

Worker Or Dependent Contractor? Recent BC Decision Examines Important Considerations



A recent BC Supreme Court decision¹ discusses factors that courts will consider when assessing whether a worker is an independent contractor, an employee or an intermediate classification of dependent contractor. One key consequence of a worker being found to be a dependent contractor instead of an independent contractor is that dependent contractors are entitled to receive common law reasonable notice upon termination, whereas independent contractors are not.

The court identified the following considerations when deciding whether a worker is a dependent contractor:

1. Whether the worker was largely limited exclusively to the service of the principal;
2. Whether the worker was subject to the control of the principal, not only as to the product sold but also as to when, where and how it was sold;
3. Whether the worker had an investment in or interest in the tools necessary to perform their service for the principal;
4. Whether by performing their duties the worker undertook risk of loss or possibility of profit apart from their fixed rate remuneration;
5. Whether the worker's activity was part of the principal's business organization – in other words, "whose business was it?";
6. Whether the relationship was long standing – the more permanent the term of service, the more dependent the worker; and
7. Whether the parties relied on one another and closely coordinated their conduct.

Applying these considerations in this case, the Court noted that the worker supplied her own instruments and found this factor to favour a finding of independent contractor. In terms of whether the parties relied on one another and closely coordinated their conduct, the Court held that this factor did not clearly favour either side, although the fact that the worker was required to call the employer when she was sick so the employer could provide an alternate worker "slightly favours" the employer's position that the worker was an independent contractor.

However, for the five remaining considerations, the Court found that these factors militated towards a finding of dependent contractor:

- The worker was economically dependent on the employer as she derived a large majority of her income from the employer;

- The employer had a high degree of control of the worker as it, among other things, restricted other work that the worker could take on;
- The employer paid the worker directly even if the customer had not paid;
- The worker wore a name tag with the employer's name on it and also had her picture and biography on the employer's website; and
- The worker had worked for the employer for twelve years.

After considering all of the factors, the court ultimately held that the worker was a dependent contractor and entitled to reasonable notice. The court awarded the worker 12 months of reasonable notice based on an assessment of the facts in the case as they related to the factors set out in *Bardal v. Globe & Mail Ltd.*, 1960 CanLII 294.

Important considerations

When entering into a working relationship with an independent contractor it is important for employers to consider how the relationship functions in actuality and not just what is contained in the independent contractor agreement. If the way a role is carried out by a worker is closer to that of an employee or dependent contractor, then a court will make that finding despite the contractual relationship you think you may have.

Footnote

1 Dibble v Creative Music Therapy Solutions Inc., 2024 BCSC 1066

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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