



FREE WEBINAR

Dependant Contractors:
Employer Obligations and
Legal Risks

EP 59

Wednesday, March 19, 2025
10:30 a.m. E.S.T.



Meet Your Presenters

Filip Szadurski

Employment, Litigation, & Contracts
Lawyer

&

Lisa Stam

Lawyer, Managing Partner



Land Acknowledgement

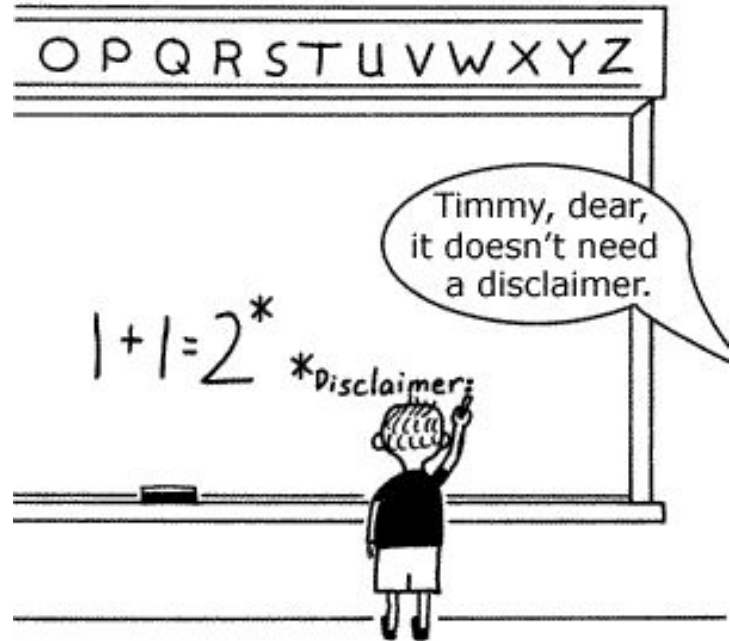
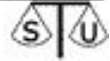
We acknowledge that the land on which we operate is the traditional territory of the Anishinaabe, Haudenosaunee, Huron-Wendat, and Mississaugas of the Credit First Nation, who have stewarded these lands for generations.

We recognize that Indigenous Peoples lived and thrived here long before the arrival of settlers, and we acknowledge the lasting impacts of colonialism. As part of our commitment to truth and reconciliation, we strive to learn, unlearn, and understand the history and effects of these wrongs.

We are grateful to live and work on this land.

Legal Disclaimers

Timmy
doesn't need
a disclaimer
but we do...



Legal Disclaimers

We're lawyers and know that legal disclaimers are never fun to read, but sometimes necessary to have. To clarify the legal scope and intent of our webinars, here are our general legal disclaimers that apply to all SpringLaw videos, webinars and content on our YouTube channel:

- 1) The content of this webinar should not be relied upon as legal advice. If you require legal advice, please contact one of SpringLaw's lawyers, or you may wish to consult with the Law Society of Ontario for a listing of lawyers in Ontario.
- 2) Attending, accessing or viewing any SpringLaw webinars does not create a lawyer-client relationship with anyone at SpringLaw. That will only happen after you formally sign a Legal Services Agreement with us.
- 3) You should apply your own judgement in making any use of any content from our webinars, including the use of the information as the basis for any conclusions. Every case and set of facts is different and unique to you - our videos are informational only.
- 4) The law changes quickly in Canada. We do not guarantee that the content of our recorded webinar videos is accurate, complete or up-to-date given how quickly the law can change. SpringLaw assumes no obligation to update the content. We assume no responsibility for errors or omissions in the content or other documents that are referenced by or linked to in our videos. The content of this webinar may be changed without notice to you.

Please contact us at info@springlaw.ca if you have any questions about any of our content or your legal matter generally.

5

Presentation Roadmap

Section 1 – Status of your Workers

Section 2 – Why Mischaracterization Matters

Section 3 – Case Studies

Section 4 – Getting it Right

Status of your Workers



Status of your Workers

- What is an “Employee”?
 - An employee works within the business, under its control.
 - Employer dictates how, when, and where work is performed.
 - Employee to pay income taxes
 - Employee entitled to benefits (if eligible and offered by the company), EI, CPP, vacation, and termination pay.

Status of your Workers

- What is an Independent Contractor?
 - A true independent contractor runs their own business.
 - Controls their work, schedule, and tools.
 - No EI, CPP, vacation, or termination pay entitlements.
 - Worker charges HST on services

Status of your Workers

- The "Dependant Contractor" Trap
 - Not fully independent, but not an employee either—grey area.
 - Key risk: Dependents are entitled to reasonable notice of termination.
 - Courts generally look at exclusivity and economic dependence.

How to Characterize your Workers

- Employee vs. Independent Contractor – Key Factors
 - **Control:** Who dictates how, when, and where work is done?
 - **Tools & Expenses:** Does the worker use their own tools and cover expenses?
 - **Integration:** Is the worker part of the core business or a separate entity?

Why Mischaracterization Matters



Why Mischaracterization Matters

- You can't fake it – courts will look at actual relationship
- Why it matters on termination:
 - If a contractor – terminate contract as per IC agreement (like a business relationship)
 - If an employee – termination includes range of statutory, contract and common law

What about Dependent Contractors?

- Have key employee-like rights:
 - Termination pay regardless of contract characterization
 - Tax and statutory deduction liabilities as an “employee”
 - ESA compliance liabilities: overtime, vacations, minimum wage, etc

Status of Workers in the Remote Workplace

- Does location of worker impact worker status characterization?
- Will company-provided devices for international contractors impact characterization?

Case Studies



Case Studies

- *McKee v. Reid's Heritage Homes Ltd.* (2009 ONCA 916)
 - sets the stage and solidified the concept of “dependent contractor”
 - identified the initial test is to assess if someone is a dependent contractor:
 - first assess if the worker at issue is an employee or independent contractor.
 - Then, if an IC, assess if the worker is a dependent contractor, not truly an “independent” contractor, based on exclusivity, amongst other factors.

Case Studies

- *Keenan v. Canac Kitchens Ltd.* (2016 ONCA 79)
 - Provided “exclusivity” legal analysis
 - entire history of the relationship to be assessed and not a “snapshot” in time.
 - exclusivity will be established where there is “economic dependence” on the employer through “exclusivity or a high level of exclusivity”

Case Studies

- *Thurston v. Ontario (Children's Lawyer)* (2019 ONCA 640)
 - **Helpful Court Analysis:** if a non-employee worker is not at least 50% economically dependent on the employer, they are not truly “exclusive”, and therefore, most likely an IC not a dependent contractor
 - **Unhelpful Court Analysis:** misconception since that less than 50% economic dependence = independent contractor
 - This is not necessarily correct.

Nuances in the caselaw

- Note: some caselaw says exclusivity is *not* the only thing that matters, so remains complex area for which to get legal advice
- For example, could potentially be economically dependent on one client, yet an independent contractor in substance overall.

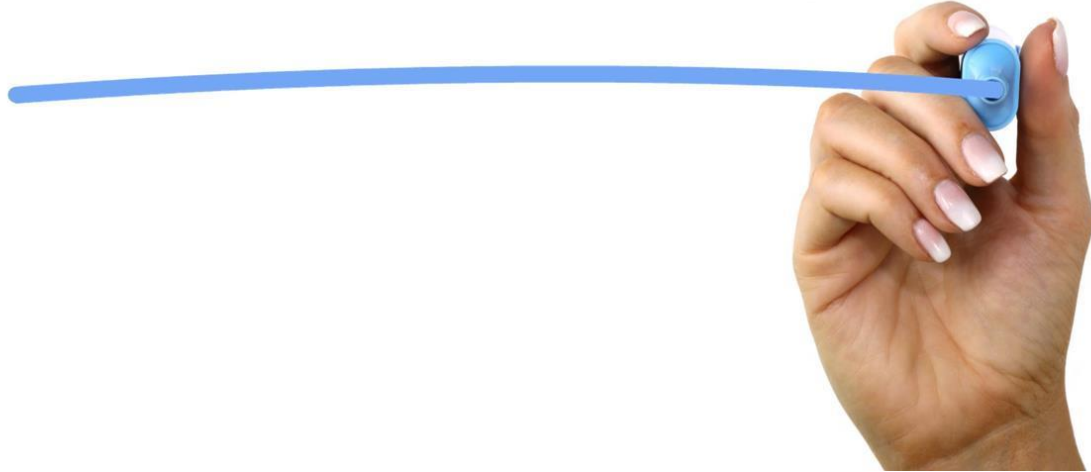
Getting it Right



How to Get Classification Right

- Use a legal test, not just contract wording.
- Regularly review contractor relationships as business needs evolve.
- If in doubt, seek legal advice—proactive compliance is cheaper than litigation.

QUESTIONS



Thank you!

To learn more about our team:

<https://springlaw.ca/our-team/>

To connect with our legal team:

- Lisa Stam – lstam@springlaw.ca
- Marnie Baizley – mbaizley@springlaw.ca
- Tiffany Thomas – tthomas@spring.ca
- Jeffrey Adams – jadams@springlaw.ca
- Lexa Cutler – lcutler@springlaw.ca
- Filip Szadurski – fszadurski@springlaw.ca
- Calvin To – cto@springlaw.ca
- Jessica Paglia – jpaglia@springlaw.ca
- Gaya Murti – gmurti@springlaw.ca
- Maureen Cruz – mcruz@springlaw.ca
- Shannon Baker – sbaker@springlaw.ca

Sign up for future **SpringForward Legal Updates**:

springlaw.ca/employers/springforward-legal-updates/

Sign up for our monthly **Newsletter**:

www.springlaw.ca

We are SpringLaw!



Lisa Stam
Lawyer, Managing
Partner



Marnie Baizley
Partner, Lawyer



Tiffany Thomas
Lawyer



Jeffrey Adams
Lawyer



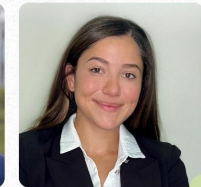
Lexa Cutler
Lawyer



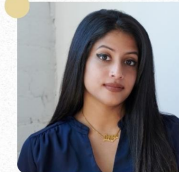
Filip Szadurski
Lawyer



Calvin To
Lawyer



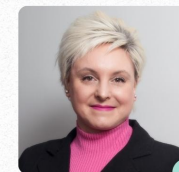
Jessica Paglia
Lawyer



Gaya Murti
Paralegal



Maureen Cruz
Legal Assistant



Shannon Baker
Law Clerk