

## ***Contractors: Dependent or Independent***

The Ontario Court of Appeal recently provided some much-needed guidance on how to identify a dependent contractor in *Thurston v. Ontario (Children's Lawyer)* ("Thurston"). A dependent contractor is a third category of worker that falls between an employee and an independent contractor.

Like an independent contractor, a dependent contractor is not entitled to any of the benefits afforded to employees by provincial employment standards legislation, such as vacation time and pay, overtime, and protected leaves of absences. However, a dependent contractor will generally be entitled to additional notice of termination absent an enforceable termination provision.

At times it can be difficult to correctly determine when an individual is an independent or dependent contractor. Typically, a dependent contractor is a contractor that exclusively works for one company or is economically dependent on one company. In *Thurston*, a lawyer provided legal services to the Office of the Children's Lawyer ("OCL") over a 13-year period until the OCL chose not to renew her retainer. The lawyer claimed she was a dependent contractor for the OCL and was therefore entitled to 20 months' notice of termination. Over the 13-year period, her OCL billings accounted for an average of 39.9% of her annual billings.

Based on the above percentage, the Court determined she was not a dependent contractor. Importantly, the Court stated that in order for a dependent contractor relationship to exist, substantially more than 50% of a worker's billings or income needs to come from one employer.

However, employers should note that in making a determination regarding a particular worker's status, courts will consider a wide range of factors. In *Thurston*, the Court made note of the fact that the lawyer had her own office and was not guaranteed a minimum amount of work by the OCL, among other factors. Each set of circumstances deserves its own unique analysis.

If you are ever unsure how to properly categorize a particular worker, please contact an e2r® advisor.