

Selection of post-*McKee* (2009) cases that demonstrate the application of exclusivity and economic dependence criteria¹

Review of Cases re Employment status and Exclusivity/Economic Dependence criteria						
#	Case	Relevant Facts	Worker Status	Exclusivity or near exclusivity	Economic Dependence	Key factors
1	<i>Cormier v 1772887 Ontario Limited (cob as St. Joseph Communications)</i> 2019 ONSC 587 aff'd 2019 ONCA 965	Wardrobe Stylist without a written contract, formerly an employee	Dependent Contractor	X	X	The worker worked for the employer for 23 years and no change in role from employee to contractor (para 52, ONSC decision).
2	<i>Thurston v Ontario (Office of the Children's Lawyer)</i> 2019 ONCA 640	Lawyer with private practice applied to be a panel lawyer to provide services to clients on an as needed basis. Series of consecutive, fixed term contracts	Independent Contractor			Near exclusivity requires substantially more than 50% of earnings (para 30).
3	<i>VPM Marketing v Jenne</i> 2018 ONSC 4627	Shareholder of a marketing company, without a written contract	Dependent Contractor	X	X	The worker worked for the employer for 20 years (para 133).
4	<i>Beattie v Women College Hospital</i> 2018 ONSC 1852	Physicians with a written contract	Dependent Contractors	X	X	Worked nearly exclusively at the hospital (paras 21- 36).

¹ No cases surveyed have found that a worker was a dependent contractor absent exclusivity/near exclusivity and economic dependence.

5	<i>Fisher v Hirtz</i> 2016 ONSC 4768 (ONSC) (“Fisher”), aff’d <i>Fisher v 6007325 Canada Inc.</i> 2017 ONSC 5943 at paras 2-5 (DC)	Painter with a written contract	Independent contractor	X		Exclusivity cannot be self-induced to create dependence (para 47, ONSC decision). The worker controlled whether she accepted the assignments and had her own tools.
6	<i>Keenan v Canac Kitchens Ltd.</i> 2016 ONCA 79	Foreman with a written contract	Dependent contractor	X	X	Economic dependence is vital to determining approach to exclusivity (paras. 24-25). Exclusivity cannot be determined using a snapshot approach and must look at full history (para 25). Work accounted for 97.5% of work (para 27).
7	<i>Tetra Consulting v Continental Bank of Canada et al.</i> 2015 ONSC 4610	Chief Compliance Officer with a written contract	Dependent contractor	X	X	The worker had no other work during the entire period of the relationship (para 16).
8	<i>Ford & Associates Inc. (o/a Training Services) v Keegan</i> 2014 ONSC 4989	Consultant with a written contract	Dependent contractor	X	X	Findings of a dependent contractor. Worker was limited exclusively to this employer (para 139).
9	<i>Wyman v Kadlec</i> 2014 ONSC 4710	Resort manager with a written contract	Independent contractor	X		Worker is semi-retired and had other source of income so not economically dependent (para 29-31). Worker set his own hours.
10	<i>Conde v National Sign Manufacturers Ltd.</i> 2013 ONSC 229	Worker in the sign business	Independent contractor			Worker was informed he could not be hired as an employee. Worker could set his own hours. Worker could give priority to his own clients (paras 12-14).

						Worker had an extensive list of clients or potential clients - 40% of the worker's earnings were from his own clients. Worker has his own corporation. Worker filed income tax as an independent contractor. Worker had his own business cards, letter head and telephone number - worker brought his own supplies. Worker did his own invoicing. Worker hired his own sub-contractors. Worker owned his own tools.
11	<i>Sarnelli (cob East end Lock and Key) v Effort Trust Co.</i> , 2011 ONSC 1080	Locksmith hired without a written contract	Dependent Contractor	X	X	On call for the employer. Worker had 7 telephone numbers for employer. Worker was employer's only locksmith from 2002- 2003 (para 22).
12	<i>McKee v Reid's Heritage Home Ltd.</i> 2009 ONCA 916	Salesman hired with a written contract.	Employee	X	X	Question before court was whether the worker was an employee or a contractor. The dependent contractor analysis was not applied in this case (paras 30, 34, 35).