

THE LEGAL EDGE

Current developments in the law which may affect you or your business

Prepared by the offices of Michael Woods and John Allen

DOCTRINE OF VICARIOUS LIABILITY EXPANDED

It is common knowledge that an employer is liable for the actions of its employees taken in the course of their employment. The legal term for this is “vicarious liability”. The recent decision of the Ontario Court of Appeal in 671122 *Ontario Limited formerly Design Dynamics Limited v. Sagaz Industries Canada Inc.* is of interest as it expands the scope of this doctrine to include potential liability for the actions of persons with whom the employer has an independent contractual relationship.

The facts of this case are not uncommon. *Sagaz* was a Florida based company. It retained the services of a marketing agent in Canada to market its products in Canada. A contract was entered into which contained a clause expressly stating that the marketing agent was an independent contractor. The principal of the marketing agent procured the business of Canadian Tire away from the plaintiff (which at that time carried on business under the name “*Design Dynamics Limited*”), by bribing a purchasing agent of Canadian Tire. At the time, Canadian Tire was *Design Dynamics’s* largest client. *Design Dynamics* sued all parties involved and obtained judgment against the marketing agent and its principal for more than \$2 million CDN. The issue on appeal was whether the Florida based *Sagaz* was vicariously liable for the actions of its Canadian marketing agent, and as such liable to satisfy the judgment.

The Court of Appeal reversed the trial judge’s decision on this issue and found *Sagaz* vicariously liable for the wrongful acts of its marketing agent. The key findings of the Court can be summarized as follows:

1. The label attached to a relationship by the parties is not determinative. The Court will look at all the facts to determine the true legal character of the relationship.
2. The key factor the Court will consider is whether the services being provided by the independent contractor were an integral part of the organization of the other party, or whether such services were incidental to the overall business operations.
3. Of critical importance in this case was that notwithstanding the existence of the contract, the services being provided by the independent contractor were essentially employment services disguised as a independent contractual relationship. The initial contact with Canadian Tire was made by the national sales manager of *Sagaz*. After that the marketing agent took carriage of the account on behalf of *Sagaz* just as an account executive would do. In essence the relationship was an employment relationship.

As a result of this decision, determining when vicarious liability will attach to any particular contractual relationship is not a “bright line” test. The lesson to be learned is clear: pick your contractual partners carefully because at the end the day, you may be responsible for their actions!

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