

## **Use of the corporate form by an employee to bill his employer is not determinative that the employment relationship has ceased to exist**

In *Kordish v. Innotech Multimedia Corp.*<sup>1</sup>, to obtain tax advantages including the ability to deduct his expenses, Mr. Kordish formed a single shareholder corporation, Kortech Inc., and with the consent of his employer, Innotech Multimedia Corp. (the “Employer”), provided his services to the latter through this corporate vehicle. He invoiced the Employer for his services through Kortech Inc. and charged the Employer G.S.T., which the Employer knowingly paid. In return for the benefit of providing his services through Kortech Inc., Mr. Kortech gave up entitlement to various health and other benefits he would otherwise be entitled to as an employee.

Unfortunately, Mr. Kordish did not meet the expectations of the Employer and eleven (11) months after he commenced working for the Employer, the Employer terminated his engagement for cause. Thereafter, Mr. Kordish commenced a wrongful dismissal claim against the Employer.

The Ontario Court of Justice (Gen. Div.), while acknowledging that the Employer clearly had issues with the performance of Mr. Kordish, concluded that the Employer failed to establish cause. The Court then, in determining appropriate damages in lieu of reasonable notice, noted that Mr. Kordish was not precluded from recovering damages by virtue of having contracted his services with the Employer through the corporate vehicle and the notice period or the measure of damages to be awarded would not be affected because his services were provided using such form or because the tax benefits he received therefrom.

Employers should be careful not to be deceived into believing that just because their employee is using a corporation to bill them (even where the invoices include taxes for services rendered) that the employment relationship and its attendant obligations such as the requirement to give reasonable notice of termination of employment where no cause exists has ceased or given way to some other relationship such as an independent contractor relationship. The use of the corporate form by an employee to bill his employer is not determinative that the employment relationship has ceased to exist.

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<sup>1</sup> (1998), 46 C.C.E.L. (2d) 318 (Ont. Ct. J. (Gen. Div.)), aff'd [2000] O.J. No. 2557 (C.A.).



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