



Case in Brief: **Modern Cleaning Concept v. Comité paritaire**

Judgment of May 3, 2019 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2019 SCC 28

The actual relationship—not the words in a contract—will determine whether someone is an employee, the Supreme Court has ruled.

Modern Cleaning Concept offered cleaning services. It signed contracts with clients and managed the business, but hired cleaners (which it called “franchisees”) to do the actual cleaning. Clients got bills from Modern Cleaning Concept, not from the cleaners.

Mr. Bourque had his own part-time cleaning business in the Quebec City area. His spouse helped him with cleaning jobs. In 2014, he became one of Modern Cleaning Concept’s cleaners. The agreement said Mr. Bourque was an independent contractor and had full control over his business. But it also said Modern Cleaning Concept had a lot of control over him. Mr. Bourque had to report any complaints right away, and fire an employee if the company or a client asked. He had to report any new possibilities for cleaning contracts, so the company could sign the client. Modern Cleaning Concept paid Mr. Bourque directly, and would deduct amounts he owed under the agreement. This could be up to 43% of what he earned.

After five months, Mr. Bourque left because he couldn’t build his business or make profits. He ended the agreement and went back to his own business.

In the Quebec City area, employees cleaning public buildings are covered by a collective agreement. This is called the *Decree respecting building service employees in the Québec region*. “Employee” is defined in the *Act respecting collective agreement decrees*. It doesn’t include independent contractors. The *Comité paritaire de l’entretien d’édifices publics de la région de Québec* (the Committee) makes sure the Decree is followed.

The Committee looked at Mr. Bourque’s situation. His agreement with Modern Cleaning Concept said he was an independent contractor. But the Committee thought he was really an employee. This would mean the company owed Mr. Bourque and his spouse over \$9,000 in unpaid wages and benefits. It took the claim to court on their behalf.

The trial judge said Mr. Bourque was an independent contractor. But the majority at the Court of Appeal said he was an employee. It said the trial judge should have thought more about the company’s business model. It said the way three different parties (Modern Cleaning Concept, its clients, and Mr. Bourque) were tied together was important to deciding this case.

The majority at the Supreme Court agreed with the Court of Appeal. It said that to decide if someone is an independent contractor or an employee really depends on the specific facts. Independent contractors are more like businesses. They take on business risks in order to make profits. Employees don’t. Looking at the contract with the client and the agreement with Mr. Bourque, it was clear that Modern Cleaning Concept kept the risk and the chance to profit. It was responsible to its clients for making sure the work got done. It was rewarded for taking this risk, with up to 43% of Mr. Bourque’s earnings. It controlled him closely with the conditions set out in its agreement with him. Because of these restrictions, Mr. Bourque couldn’t really build his business or make a profit. That meant he was an employee.

In this case, a person was found to be an employee under a specific law (the *Act respecting collective agreement decrees*). Someone can be considered an employee under one law (for example, the Act) but not another (for example, employment insurance legislation). Each situation depends on its own facts.

Breakdown of the decision: **Majority:** Justice Rosalie Silberman [Abella](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Gascon](#), and [Martin](#) agreed) | **Dissenting:** Justices Suzanne [Côté](#), Russell [Brown](#), and Malcolm [Rowe](#) said that it was open to the trial judge to find that Mr. Bourque was an independent contractor because he intended to accept a business risk, and would have allowed the appeal

More information (case # 37813): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings (available in French only): order (Comité paritaire de l’entretien d’édifices publics de la région de Québec, not available online) | [judgment](#) (Court of Quebec) | [appeal](#) (Court of Appeal of Quebec)

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