# Foodora workers found to be “dependent contractors” in labour board decision

**February 28, 2020**

In the Ontario Labour Relations Board’s (the Board) first decision with respect to workers in the “gig economy”, Foodora’s couriers have been found to be “dependent contractors” within the definition of Ontario’s *Labour Relations Act* (the Act), and thus have the right to unionize under the Act.

In the long-awaited decision that will impact Ontario’s approach to ride-sharing services, food delivery apps and other “gig” platforms, the Board underwent a lengthy point-by-point analysis before finding that Foodora couriers are “dependent contractors” that “must be treated as such under the Act.”

## Background

In August 2019, couriers working for Foodora Inc. (Foodora), an app-based food delivery company, voted on whether to join the Canadian Union of Postal Workers (CUPW), with the Board electing to seal the ballot box pending clarification of the couriers’ status.

Unlike many other jurisdictions in Canada, the Act:

- Creates a category of workers called “dependent contractors” – those who, whether or not employed, are in a position of economic dependence upon, and under an obligation to perform duties for another person/entity; and
- Includes “dependent contractors” in the definition of “employee”.

The issue before the Board was whether Foodora’s couriers met the definition of “dependent contractor” in the Act or, as argued by the Company, whether they were independent contracts not covered by the Act.

## Ontario labour relations board decision

The Board reviewed the activities of the couriers in detail and determined that they are, in fact, dependent contractors. The Board found there to be the requisite elements of control, primarily because couriers had to use the app owned and controlled by

Foodora. The Board also concluded that the many incentives and restrictions imposed by Foodora governing the couriers' work supported the conclusion that the couriers are in a position of economic dependence on Foodora. In the words of the Board: "The couriers are selected by Foodora and (are) required to deliver food on the terms and conditions determined by Foodora in accordance with Foodora's standards. In a very real sense, the couriers work for Foodora and not themselves".

# Takeaway

Statistics show that the "gig economy" continues to grow in Canada and elsewhere. While the Ontario Act is unique in that it gives dependent contractors the right to unionize, there could certainly be a ripple effect because of this decision in Ontario and elsewhere.

In particular, this decision is interesting when contrasted with the state of the law in the United Kingdom, where the Central Arbitration Committee (and on review, the High Court), rejected an application to gain union recognition by a group representing Deliveroo drivers who operate in a similar manner to Foodora couriers. In the *Deliveroo* case,[1] the drivers were found to be independent contractors, and thus were deemed ineligible to unionize – a finding that is particularly relevant given that UK legislation features a recognized category of "worker" that is comparable to that of a "dependent contractor" in Canada.

[1] *Independent Workers' Union of Great Britain (IWGB) and RooFoods Limited T/A Deliveroo,* TUR1/985(2016) (*Deliveroo*).

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