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Employing Minors in the Entertainment Industry: A Primer for Employers Doing Business in Canada

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Employers that hire minors must comply with a myriad of special rules designed to protect the minor employee from, among other things, dangerous work, exploitation, and abuse.

Legislators and courts have gone to great lengths to protect working minors, particularly in light of high-profile cases of financial exploitation or other abuse. Employers in the entertainment industry must comply with both the general rules on employing minors, and special rules that apply to the entertainment industry.

General Protections for Working Minors in Canada

Each Canadian province has enacted legislation dictating the minimum age for employment in various industries, as well as a number of conditions that may apply to certain kinds of work or work in certain industries. This article discusses Ontario and British Columbia (BC) as examples.

Most provinces have a general minimum age for industrial employment (broadly defined). In Ontario, the minimum age for industrial employment is 14 years of age. In BC, the minimum age is 15. Other provinces set the general minimum age of employment between 14 and 17 years old.

The minimum age in certain industries is higher. For example, in Ontario, employment standards and/or occupational health and safety regulations establish additional minimum ages for minors' work in specific industries:

1. Factories or repair shops: 15 years of age
2. Logging operations: 16 years of age
3. Construction: 16 years of age
4. Above-ground mine operations: 16 years of age

5. Underground mine operations: 18 years of age

In British Columbia, the general minimum employment age is 15 years old, though children between the ages of 12 and 14 may be employed with their parents' or guardians' written permission. This requirement provides the parent or guardian an opportunity to ensure that the employment is suitable and in the best interests of the child and that it will not negatively affect the child's social, physical, or educational needs. In order to employ a child under the age of 12, an employer must obtain a permit from the Director of Employment Standards.

In BC and Ontario (and in most other provinces), rules restrict or regulate employment during the regular hours of school and/or on school days (unless the minor has been legally excused from attending school). For example, BC sets the following maximum number of hours of work for children between the ages of 12 and 14 as follows:

- 4 hours on a school day;
- 7 hours on a non-school day, unless the Director of Employment Standards has provided written approval;
- 20 hours in a week that has 5 school days; and
- 35 hours in any other week.

Each province and its respective ministry of labour have taken special interest in protecting young workers in areas including employment standards and occupational health and safety. There are, however, a myriad of other rules that apply to young workers, including young workers over the minimum age of industrial employment.

Employing Minors in the Entertainment Industry

Employers in the live or recorded entertainment industry must take care to comply with special rules that apply to minors working in the entertainment industry. Both BC and Ontario have specific laws governing minors' participation in entertainment work.

In BC, minors under the age of 15 working in the recorded entertainment industry (such as in film, video, or television productions) are governed by an entirely separate set of rules from those that apply to other minors. These rules are set out in section 45.5-45.13 of the *Employment Standards Regulation*. Among other things, these rules provide that

1. The minimum age of employment is 15 days old.
2. For children under the age of 12, a shift cannot last longer than 8 hours after the child reports to the work location. For children aged 12 to 14, a shift cannot last more than 10 hours.
3. Special rules apply to working on school days, and the hours at which employment may begin and must cease depend on whether the next day is a school day and/or whether school is in session.

4. Split shifts are prohibited, as are long lunch breaks (that might otherwise be used to create split shifts).

5. Time in front of a recording device is strictly regulated, and a specified break must be provided between recording sessions. The length of time and break depends on the child's age.

6. A child must have at least 48 consecutive hours free from work each week (or else be paid 1.5 times his or her regular rate of pay for any hours the child would otherwise have been free from work); 12 hours free between each shift of work; and 12 hours between the end of work and when the child is scheduled to attend school.

7. The child cannot work more than 5 days in a week (or 6 days, if the Director of Employment Standards approves in writing).

8. The child must be chaperoned by either his or her parent or guardian, or by a person over the age of 19 designated by the child's parent or guardian.

9. If a child earns more than $2,000 on a production, the employer must remit 25 percent of any such earnings to the Public Guardian and Trustee to hold in trust for the child.

A different set of rules applies to children aged 4 to 15 who work in the live entertainment industry (such as in theatre, dance, music, opera, or circus productions). Among other things, these rules provide that

1. The child cannot work more than 8 hours in a day (or for up to 12 hours in a day if not working at a performance on that day, which exception can apply up to 4 times per production).

2. The child cannot begin work earlier than 7:00 a.m. or end work later than 12:30 a.m.

3. The child must have at least 36 hours per week free from work (or else be paid 1.5 times his or her regular rate for any hours the child would otherwise have been free from work) and 12 hours free from work between each shift worked.

4. The child must be chaperoned by either his or her parent or guardian, or by a person over the age of 19 designated by the child's parent or guardian.

5. If the child earns more than $1,000 in a week, the employer must remit 25 percent of any such earnings over $1,000 to the Public Guardian and Trustee to hold in trust for the child.

In February of 2016, new Ontario legislation called the Protecting Child Performers Act, 2015 came into force. Much like its BC equivalent, this legislation provides special rules for children under the age of 18 who work in the live entertainment industry and the recorded entertainment industry.

Among other things, the Protecting Child Performers Act, 2015 sets out the following general rules:

1. Before employing or contracting with a child performer, an employer must hold a meeting with the child performer's parent or guardian to disclose a general description of the role the child

performer will play; the location and hours of rehearsals and performances; any health and safety hazards that the child performer may be exposed to and precautions to be taken; any special skills the child performer will be expected to perform; and any special effects to which the child performer may be exposed. Any changes to this information must be subsequently disclosed.

2. An employer and child performer must have a written agreement.

3. A parent, guardian, or authorized chaperone (over the age of 18) must escort a child performer under the age of 16 to and from the workplace.

4. A parent or guardian must accompany a child performer during any overnight travel, the expenses for which the employer must pay.

5. The child performer's work schedule must provide time for child performers of compulsory school age to receive tutoring.

6. If a child performer earns more than $2,000 on a production or project, the employer must remit 25 percent of those earnings to be held in trust for the child performer, unless the child is a member of a union or professional association that negotiates on behalf of the child performer and the collective agreement provides for trust holding of designated earnings.

7. Special health and safety training must be provided to all child performers and their chaperones.

8. Healthy food must be provided for all child performers.

For children in the recorded entertainment industry, additional rules apply, including the following:

1. The minimum age of employment is 15 days.

2. Child performers under the age of two cannot work more than four hours in a day; performers over the age of two may work eight hours in a day.

3. Forty-eight hours' notice must be given if a child performer is required to report to work later than 7 p.m.

4. A child performer must have at least 12 consecutive hours free from work each day, and 48 consecutive hours free from work each week.

5. Split shifts are prohibited, as are long lunch breaks (that might otherwise be used to create split shifts).

6. Time in front of a recording device is strictly regulated, and a specified break must be provided between recording sessions. The length of time and break depends on the child's age.

7. A parent, guardian, or designated chaperone (over the age of 18) must accompany the child performer in the workplace.

8. The employer must designate a child performer's coordinator at each workplace who is responsible for coordinating matters relating to the welfare, safety, and comfort of child performers.

For children in the live entertainment industry, additional rules apply, including the following:

1. The minimum age of employment is two and a half years old.

2. During the rehearsal phase, children under six years old may not work more than 4 hours in a day or 16 in a week, whereas children over six may not work more than 8 in a day or 42 in a week.

3. During the performance phase, a child performer may only work up to 8 hours in a day for 2 days per week, and then 4 hours on any other days. The maximum number of hours is 32 in a week.

4. All child performers must have at least 12 consecutive hours free from work in a day and 36 in a week.

5. Child performers must not work longer than 2 hours without a break of at least 10 minutes.

6. A parent, guardian, or designated chaperone (over the age of 18) must accompany the child performer in the workplace, and a child attendant must be designated to monitor the child performers when they are not rehearsing or performing.

Entering Into Contracts With Minors

All Canadian provinces have a minimum age of majority (e.g., in Ontario, 18 years old; in BC, 19 years old; and in other provinces either 18 or 19 years old). Entering into a contract with a person below the minimum age of majority has special risks associated with it.

As a common law rule, all contracts entered into by a minor are voidable at the child's option, unless they are contracts for the necessaries of life (such as food, lodging, legal, or medical services), beneficial contracts of service (i.e., for employment or training and apprenticeship), or agreements that the minor ratifies after becoming an adult.

Perhaps unsurprisingly, one of the leading cases on when a minor may renounce an employment contract in Canada involved a minor hockey player who went on to become a professional hockey player.

In *Toronto Marlboro Major Junior "A" Hockey Club, et al. v. Tonelli, et al*., the Toronto Marlboros hockey club (which was the junior affiliate of the Toronto Maple Leafs) sued John Tonelli, a hockey player who renounced his junior hockey contract and joined a professional hockey team upon turning 18. The terms of Tonelli's standard form minor hockey contract provided that he would be required to pay 20 percent of his gross earnings with any professional hockey club in the first three years of his contract to the Toronto Marlboros, ostensibly to offset the cost of training and developing Tonelli as a hockey player.

The case turned on whether the contract of service was, as a whole, beneficial to the interests of Tonelli at the time he signed it; if it was not, then it was not binding on him and his repudiation of it upon turning age 18 voided the contract. The trial judge noted that the word “beneficial” referred principally to financial benefit. The onus to prove the contract was beneficial fell on the employer.

Upon reviewing the terms, the trial judge found that the contract was uneven and heavily favored the Marlboros’ interests, noting that it allowed the Marlboros to terminate Tonelli at their discretion, but bound Tonelli for several years. It also reserved television and media rights to the Marlboros and the value of the training and development “services” provided to Tonelli were not comparable to the amount of money he would pay to the Marlboros under the contract. On appeal, a majority of the Court of Appeal for Ontario agreed with the trial judge that the contract was voidable by Tonelli.

Although such repudiation cases are rare, the message for employers is clear: Contracts with young entertainers must be approached with caution, particularly where they contain onerous restrictions or terms that might appear to be one-sided. The courts will scrutinize such contracts and, if the young person repudiates the contract, it is the employer that has to prove that the contract was beneficial to the young person when it was signed.

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