

Renting Hotel Rooms to Minors

As Hoteliers, you're in the business of renting rooms. At the basic level, renting a room involves creating a valid and enforceable contract with your clientele. And it makes good business sense to operate on the principle of establishing a valid and enforceable contract for each and every transaction.

Difficulties arise, however, when Hoteliers are asked to rent rooms to minors. For example, when is a contract between a hotel and a minor valid and enforceable? If a contract is unenforceable against a minor, why can't a Hotelier implement a policy prohibiting the rental of hotel rooms to minors? Are there ways to minimize the risks of a complaint of discrimination being filed against the hotel for declining to rent a room to a minor?

This Bulletin addresses these difficulties and provides practical strategies for addressing the liabilities associated with renting hotel rooms to minors.

What is a Minor?

In Ontario, the *Age of Majority and Accountability Act*¹ indicates that:

Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years.

Accordingly, a minor is any person that is less than 18 years old, even by one day.

A Valid Contract

At common law (the body of law developed by the courts), a contract is only found to be valid if three requirements are met: offer, acceptance and consideration.

For a Hotelier, the transaction could be as follows:

1. By virtue of opening its doors, or in some instances, by advertising on a billboard or through online marketing, the hotel offers room rentals to its clientele;

2. By walking up to the reception desk and making a reservation or by booking a room online, a guest accepts the offer; and
3. The hotel provides consideration in the form of a hotel room rental and the guest's payment for the room rental completes the exchange of consideration.

Once these steps are taken by a Hotelier and a guest, a valid contract is said to exist.

An Enforceable Contract

Despite the creation of a valid contract, Hoteliers may experience difficulties when they attempt to enforce a contract against a guest. There are a number of defences available to a party seeking to have a contract rendered unenforceable against him or herself. One such defence is mental incapacity. Under the common law, a contract can be found unenforceable against a party without mental capacity which includes the state of being a "minor".

Through a combination of the *Age of Majority and Accountability Act* and the common law, parties contracting with minors, *i.e.*, persons 17 years of age or younger, should proceed cautiously since there may be difficulties enforcing such contracts.

What are the Implications for Hoteliers?

With the knowledge that a contract made with a minor may not be enforceable, it may be tempting as a Hotelier to implement a policy prohibiting the rental of a hotel room to a minor out of fear that the minor will not pay for the room or any services rendered. Hoteliers may be further tempted not to rent to a minor for fear of damage being caused to the room or the property and the possibility of the minor disturbing other guests of the hotel.

However, a policy prohibiting the rental of a hotel room to a minor based on his or her age may result in a complaint of discrimination based on the prohibited ground of age. In Ontario, complaints of this nature are usually heard before the Ontario Human Rights Tribunal (the "Tribunal"). Hearings before the Tribunal are time-consuming and may be costly, both in terms of defending against a complaint of discrimination and the possibility of an award of damages in favour of the complainant.

To avoid having to defend against a discrimination complaint with respect to the rental of hotel rooms to minors, Hoteliers should be aware of the applicable provincial human rights legislation.

Ontario Human Rights Code²

In Ontario, Hoteliers are bound by the Ontario *Human Rights Code*. In the context of renting hotel rooms, section 2.(1) of the *Code* states that:

Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

Generally, the right to equal treatment without discrimination based on age applies when a person turns 18. Accordingly, hotels cannot refuse, on the basis of age, to rent a hotel room to persons who are 18 years of age or older.

The *Code*, however, provides special consideration for persons that are 16 or 17 years of age when dealing with accommodation. In Ontario, the Ontario Human Rights Commission in Guide to Your Rights and Responsibilities under the *Human Rights Code* states that “accommodation” refers to housing and “also covers renting or being evicted from a hotel room”. The *Code* provides that:

Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

The special consideration found in the *Code* for persons that are 16 or 17 years of age in the provision of accommodation is not automatic, but rather, the 16 or 17 year old person must have withdrawn from parental control before they are entitled to the right to equal treatment based on age. However, determining whether a 16 or 17 year old person has withdrawn from parental control can be difficult.

Drawing from jurisprudence under the *Family Law Act*,³ in order for a 16 or 17 year old minor to be found to have withdrawn from parental control, the minor must have made a conscious decision to start his or her own life and accept responsibility for him or herself. This is to be distinguished from a 16 or 17 year old minor that left his or her home out of necessity because of the circumstances in the home.

To insulate against allegations of discrimination and liability, Hoteliers can attempt to determine whether a 16 or 17 year old minor has withdrawn from parental control by requesting proper identification that includes the minor’s residence and home telephone number. At this point, the Hotelier can attempt to contact the minor’s parents to determine whether or not the parents continue to exert control over the minor. In addition, the Hotelier should require the minor to sign a declaration attesting to his or her withdrawal from parental control. Once satisfied that the 16 or 17 year old has withdrawn from parental control, it

is discriminatory to decline to rent a hotel room to that individual based solely on age.⁴

Hoteliers are reminded that relying on stereotypes and generalizations about minors can result in allegations of discrimination if the person is 16 or 17 years of age and has withdrawn from parental control, or if the person is 18 years of age or older.

Aside from the rental of a hotel room to a minor, Hoteliers must also be cautious not to discriminate against a minor with respect to “services, goods and facilities”⁵ and the “right to contract”.⁶ Because the case law in Ontario with respect to the denial of a hotel room rental to a minor is undeveloped, it is possible that such a complaint may be filed under section 1 (Services), section 2 (Accommodation), or section 3 (Contracts) of the *Code*, or any combination of the above three sections.⁷

Hoteliers should not decline a room rental solely based on:

1. Age (unless the person is 15 years of age or younger);
2. Any other prohibited ground of discrimination, such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, marital status, family status or disability;
3. The person belonging to a group assumed to cause trouble;
4. The person associating with a group assumed to cause trouble;
5. The Hotelier’s belief that the group will be unacceptable to other guests.

Denying a hotel room rental may, however, be based on the individual’s current behaviour (for example, if the person is visibly intoxicated and belligerent) or past exhibited behaviour (for example, if the person was responsible for unpaid damages to a prior hotel room rental).

Human Rights Legislation outside Ontario

While Hoteliers in Ontario are bound by the *Code*, the other provinces and the federal sector have comparable legislation prohibiting discrimination based on age. Since the definitions of “age” and “accommodation” vary widely from province to province, so too do the age-based protections afforded to individuals in the rental of hotel rooms. Due to the various definitions of age from province to province, and the applicability of age as a prohibited ground of discrimination in hotel room rentals, all Hoteliers are well advised to consult their provinces’ human rights legislation.

This Bulletin provides a general overview of the law as it relates to certain human rights and employment matters. The Bulletin is intended for informational purposes only (and not as legal advice). As a result, always seek the advice of employment law counsel when human rights and employment related rights and obligations are in question.

For further information on human rights and other labour and employment law obligations as a Hotelier, please contact Sheri Farahani at Emond Harnden LLP at (613) 940-2745 or sfarahani@emondharnden.com.

1. *Age of Majority and Accountability Act*, R.S.O. 1990, Chapter A.7 (the “*Age of Majority Act*”). The *Age of Majority Act* is available online at <http://www.canlii.org/en/on/laws/stat/rso-1990-c-a7/latest/rso-1990-c-a7.html>.

2. *Human Rights Code*, R.S.O. 1990, c. H.19 (the “*Code*”). The *Code* is available online at <http://www.canlii.org/en/on/laws/stat/rso-1990-c-h19/latest/rso-1990-c-h19.html>.

3. *Family Law Act*, R.S.O. 1990, c. F.3. The *Family Law Act* is available online at <http://www.canlii.org/en/on/laws/stat/rso-1990-c-f3/latest/rso-1990-c-f3.html>.

4. Section 4.(2) of the *Code* provides a corresponding protection to Hoteliers that have contracted for accommodations with persons that are 16 or 17 years of age, by deeming that the contract for accommodation is enforceable:

A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old.

5. *Code*, s. 1.

6. *Code*, s. 3.

7. Note: sections 1 and 3 do not contain “the receipt of public assistance” as a prohibited ground of discrimination, whereas “the receipt of public assistance” is a prohibited ground in the provision of accommodation in s. 2.