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Baby, Baby No

Contracting With Minors

Justin Bieber and many “minors” before him have entered into the music business prior to turning 18 years old. The issues facing companies attempting to contract with minors vary from province to province and state to state. This article addresses how this issue is addressed in Ontario with references to other jurisdictions.

The Law & Minors

The law has traditionally empowered minors with the ability to reject a contract into which they previously entered, prior to or within a short period after reaching the age of majority because minors are generally deemed to lack the capacity necessary to enter into binding contracts; however, an exception exists with regards to minors rendering services in the entertainment industry, if the contract in question is for the benefit of the minor.

The Benefit Of The Minor

Typically, entertainment contracts entered into by minors will be enforceable only if the contract is signed for the benefit of the minor. In assessing a contract, courts will look at the contract as a whole and make an effort to strike a balance between its beneficial and onerous features. For example, in the case of *Toronto Marlboro Major Junior “A” Hockey Club v. Tonelli, John Tonelli*, at the age of 17, entered into a contract with the junior hockey club. The contract stipulated that Tonelli would play exclusively for the team for three years and if he were to ever play for a professional hockey team, he would remit 20 per cent of his gross earnings to the junior hockey club during the first three years of his professional career. A day after turning 18, Tonelli repudiated his contract with the junior hockey club. The junior hockey club sued for breach of contract. The court concluded that the contract was not enforceable against Tonelli because it was not in his best interests.

Contracts with minors must be made for their benefit. Obtaining a court declaration of such may be a viable solution as a means of preventing potential contract enforceability issues with minors.

Contracting With Minors In Ontario

Entertainment contracts in Ontario usually don’t get court approval. Rather, they are subject to court scrutiny if the minor rejects or rescinds the contract; however, Ontario courts have the judicial authority to “make binding declarations of right”; therefore, it is possible to make an application to the court seeking a declaration that the contract is in the minor’s best interests. Such a declaration would presumably prevent the minor from rejecting the contract on this basis down the road.

Practically speaking, in a situation where both parties are keen on obtaining a declaration and terms of the agreement are not prejudicial to the minor, there is no compelling reason for the court to deny the request. Although there is no formal mechanism for entering into contracts with minors in Ontario, the availability of a court declaration serves as a potential solution. It is always advisable to have parents sign an acknowledgment that the contract is in the best interests of the minor in any case.

Outside Ontario

The rules and methods available vary from province to province and state to state. Unlike Ontario, British Columbia has enacted laws aimed at securing the enforceability of contracts entered into with minors. Under the *Infants Act*, an application may be made to the court seeking an acknowledgment that the minor has capacity. As such, the court has the discretion to make an order granting the minor either full capacity or the capacity to enter into a contract or class of contract specified in the order. Again, the court will not make an order unless it is satisfied that it is for

the benefit of the minor.

Alternatively, another option exists in British Columbia where an application can be made to the Public Guardian and Trustee of British Columbia (the PGT). The PGT is empowered to make orders granting contractual capacity, if making such an order would be in the best interests of the minor. In reviewing an application, the PGT considers factors such as: the circumstances surrounding the making of the contract; the nature, subject matter, and terms of the contract; the requirements of the minor; the age and means of the minor; and the wishes of the minor’s parent or guardian.

In California, the California Family Code provides a comprehensive judicial approval mechanism for entering into binding contracts with minors rendering “artistic or creative” services. Generally, court approval is subject to the contract being in the best interests of the minor. The court may also require parental approval of the contract, as well as the requirement that a portion of the net earnings of the minor be held in a trust fund or other savings plan approved by the court. Ultimately, contracts entered into by minors cannot be disaffirmed on the grounds of minority if the contract has been approved by the court.

Conclusions

The law surrounding minors can assist both entrepreneurs and the minors wishing to benefit from investment in the music world. Entrepreneurs (record labels, artist managers, or music publishing companies) need reassurance that their investment is protected as a minor reaches the age of 18 and need to be cognizant of how various jurisdictions address the issue, especially if it’s the next Justin Bieber signing up with them. These laws also assist a minor wishing to provide comfort to an entrepreneur who might not otherwise invest.

The views and opinions expressed in this article are not meant to substitute for legal advice, which should be sought in each particular instance.