



# Cochrane Moore LLP

## Legal Services

---

57 Simcoe St. S., Suite 2A, Oshawa, ON. L1H 4G4

www.cctmlegal.com

P: (905)240-4529

F: (905)240-3030

---

The following paper is for academic use only and is not intended to be used or interpreted as legal advice.

### **Contracts with Minors – Why Age is So Important**

In law, the terms “infant” and “minor” relate to a person under the age of majority. More specifically, a person who is under the age of 18 would be considered a minor in Ontario. It is important to be well informed regarding what types of contracts a minor can be held accountable for and what types of contracts could later be voided by the minor.

If a person enters into a contract with a minor, there are very specific stipulations to be aware of. If the agreement is a non-necessity contract or its terms are detrimental to the minor, in the eyes of the court, the contract could be void.

Although it is legal to enter into a contract with a minor, there are specific factors that determine if the contract is enforceable or if it is voidable.

One very important factor in determining if a contract is valid is whether or not the minor is mentally capable of fully understanding and comprehending the contract or agreement and the terms set out within. It would be fair to say that a child at the age of three would not be at the same mental capacity to interpret and understand an agreement as a child at the age of 10. In the eyes of the court, a child at any age may not of sound mind to enter into a contract. Better understanding may be found in the following quote by L.J. Moulton in *Nash v. Inman*, “... an infant, like a lunatic, is incapable of making a contract in purchase in the strict sense of the words...”<sup>1</sup>

In law, a minor can only be bound by contracts for necessities. This is founded, in part, on a belief that the law should impose no restriction on a minor’s ability to obtain legitimate necessities; if all contracts with minors were voidable, people would be reluctant to provide a minor with necessities for fear they will not be compensated. Authority for this principle comes from both common and statutory laws, such as cases line *Nash*<sup>2</sup> or s. 3 of the *Sale of Goods Act*<sup>3</sup>. Regarding the *Sale of Goods Act*, the following authority is provided:

Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property, but where necessities are sold and delivered to a minor or to a person who by reason of mental incapacity or

---

<sup>1</sup> *Nash v Inman* [1908] 2 KB 1

<sup>2</sup> *Ibid.*

<sup>3</sup> *Sale of Goods Act*, R.S.O. 1990, c. S.1

drunkenness is incompetent to contract, he or she shall pay a reasonable price therefor.<sup>4</sup>

The definition of necessities can be very broad; basic necessities would consist of food, water, shelter, health and safety. However, several cases have held that items not typically considered necessities can also constitute necessities. Such a contract is required to be fulfilled by both contracting parties, but the courts may impose restrictions on this to ensure the minor is not taken advantage of simply because he or she is in genuine need.

Any contract that is not of necessity to the minor is voidable by the minor at any point during the contract. If a minor enters into a contract and fails to fulfill their obligation, the debt that is incurred will not follow them to adulthood, and is essentially a loss to the other contracting party. See the *Statute of Frauds*, which reads:

**“As to the ratification of promise made during minority**

No action shall be maintained to charge a person upon a promise made after full age to pay a debt contracted during minority or upon a ratification after full age of a promise or simple contract made during minority. Unless the promise or ratification is made in writing signed by the party to be charged therewith or by his or her agent duly authorized to make the promise or ratification.” R.S.O. 1990, c. S. 19, s. 7.<sup>5</sup>

See also *Jewell v. Broad*, where C.J. Mulock stated: “This action rests entirely upon contract, and the general rule is that, unless for necessities, the contract of an infant is not binding upon him...”<sup>6</sup>

What happens if a contract is formed during the minority, but the minor becomes of age?

*R v. Rash* allows the minor to repudiate the contract if such is done within a reasonable period of time after turning 18. This concept is discussed in *Rash* as follows:

“The claim of one who has in the course of trade, supplied goods to an infant is admittedly unenforceable against the infant during his infancy and if repudiated after the infant comes of age may never ripen into a debt...”<sup>7</sup>

*R v. Rash* goes on to explain that “...because an infant could not contract a debt except for necessities... If a person *choose* to supply goods to an infant on credit, they take the chance of being paid.”<sup>8</sup>

A minor may also ratify a contract after they turn 18. This means that if a teenage athlete enters into an agreement with a sports team, the parent or guardian would be required to also sign the

---

<sup>4</sup> *Ibid.* at s. 3(1)

<sup>5</sup> *Statute of Frauds*, R.S.O. 1990, Chapter s.19 at s. 7

<sup>6</sup> *Jewell v. Broad*, [1909] O.J. No. 100 at para 6

<sup>7</sup> *R v. Rash*, [1923] O.J. No. 127 at para 36

<sup>8</sup> *Ibid* at para 71

contract. Once that teenager is no longer a minor, they may choose to ratify the contract, however the ratification would not need to be in writing.

Due to the unequal bargaining power between a minor and an adult, the option to cancel or void a contract must be available to the minor, but not to the adult. A good example of this is if a teenager were to buy a vehicle with cash, and later realize that it was a bad decision, they could void that contract, however the seller of the vehicle could not, provided the vehicle was not somehow deemed a necessity.

Keep in mind that any contract with a minor must be in writing, and if the minor cancels the contract it must be in its entirety; the minor can not pick and choose provisions of the contract that they may find favourable.

While this provides a brief overview regarding contracts with minors, the law can be very complex, and many aspects are case specific. If you have an issue involving a contract with a minor, call Cochrane Moore LLP for a free consultation.

(905) 240-4529

Last updated November 3, 2017