

Alberta Agrees to Amend Human Rights Legislation to Expand Prohibitions Against Age Discrimination

By: Jennifer Koshan

Case Commented On: *Ruth Maria Adria v Attorney General of Alberta*, Court File No 1603 05013, [Consent Order filed 13 January 2017](#)

Human rights legislation exists in every province and territory in Canada, and at the federal level, but protection against discrimination varies amongst jurisdictions with respect to what grounds and areas are protected. Until recently, the *Alberta Human Rights Act*, [RSA 2000, c A-25.5](#), only protected against age discrimination in the areas of publications and notices (section 3), employment practices and advertisements (sections 7 and 8), and membership in a trade union, employers' organization or occupational association (section 9). Age was not a protected ground in relation to the provision of goods, services, accommodation or facilities customarily available to the public (section 4), or in relation to tenancies (section 5).

In January 2017, the Alberta government agreed to expand the *Alberta Human Rights Act* to include age as a protected ground under sections 4 and 5. This development was prompted by an application brought in March 2016 by Ruth Maria Adria under section 15 of the *Charter*, the constitutional equality rights guarantee, to have the omission of age declared unconstitutional and to have age read in to these sections. The *Adria* case is similar to *Vriend v Alberta*, [1998] 1 SCR 493, [1998 CanLII 816](#), where a section 15 challenge went all the way to the Supreme Court of Canada before a reading in remedy was granted to add sexual orientation to Alberta's human rights legislation (see ABlawg posts on *Vriend* [here](#) and [here](#)). Unlike *Vriend*, however, the government did not fight the challenge in the *Adria* case. As noted in the consent order signed by Justice R.P. Belzil of the Alberta Court of Queen's Bench, the Minister of Justice and Solicitor General of Alberta consented to the reading in remedy, which will be suspended for one year (presumably to allow parties who are covered by the new prohibition against age discrimination to amend existing policies and practices as needed). The [Alberta Human Rights Commission](#) will begin accepting complaints on the ground of age under sections 4 and 5 when the government amends the legislation or on January 6, 2018, whichever occurs first.

There is one important caveat to this significant legal development. Age is defined in the *Alberta Human Rights Act* to mean 18 years of age or older (section 44(1)). Therefore, service providers and landlords will still be able to deny goods, services, accommodations, facilities and tenancies to persons under the age of 18 years without facing a human rights complaint. Ms. Adria's application was motivated by concerns about discrimination against the elderly in the areas of services and tenancies (Adria is affiliated with the [Elder Advocates of Alberta Society](#)). This is certainly a valid concern, as a previous [ABlawg post](#) on the treatment of elderly condominium residents makes clear, as do the case studies on the Elder Advocates website. However, now that it is looking at this issue, the government might consider extending the protection against age discrimination to include youth under the age of 18.

Alberta is not the only province to exclude youth from protection against discrimination based on age – for example, Ontario and Saskatchewan also define age as over 18 years old (*Human Rights Code*, [RSO 1990, c H.19](#), section 10(1); *Saskatchewan Human Rights Code*, [SS 1979, c S-24.1](#), section 2), and in British Columbia, age discrimination is only prohibited for those 19 years and older (see *Human Rights Code*, [RSBC 1996, c 210](#), section 1). In Ontario, however, youth who are 16 or 17 years old and who have withdrawn from parental control have “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” (*Human Rights Code*, section 4). This type of provision recognizes that some youth live independently and have housing needs that should not be denied simply on the basis of their age. Youth homelessness has been recognized as a problem in Alberta (which has a [youth homelessness initiative](#); so does the [Calgary Homeless Foundation](#) and other municipalities). Amending the *Alberta Human Rights Act* to protect against age discrimination without any limits, or at the very least in the context of housing for independent youth, would be one positive step forward in this context. It would also recognize that youth under 18 are employable, and should have the same right to be free from discrimination in the employment context as those over 18 (see Alberta Human Right Review Panel, [Equal in Dignity](#) at 57).

The government’s rationale for excluding age discrimination claims from youth may be to avoid a flood of claims, given that age is a common basis for limiting entitlements in society (driving, voting, working, admission to facilities serving alcohol, etc.). Other provinces have dealt with this issue by creating specifically tailored limits on age discrimination protections in their human rights statutes. For example, the Manitoba *Human Rights Code*, [CCSM c H175](#), provides in section 13(2) that “Nothing ... prevents the denial or refusal of a service, accommodation, facility, good, right, licence, benefit, program or privilege to a person who has not attained the age of majority if the denial or refusal is required or authorized by a statute in force in Manitoba”, with an equivalent exception for employment discrimination in section 14(10) (see also New Brunswick’s *Human Rights Act*, [RSNB 2011, c 171](#), which has similar provisions in sections 4(7), 5(5) and 6(3)). These sorts of carefully tailored provisions would be much more likely to withstand scrutiny under section 1 of the *Charter*, the reasonable limits clause, than the blanket exclusion of discrimination against youth that currently exists in the *Alberta Human Rights Act*, if it were to be constitutionally challenged.

In 1994, the Alberta Human Right Review Panel recommended that age be added to Alberta’s human rights legislation for all areas of discrimination, with no limits on age (see [Equal in Dignity](#) at 16). The Alberta government has now agreed to the first recommendation; it is time for it to implement the second.

This post may be cited as: Jennifer Koshan “Alberta Agrees to Amend Human Rights Legislation to Expand Prohibitions Against Age Discrimination” (7 February, 2017), online: ABlawg, http://ablawg.ca/wp-content/uploads/2017/02/Blog_JK_AHRA_Age.pdf

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