

CBA CHILD RIGHTS TOOLKIT
FOR: UNCRC SUB-COMMITTEE OF THE CBA CHILDREN'S LAW COMMITTEE

Dale Hensley, Q.C., Calgary, 2016
DRAFT OUTLINE: COMPETENCY, CAPACITY, CONSENT

SUMMARY

Most members of Canadian society presume, with a few exceptions, that parents or guardians, in good standing with respect to their children or charges, have the right to make decisions for and about their children in all cases. The notion that minors may have competency, capacity, the right, to make some decisions for themselves, the right to participate in decision-making processes affecting them, and the right to provide their own consent in many contexts, including in contradiction to what parents or guardians might wish, is quite foreign to most and unheard of for others.

Definitions & Concept

What is meant by “capacity” and “competency” and are they different? For the most part, while not entirely correct in all contexts, the terms “capacity” and “competency” are largely used interchangeably¹. A brief online survey of definitions reveals a lack of distinction between the two terms. Whether checking Black's, Merriam Webster, Cambridge English, the free Dictionary or Wikipedia, no bright line is drawn between the meanings of “competency” and “capacity”. For example:

Capacity: *Legal qualification (i.e. legal age), competency, power or fitness. Ability to understand the nature and effects of one's acts.*²

*In United States law, competence concerns the mental capacity of an individual to participate in legal proceedings or transactions, and the mental condition a person must have to be responsible for his or her decisions or acts.*³

And interesting and related, though not identical discussion: the difference between the concepts of “legal capacity” and “the right to recognition everywhere as a person before the law” was one of the most debated topics during the development of the UN Convention on the Rights of Persons with Disabilities (CRPD). The discussion paper prepared on this subject concludes that:

...the two terms 'recognition as a person before the law' and 'legal capacity' are distinct. The 'capacity to be a person before the law' endows the individual with the right to have their status and capacity recognised in the legal order. The concept of 'legal capacity' is a wider concept that logically presupposes the capability to be a potential holder of rights and

¹ *Canada Evidence Act*, RSC 1985, c C-5 uses both competency/incompetency as well as capacity without defining them or identifying the difference between them.

² Black's Law Dictionary 5th ed., 1979 West Publishing Co.

³ https://www.google.ca/search?q=legal+competence+definition&ie=utf-8&oe=utf-8&gws_rd=cr&ei=FQv7VqStLsOojwOU5prABQ
Retrieved March 17, 2016.

obligations, but also entails the capacity to exercise these rights and to undertake these duties by way of one's own conduct.⁴

This same group also suggested that:

*Legal capacity is what a human being can do within the framework of the legal system. It is a construct which has no objective reality but is a relation every legal system creates between its subjects and itself. Legal capacity gives the right to access the civil and juridical system and the legal independence to speak on one's own behalf.*⁵

These excerpts illustrate the complexity and breadth of the concepts involved; that, of course, discussions of “capacity” are not limited to the child rights community, and that there can be value in reviewing and consulting the legislation, case law and literature of other fields of practice. Indeed, in the national Professional Code of Conduct developed by the Federation of Canadian Law Societies, and implemented by provincial governing bodies, the notion of a minor’s capacity is explicitly considered in combination with all “Clients of Diminished Capacity” and includes impairment “...because of minority, mental disability, or for some other reason...”.⁶

United Nations documents tend to use the language of “capacity” when referring to an individual’s capabilities as we would understand them in a legal context; whereas, UN documents tend to reserve the use of “competency” for the jurisdictional authority of the UN’s governing and policy bodies. For the purpose of this section of the Child Rights Toolkit, “capacity” will be the preferred terminology and no distinction will be drawn between “capacity” and “competency”.

The CRC and Reference to Capacity (emphases added in all cases)

Articles of the CRC in which the word ‘capacity’ is used:

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, ***in a manner consistent with the evolving capacities*** of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

⁴ Background conference document prepared by the Office of the United Nations High Commissioner for Human Rights retrieved from www.un.org/esa/socdev/enable/rights/documents/ahc6ohchrlegalcap.doc March 17, 2016.

⁵ EXPLANATORY NOTE ON LEGAL CAPACITY AND FORCED INTERVENTIONS retrieved from www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8idc1218ex.doc March 28, 2016.

⁶ See, for example, Codes of Conduct as published on the respective websites of the Law Societies of Alberta (2.02 (12)) and Upper Canada (3.2-9) retrieved February 28, 2016.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right ***in a manner consistent with the evolving capacities of the child.***

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
- 2.....
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which ***children shall be presumed not to have the capacity*** to infringe the penal law;

Articles of the CRC in which participation by young people is contemplated and which may engage or imply some capacity on the part of a young person:

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an ***opportunity to participate in the proceedings and make their views known.***

Article 12

1. States Parties shall assure to the child who is ***capable of forming his or her own views*** the right to express those views freely in all matters affecting the child, ***the views of the child being given due weight in accordance with the age and maturity of the child.***

2. For this purpose, the child shall in particular be provided the **opportunity to be heard** in any judicial and administrative proceedings affecting the child, either **directly, or through a representative or an appropriate body**, in a manner consistent with the procedural rules of national law.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, **the persons concerned have given their informed consent to the adoption** on the basis of such counselling as may be necessary;

Article 26

1. States parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as **any other consideration relevant to an application for benefits made by** or on behalf of **the child**.

Article 37

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the **right to challenge the legality of the deprivation** of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and **to have legal or other appropriate assistance in the preparation and presentation of his or her defence;**
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body **in a fair hearing according to law, in the presence of legal or other appropriate assistance** and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (vi) To have the free **assistance of an interpreter** if the child cannot understand or speak the language used;

With respect to use of the word “capacity” in the CRC, Articles 5 and 14 do not require or expect capacity of the young person, rather they recognize that those responsible for caring for young people have an obligation to provide for young people in accordance to their needs, and consistent with their growth, development and maturation processes. This concept is as reflected in the seminal *Gillick* decision in which Lord Scarman stated:

The principle is that parental right or power of control of the person and property of his child exists primarily to enable the parent to discharge his duty of maintenance, protection, and education until he reaches such an age as to be able to look after himself and make his own decisions.⁷

The reference to capacity in Article 40(3)(a) is intended as a protection for young persons and proposes an age-based standard for determining capacity rather than any analysis of competency, cognition or reasoning.

Articles 9, 12, 26, 37, and 40 contemplate participation and representation of the young person in various processes and proceedings. Young person’s participation rights and their relation to capacity in the CRC are discussed further below.

Article 21 stipulates that **persons** having the right to consent to an adoption including a young person being considered for adoption, have a right to “informed consent”. “Informed consent” places a burden on those seeking the adoption to have acquired informed consent from a young person who is being adopted. The language implies both participation and capacity on the part of the young person as informed consent can only be given by someone who has capacity, or an understanding of what they are consenting to. This is the only place in the CRC in which “participation” is dependent on having capacity. However, a young person in a situation of adoption, or any other circumstance in which capacity or understanding is expected, can be

⁷ *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] (1985) 3 All ER 402, [1986] AC 112 p 185.

assisted to reach the requisite degree of understanding in order to give informed consent.

Capacity, Participation and the CRC: Does the CRC require a young person to have capacity in order to enjoy the rights of participation prescribed therein?

A significant purpose of the CRC is to invite and encourage the participation of young people in all aspects of civil society and to respect their rights while doing so.⁸ With the exception of Article 21, the CRC does not require a young person to have capacity (as contemplated herein, that is, as a legal construct), in order to participate and enjoy the rights set out in the CRC. Even Article 21 is not so much a requirement but rather provides a protection for all those participating in an adoption and “informed consent” is a right in itself. In Article 12, a young person is required to form an opinion, but this is framed as a young person being “capable” of forming an opinion rather than having the “capacity” to form a view or opinion. The requirement to be “capable of forming” an opinion is stated explicitly at Article 12(1) and is, arguably, implied in Article 9(2). The threshold for participation is, therefore, low. Article 12 simply requires the formulation of an opinion absent any understanding by the young person of how or why they formed the opinion, the basis of the opinion, the consequences of voicing the opinion or acting on it.

Does the formation of an opinion require capacity? Clearly the drafters of the CRC were intentional in their use of the language of “capable of forming” a view rather than “**capacity** to form an opinion or a view” when they drafted Article 12. By way of distinguishing between “capable” and “capacity”, for example, a baby could have capacity to form a view and may have formed views but not be capable of articulating or communicating that view (or not in any fashion understandable to human carers). Does forming a view require understanding or reasoning? Certainly a view or opinion can be formed without the benefit of understanding or reasoning and this would be all that is required in the CRC. There is no requirement that the opinion be reasoned or rational and as such there is no necessity to have capacity to form a view as understood in Article 12 of the CRC or any of the other CRC provisions except Article 21. The intention of the drafters of the CRC would have been to minimize barriers to young people’s participation. Historically, tests of capacity have tended to limit opportunities for young people to participate in the making of decisions about them. The CRC is explicit that “capacity” is not to be a barrier to young people’s participation and that the formation of a view in and of itself, without any requirement to “have capacity” is sufficient to permit participation by young people in matters affecting them.

Capacity to do What?

The largest question in any discussion of capacity is: **capacity to do what?** It is impossible to discuss any individual’s capacity, without refining the context within which that capacity is to be exercised. Any assessment of an individual’s capacity must entail a very careful and precise analysis of the context within which that individual’s capacity is being determined. Is it a question of capacity to:

- instruct counsel
- consent to/refuse medical treatment
- enter a solicitor-client relationship
- enter into a contract
 - to buy a car
 - to buy a cell phone

⁸ Suzanne – do you have an authority that can be inserted here supporting this statement?

- waive solicitor-client privilege
- consent to/refuse release of records
- testify/give evidence
- to stand trial
- consent to/refuse treatment for mental disorders
- admit/refuse admission to hospital
- register in school
- determine the school in which to register
- open a bank account
- apply for a driver's licence
- to rent an apartment
- consent to or refuse to consent to evaluation or assessment
- make access arrangements with a non-residential parent
- consent to/refuse testing
- enter a foreign country as a refugee
- travel as an unaccompanied minor
- consent to sexual activity
- to vote
- consent to doctor assisted death

The list is endless.⁹ Generally, the current approach to capacity, as developed in legal and medical contexts, is that capacity is not a global condition but rather capacity is domain and/or decision-specific; hence the requirement to ask: "Capacity to do what?" because there is and should not be a universal test of capacity. The notion of a specific test of capacity for different contexts is familiar to the legal profession. We understand that the tests for capacity to make a will, to stand trial, to give evidence, to refuse or consent to treatment, etc. may each be different and should be different.¹⁰ Assessing a young person's capacity entails the same potential diversity and process. As with adults, if the issue being determined involves a decision in which a life hangs in the balance, the test for capacity to make that decision is likely to have a much higher threshold than the test of capacity to open a bank account or to choose what school to attend: different decisions, different contexts will require different capacities and thresholds and different tests. But a review of a sample of tests of capacity shows invariably that an element of understanding is required.¹¹ This is the hallmark of any

⁹ In many instances, for efficiency, rather than engage in a case by case capacity determination, the short-hand approach of establishing an age-based standard is employed. There are numerous examples of this approach as well, several of which are included in the above list e.g. voting, consent to sexual activity, issuance of driver's licences, age of majority itself, age-based standards in child protection statutes, age at which youth can apply for their own passports, etc.

Lansdowne, in her treatise for the Innocenti Research Centre, referenced herein, points out that a society's willingness to recognize a young person's capacity is highly determined by economics and whether the young person is needed to assist the family or the society in its economic endeavours, for example when the family runs a business and all members participate in the running of that business – children are enlisted to assist and are recognized to have capacity in that context. Similarly, in Alberta during the now-past economic boom, legislation was passed to permit 12 year olds to be employed in certain sectors of the economy as it was difficult to find enough workers to fill some jobs (e.g. food service industry).

Lansdowne also points out that in the developed world we encourage longer term dependence of young people through extended years of education during which time we largely view young people as lacking capacity.

¹⁰ Pachet, A., Newberry, A., Erskine, L., Regional Capacity Assessment Team, Calgary Region Health Authority, *Canadian Psychology*, "Assessing Capacity in the Complex Patient: RCAT's Unique Evaluation and Consultation Model", 2007, Vol. 48, No 3, p 175; Lansdown G., "The Evolving Capacities of the Child" Innocenti Research Centre, UNICEF/Save the Children, Florence (2005), p. x and throughout.

¹¹ *Canada Evidence Act*, RSC 1985, c C-5, S 16, ss (4) A person referred to in subsection (1) who neither **understands the nature of an oath or a solemn affirmation** nor is able to communicate the evidence shall not testify. S 16.1, ss (5) If the court is satisfied that there is an issue as to the capacity of a proposed witness under fourteen years of age **to understand and respond to questions**, it shall, before permitting them to give evidence, conduct an inquiry to determine whether they are able to understand and respond to questions.

Adult Guardianship and Trusteeship Act, SA 2008, c. A-4.2, S 1(d) capacity means, in respect of the making of a decision about a matter, the ability to **understand the information** that is relevant to the decision and to appreciate the reasonably foreseeable

test of capacity. Harkening back to the earlier discussion of the difference between “forming an opinion” as opposed to “capacity”, there is a clear difference between simply forming an opinion without an expectation of reasoning supporting that opinion, and making an assessment or making a choice or taking an action based on an understanding of the choices and potential consequences, or aspects thereof, which understanding is determined by the administration of a test to confirm the understanding.

Mature Minor and Emancipation

At common law, the notion of a mature minor has developed, largely in the health and medical domain. The *Gillick* case noted herein provides a foundation which has been accepted in Canada for the proposition that when a minor is “capable of understanding what is proposed and of expressing his or her own wishes”¹² with respect to treatment then, parental rights yield “to the children’s right to make his or her own decisions.”¹³ More recently, arguably, the strength of these principles has been eroded somewhat in Canada in the face of decisions involving essential medical treatment, primarily by the SCC in *AC v Manitoba (Director of Child and Family Services)*. In *AC* the Court (with a strong dissent from Justice Binnie) attempts to draw a line distinguishing these cases from those involving more minor medical procedures and focussing, in the more serious cases, on best interests of the child as the determining factor. The mature minor doctrine has been largely confined to medical decision-making. However, there should be room to argue for a more expansive interpretation in cases involving, for example, a young person’s right to deny others access to their mental health or counselling records, particularly in light of the CRC.

Emancipation as a legal status for youth in Canada, with the exception of Quebec, does not exist. Practically speaking, young people can acquire authority over some matters before reaching the age of majority on a domain by domain basis. For example, in Alberta, young people who can demonstrate, through various means, that they are self-supporting can apply to their school administration for *independent student status* and thereby be permitted to make their own decisions as to their courses and involvement in extra-curricular activities and, there will be no release of records to parents or guardians. At law, young people can contract for necessities.¹⁴ Young people can apply for their own passports at 16 but generally require consent of their parents to acquire a learner’s permit until they are over the age of majority.

consequences of (i) a decision, and (ii) a failure to make a decision.

Banks v Goodfellow (1870), LR 5 QB 549 at 565, “...a testator shall **understand the nature of the act** and its effects; shall **understand the extent of the property** of which he is disposing; shall be able to **comprehend and appreciate** the claims to which he ought to give effect;...”.

¹² *Gillick v West Norfolk Area Health Authority* [1985] 3 All ER at 409.

¹³ *Ibid* at 403.

¹⁴ *Pyett v Lampman* (1922) 53 OLR 149; see further at www.youthlaw.ca, search: “Can a youth enter into a contract?”

THE LAW

Gillick v West Norfolk and Wisbech Area Health Authority [1985] (1985) 3 All ER 402; [1986]AC 112

Alberta:

J.S.C. v. Wren, 1986 ABCA 249

Puszczak v Puszczak 2005 ABCA 426¹⁵

Provincial Codes of Conduct which set out the obligations of counsel with respect to clients of “diminished capacity”.

SPECIAL CONSIDERATIONS

In determining or setting a test of capacity for a young person, care should be taken not to set a higher threshold capacity test than would be expected of an adult in similar circumstances – it must be appropriate for a young person in that particular context. This is the case especially because, as noted earlier, a major goal of the CRC is the inclusion and participation of young people. Furthermore, capacity is not required to take a young person’s view into account or to advocate for that view. To honour the spirit of the CRC, to promote inclusivity, and offer young people maximum opportunity to participate, as low a threshold test of capacity as possible should be employed in every instance. Below is an example of a potential customized test of capacity to instruct counsel for a young person which the author suggests a young person can easily understand (low threshold).¹⁶

As in other areas of practice, counsel, not the court, must, in the first instance, be responsible for

¹⁵ Care must be taken in relying on the test of a child’s capacity set out in this case. The Court states that it “must be satisfied that the child has capacity to instruct counsel.” The Court then purports to quote Alberta’s Code of Professional Conduct as it was at the time, stating that Alberta’s Code of Conduct required that a child “be capable of making reasonable choices and can exercise judgment without undue adult influence” and that these requirements were “embodied in the Law Society of Alberta’s *Code of Professional Conduct*, Chapter 9, Rule 7.1. At that time, the Alberta Code actually stated “**When** a client is unable to provide proper instructions in a matter due to incapacity: (a) the lawyer must make reasonable efforts to cause the appointment of a legal representative for the client; and (b) pending such appointment, the lawyer must continue to act in the best interests of the client to the extent that instructions are implied or as otherwise permitted by law.” The Court went on to say that the Commentary to Rule C.7.1 “elaborates that capacity means a client is able to make reasonable judgments respecting his or her own affairs. It further notes, “This is a legal issue rather than an ethical one.” However the Commentary actually says that: “**Whether** a client is able to make reasonable judgements respecting the client’s affairs is a legal issue rather than an ethical one.” Alberta’s Code has since been changed and still does not read as the Court states in *Puszczak*. How could the Court have got it so wrong? The Court was misled in their interpretation by other publications by learned authors in the child representation field who had not read the relevant documents with sufficient care.

¹⁶ 1. The minor understands or is capable of understanding that the lawyer takes direction from the minor;
2. the minor understands or is capable of understanding one or more consequences of disclosure of information the minor has shared with the lawyer; and
3. the minor is able to convey his or her understanding to the lawyer.

With respect to no. 1, with a little elaboration, children readily understand when their lawyer tells them “You’re my boss.” While the second arm of the test potentially seems challenging, most young people are clear that some of their information can be shared with some people. This is a clear indication that they understand there can be consequences to the disclosure of information provided to their lawyer and that they want at least some of their information to remain confidential and within the orbit of solicitor-client privilege, the hallmark of a solicitor-client relation. With respect to the third arm, counsel has a responsibility to create an atmosphere and to provide tools to facilitate the child’s communication to the lawyer. This is not merely the child’s responsibility.

determining their client's capacity as in the case, for example, of testamentary capacity. Counsel's position that their client has capacity can be challenged and a different determination might be made by a court but in the first instance, counsel must make that determination and be in a position to support the assessment that their client has capacity by having developed, adopted, and applied a test of capacity for whatever situation is at hand.

As noted earlier, in practice, a test of capacity should not be used as a barrier to taking a young person's views into account. Regardless of capacity, with the exception of Article 21, under the CRC young people need only be capable of forming a view. How or why they reached that view is not, under the CRC, a legitimate basis for failing to authentically present or take into account young people's opinions. Conversely, it must also be born in mind that holding an opinion does not equate to having capacity to make any particular decision or to do any particular thing.

PRACTICE ESSENTIALS

With children and youth, great care must be taken to neither substitute one's own opinion for that of the child's, based on counsel's (or any other person's) determination of the **correctness** of the young person's views or opinions. Disagreeing with, or holding a different opinion than that of a young person's is not sufficient to discount that young person's views and opinions. Determining a young person's capacity is both a process issue and a matter of substance. The process issue is the development of a test of capacity for that particular situation. The issue of substance is determining whether the young person's response to the test meets the test, but that should not be measured against a personal view or opinion of counsel of the "right" or "wrong" answer but rather a demonstration by the young person that they understand the particular matter at hand.¹⁷ In all cases, some measure of understanding or cognition by the young person is required but what and how much understanding must again be determined based on the context of the decision or act to be undertaken. In essence the quality or nature of a young person's position or decision is not determinative, rather it is their responses to a low threshold test of capacity developed for that situation that must be assessed. They have either demonstrated sufficient understanding based on the test or they have not. A test of capacity for that particular domain or decision is required in order for counsel to make that determination.

As noted above under discussion of the various provisions regarding capacity in the CRC, there is no expectation that your client come to you with their understanding already in place and it is not required that a young person demonstrate capacity within the first minutes of interaction. As with adults, instruction, education and guidance are often required to put an individual into a position to make a decision, engage in particular behaviour, undertake some activity or contribute their opinions. Part of

¹⁷ This is a similar concept to that articulated by the SCC in *Starson v. Swayze* [2003] 1 SCR 722 (and Justice Binnie in dissent in AC) in which the Court, in interpreting an Ontario statute relating to capacity under the *Health Care Consent Act* S.O. 1996, c 2 Sch A, which statute uses the phrases "able to understand the information relevant to making a decision" and "able to appreciate the reasonably foreseeable consequences of a decision" emphasized that "In this case, the only issue before the Board was whether Professor Starson was capable of making a decision on the suggested medical treatment. The wisdom of his decision has no bearing on this determination." and the Court further set out that in respecting the right of a patient to make such a personal decision regarding treatment, a reviewing court must accept that while choices may seem "foolish", if the patient has capacity, the choice should be honoured.

the responsibility of any counsel is to bring a client to a degree of knowledge and understanding so that the client can provide the lawyer with instructions on the matter at hand.

Having said that counsel must not substitute their opinion for their client's, this does not mean that counsel blindly accepts the views and decisions of their young clients when they do not agree with the direction the young person seems to be heading. As with any client, counsel has an obligation to give sound advice, to indicate the likelihood of the young person's desires to come to fruition in the matter, to present other possible options, solutions and other lines of thought and/or what might be a 2nd best alternative. In other words, as with other clients, legal counsel must do their job of providing their child or youth client with the benefit of their legal advice.

ADDITIONAL RESOURCES

Melton GB. Young children's rights. In: Tremblay RE, Boivin M, Peters RDeV, eds. *Encyclopedia on Early Childhood Development* [online]. Montreal, Quebec: Centre of Excellence for Early Childhood Development and Strategic Knowledge Cluster on Early Child Development; 2011:1-8. Available at: <http://www.child-encyclopedia.com/documents/MeltonANGxp1.pdf>. Accessed [insert date].

Cherry, Jessica, "The Child as Apprentice: Enhancing the Child's Ability to Participate in Custody Decisionmaking by Providing Scaffolded Instruction", *Southern California Law Review*, Vol 42, 811-850.