

**YOUNG PEOPLE'S
PARTICIPATION IN JUSTICE
PROCESSES: FINDING THE
BEST WAYS FORWARD**

SEPTEMBER 16
CALGARY ALBERTA

***THE CANADIAN BAR
ASSOCIATION CHILD
RIGHTS TOOLKIT AND THE
CONVENTION ON THE
RIGHTS OF THE CHILD***

**YOUTH RIGHTS &
PARTICIPATION**

***YOUTH AND CIVIL JUSTICE:
LEGAL SUPPORT FOR YOUNG
PEOPLE IN CRISIS***

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**LEGAL REPRESENTATION,
RIGHTS AND
PARTICIPATION**

- Legal representation 'actions' Article 12 of the CRC
 - Young peoples' right to be heard in matters affecting them
- Legal representation is 'participation' in justice processes

PARTICIPATION THROUGH REPRESENTATION

- Currently, typically three legal domains in which young people receive legal representation
 - Criminal law
 - Child protection matters
 - Family law

PARTICIPATION THROUGH REPRESENTATION

- In Alberta and Canada, legal representation is virtually the only means by which yp participate in justice processes
- The broader participation contemplated by the CRC is not happening

YOUTH PARTICIPATION MORE BROADLY

Jurisdictions other than Canada are doing better and take the CRC and children's rights seriously:

- South Africa 2001: youth consulted by government in the development of new youth criminal justice legislation

YOUTH PARTICIPATION MORE BROADLY

Jurisdictions other than Canada are doing better and take the CRC and children's rights seriously:

- Australia 1998: class action lawsuit launched against national newspaper by learners with the assistance of the National Child and Youth Law Centre of Australia

PARTICIPATION THROUGH LEGAL REPRESENTATION?

- As noted by other speakers, even in the domains in which yp do acquire representation, there is no guarantee of representation
- Many parts of Canada where legal services/representation for youth are just not available

INVISIBILITY

- As highlighted by Uncensored, young people often do not feel heard in justice processes affecting them, even when they are technically 'participating', or represented
- Certainly, the civil law issues youth confront are, for the most part, not known, acknowledged or recognized

YOUTH PARTICIPATION THROUGH REPRESENTATION?

- Beyond the three primary domains, the legal needs of young people tend to be invisible
- But legal issues confronting youth are almost as wide ranging as those of adults
- No one legal domain

YOUTH PARTICIPATION IN CIVIL JUSTICE MATTERS

- Serving youth is like running a small rural practice
- But yet a specialized practice area – unique client base: youth
- Not recognized by Law Societies, CBA – why?
- Because there is no one who can pay!

LEGAL NEEDS OF YOUTH IN CIVIL JUSTICE MATTERS

- Wills & Estates
 - Particularly when estranged from one parent
- Return of property (replevin)
- Education/schooling
 - Access to/Truancy/Suspension/Expulsion
- Personal injury (volunteers)
- Insurance matters
 - Driving uninsured, without a licence, someone else's vehicle, car accidents

LEGAL NEEDS OF YOUTH IN CIVIL JUSTICE MATTERS

- Health
 - Acquisition of services – own health care number
 - Knowledge of and Implementation of mature minor doctrine
- Privacy (e.g. of records in many contexts)
- Refugee, immigration and settlement related issues
 - For self and for family

LEGAL NEEDS OF YOUTH IN CIVIL JUSTICE MATTERS

- Change of residence/change of primary parent
 - Family law/custody and access/parenting and is much different for youth than for children
- Identification
- Independent living – many legal issues
- Commercial matters
 - Starting a business especially online

LEGAL NEEDS OF YOUTH IN CIVIL JUSTICE MATTERS

- Identity issues
 - Including gender identity
- Pregnancy and parenting
 - Child support
 - Guardianship/parenting
 - Custody and access/contact
 - Protection orders
 - Management of relationships - with other parent and grandparents

LEGAL NEEDS OF YOUTH IN CIVIL JUSTICE MATTERS

- Child Protection
- Employment
- Landlord and tenant
- Contracts – historical case law
- Debtor/creditor (CCAA)
- Government relations
 - Benefits
 - Status

YOUTH IN CRISIS

- In civil law matters, clients are generally youth as opposed to children: 13 to age of majority
- Few resources to meet basic needs
- As with many legal issues theirs arise in context of dysfunctional, usually family, relationships
- If left family, leaving is usually due to abuse of some form and high levels of conflict

YOUTH IN CRISIS

Largely a practice in poverty law. Many clients or contacts from young people:

- with no home (likely couch surfing)
- with unreliable phone contact
- with transportation issues
- who are hungry

Q: What is the problem here?

CIVIL LAW AND YOUNG PEOPLE'S NEEDS

A: If basic, elemental needs are not being met, your client does not have the capacity to focus on their legal problems.

Q: Is it the responsibility of a legal service organization to meet the basic needs of its youth clients?

YOUTH PARTICIPATION: RECOGNIZING NEEDS

A: You must engage in one way or another to meet your client's non-legal needs or find a way for that to happen. Otherwise, you will not be able to assist them with their legal needs.

Lesson: serving youth is cross-over work – never strictly law but must include social work, life skills and counselling

YOUTH PARTICIPATION: RECOGNIZING NEEDS

Red Flags? Boundaries!!!

- Personal
- Professional

How Manage? Good referrals (knowledge of community resources), in-house service teams, partnering with other relevant service providers/wraparound Mental health/lawyer team

YOUTH PARTICIPATION: RECOGNIZING NEEDS

Red Flags? Boundaries!!!

- Personal
- Professional

How Manage? But it is often the lowering of barriers and boundaries that will enable you to serve and reach a young person – dilemma for service providers

YOUTH PARTICIPATION: WORKING WITH YOUTH

Approach:

- Listen, acknowledge, affirm
- Accept where youth is coming from
- Non-judgemental, non-reactive
- Respect as thoughtful and rational especially as to their own circumstances
- Later point out difficulties in position(s)
- Be available and responsive (or they will disappear)

YOUTH PARTICIPATION: WORKING WITH YOUTH

Be Prepared for:

- Problems in maintaining contact
- Missed appointments
- Mistrust of adults and systems
- Defeated and depressed
- Some unrealistic expectations
- Needing immediate responses/relief
- Bring a cluster of legal issues

YOUTH PARTICIPATION: RECOGNIZING NEEDS

Youth:

- Lack knowledge and understanding that they have rights
- Lack confidence of their own value
- Have internalized that they are not worthy

TWO EXAMPLES OF CRITICAL ISSUES FOR YOUTH



YOUTH PARTICIPATION YOUTH IN CIVIL LAW: two examples

Identity/Identification

- Articles 7 & 8 CRC
- As far as I am aware, no statutory provisions in Canada written from young peoples' perspectives or with their perspective of their needs in mind
- For young people there are many aspects to 'identity'

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW
Identity (cont'd)**

Identity (cont'd)

- Identification - their ID documents; having them and holding them
- Using a name of your choice (how you identify yourself)
- Implications with respect to sexual orientation identity
- What if you do not want your family name?

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW
Identity (cont'd)**

Sephira's story

Sephira immigrated with her father

- Father refused to consent to treatment for Sephira
- Sephira left home
- Father refused to release any of Sephira's identity documents to her



**RIGHTS IN ACTION FOR
YOUTH IN CIVIL LAW
Identity (cont'd)**

- Sephira wanted to register in school to finish her grade XII
- She needed ID to do so - had none
- Sephira found a part-time job
- Her employer required copies of her ID or she lose her job



**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW
Identity (cont'd)**

- Sephira asked her father for her ID many times
- Father refused
- Sephira went to a legal clinic in Calgary specifically for youth offered by The Alex and CLERC Calgary



**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW
Identity (cont'd)**

- Sephira acquired one piece of ID at the clinic
- A volunteer lawyer was assigned to her case
- Sephira told her father she had a lawyer
- Next day father went to Sephira's place of employment



**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW
Identity (cont'd)**

- Sephira's father had her ID with him and gave it to her employer who then gave it to Sephira



**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW:
two examples**

**Independent Living aka
"Emancipation"**

- CRC does not contemplate young people wanting to live separately from their parents before reaching the age of majority
- CRC has number of provisions recognizing primacy of parents as caregivers

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW**

Independent Living (cont'd)

- Most frequently asked question by youth
 - “How can I emancipate myself?”
 - “When can I legally move out on my own?”

**YOUTH PARTIDIPATION
YOUTH IN CIVIL LAW**

Independent Living (cont'd)

Often living with parents is highly conflictual, distressing, harmful and sometimes dangerous

Most youth do not want involvement with child protection authorities

**YOUTH PARTIIPATION
YOUTH IN CIVIL LAW**

Independent Living (cont'd)

- CRC: children to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (Article 19) but no right to live independently of parents

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW**

Independent Living (cont'd)

- Only province in Canada with 'emancipation' rules is Quebec
- Ontario has codified in their Children's Law Reform Act (s 65) that a 'child' can withdraw from parental control at 16

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW**

Independent Living (cont'd)

- **At Common Law**
- A parent's right to custody will not be enforced against a child's will once the child has reached the 'age of discretion':
Rex v Greenhill (1836)4 A & E(KB); *Reg. v Howes* (1860) 3 E & E 332(QB)
- Cited in *RG v KG* [2017] OJ No 1127

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW**

Independent Living (cont'd)

Common Law not widely known or necessarily adopted

In Alberta: *Family Law Act* requires that every child (under 18) is subject to guardianship (s 19(1) SA 2003, c. F-4.5)

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW**

Independent Living (cont'd)

Technically, therefore, at least in Alberta (varies across the country) unless by consent, every young person under 18 needs a court application and Court Order to live separately from their parents

**YOUTH PARTICIPATION
YOUTH IN CIVIL LAW**

Independent Living: Michael's Story

Michael's parents divorced.
Michael turned 16.
He lived with his mother but wanted desperately to live with his father and his father's new partner.



YOUTH PARTICIPATION YOUTH IN CIVIL LAW

Independent Living: Michael's Story

His mother would never agree.
Michael's father tragically died unexpectedly.
Michael still wanted to live with his father's partner.



YOUTH PARTICIPATION YOUTH IN CIVIL LAW

Independent Living: Michael's Story

Michael found a youth legal clinic in Alberta (CLERC) online and emailed.
A lawyer agreed to meet with him.
With the legal help, Michael was able to live where he wanted to and felt safe.



YOUTH PARTICIPATION: CONCLUDING THOUGHTS

- Said little about the actual process of interacting with young people
- I have tried to avoid stating the obvious
 - what to wear, where to meet etc
 - bottom line, it needs to be comfortable for your client, not what works for you

**YOUTH PARTICIPATION:
CONCLUDING THOUGHTS**

- Given the crossover nature of working with young people, a collaborative approach with other professionals is required, that is, power-sharing to meet the challenges & unique needs and qualities of the client
- This is usually uncomfortable for lawyers

**YOUTH PARTICIPATION:
CONCLUDING THOUGHTS**

- Not the average law student or lawyer who will be interested in this work
- Can be great rewards



**THANK YOU FOR YOUR
INTEREST AND ATTENTION**



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