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Legal Brief*

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THE ROLE OF THE CHILD'S LAWYER

For a number of years, children have had the right to be represented by a lawyer in youth protection hearings involving them before the Court of Québec, Youth Division.

A lawyer who represents a child in these circumstances cannot simply do as he pleases. There are three situations to consider and each must be approached in a particular way.

The child cannot give a mandate:

When the situation is such that the child cannot be advised by his lawyer, the lawyer is said to hold a legal mandate. In such a situation, the lawyer's role is to represent the child in connection with the evidence submitted at the various stages of the case, while ensuring the child's rights are respected and his best interests are represented. The lawyer acts in the name of his young client. To do so, he examines and cross-examines witnesses, presents his own witnesses, obtains expert assessments when necessary, listens to the evidence, highlights the most important elements to the court and takes a position with respect to possible solutions. It is then up to the court to rule on litigious issues, based on the court's powers in the particular case.

The child is able to indicate his wishes and communicate:

In such a situation, the lawyer still holds a legal mandate of the same type as that described above. As in the preceding situation, he can cross-examine witnesses, present his own witnesses, highlight important elements, and so on, provided, however, he does not disclose what the child has confided to him, so as to maintain the relationship of trust established with the child. Furthermore, the lawyer must inform the court of the child's choices and wishes, even if these are not in the child's best interests.

The child communicates privileged information:

Here, the child is better able to articulate his thoughts and is in a position to provide information and evidence to his lawyer in an autonomous manner, even if he is too young to testify. In this situation, the child is a client who gives his lawyer a traditional mandate and is entitled to the protection of the lawyer's professional secrecy (also known as "attorney-client privilege"). The child has the right to require his lawyer to indicate his choices and wishes and assert his interests as he himself sees and expresses them.

As indicated by the Québec Court of Appeal in the case of "*M.F.*",¹ under no circumstances should the lawyer tell the court his own feelings regarding the nature of the choices made by his client.

There are other situations to consider, which may be the subject of another legal brief.

¹ *M.F. v. J.L.*, C.A. Montréal 500-09-011510-013, 18 March 2002, Judges: Rothman, Chamberland and Pelletier (www.jugements.qc.ca).

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* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.