



**The Law
Foundation
of Ontario**



Views of the Child Reports: Ontario Practice & Final Research Results

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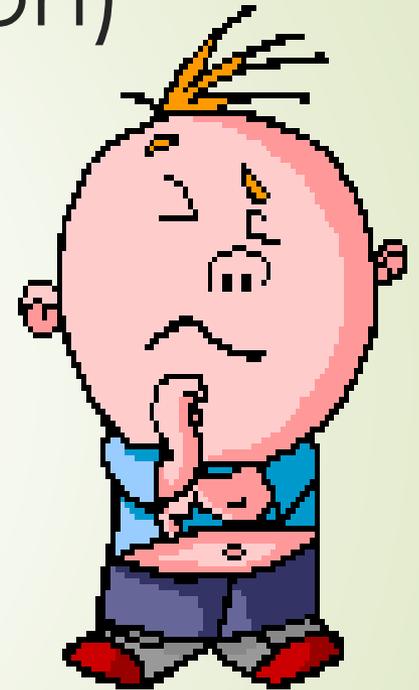
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Importance of Child Participation

Why Not Listen To Kids? (including in mediation)



Risks of Involving Kids

- ➔ Children may not understand the process or provide reliable information
- ➔ Children should not be “caught in the middle”
 - need to try to protect from parental conflict
 - children have an acute sense of “fairness” & do not want to hurt either parent
- ➔ Parent’s possible reactions to child after hearing true views:
 - ➔ disappointment, anger, retribution

Risks of Involving Kids (2)

- Possibility of inappropriate reliance:
 - stated views may change depending on when, how or by whom questions asked
 - child's views and perspectives may not be consistent with best interests
- Judges, lawyers & mediators are generally not trained to talk to children
 - Lack of standardized protocols
 - Don't want to harm kids in search for "best interests"
 - Will children be "traumatized"?

Benefits of Listening to Children (Birnbaum & Saini, 2012a & 2012b)

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- ➔ Right to be heard (UN Convention Art. 12) – Government obligation
- ➔ Most kids do NOT want to make decisions
 - ➔ Understand difference between “voice & choice”
- ➔ The “myth of harm”
 - ➔ empirical research reveals no trauma for child *from meeting judges or mediators*
 - ➔ trauma for child is from parental separation & conflict;
- ➔ Often value to judge, mediator **and parents** in hearing from the child

Benefits of Listening For Children

- Settlement by parents may be more likely if children heard
- Better outcomes for children in court process if they know that they have been heard and understand what is happening (Birnbaum & Saini, 2012; Walker & Edwards, 2016)
- Parents (fathers) may have better long term relationships if child inclusive mediation (McIntosh, 2000 & 2008, Australia)
- Parents often do not know true feelings as child may be telling each parent what they want to hear

Many Ways to Engage with Children

- Variation in children's experiences with family justice system professionals (lawyers, MHP's, mediators & judges).
- No single "answer" to question of how to engage children during parental separation process.
- Depends on:
 - nature & stage of case
 - child's age, capacity & desire to participate
 - parental attitudes & resources
 - community resources
 - experience, training and "comfort level" of all professionals engaged with children
 - legal representation vs not (parent and/or child).

Views of Child Reports: Canadian Study

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Birnbaum, Bala & Boyd (2016)

(2016) 30 International Journal of Law, Policy and the Family 158-178.

Varying Terminology & Practices in Canada

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- Hear the Child Report (started in BC)
 - BC Practice Guidelines, 2016
- Views of the Child
 - Man. & PEI gov't provides them
 - NB gov't pay if court orders
- Voice of the Child Report
 - Alta QB Practice Note 7
- Voice of the Child Report
 - NS Guidelines, 2015
- In Ontario no policies and very little use before 2016



Views of Child Reports

- Views of the child” reports increasingly used in some parts of Canada to ascertain perspectives and preferences of child
- Information is about the children only; more focused and less expensive
 - Useful in negotiation and mediation as well as litigation
- Still controversy and confusion in Canada
 - Only views, or also “facts” related by child?
 - Should reporter comment on reliability?
 - Lack of consistency in process
- Need for further development of policy and research



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Views of the Child Reports: Ontario Pilot Project (2016 – 2017)

Birnbaum & Bala (2017). Views of Child Reports: The Ontario pilot project. *International Journal of Law, Family & Policy*, 31(3), 344-362.

Birnbaum, R. (2017). Views of the Child Reports: Hearing directly from children involved in post separation disputes. *Social Inclusion*, 5(3), 148-154; DOI: 10.17645/si.v5i3.922

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VCR Pilot Project

2016-2017

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- ❑ Funded by Law Foundation with administrative support of Office of Children's Lawyer (Katherine Kavassalis, Legal Director)
- ❑ 11 court locations (Toronto, Brampton, Hamilton, Timmins, Ottawa, London, Belleville, Guelph, Milton, Kitchener, & Sault Ste. Marie).
- ❑ Over 120 social workers took training on VCR
 - MHP paid rate as OCL (includes travel time, administration, interviews & report preparation).
 - OCL filed VCR; provided ongoing support if case required s.112 or MHP is required to testify

VCR Pilot – Methodology for Reports

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- At pilot project sites, at request of either judge, parents or lawyers,
With consent of both parties, judge could make order for VCR.

- Parents complete brief intake questionnaire.

- Endorsement Order and questionnaire sent to OCL, which refers only to trained MHP only.

- Each child (ages 7 yrs+) interviewed twice (brought once by each parent/guardian) about their situation, usually at clinician's office.

- Child's experiences with each parent, perspective on issues and preferences; suggested questions for clinicians

- Child given final say on contents (confidentiality).

- Non-evaluative reports with no recommendations, but could have clinician's observations about the child's non-verbal communication, affect during the interview, cognitive functioning, and any significant physical characteristics or behaviour.

- OCL files VCR to court within 30 days and sent to parents/lawyers.



VCR: Research Process (RERC approved)

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- Voluntary interviews
- Except judges, all were audio-recorded and transcribed.
- Importance of Multiple perspectives
- Only follow up study of all participants in VCR
 - Small BC study of 6 children and 14 parents

Importance of Multiple Perspectives



Demographic Results

CHILDREN: 86 children (38 boys, 48 girls)

- Average age: 12 years of age (range is 6-17 years of age)
- Most common issue in dispute is parenting arrangements
 - 11 cases where children have not had access to a parent in 6 months to 2 years.

OUTCOME of CASES:

- 54% cases settled as **direct result of VCR** (as reported by the parent/guardian/lawyer/judge)
 - 5 cases collapsed as parents did not consent after order made
 - 3 cases referred to child welfare; 1 dispute filed (case has since settled; access to father); 2 cases where s.112 ordered after VCR; 2 cases went to trial; sw did not testify

Cost Comparisons

Survey Results Across Canada (Private Practice)

Cost of reports for one child
varied

- Generally less costly in BC, AB, SK and MB:
\$250 - \$1,250

- Somewhat more expensive in ON:
\$751- \$1,500

Cost of reports by lawyers &
MHPs roughly equal

Ontario, 2016 (OCL Clinicians) based on 86 children

Average cost per case:

\$1,200

Average time interviewing per
case:

7 hours

Average time report writing:

5 hours

ONE CASE

Case #1: Residence Change

- 1 girl, age 13 years; lived with each parent on/off many years; child living solely with father at time of application.
- Each parent seeks sole custody and claims that child wants to live with them.
- Allegations of drinking made by mother against father.
- Mother had lawyer; father self-represented.
- Case settled, on basis of child's preferences. Child lives with mother and visits to father.

Case #1: Comments of Participants

“Judge requested it; it was quick. It was actually good, but I disagreed with the report as her words were changed.” [Mother]

“My daughter was comfortable with MHP; allegations not really dealt with, but a good report. I would recommend to others.” [Father]

“It felt good,[though] certain things that I said not really there. For me it was good feeling.” [Girl]

“She went from not seeing her mother to living with her now.....really validated issues and was quick.” [Mother’s Lawyer]

“I really liked it; they read [children] report and commented on it....maybe a better way to get views and preferences....[MHP]

THEMATIC FINDINGS



Children

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- ❑ 34 interviewed: 22 girls; 12 boys
- ❑ On the whole very positive, though a couple said report not accurate



Parents/Guardians

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- 41 Parents/Guardians (21 mothers/2 maternal grandmothers/18 fathers).
- Most very positive
- A number indicated that they were not aware of their children's views
- A couple had prior assessments and preferred VCR as less judgemental

MHP & Lawyers: Anyone Else To Be Interviewed?

“...this is a views of the child report....that is what it is strictly speaking....when I finished writing the report....the kids were open to seeing their father [whom they had not seen for a few years] in a supervised access center, but I just felt uncomfortable leaving it that way....I would not have recommended it.” (MHP)

“I think it is better not to....I heard what the child told me and he told me a lot.” (MHP)

“Absolutely speaking to someone else...parents, collaterals”
(Lawyer)

Mental Health Professionals

25

- 29 OCL clinicians (26 females; 3 males).
- All had to have 5 years or more experience interviewing children.
- Average years experience with both private and public assessments: 9 years (range: 5-19 years).
- 6 female MHPs had prior experience with private VOC (1 MHP had gone to trial and another has been requested to do a follow up privately after the VOC was completed for this pilot)

Lawyers

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- 35 interviewed (25 females/10 males).
- Average years experience: 12 years (range: 2-25 years).
- 4 lawyers declined interview.

MHP & Parents' Lawyers:

Other documents such as pleadings, school reports?

“No....if I had more documents that would affect my thinking....here I was solely focused on child.” (MHP)

“If we're confining it to views of kid...probably no other documentation.” (MHP)

“Depends on issue....if it is a school change, then need attendance and grades.....” (Lawyer)

“Useful to get school information.” (Lawyer)

MHP & Parents' Lawyers: Child's right of confidentiality?

“It's their information [so children should have this right.]”
(MHP)

“I struggled with it as it was part of protocol...but went over it and asked him”. (MHP)

“Yes [it's good], especially older children.” (Lawyer)

“Depends on age of child.” (Lawyer)

MHP's- Other comments?

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“I see value to it....one caveat that the judge is astute...putting [the child's] views into context.”

“Very good project....it changed my mind about process as I saw with this child who was 12 and thoughtful young man.”

“It is short; it is child focussed....it is good.”

“With a s.112 [full assessment], the child gets lost in report. This is focused on child.”

“Professionallyit is way less burdensome than OCL reports.”

Lawyers - How Helpful Settling Cases?

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“The report became central for the father to bring a motion for 50/50 time and mother resisted.”

“Phenomenal and helpful to my client” [his client did not get what he wanted].

“

All actions should start with VOC and then if they need more....”

“She went from not seeing child to having child live with her.”

“Fundamental in settling case.”

Judges' Comments

28 interviewed (20 females/8 males)

“Settled cases easily.”

“Speed of getting feedback is great.”

“Can see this better for early resolution, narrow issues, focused.”

“Fast, effective way of hearing from children.”

LESSONS

LEARNED

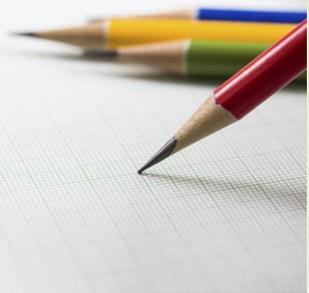


Utility of Views of Child Reports

- Parents, children and professionals generally satisfied
- Parents report that they feel it is neutral as it only reports what their child said, and not negative comments about either parent or their parenting abilities/weaknesses.
- Facilitated settlements
- In a few cases, child disclosed abuse which resulted in child welfare report or OCL undertook fuller assessment [Triage function]

Limited Focus of VCR

- Most helpful for cases with narrow focus (i.e., access issues; views of older children; parenting schedules/changes, etc.).
- Need clarity when order made (i.e., all children, parents and lawyers need to understand what VCR is and is not).
- Some cases where VCR **may not** be appropriate include:
 - criminal charges pending and children may testify;
 - language barriers;
 - child is under 7 years of age;
 - previous assessment reports and children interviewed multiple times already.



Conclusions



- Does **NOT** replace assessments, child legal representation, child-inclusive mediation, or even judicial interviews.
- Relatively fast and inexpensive option that can facilitate settle and help court hear from children.
- Identifies cases that require more extensive assessment (i.e., abuse, mobility) or referral to child welfare (acts as a triage process).
- Provides a ‘voice’ to children where they may have none.
- Good triage function and cost effective.

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Thank You for
Listening

