

# Shaping the Future of Child-Inclusive Mediation in Canada: A Discussion Paper for Family Mediation Canada

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## Introduction

As recognized in the 1989 United Nations [\*Convention on the Rights of the Child\*](#), there is growing appreciation internationally of the importance of involving children in the making of decisions that affect their lives. In 2021, Canada's [\*Divorce Act\*](#) was amended to explicitly provide that children's "views and preferences" are to be considered in making post-separation parenting arrangements, giving due weight to their age and maturity. Those amendments also recognized the importance for families to make use of family dispute resolution processes outside the court system, in particular mediation. Considering these amendments, it is now very important to address how children should be involved in mediation in Canada. The Ontario Association of Family Mediators (OAFM) amended its Standards in 2023 to address child inclusive mediation (see Appendix). This paper recommends that Family Mediation Canada (FMC) adopt a similar approach in the FMC Code of Conduct and policy.<sup>3</sup>

There are several ways of involving children in the *Family Court process* for making post-separation parenting orders. There are *indirect forms* of child participation, such as through the appointment of counsel for a child, having a Voice of the Child Report prepared, or having a full parenting plan assessment by a qualified professional. There are also *direct forms* of child participation, in particular having judges directly meet with children. The method used in an individual case will depend on the stage of the process, the issues in dispute, the resources available, the age and communication abilities of the child. While there is no research that demonstrates that any one method is better than another for involving children in court-based decision-making about post separation decision-making, there is significant research which establishes that if children feel that they have been "heard" in a court-based process, they generally have better outcomes.<sup>4</sup>

There is also a growing body of research about the value of involving children in the making of parenting plans outside of the litigation in *child- inclusive mediation*.

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<sup>3</sup> Code of Conduct | Family Mediation Canada.

<sup>4</sup> Nicholas Bala & Rachel Birnbaum Hearing the Voices of Children in Family Disputes, in Pierre Noreau et al eds, *Youth at the Crossroads of Family, Community, Law and Society*, (Éditions Thémis, Montreal, 2021), 21-42 ; Rachel Birnbaum & Michael Saini, "A Qualitative Synthesis of Children's Participation in Custody Disputes" (2012) 22:4 Intl J of Social Work Practice 400; Rachel Birnbaum & Michael Saini, "A Scoping Review of Qualitative Studies on the Voice of the Child in Child Custody Disputes" (2012) 20:2 Childhood 260.

## Research into Child-Inclusive Mediation

Jennifer McIntosh et al.<sup>5</sup> in Australia undertook research that distinguished between child-inclusive (CI) mediation and child-focused (CF) mediation. That research has been influential and replicated. In child-inclusive (CI) mediation the child is directly consulted, and their views are considered by the parents. This may involve the child being interviewed by a consultant (social worker) or the mediator, who reports to the parents on the child's views, or even by having the child attend a mediation session with the parents. In child-focused mediation (CF), the mediator focuses on the children's developmental needs, so that parents may better understand the impacts of separation and their parenting plans on their child, but there is no involvement of the child in the mediation process.

In the form of child-inclusive mediation (CI) that McIntosh and her colleagues studied, a child consultant (social worker or psychologist) met with the child and reported on the child's views at a mediation session with their parents. They found that families who received CI experienced significant benefits compared to families in CF, such as higher levels of child-reported closeness to father, better mother-child relationships, and greater parental satisfaction with the parenting arrangements following one year post intervention.<sup>6</sup> These researchers also found benefits four years post intervention, such as greater father involvement in the children's lives and less interparental conflict.

Ballard et al.<sup>7</sup> and Rudd et al.<sup>8</sup> in the United States replicated the work of McIntosh et al.<sup>9</sup> adding a comparison to the traditional mediation approach when evaluating the CI approach. They also found evidence that child-inclusive mediation helped parents to better understand their children's needs and was considered useful by parents and mediators, and more effective than either traditional mediation or child-focused mediation. Among the positive outcomes of CI mediation was that children felt heard and appreciated being involved. Rudd et al.<sup>10</sup> also found that there may be lower re-litigation rates when child inclusive mediation is used.

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<sup>5</sup> McIntosh, J. E., Wells, Y. D., Smyth, B. M., & Long, C. M. (2008). Child-focused and child-inclusive divorce mediation: Comparative outcomes from a prospective study of post separation adjustment. *Family Court Review*, 46(1), 105–124.

<sup>6</sup> McIntosh, J. E., Wells, Y. D., Smyth, B. M., & Long, C. M. (2008). Child-focused and child-inclusive divorce mediation: Comparative outcomes from a prospective study of post separation adjustment. *Family Court Review*, 46(1), 105–124.

<sup>7</sup> Ballard, R. H., Holtzworth-Munroe, A., Applegate, A. G., D'Onofrio, B. M., & Bates, J. E. (2013). A randomized controlled trial of child-informed mediation. *Psychology, Public Policy, and Law*, 19(3), 271–281. <https://doi.org/10.1037/a0033274>;

<sup>8</sup> Rudd, B. N., Ogle, R. K., Holtzworth-Munroe, A., Applegate, A. G., & D'Onofrio, B. M. (2015). Child-informed mediation study follow-up: Comparing the frequency of relitigation following different types of family mediation. *Psychology, Public Policy, and Law*, 21(4), 452–457. <https://doi.org/10.1037/law0000046>.

<sup>9</sup> McIntosh, J. E., Wells, Y. D., Smyth, B. M., & Long, C. M. (2008). Child-focused and child-inclusive divorce mediation: Comparative outcomes from a prospective study of post separation adjustment. *Family Court Review*, 46(1), 105–124.

<sup>10</sup> Rudd, B. N., Ogle, R. K., Holtzworth-Munroe, A., Applegate, A. G., & D'Onofrio, B. M. (2015). Child-informed mediation study follow-up: Comparing the frequency of relitigation following different types of family mediation. *Psychology, Public Policy, and Law*, 21(4), 452–457. <https://doi.org/10.1037/law0000046>.

While there is a range of approaches and models, the existing research generally supports the value of child-inclusive approaches in mediation. Saposnek<sup>11</sup> eloquently summarized the value of inclusion of children in mediation:

Including children in the mediation process.....empowers children. It gives them a voice, it gives them rights, it gives them status, and mostly, it gives them a forum for asserting their personal and individual power. The implications of this are quite significant: implicit in the act of empowering children are the assumptions that children are to be heard, that their opinions are valid and valued, that they are esteemed as important persons along with their parents in the process of decision making, and that what they say will have a bearing upon and may influence the final decisions that are to be made (p.331-332).

In 2009 Walker & Associates<sup>12</sup> evaluated the government subsidized *Children in Mediation Project* in British Columbia. That program was still in a developmental phase at that time and involves a family justice counsellor interviewing the child and conducting the mediation, including providing the parents with information about the child's views as part of the mediation process. A total of 19 parents (16% response rate) participated; about three quarters of the parents rated the child-inclusive mediation process, overall, as either favorable or very favorable, and a majority would recommend that other parents use child-inclusive mediation process. A total of 14 family justice counsellors (64% response rate) participated, and these counsellors were also generally positive. Despite the methodological limitations and small scale of this study, the evaluators concluded that child-inclusive mediation in BC was overall a success. Since that study was undertaken in British Columbia all Family Justice Counsellors in the province have been trained in child-inclusive mediation and provide this service at no charge at the Family Justice Hubs across the province to children 8 years of age and older, provided both parents' consent to the child being interviewed. The evaluators recommended that documents provided to parents about child-inclusive mediation should provide greater clarity about the role of the family justice counsellor and mediator and better explain the value of child-inclusive mediation.

In 2016, Yassenik & Graham<sup>13</sup> wrote about child-inclusive and child-focused mediation processes, together referred to as part of their child-centered continuum model (CCCM) of mediation. Their approach to child involvement in mediation uses a skills-based framework and is intended to increase the likelihood that children can participate in mediation and alternative dispute resolution processes. A key element in their approach is working with parents to improve their readiness to hear their children's view and preferences. Yassenik & Graham identified four levels of child involvement: (1) managed child focus; (2) child focus; (3) assisted child participation; and (4) direct child participation. Their model provides a rich foundation for understanding children's participation in mediation and other ADR processes in a sensitive, planned and appropriate manner.

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<sup>11</sup> Saposnek, D. T. (1991). The value of children in mediation: A cross-cultural perspective." *Mediation Quarterly*, 8(4), 325-342.

<sup>12</sup> Walker, C. A. & Associates (2009). *Evaluation of the Children in Mediation Project*. [Evaluation of the Children in Mediation Project - November 2009](#)

<sup>13</sup> Yassenik, L. A., & Graham, J. M. (2016). The continuum of including children in ADR processes: A child-centered continuum model. *Family Court Review*, 54(2), 186–202. <https://doi.org/10.1111/fcre.12213>.

In a government funded pilot project in Québec reported in 2017, Quigley & Cyr<sup>14</sup> worked with ten high conflict families in Montreal who received free parenting coordination (PC) services. As part of their work with the families, a PC trained in interviewing children met with the child to obtain their views, first at the initial phase and then as needed on a case-by-case basis for further meetings. Children were interviewed without their parents present. The researchers found that half of the children provided examples of improvements in their lives as a result of their participation in the project, mostly related to reduced parental conflict and better communication between the parents. However, some children shared frustrations with the intervention and their belief that parenting coordination was not helpful. Feeling not properly heard by the parenting coordinator (PC) as well as a perceived lack of neutrality by the PC were linked with negative feelings about parenting coordination.

Yasenik, Graham & Fieldstone<sup>15</sup> surveyed 92 parenting coordinators (PC) in several countries to learn about their practices and views of child-inclusive practice. They found that the majority of PC's believe that children can be included in a safe and appropriate manner. Over 90% of those surveyed said that they had met with a child as part of their PC process, at least "sometimes," and 71% reported that they believed child inclusion rarely compromises the welfare of the child. Most of the PCs reported that they meet the child individually and keep their input confidential, only using their information to assist them in helping the parents come to an agreement. Most of the PCs make sure the process related to child inclusion is clear to parents and children, including clarity about their approaches to child confidentiality and ensuring that children were not harmed from their involvement.

Whitehead & Birnbaum<sup>16</sup> undertook a study of court-connected mediation in Ontario. They surveyed 95 Ontario mediators and 43 referrers to mediation services and interviewed a number of judges and other family justice professionals. The focus of the research was to examine the benefits and challenges associated with court-connected mediation and its affiliated services, with a view to examining if there were ways to increase their use and effectiveness. Of the 95 mediators who completed the survey, 22% reported that they regularly include consideration of the child's views in the mediation process (likely as part of their private practices than in government subsidized work), 28% did not, and 50% said sometimes. Of those who said they included the child's views, the methods were: a letter or report about the child's views prepared by another professional (30%), a child only session with the mediator (19%) who then shared information with the parents; a child and parent session (7%); a child providing a letter to the mediator to share with the parents (3%); and other means such as a children's lawyer or other professional involved obtaining the child's views and preferences (19%). Some mediators (22%) reported relying on parents to provide information about their child's views. The mediators who did not involve children indicated that the reasons for this included: their lack of specific

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<sup>14</sup> Quigley, C., & Cyr, F. (2017). Children's perspectives on parenting coordination: Insights from the Montreal parenting coordination pilot project. *Journal of Child Custody: Research, Issues, and Practices*, 14(2-3), 151–174. <https://doi.org/10.1080/15379418.2017.1371093>.

<sup>15</sup> Yasenik, L., Graham, J., & Fieldstone, L. (2020). Child voice in parenting coordination: Toward a model of inclusion. *Family Court Review*, 58(3) <https://doi.org/10.1111/fcre.12511>.

<sup>16</sup> Whitehead, D. & Birnbaum, R. (2020). Ontario's publicly funded family mediation services: Exploring what influences uptake. *Canadian Family Law Quarterly*, 39(2), 109-149.

training; their belief that doing so would compromise mediator neutrality; and they worked for court-connected services that did not allow for child involved mediation.

Birnbaum<sup>17</sup> surveyed 67 mediators who were members of the Ontario Association of Family Mediation (OAFM) and interviewed a subsample of 20 mediators and 16 clients of mediation, to better understand how the OAFM was meeting the needs of mediators and clients. Among the 36 open and closed ended questions in the survey of mediators there were 2 questions about incorporating children's perspectives in the mediation process. Of the 52 mediators who responded to these questions, 2/3 reported that they sometimes involve children in mediation process and 1/3 did not. Those mediators who did not incorporate children's views commented that they lacked proper training and experience and that child-inclusive mediation was not part of their mediation practice model. Mediators who use child-inclusive mediation commented on factors that they consider when deciding about child involvement, such as child factors (age, emotional state, maturity), parental disagreements or support for child involvement, and whether it was possible to obtain information about the child's perspective from other service providers.

Birnbaum & Bala<sup>18</sup> recently evaluated an Ontario pilot project of a publicly funded mediation service using child involved mediation. The Child and Youth Informed Mediation (CYIM) project was a collaboration between the Office of the Children's Lawyer (OCL)<sup>19</sup> and Peel Family Mediation Service (PFMS), which provides publicly subsidized mediation in the Peel Region of Ontario. The project involved having a Voice of the Child Report prepared by an OCL clinician and provided to the parents and mediator, with the clinician sometimes attending a mediation session, and in a few cases having an OCL lawyer representing an older child and attending a mediation session on behalf their child client. This was a relatively small qualitative study, involving parents (19), children (3), mediators (6), parents' lawyers (10), children's lawyers (3) and OCL clinicians (6). The children, the mediators and some of the parents were generally satisfied with CYIM. Although the mediators reported that only slightly more than half of their CYIM cases were settled, this may have reflected that some of the cases involved in the project may not have been suitable for mediation. Some of the parents were concerned that the child's views were not being reliably reported.

In a recently published study undertaken with the assistance of Family Mediation Canada, Birnbaum and Bala<sup>20</sup> surveyed mediators across Canada about child-inclusive mediation.<sup>21</sup> There were 32 respondents. The survey found: (1) more than half of respondents had completed 30+

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<sup>17</sup> Birnbaum, R. (2023). Private-based mediation in family disputes: Mediator and client experiences in Ontario. *Canadian Family Law Quarterly*, 42, 131-161.

<sup>18</sup> Birnbaum, R. & Bala, N. (in press). Exploring the use of Child & Youth Informed Mediation in Ontario. *Canadian Journal of Children Rights*.

<sup>19</sup> The Office of the Children's Lawyer (OCL) is an independent law office in the Ontario Ministry of the Attorney General which represents children in child welfare matters, parenting disputes and estate matters, and provides clinician services in parenting cases. The OCL have been providing Voice of the Child Reports as part of their suite of services since 2019. See Birnbaum, R. & Bala, N. (2017). Views of the child reports: The Ontario pilot project. *International Journal of Law, Policy, and the Family*, 31(3), 344-362. <https://doi.org/10.1093/lawfam/ebx008>.

<sup>20</sup> Birnbaum, R. & Bala, N. (2026). Child inclusive mediation in Canada. *Canadian Family Law Quarterly*, 44(3), 281-302.

<sup>21</sup> Birnbaum & Bala, Child Inclusive Mediation in Canada, 44 *Canadian Family Law Quarterly* 279-300 (2026).

child inclusive mediations; (2) the most common method is for mediator to meet child alone and bring child's views to the mediation sessions, at least in part as this is the least costly form of child-inclusive mediation; (3) some mediators interview children as young as 6, but common minimum age is 8 yrs (BC policy), and some will only interview older children (e.g., 12 yrs); (4) there was wide consistency in practice among mediators who interview children regarding confidentiality, with almost all offering confidentiality to child; and (5) mediators report children are appreciative, parents generally respond well to information, and lawyers appear to find it useful.

The research from several jurisdictions reveals that involving children in mediation has the potential to increase the likelihood of parents settling their cases outside of court and results in more stable parenting arrangements.<sup>22</sup> Helping parents understand the harmful effects of their conflict on their children and assisting them in making parenting agreements that reflect the views and concerns of their children can improve outcomes for children.

### Goals of Child-Inclusive Mediation

McIntosh<sup>23</sup> identifies the goals of child-inclusive mediation: (1) protect, repair and support children's developmental pathways as they navigate their parents separation; (2) provide a safe and skillful interview to enable the child to share their views and preferences about their story; (3) be able to represent the child's narrative and their developmental implications within the mediation to the parents; (4) enable parents' to reflect on their child's needs; (5) provide information to parents and the mediator about the views and preferences of the child; and (6) support an appropriate parenting plan that considers the child's developmental needs and the child's expressed wishes.

The objective of child-inclusive mediation is not to have children making decisions but adding their input to the decision-making process. The research demonstrates that when children are consulted and included, they have better outcomes.

### The Value of Child-inclusive Mediation

Mediation practitioners and academics have been exploring ways to involve children in mediation that addresses their safety and emotional needs while supporting their participatory rights (Yasenik & Graham<sup>24</sup>). Various models have been developed to provide for hearing from

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<sup>22</sup> Barlow, A., & Ewing, J. (2024). *Children's Voices, Family Disputes, and Child-Inclusive Mediation: The right to be heard*. Bristol University Press; Birnbaum, R. & Bala, N. (in press). Exploring the use of Child & Youth Informed Mediation in Ontario. *Canadian Journal of Children's Rights*; Dimopoulous, G., Hew, E., Vosz, M., & Walsh, H. (2025). Talk to Us, Not About Us': Children's understandings and experiences of participation in Australian Family Law. *Child & Family Social Work*, <https://doi.org/10.1111/cfs.13275>; Kit, J. (2018). Divorce mediation in Singapore: Bringing the voice of the child to the table. *Asian Journal of Mediation*, 21-32; Thörnblad, R., Strandbu, A. (2018). The involvement of children in the process of mandatory family mediation. In: Nylund, A., Ervasti, K., Adrian, L. (eds) *Nordic Mediation Research*. Springer, Cham. [https://doi.org/10.1007/978-3-319-73019-6\\_10](https://doi.org/10.1007/978-3-319-73019-6_10); Tveit, O.B., Gustavson, K., & Helland, S. (2023). Children's participation in post-divorce decision-making: The role of conflict and attachment. *Child & Family Social Work*, 28, 712–722.

<sup>23</sup> McIntosh, J. (2016). [Microsoft Word - AFCC newsletter ask the experts 2016.docx](#)

<sup>24</sup> Yasenik, L. A., & Graham, J. M. (2016). The continuum of including children in ADR processes: A child-centered continuum model. *Family Court Review*, 54(2), 186–202. <https://doi.org/10.1111/fcre.12213>

children directly or indirectly in family mediation in a way that also provide protection for children. There are a number of models of child-inclusive mediation which use different terminology and vary in some significant respects, but all of the approaches involve hearing from children either directly communicating their views and preferences to their parents and a mediator or indirectly with a child consultant. The goal of these approaches is to sensitively involve children in a holistic way to have their views and preferences heard by their parents and mediators.

In Canada, it would seem that the most common child-inclusive mediation practice is for the mediator to meet with the children themselves and report to the parents' information that the children are prepared to have shared with the parents, assuring the child confidentiality. This is likely the least expensive form of child-inclusive mediation but requires mediator training in child interviewing.

It is also important to involve children in the non-court dispute resolution processes that are encouraged by the 2021 *Divorce Act* amendments, in particular family mediation. There is clearly interest in Canada in different forms of child-inclusive mediation, though recent work in Ontario found that only a third of mediators regularly do this (Birnbaum<sup>25</sup>). Reasons for the lack of child involvement in mediation include a lack of mediator training and the absence of practice models.

In the 2023 Ontario case of [B. v B.](#)<sup>26</sup> the court considered the effect of an agreement that the parents had made to mediate a review of their parenting arrangements, including having a consultant interview the children aged 6 and 8 years and prepare a Voice of the Child Report (VCR) for use in mediation. Justice Tellier directed that the VCR was to be prepared for use in the mediation, and that the parents were then to attend at least two mediation sessions, prior to bringing their case to court if the issues were not resolved in mediation. The mother expressed concern that the father was pressuring the children to express preference to the consultant for equal parenting time. The judge observed that “a potential concern about the independence of a child’s statement should not result in a refusal to meet the child to try to ascertain his or her views; rather it is a factor that goes to the weight to be given to those expressed views.”

## **Recommendations for Family Mediation Canada**

In Canada, only the Ontario Association of Family Mediation (OAFM) has standards incorporated in their policies about involving children in mediation. Family Mediation Canada (FMC) is a national voice for family mediators with a substantial strong history in promoting safe, qualified professionals carrying out mediation with families post separation.

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<sup>25</sup> Birnbaum, R. (2023). Private-based mediation in family disputes: Mediator and client experiences in Ontario. *Canadian Family Law Quarterly*, 42, 131-161.

<sup>26</sup> 2023 ONSC 297.

We recommend that FMC undertake discussions and develop a policy and standards about child-inclusive mediation. An Advisory Group should work with the Board of FMC to develop a policy that will address a range of issues, including:

- (1) develop a consistent definition of child-inclusive mediation that all FMC members are guided by;
- (2) identify types of cases where it would be appropriate to interview children that promote their safety and confidentiality;
- (3) identify a range of ways in which children can be included in mediation;
- (4) address manner in ways children's views are communicated to the parents;
- (5) address issues related to child safety and confidentiality;
- (6) establish training requirements for mediators undertaking this work; and
- (7) provide guidance for how parents are educated about the value, limitations and costs of child-inclusive mediation.

If the policy is adopted, FMC should also undertake an evaluation to better understand the processes adopted and their effect on mediation and on outcomes for parents and children.

It is critical to understand that involving children in mediation requires policies, codes of conduct and training in interviewing children that provide safety and security for their voices to be heard and then conveyed to their parents.

May 30, 2026

## Appendix: OAFM Standards for Child-Involved Mediation (adopted April 3, 2023)

### K. Child Inclusive Mediation

41. In consideration of the vulnerability of children, mediation must be child centered and mediators must provide education, awareness and understanding of the needs and best interests of children experiencing the conflict of others.
42. Mediators must educate the parents on the importance of the voice of children in family conflict and consider whether and how they could have their voices heard in a safe, supportive way while also providing education about the importance of not causing children undue pressure to have an opinion or become a decision maker.
43. Participation of the child must be voluntary, and no child should ever be pressured into talking with a mediator or professional, recognizing that not all children will wish to take the opportunity to have a voice their voice heard.
44. Mediators have a wide range of options to bring in the voice of children, directly or indirectly. If there is a lawyer or clinical investigator appointed by the Office of the Children's Lawyer, the mediator should always attempt to speak with that person first. Other options may include:
  - a. a co-mediation model where one mediator speaks with the child;
  - b. interviewing a therapist, social worker or psychologist involved with the child or family;
  - c. utilizing a Voice of the Child report or similar report on the views and preferences of the child(ren); or
  - d. offering the child an opportunity to participate in a conversation verbally, in person, in writing, over the telephone or by play or storytelling.
45. Mediators should utilize the least intrusive method of bringing in the child's voice, considering their age, maturity and other relevant circumstances.
46. Mediators meeting children directly should have competency and experience doing so, and shall follow best practices for working with children, such as:
  - a. ensuring the mediation process is "closed";
  - b. ensuring that parents/guardians and children over the age of 12 sign consents;
  - c. meeting with the children more than one time;
  - d. ensuring children understand that they are there to give input and to be heard, but not to make decisions ("voice not choice") and never directly asking them to choose between their parents or caregivers;
  - e. ensuring that children understand the mediation process and their role in it;
  - f. ensuring children understand that information related to safety cannot be kept confidential;
  - g. ensuring that each participant to the mediation has an opportunity to bring the child for a meeting;
  - h. seeing siblings in separate meetings;

- i. clarifying with the child what information the child wishes shared and which is confidential.

47. Mediators should encourage parents to share the parenting plan with the children, where appropriate, emphasizing that their voice was heard and considered and how to continue to gain their input on future issues in an appropriate way.