

 **The Law Foundation of Ontario**

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Western University Canada

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

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Prof. Birnbaum is solely responsible for all content.

Topics Covered

Importance about Children's Participation

Views of the Child Reports: The Concept

Background: Canadian Survey

LFO Ontario Pilot Project & Research Project

Lessons Learned
Practice, Policy & Research Applications.



Importance of Child's Views in Disputes Between Separated Parents

- Child has right to be heard
✓UN Convention on Rights of Child Art 12.
- Decision-makers better informed
✓views & perspectives of child is "best interests" factor
- Parents may be more likely to settle.
- Many children want to participate (though few want to "decide") – "A voice but not a choice"
- Better outcomes if children feel that they have been engaged

Evidence of Child May Be Introduced By

- Hearsay statements from parents
 - reliability?
- Videos, letters or affidavits of child
 - reliability?
- Hearsay statements & reports from teachers, doctors, therapists etc.
- Custody assessments – CLRA s. 30 or OCL Clinical Investigation
- Views of child reports
- Lawyer for child telling court about child’s views
- Interview with judge or mediator



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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: The Concept

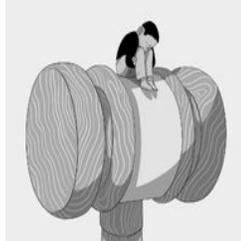
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Views of Child Reports

- Views of the child” reports increasingly used in Canada to ascertain perspectives and preferences of child
- Less information and value than either full assessment or lawyer for child, but more focused, faster and less expensive
 - Useful in negotiation and mediation as well as litigation
 - Some Canadian judges prefer this to judicial interview
 - Due process and judicial lack of training addressed
- 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

Varying Terminology & Practices in Canada

- 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: Canadian Study

**Birnbaum, Bala & Boyd
(2016)**

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

VOC Canadian Survey
Birnbaum, Bala & Boyd (2016)

- Conducted over four months in 2014 as well as 64 cases across Canada (limited by search terms)
 - Another BC based study by David Dundee
- Distributed through provincial colleges of social workers, provincial justice ministries and groups providing child interview services (including BC Hear the Child Society) in BC, AB, SK, MN & ON
 - No surveys in NB or NS
- 64 valid responses received
 - 11 male respondents
 - 53 female respondents



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

Birnbaum & Bala (In Press). Views of Child Reports: The Ontario pilot project. *International Journal of Law, Family & Policy*

Birnbaum, R. (In Press). Views of the Child Reports: Hearing directly from children involved in post separation disputes. *Social Inclusion*



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VOC Project Context

- Started in 2014 with small advisory group who met for over 2 years/once per month (Moscoe & cross as OCJ & SCJ reps, Nancy Webb, Dr. Butkowsky, and Dr. Birnbaum)
- Pilot & research rolled out in May, 2016 funded by Law Foundation.
- Information forms sent to courts, lawyers and judges in pilot sites across Ontario as well as at Ontario-wide professional education programs.
- MAG (court locations) aware of project and reports to be filed.

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VOC Pilot Project 2016-2017

- 11 court locations (Toronto, Brampton, Hamilton, Timmins, Ottawa, London, Belleville, Guelph, Milton, Kitchener, & Sault Ste. Marie).
- Significant administrative support from Office of Children’s Lawyer, Katherine Kavassalis and Administrative Assistant, Kae Donais.
- Over 120 social workers took training on VOC in March, 2016 & January, 2017
 - MHP paid rate as OCL (includes travel time, administration, interviews & report preparation).
 - OCL files VOC report; provides ongoing support if case requires s.112 or MHP is required to testify (one trial to date on VOC, sw did not testify).

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VOC Pilot – Methodology for Reports

- **At pilot project sites, at request of either judge, parents or lawyers.**
With consent of both parties, judge could make order for VOC report.
- 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 VOC Report to court within 30 days and sent to parents/lawyers.

VOC: Research Process (RERC approved)



- Voluntary interviews
- Except judges, all were audio-recorded and transcribed.
- Importance of Multiple perspectives
- Only follow up study of all participants in VOC Report
 - Small BC study of 6 children and 14 parents (2009).

Importance of Multiple Perspectives



Multiple Perspectives: Research Questions

CHILDREN: 4 questions based on their comfort level with MHP/talking; thoughts on being interviewed in this way; safety issues; confidentiality.

PARENTS/GUARDIANS: 4 questions based on how they found out about VOC; information available to them; level of comfort taking their children to interview; thoughts on child interviews only; and how helpful report was.

CLINICIANS: 7 questions based on process (e.g.: ages; # of interviews; documents required, etc.)

PARENTS' LAWYERS: 9 questions based on process (e.g.: same as parents as well as usefulness for court; settlement purposes, etc.).

JUDGES: 5 questions based process; usefulness of these types of reports; etc.

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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:

- 44% cases settled as **direct result of VOC** (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).
 - 1 case went to trial
 - 2 cases where a 112 ordered after VOC

Length & Contents of Reports

Length of Reports

- Number of pages ranged from 2-10 (average was 4.5 pages)
- No relationship between the number of children or the reasons for the report and the length of the report.

Contents of Reports

- All the reports had the names of the parties and children
- All reports provided had names of counsel for the parties or indicated if someone was self-represented.
- Majority of the reports lacked the DOB of the child or name of the clinician and their academic credentials.
- Some reports missing dates of interviews, the number of interviews and who brought the children to each interview.

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Cost Comparisons

<p>Survey Results Across Canada (Private Practice)</p> <p>Cost of reports for one child varied</p> <ul style="list-style-type: none"> • Generally less costly in BC, AB, SK and MB: \$250 - \$1,250 • Somewhat more expensive in ON: \$751- \$1,500 <p>Cost of reports by lawyers & MHPs roughly equal</p>	<p>Ontario, 2016 (OCL Clinicians) based on 86 children</p> <p>Average cost per case: \$1,198.28</p> <p>Average time interviewing per case: 7 hours</p> <p>Average time report writing: 5 hours</p>
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TWO CASES

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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.

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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]

Case #2 : Time with Dad

- 2 siblings: girl, 14 years and boy, 11 years.
- Both parents represented.
- 3 interviews conducted with older girl (3rd was to review report)
- Arrangement at time of application was living with mother, alternate weekends and 2 nights after school with father.
- Father seeking 50/50. Mother accepts more time with father, but has concerns as one child has special needs and father lacks understanding of son’s needs.

Case settled on VOC with interim 50/50 mhp doing follow up privately

Case #2: Comments of Participants

“The judge requested it. My goal was getting feedback from children and they said they want more time with dad....we are trying it out but challenging...great VOC but needs follow up.” [Mother]

“My lawyer suggested this....it was expedited and great....my children wanted to try it out for 3 months...it is a great process for hearing from children directly.” [Father]

“I didn’t care to go, but I was comfortable with MHP. Yes, it helped to figure things out....[Girl]

“I see this as an evolving process, wise procedurally...only helpful for children who want to express a view...the boy did not” [MHP]

[The boy signed consent for research interview, but then did not wish to be interviewed. Lawyers did not return calls.]

THEMATIC FINDINGS

Children

- ❑ 34 interviewed: 22 girls; 12 boys
- 1 boy declined interview but his sister was interviewed.
- 3 children did not sign consents.
- 1 child signed consent, but father who had custody declined that he be interviewed.

Child's Consent to Research Interview

Parents/Guardians

- ❑ 41 Parents/Guardians (21 mothers/2 maternal grandmothers/18 fathers).
- ❑ 17 mothers/7 fathers declined to participate in research interviews (e.g. did not return calls, did not sign consents, etc).

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- Parents and children appreciated the follow up interviews about process
- Virtually no follow up on many interventions/services (i.e., child legal representation/assessments/mediation/ parenting coordination).

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Mental Health Professionals

- 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).

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Lawyers

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

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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)

**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)

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**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)

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MHP's- Other comments?

"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."

"I really enjoyed doing it...child was very insightful...there is value to
their voice."

Lawyers - How Helpful Settling Cases?

"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."

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Parents’ Lawyers- Other comments?

“Very useful... turnaround was quick.”

“Excellent program and puts child in centre.”

“Really impressed by the fact that the report can be produced so fast. Everything takes time in litigation, and it’s usually damaging for the children because they are in limbo so long.”

“I would like to see more information and done a few more times...in my case it kind of really helped, but I can see it in a number of scenarios where it might not be.”

“Alienation cases can be problematic.”

“More and more files where OCL will not get involved and this fills the gap.”

Judges

▪28 interviewed (20 females/8 males).

▪Average number of orders for VOC: 2

▪Some judges gave specific questions to be addressed, as well as context of situation.

▪Not all judges were able to case manage and read VOC Reports they ordered.

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Judges’ Comments

“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.”

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Judges' comments (2)

"Obtained resolution on 3-4 cases that were outstanding for years and complex."

"Concerned if resources are diluted 'instead of s.112"

"Lots of time do not need collaterals and full story."

"I like it...impressed the way they were written."

"Absolutely helpful...all resolved in my cases."



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]
- Useful for judges
- Much less expensive than alternatives

Concerning Issues From Study

Some children said their comments were inaccurately reported
• Care needs to be taken to reflect what children say

Some MHPs wanted to express an opinion, despite instructions that reports were to be non-evaluative.

Some parents and lawyers did not appreciate that this is not an assessment and focus is on children's views NOT adults.

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Limited Focus of VOC

- 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 VOC is and is not).
- Some cases where VOC **may not** be appropriate include:
 - criminal charges pending and children may testify;
 - language barriers;
 - child is under 7 years of age;
 - where both parents do not consent to VCR;
 - previous assessment reports and children interviewed multiple times already.

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Conclusions

- VOC is a cost-effective approach for *some* cases
 - Does **NOT** replace assessments, child legal representation, child-inclusive mediation, or even judicial interviews.
 - But in some cases, a relatively fast and inexpensive option that can facilitate settle and help court hear from children.
 - Can also identify whether case requires 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.
 - In some cases, a good triage function.

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A Useful Addition to Ontario's Family Justice Toolbox – For the Right Cases



- Already lawyers and judges in Ontario are requesting VOC reports outside the pilot (several lawyers/judges calling to inquire how they can do them; MHP advertising)
 - Parents pay
- We recommend that VOC by MHPs be added to OCL representation and full clinical investigation
 - Judges should provide direction with specific questions and context/reasons why ordered.
 - Cost effective for *some* cases
 - Need training, practice protocols & consistency (with some flexibility).
 - At present in Ontario, without legislation, likely necessary for both parents to consent.
- More research, especially about possible use for mediation & child welfare cases

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Thank You for Listening

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