

Views of the Child Reports: The Ontario Pilot Project – Research Findings and Recommendations

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Abstract: There is increasing use of Views of the Child Reports as a means of involving children in the resolution of parenting disputes in some parts of Canada, but there are significant differences in how these Reports are prepared. Further, until 2016 there was only very limited use of these Reports in Ontario. This paper reports on a study of an Ontario pilot project, funded by the Law Foundation of Ontario, that provided non-evaluative Reports for parenting disputes over custody or access prepared by clinicians based on two interviews with each child; children were offered confidentiality and the opportunity to review and edit the report. Reports were prepared for 86 children. After completion of the Reports, research interviews were conducted with 34 children, 41 parents/guardians, 35 parents' lawyers, 28 judges, and 29 clinicians about their experiences with the Views of the Child Reports. The majority of professionals and parents stated that having these Reports of children's views and preferences was helpful for the resolution of the cases. Almost half of the cases settled shortly after preparation of the report, and many judges and parents' lawyers remarked on the value of the Reports for promoting settlement. Most significantly, the children all stated that they appreciated the opportunity to share their views. However, some parents and their lawyers raised concerns that these reports may not be appropriate for certain cases, such as when a child refuses to visit with the other parent, has special learning needs, or has had no contact with the other parent for a long period of time; for these cases, a more thorough child custody and access assessment is required. We conclude that these Reports are a valuable addition to the "family justice toolbox" for Ontario. Although only suitable for some cases, for the right cases they are a relatively inexpensive and expeditious way to provide information and support children's participation about their perspectives and preferences to parents, lawyers and the courts and can facilitate settlement. We make suggestions for good practice guidelines and policy reforms to encourage their appropriate use in Ontario.

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Introduction: The Importance of Children's Participation

The movement towards child inclusion in decision-making in education³, medical treatment,⁴ and various areas of the law,⁵ including separation and divorce,⁶ has grown over the last decade. Studies have explored children's rights as citizens,⁷ children's perspectives on family relationships and what is a family,⁸ and children's attitudes about parental separation and participation in the decision-making process about post-separation parenting.⁹ Research clearly suggests that children's inclusion in the post-separation decision-making process is important to the promotion of their well-being.¹⁰ Smart, Wade & Neale argue that children can provide a

³ McNamee, S. (2016). *The Social Study of Childhood*, Palgrave Publishers.

⁴ Mitchell, M., Keppell, M., & Johnston, L. (2003) An interactive multimedia approach to preparing children and their families for hospitalization. Interact, Integrate, Impact. In: *Proceedings of the 20th Annual Conference of the Australasian Society for Computers in Learning in Tertiary Education (Ascilite)*, 7–10 December. Available at: <http://ascilite.org/conferences/adelaide03/docs/pdf/343.pdf>

⁵ Williams, S., Martinson, D., & Tempesta, C. (2017) have promoted the participation of children in decision-making in legal and administrative contexts in Canada by developing the *Child's Rights Toolkit*, publicly available on the Canadian Bar Association website at: <http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit>. (last accessed May 17, 2017).

⁶ Birnbaum, R., Bala, N., & Cyr, F. (2011). Children's experiences with family justice professionals and judges in Ontario and Ohio. *International Journal of Law, Policy and the Family*, 25(3), 398-422.

⁷ Hill, M., Laybourn, A. & Stafford, A (2003). Having a say: Children and young people talk about consultation. *Children and Society*, 17, 361-373; West, A. (2007). Power relationships and adult resistance to children's participation. *Children, Youth and Environments*, 17(1), 123-135.

⁸ Punch, S. (2005). The generation of power: A comparison of child-parent and sibling relations in Scotland. (pp. 169-188). In Bass, L. (Ed). *Sociological Studies of Children and Youth*, 10(10). 169-188; Punch, S. (2008). You can do nasty things to your brothers and sisters without a reason: Siblings backstage behaviour. *Children and Society*, 22(5), 333-344.

⁹ Birnbaum, R., & Saini, M. (2012a). A scoping review of qualitative studies on the voice of the child in child custody disputes. *Childhood*, 20(2), 260-282; Birnbaum, R., & Saini, M. (2012b). A qualitative synthesis of children's participation in custody disputes. *Journal of Social Work Research Practice*, 22(4), 400-409; Birnbaum, R., Bala, N., & Cyr, F. (2011). Children's experiences with family justice professionals and judges in Ontario and Ohio. *International Journal of Law, Policy and the Family*, 25(3), 398-422; Cashmore, J. (2003). Children's participation in family law matters" in C. Hallett and A. Prout (Eds.) *Hearing the voices of children: Social policy for a new century*. (pp. 158–157). Bodmin Routledge: Falmer Press; Holt, S. (2016). The voice of the child in family law: A discussion paper. *Children and Youth Services*, 68, 139-145; Wade, A. & Smart, C. (2002). *Facing family change: Children's circumstances, strategies and resources*. York, Joseph Rowntree Foundation.

¹⁰ Cashmore, J. & Parkinson, P. (2008). Children's and parents' perceptions on children's participation in decision-making after parental separation and divorce. *Family Court Review*, 46(1), 91-104; Smith, A.B., Taylor, N.J., & Tapp, P. (2003). Rethinking children's involvement in decision-making after parental separation. *Childhood*, 10, 201-216.

unique perspective to the decision-making process about parental separation that directly affects them, concluding that rather than excluding children,

We may have a lot to learn about divorce from children if we suspend the presumption that they are damaged goods in need of protection.¹¹

In part, the lack of involvement of children in the decision-making process has been a result of the perceptions and assumptions of professionals and parents about childhood, which have led to a presumption that children should not participate in decisions arising from their parents' separation.

The recognition of the rights of children has been supported by the adoption of the *United Nations Convention on the Rights of the Child* that guarantees children the right to express views on matters that affect them.¹² Despite the *Convention*, children have often remained absent from the decision-making process following parental separation. In an important 2010 Canadian decision, *B.J.G. v D.L.G.*, Martinson J. expressed her strong support for children's participation in post-separation parenting disputes, citing Article 12 of the *Convention*, stating that:

. . . all children have these legal rights to be heard, without discrimination. [The *Convention*] **does not** [bolded for emphasis] make an exception for cases involving high conflict, including those dealing with domestic violence, parental alienation, or both. It does not give decision makers the discretion to disregard the legal rights contained in it because of the particular circumstances of the case or the view the decision maker may hold about children's participation.¹³

It is important for judges, lawyers, mental health professionals and parents involved in making decisions based on the "best interests" of the child to be aware of the views of the child –

¹¹ Smart CC, Wade AE, Neale BA, 'Objects of Concern? Children and Divorce', *Child and Family Law Quarterly*, 11.4 (1999), 365-376, at 366.

¹² Can. T.S. 1992, No. 3.

¹³ 2010 YKSC 44.

their perspectives and preferences.¹⁴ There are several ways that children's views can be ascertained for use in the family court and/or dispute resolution process. These methods include having:

- parents provide their own testimony evidence about what their children told them;¹⁵
- a person other than a parent, such as a social worker, teacher or doctor, testify about what the child told them;
- a video-record statement, letter or email of the child presented to the court;
- a custody and access assessment prepared by a mental health professional, that will include reports on interviews with the child;¹⁶
- a lawyer appointed to represent the child and present the child's views to the court;¹⁷
- a judge interviews the child;¹⁸ and

¹⁴ Article 12(1) of the *CRC*.

¹⁵ This evidence will be hearsay evidence. In some cases, it may be considered admissible under the "state of mind exception" to the hearsay rule, but there are often significant concerns about the reliability of statements made by a child to a parent, and the courts may exclude them or give them no weight.

¹⁶In Ontario, the judicial authority for ordering an assessment in a family case is found in two pieces of legislation. The *Children's Law Reform Act*, R.S.O. 1990, c C.12, s. 30(1) governs assessments that the parents normally are required to pay for:

The court before which an application is brought in respect of custody of or access to a child, by order, may appoint a person who has the technical or professional skills to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.

A court may also request the involvement of the Office of the Children's Lawyer, which may have a clinical investigator *Courts of Justice Act*, R.S.O. 1990 c.C.43, s. 112.

In a proceeding under the *Divorce Act* (Canada) or the *Children's Law Reform Act* in which a question concerning custody of or access to a child is before the court, the Children's Lawyer may cause an investigation to be made and may report and make recommendations to the court on all matters concerning custody of or access to the child and the child's support and education.

¹⁷ *Courts of Justice Act*, R.S.O. 1990 c.C.43, s. 89. There are, however, significant limits on the extent to which counsel for a child can communicate the child's views to the court without calling a witness, like a social worker who has interviewed the child: see *Strobridge v Strobridge*, [1994] O.J. 1247, 4 R.F.L. (4th) 169 (Ont.C.A.)

¹⁸ *Children's Law Reform Act*, R.S.O. 1990, c C.12., s. 64.

- a Views of the Child Report prepared that only provides information about interviews on the child's views and preferences.

None of these methods to obtain children's views and preferences are mutually exclusive and may occur at different stages of the court process to facilitate settlement. However, it should be noted that obtaining children's views at interim stages, particularly in jurisdictions without one judge case management, may be of limited utility in hearing from children at the interim stage.

While Views of the Child Reports are being increasingly used in some parts of Canada as a means of directly obtaining evidence about the child's perspectives and preferences,¹⁹ there is only limited research about their utility and impact, the benefits and limitations of the approach, and less about what factors need to be considered in establishing good practices and protocols to appropriately advance children's views during parental disputes.²⁰ Especially significant, there

¹⁹ In Australia and elsewhere there is some use of child-inclusive mediation, a practice whereby a mental health professional interviews the child and reports to the parents and a mediator (McIntosh, J. (2000). Child-inclusive divorce mediation: Report on a qualitative research study. *Mediation Quarterly* 18, 55–69. However, most of the writing about this practice has focused on the value of comparing 'child-inclusive mediation' with 'child-focused' mediation. The Australian literature has not directly explored issues related to how these interviews are to be conducted or about the nature of reports to parents and mediators. Also, see, Rudd, B. N., Ogle, R. K., Holtzworth-Munroe, A., Applegate, A. G., & D'Onofrio, B. M. (2015). *Psychology, Public Policy, and Law* 21(4), 452–57. Child-informed mediation study follow-up: Comparing the frequency following different types of family mediation. They describe the outcomes of these two approaches incorporating children's views in mediation.

In England and Wales, the previous government made significant commitment to ensuring that the 'voice of the child' is heard in mediation (United Kingdom, Ministry of Justice, 2015). However, it is unclear whether and how the present Conservative government will honor that commitment. See www.gov.uk/government/publications/voice-of-the-child-government-response-to-dispute-resolution-advisory-group-report (last accessed May 17, 2017); and Ewing, J, Hunter, R., Barlow, A., & Smithson, J. (2015). *Child & Family Law Quarterly*, 21(1), 43–61. Children's voices: Center-stage or sidelined in out-of court dispute resolution in England & Wales? They argue that if these changes occur a significant investment in training and accreditation of family justice professionals would also need to follow. Views of Child Reports are also ordered in Ireland, pursuant to s.32 of the *Children and Family Relationship Act*, 2015.

²⁰ Together with a colleague, the authors undertook a review of Canadian case law review and an internet-based survey of lawyers and mental health professionals about use of these reports: Birnbaum, Bala & Boyd, "The Canadian Experience with Views of the Child Reports: A Valuable Addition to the Toolbox?" (2016) 30 *International Journal of Law, Policy and the Family* 158-178.

Experiences in British Columbia with these reports was studied by Williams, S. (2006) *Through the Eyes of Young People: Meaningful Child Participation in Family Court Processes*, Canada, BC: IICRD Centre for Global

has been little research that has directly studied the experiences of children and parents involved in parental disputes about these Reports.

The Scope of this Paper

In this paper, we specifically focus on the *Views of the Child Reports* (VCR's) that are intended to provide a non-evaluative report on the children's perspectives and preferences in parenting disputes. The next section of the paper reviews the purpose and process for the Views of the Child Reports in Canada. We then describe a Pilot Project undertaken in Ontario with funding from the Law Foundation of Ontario to prepare VCR's at selected locations and report on the results of a mixed method research study evaluating the pilot project, including a summary of the experiences of judges, lawyers, social workers, parents and children involved in the project. We conclude by offering our suggestions for good practice approaches²¹ for clinicians who may undertake this work, and for judges and lawyers who may be requesting and using these reports. We also offer policy recommendations for professional groups and governments, in particular in Ontario, about legislative and regulatory changes that will facilitate appropriate use of these Reports, and more efficient use of publicly-funded resources.

Our intent is not only to add to the nascent literature of this type of Report by providing insights and concerns from multiple perspectives, but also to facilitate the further development of approaches for ensuring that children can meaningfully participate in decisions that will

Studies, University of Victoria; Williams, S. & Helland, J. (2007) *Hear the Child Interviews: Kelowna Pilot Evaluation*, IICRD; and Focus Consultants (2008). *An Evaluation of The Hear the Child Interview Process (Based on Parent and Child Feedback)*, for the International Institute For Child Rights and Development (IICRD), Victoria, British Columbia. These studies had a small sample size and did not include all the different stakeholders and participants in the process.

²¹ In this paper, we purposely distinguish between 'good practice' approaches and 'best practice' approaches. While many lawyers and mental health professionals (e.g., social workers, psychologists) across Canada prepare both evaluative and non-evaluative Reports, there remains a paucity of research, particularly on outcomes to guide practitioners about "best practices" on how the Reports should or should not be prepared, and even whether any one professional discipline (e.g. lawyers or mental health professionals) is more suited to these brief interviews with children for court purposes.

profoundly affect their lives, and promoting more efficient and effective means of family dispute resolution.

Views of the Child Reports in Canada

The use of focused non-evaluative reports to ascertain and report on the views of children involved in disputes between parents began about 15 years ago in British Columbia.²² While there is significant variation in Canada about such issues as which professional prepare these reports, how interviews are conducted, who pays for the reports, whether parental consent or a court order is required, and whether child is to given confidentiality, the use of these reports is increasingly a part of the family justice process in Canada.²³ The names used to describe the reports include Hear the Child Reports, Voice of the Child Reports, and Views of the Child Reports. These reports are now a legally recognized part of the family justice process in Alberta,²⁴ Saskatchewan²⁵, Manitoba²⁶, Nova Scotia²⁷, New Brunswick²⁸, and Prince Edward

²² In 2009, a group of British Columbia lawyers and mental health professionals, following up on the pilot project of the International Institute for Child Right's and Development, established the British Columbia Hear the Child Society (BCHCS) to promote children's participation in justice processes. Mental health professionals and lawyers interview children and prepare non-evaluative reports for the use of parents, the court, or for mediators. In 2016, the BCHCS developed practice guidelines and protocols based on a survey of their membership who conduct these interviews. Parents generally have to pay for these reports. See their website at: <http://hearthechild.ca>.

²³ Birnbaum, R. Bala, N. & Boyd, JP. (2016). The Canadian experience with Views of the Child Reports: A valuable addition to the toolbox? *International Journal of Law, Policy and the Family*, 30, 158-178.

²⁴ In Alberta, Family Law Practice Note 7 of the Alberta Court of Queen's Bench allows for a court to order preparation of a focused Voice of the Child Report, with the parents to pay.

²⁵ In Saskatchewan, a Child's Voices Report can be ordered by the court, with the government paying for the report; see website link: <http://www.justice.gc.ca/eng/fl-df/fjs-sjf/view-affic.asp?uid=219>.

²⁶ In Manitoba, the Brief Consultation Service allows for courts to order reports paid by the government to help address the wishes and concerns of children ages 11-16 years: https://www.gov.mb.ca/fs/childfam/family_conciliation.html

²⁷ In Nova Scotia the government has introduced Guidelines for the preparation of Voices of the Child Reports: <http://www.nsfamilylaw.ca/other/assessments-VCR/VCR/VCRGuidelines>.

²⁸ In New Brunswick, a court may order Voice of the Child report, paid for by the government: see website link: http://www.legal-info-legale.nb.ca/en/court_ordered_evaluations_support.

Island,²⁹ though there is variation in these jurisdictions in the extent to which governments pay mental health clinicians to prepare these reports, or expect parents to pay. In Ontario, there was very limited use of these reports starting in 2010 in individual cases³⁰ as arranged by counsel or the judge without formal government recognition or support, or much discussion about their use among family justice professionals.

Views of the Child Reports provide information about children's perspectives on their lives and their preferences, if any, on the matters at issue in the parenting dispute, based on one or more interviews with a lawyer or mental health professional, retained solely for the purpose of preparing this Report. The Reports can be evaluative, and include the interviewer's opinion on the strength and consistency of the child's views, but more commonly they are non-evaluative, providing no evaluation or commentary on the child's remarks. They provide less information than would be found in a typical custody and access assessment, and offer less opportunity for children to directly influence outcomes than if they were represented by counsel. While these Reports clearly provide children with an opportunity to participate in the justice process, from the child's perspective the nature of the participation provided may not be as empowering as meeting directly with the judge or a mediator.

Views of the Child Reports are intended to report on a child's views, perspectives and preferences for consideration in negotiation, mediation, litigation and other dispute resolution processes between parents and/or caregivers. A significant feature of the process of preparation

²⁹ Referred to a Focused or Brief Assessment such as a views and preferences interview of a child 12+ years old. See website: <http://www.gov.pe.ca/jps/index.php3?number=20159&lang=E>.

³⁰ See e.g. *Walton v. Sommerville*, 2010 ONSC 2765 where a judge is specifically requesting a VCR; *B.T.O. v A.A.*, 2013 ONCJ 708, per Sherr J; and *Violo v Munro*, 2015 ONCJ 640, per Jones, P.J.; *Svirsky v Svirsky*, 2013 ONSC 5564, per Kiteley J.

of these Reports is that most, but not all, interviewers offer the child the opportunity to exclude matters discussed from the final report; such assurances of confidentiality may encourage children to be more comfortable and candid, and permit some discussion between the interviewer and child about what will be reported and how it will be phrased.

Views of the Child Reports are usually non-evaluative and provide only a summary of the child's statements (often including quotations), without offering a conclusion or opinion from the interviewer about the reliability or significance of the statements made or providing a recommendation as to the appropriate resolution of the dispute. Reports that are evaluative in nature are only prepared by mental health professionals, and will also include the interviewer's opinion of the reliability or significance of the child's statements, but are not full assessments of the parties, the children and the circumstances. Birnbaum, Bala, & Boyd (2016) reported from their survey of legal and mental health professionals across Canada that lawyers generally only prepare non-evaluative reports, while mental health professionals prepare both non-evaluative and evaluative reports. The evaluative reports typically address issues such as the emotional state of the child and any apparent parental influences on the child, but are not full custody and access assessments.

The Ontario Pilot Project: Views of the Child Reports Study

Context of the Pilot Project and Study

The development of the Pilot Project began with monthly informal meetings starting in 2014, with support from both the Superior Court of Justice, the Ontario Court of Justice, and the

Office of the Children's Lawyer³¹ (Nancy Webb, former Clinical Director, Office of the Children's Lawyer) and Katherine Kavassalis (Legal Director, Office of the Children's Lawyer), along with Dr. Irwin Butkowsky and Dr. Rachel Birnbaum³². By 2015 this became the Advisory Committee on Views of the Child. In 2015, Dr. Birnbaum, in collaboration with the Advisory Committee and assisted by Prof. Nicholas Bala, applied for and was successful in obtaining funding from the Law Foundation of Ontario for the Views of the Child Pilot Project and Research Study. The Pilot Project began in May, 2016 and ended on March 31, 2017.

The study initially began in five Ontario court jurisdictions in May 2016 (Toronto, Hamilton, Timmins, Ottawa, Brampton), and was expanded in January 2017 to an additional six court jurisdictions (Sault Ste. Marie, London, Guelph, Kitchener, Milton, Belleville). The court jurisdictions involved both the Ontario Court of Justice and the Superior Court of Justice where both levels of court operate, and included some sites where there is a unified Family Court. The courts involved had diverse populations made up of major metropolitan centres and smaller urban court sites, and included two court sites in northern Ontario.

The Views of the Child Reports that were used in this project were based on interviews by mental health professionals, who had experience in undertaking clinical investigations for the Office of the Children's Lawyer.³³ The reports that the clinicians prepared for this project were non-evaluative, generally based on two interviews, with the child being brought once by each

³¹ The Office represents the legal interests of children in child custody disputes, child welfare disputes as well as civil, and estate and trust cases.

³² The first author (Birnbaum) was the Principal Investigator on this project and undertook all of the research interviews; she had significant administrative support from the Office of the Children's Lawyer (OCL). The second author (Bala) was the external research consultant and contributed to the funding application and report writing.

³³ The social workers were all fee-for-service agents of the Office of the Children's Lawyer who conduct clinical investigations and reports pursuant to s.112 of the *Courts of Justice Act*. They were purposely selected for this pilot as they all had already been vetted for their clinical experience and educational qualifications. More significantly the family law lawyers and the courts were already familiar with the work of these clinical agents at the Office of the Children's Lawyer.

parent, and the child³⁴ was given the opportunity to decide about the contents of the report (i.e., confidentiality was provided). The Reports were not evaluative and clinicians were not to provide any recommendations, though they were asked to include observations about the child's non-verbal communication, affect during the interview, cognitive functioning, and any significant physical characteristics or behaviour.

Judges and lawyers at the pilot sites were provided with information about the project, and judges and court staff also received additional administrative information. There were also presentations on the Pilot Project at education programs for judges and lawyers. Any party, lawyer, or judge could suggest the preparation of a VCR in a child custody and access dispute before the court, whether at a case conference, motion or trial stage. If a suggestion was made by someone involved in a case that a VCR should be prepared, each party and their lawyer³⁵, if represented, was provided by court staff with a one-page Information Sheet that summarized information about the Views of the Child Report Pilot Project. The Reports in the Pilot Project were prepared without charge to the parties, with funding from the Law Foundation. However, a Report was only prepared if both parents consented, and the judge had to endorse the request.

³⁴ In four cases the same parent brought the child to both interviews as the other parent had no access to the child for many years or did not understand the process. In one case a telephone interview with a child was done as the geographic distance precluded an in-person interview with the child.

³⁵ The Advisory Committee sent the Information forms to the local law associations in the communities. In addition, both authors presented at the 10th and 11th Annual Family Law Summits, in Toronto, Ontario about the project, and the Project was a topic presented at judicial education programs for both levels of court. Birnbaum & Bala (September 25, 2016) also wrote an article in the *Lawyers Weekly* about the case law review and survey of professionals carrying out Views of the Child Reports across Canada.

Method for Preparation of Reports

The Views of the Child Advisory Committee developed an Intake Form for the parents, a short Guide to Good Practices and Suggestions for Questions for clinicians³⁶, a Report Form, and a Court Endorsement.³⁷ To be accepted in the Pilot Project, the case had to involve a child 7-years of age or older, and the parents and child had to understand and speak English.³⁸ In addition, there were exclusion criteria for any disputes with:

- criminal charges against a parent and where the child might have to testify in criminal court;
- criminal charges against a parent and bail conditions prohibited contact with the child; or
- a recently completed child custody and access assessment under the *C.L.R.A.* s. 30 or a clinical investigation under the *C.J.A.* s. 112.

A Report was only prepared if both parties consented and the court agreed to make an order. The factors that the court was to consider in making an order for a Report included, but were not limited to the following:

- parents lacked the financial means of obtaining an independent child custody and access assessment of their child's views/wishes;
- unreasonable delay could be created by obtaining a full child custody assessment; and
- an independent report of the children's perspectives and preferences was needed but not otherwise available concerning a dispute over residential schedules, relocation, education, extra-curricular activities, or other issues related to custody and access decision-making.

³⁶ The suggested clinical questions is an adaptation from Policy and Process Considerations: Hear the Child Interviews Non-Therapeutic Interviews, IICRD, 2009.

³⁷ The Committee met for over two years on a monthly basis and established the necessary forms and procedures to assist in the role out of the project. See Appendices 1-5 at the end of this Report.

The Office of the Children's Lawyer agreed that if any of the cases required a thorough investigation that they would proceed with a clinical investigation under the *Courts of Justice Act* s.112 and if any social worker had to testify in court because of the View of the Child Reports they would supervise and pay for the social worker's court preparation and expenses. With each completed Report, the Legal Director of the OCL filed an affidavit of service, and the lawyers and self-represented parties were mailed copies of the Report.

³⁸ Translation services were only available to the children for both the interviews with the social worker and research follow up. No translation services were required.

For cases referred for a Report, each litigant was required to complete a one-page Intake Form, describing their perspective on the issues in dispute. The judge could also provide comments in the Court Endorsement Form requesting what information the court was seeking from the child.

When the Court made the endorsement, it was sent by court staff to the Legal Director, Katherine Kavassalis at the Office of the Children's Lawyer, who administered the Pilot Project and assigned the case to a clinician; she also provided supervision for the clinicians. The clinicians who interviewed the children and completed the VCR's were all required to have attended a half-day training session, either in-person or by web-cast, about the process, expectations, and the administration of the Pilot Project.³⁹ The clinicians had to have 5 years of experience interviewing children and prior experience with child custody and access investigations (private or publicly-funded reports).

Usually, each parent/guardian brought the child to the social worker's office to a separate interview of approximately one hour in length⁴⁰; some interviews were held at children's homes or at their school. If there were more than one child, each child was interviewed separately. Each child was given the opportunity by the social worker preparing the report to review the proposed contents of the report before the final report was released to their parents and the judge. In addition, the clinician advised the parents and children about the research study, and invited each parent and each child to provide voluntary consent to a telephone follow up interview for

³⁹The two authors, two lawyers representing both Chief Justices' Offices, and the Legal Director of the Office of the Children's Lawyer provided the training.

⁴⁰ Appendix 3 provides 7 steps to the interview with suggested questions that the clinicians may ask each child during the interview. As reported, these steps have been adapted from Hear the Child interviews (Williams, 2016).

research purposes only. It was made clear that having a Report prepared was not conditional on their participation in the research study.⁴¹

After a Report was prepared and submitted to the Court and parties, the lead researcher (Birnbaum) contacted the participants (e.g. social workers, children⁴², parents/guardians, parents' lawyers, and judges) to request their voluntary participation in the study. Participants were advised in the consent forms that no identifying information would be released.

The Study: Methodology and Demographics

Courts made orders for the preparation of Views of the Child Reports for a total of 91 children. However, in four cases involving 1 child and in another case involving 2 children (4 females and 1 male), the parents later declined to have their children interviewed and no reports were filed. This left a total of 86 children (48 females and 38 males) who attended for interviews with the clinician.

There were follow up research interviews with a total of 34 children (40%)⁴³ (22 females and 12 males). Their average age of the children interviewed was 12 years of age; ages ranged

⁴¹ The research was approved by the first author's Research Ethics Review Committee (RERC) at King's University College, Western. Only those parents who had sole or joint decision-making about their children were required to consent to their children being interviewed. In addition, each child had to sign their own consent for the follow up interview. A research assistant contacted each parent to confirm that they were still interested in allowing their children to be interviewed and Dr. Birnbaum followed up with the research interviews. Dr. Birnbaum confirmed with each parent before about the private and confidential nature of the interview and thanked them after for allowing their child to be interviewed. The brief conversation with each parent after the interview with the child allowed the author to ascertain whether the parent was nearby and listening as well as provide assurance to each parent that their children was doing well. No child had to be referred to a child protection agency due to concerns expressed during the research interview or needed to be provided with names of a counsellor for a clinical follow-up with a mental health professional.

⁴² See Birnbaum, R. (In Press). Views of the Child Reports: Hearing Directly from Children Involved in Post Separation Disputes. *Social Inclusion*.

⁴³ Unlike quantitative methods, qualitative interviews have no fixed sample size. Rather, what is important is that saturation in the interviews be reached; that is, the themes begin to repeat themselves. See Baker, S., & Edwards, R. (2012). How many qualitative interviews is enough: Expert voices and early career reflections on sampling and cases in qualitative research. National Center for Research Methods. *How many qualitative interviews is enough:*

from 5 to 16 years of age. There were 41 parents/guardians (21 mothers, 18 fathers and 2 maternal grandmothers,), 35 parents' lawyers⁴⁴ (25 females and 10 males, average of 14 years in family practice), 29 social workers (26 females and 3 males; average of 9 years as a clinician in private practice⁴⁵), and 28 judges (20 females and 8 males), who shared their views and experiences regarding the Views of the Child Reports.

All the participants interviewed had an interest in providing their feedback (both positive and negative) about the process. However, this is an important limitation of the study as the participants (e.g. parents, lawyers, judges) who declined to be interviewed did not state the reasons for declining, and some may have declined because of dissatisfaction with the Report. Another limitation is that all these reports were prepared on consent were before the court. It is not known how many cases in Ontario have a Views of the Child Report completed privately, with or without a court order, though none of these private reports have had any follow-up for research purposes.

All research interviews were conducted by telephone, and, except for the judges' interviews, all were audio-recorded and transcribed.⁴⁶

The children's interviews focused on the following open-ended questions: (1) whether they wanted to speak to someone about their views and preferences; (2) how comfortable or not the social worker made them feel during their interviews; (3) whether they felt their views were accurately reported; (4) whether they felt they left anything out or wanted to add information

Expert voices and early career reflections on sampling and cases in qualitative research. National Center for Research Methods. USA. for a review on sampling in qualitative research.

⁴⁴ Twelve mothers and fifteen fathers were self-represented. One father retained a lawyer on a limited scope retainer for this process. Several lawyers reported on more than one Views of the Child Reports.

⁴⁵ Six of the clinicians had prepared these types of Reports privately and one clinician had testified in court about a Report she completed privately. The average number of Reports completed by the social workers for this pilot was 2.

⁴⁶ Charmaz, K. (2006). *Constructing grounded theory: A practical guide through qualitative analysis. Introducing qualitative methods series.* (1st edition). Oxford: Blackwell Publishers.

when the interviews were completed; and, (5) what their thoughts were about the Report process and whether they would recommend it to other children in similar circumstances.

Parents were asked about: (1) their views of the process (Probe: did they feel comfortable taking their child to the clinician, did they had enough information about the process, etc.?); (2) whether they believed more information was needed to be able to hear from their children (Probe: did they need to speak to the clinician to tell their side of the story?); (3) what their thoughts were about what their children had to say; and, (4) if they would recommend this type of interview approach to other parents and children in similar circumstances; if not, why not.

Social workers and parents' lawyers were asked general questions about: (1) their views on the ages of children for these types of reports; (2) their views on the number of interviews required for this type on non-evaluative report; (3) their views on the need for collateral and/or court documents to provide more context to the interviews; (4) their views about children's confidentiality; (5) whether they believed the report was useful or not for settlement purposes and/or ongoing litigation; and, (6) any other comments they wished to share about the views of the child reports.

Judges were asked the following general questions: (1) can you tell me what your thoughts are of the Views of Child Reports (Probe: helpful to the court or not; if yes, how or why not); (2) can you tell me about other ways that children's participation can be helpful to the court or not; (3) can you tell me when these types of Reports may be of assistance to the court? (Probe: timing in process; beginning, interim stages, etc.); (4) can you tell me about what issues could be canvassed with the child that what be helpful or not in hearing from children (Probe: their school preferences, their extra-curricular activities and timing, their visitation schedules, etc.); and (5) is there anything else you would like to share about these Reports?

The parents of 24 children did not sign the voluntary research consents on behalf of their children or did not return telephone calls, and eight parents could not be located at the telephone numbers provided. Of the children, whose parents agreed that they could be interviewed for the research study, one child declined to be interviewed for the research follow up, three children did not sign the research consent forms⁴⁷, and one parent later declined to have their child interviewed even though the child signed the consent. Five lawyers declined to be interviewed, ten lawyers did not return telephone calls and another three lawyers were unavailable at the pre-arranged interview time and did not return telephone calls to reschedule.

Below we highlight the different perspectives from each participant and explore six disputed cases from multiple perspectives to provide a closer examination of the different types of disputes referred and their outcomes. What is apparent is that from the children's perspective, the interviews with the social worker were helpful to them as they felt heard. While a number of parents commented that they did not always like to learn what their child had to say, and many were apparently unaware of the exact views of the children, almost all of the parents accepted that it was in their child's best interests to be heard. A major theme reported by the parents was that they appreciated that the Report was about what their child had to say, and not about the strengths and limitations of each parent's parenting abilities that would be typically found in a child custody and access assessment.

Parents' lawyers appreciated the quick turnaround of these Reports; several lawyers expressed that they should be able to present their clients' perspective to the interviewer, despite the fact this process is solely focused on the views and experiences of children. Judges

⁴⁷ In 4 cases, the social workers did not believe the child understood the meaning of consent for research purposes and the child did not sign the consent form. In one case, a child wrote "rocks on" on their consent form. It is interesting to note that many children who are interviewed for clinical purposes are rarely asked to consent to the interview.

unanimously appreciated the quick turnaround and focus of the VCR to assist them in their decision-making. The judges believed that receiving a report by a qualified, neutral professional about what the children had to say was more helpful than hearing testimony from each parent about their version of their child views and preferences.

Case Outcomes

Of the 86 children⁴⁸ who had a VCR completed, 44% of the cases settled as a direct result of the Report, as reported to the researcher by the party, party's lawyer or the judge. While the settlement rates are moderately good post children's interviews, it must be noted that the remainder of the cases were either still before the court and may assist in settlement post this pilot project. At the time of preparation of this research report (between 2 and 14 months after completion of the VCR), only one case⁴⁹ went to trial, the social worker who prepared the VCR did not testify in that case.

Perspectives of Children

Of the 34 children interviewed for the research study, the majority were very pleased to be able to provide their views and preferences to the court and their parents. One 12-year-old male wrote on his research consent form, "rocks on," as indicative of his appreciation for even being asked his views about the clinician's interview and about follow-up events. The children's comments mainly highlighted both positive responses with their comfort level and their ability to speak freely.

⁴⁸ The majority of the cases that were referred were a result of each parent disputing what the child had to say about their views about where they were living, visits with a parent, school issues, or extra-curricular activities. There were 6 cases where a parent alleged that their child refused to visit the other parent; 3 children were referred to a child welfare agency because they were indications of parental maltreatment during the interviews with the social worker: one lawyer filed an 'objection' to the Report as his client (the father) did not bring the child to the interview (though the case settled with access to father), and there were 2 cases where the social workers expressed concern about the child's situation and suggested a referral for a more thorough child custody and access investigation by the Office of the Children's Lawyer, which occurred.

⁴⁹ *Smith v Finn*, as yet unreported, April 10, 2017, per E.B. Murray (OCJ).

One 12-year-old male reported that when the social worker went over his comments,

It was my words exactly without any interpretation.....I was comfortable and not pressured [to talk].

Another 7-year old boy stated: “the report was accurate.” A 13-year old male commented: “I actually thought she did a pretty good job, cuz she pretty much got everything into the report”. A 15-year old girl observed: “Wow, I was impressed that I was asked about what I said before it went out”.

It was also important to hear from the children, when they reflected many weeks later about their interview with the clinician that most stated that they did not have anything to add. One 10-year old boy commented: “I said everything I wanted to.” A 10-year old girl reported: “I said what I wanted to.” A 16-year old male stated: “No, I answered what I thought, and that’s what I stuck with”. There were two children, a 12-year old girl, who did express somewhat obliquely: “I didn’t know if I wanted to say more or not”, and a 14-year-old boy who stated, “I did have something I wanted to add a few days after the interview, but did say mostly what I wanted to”.

In contrast, four children did raise some concerns about what they remembered saying compared to what was in the Report.⁵⁰ In one case, a 13-year old girl said that the clinician did not go over the Report with her “as she [social worker] did not have time.”⁵¹ As a result, the Report went to her parents and the court without the girl knowing what the social worker wrote, though she later saw the Report. The girl commented: “Things [that I was reported to have] said were not how I put it”. Another 12-year old girl said that the social worker “got a lot of things

⁵⁰ Birnbaum, R. (In Review). Views of the Child Reports: Hearing directly from children involved in post separation disputes. *Social Inclusion*.

⁵¹ In this case, during the mother’s follow up research interview she reported that the social worker did try and telephone to review the report with her daughter, but her [parent] telephone was disconnected at the time.

wrong, like how many times I wanted to see my dad....how I have everything at my dad's place and nothing at my mom's, when it's actually vice versa". Her 10-year old brother said, "It looked like she [social worker] made some mistakes after we were done, cuz I said that I wanted to live with my mom, but it said on the paper that I want to live with my dad".

Perspectives of Parents

The majority of the parents/guardians appreciated that they could obtain a Views of the Child Report in 30 days⁵² and that it focused only on the statements of their children. One maternal grandmother who had custody of her three grandchildren said: "Well I'm glad that the process is a lot shorter. I understand the older process [s.112] took several months to do...and I'm glad that the children will have a voice....that the judge will see what their views are."

A central theme reported by both mothers and fathers was that they did not feel the Report was biased against them, even if the children said things that they did not expect; it was only about their children said, and not about the strengths and challenges of the parent-child relationship or personal limitations of the parent as would be in a custody and access assessment. One mother who was concerned about whether the Report would reflect what her child said or what the clinician believed: "I worried initially, but was pleasantly surprised that it [Report] was accurate". One father stated: "It was not biased as it was only about my child and not about me or my ex." Another father commented: "It was not easy [for me] to hear what my kids said, but this was about my kids only and not about either of us as parents.....I accepted what she [daughter] had to say about the visits." And another father observed: "It is a good way to hear and see from children's eyes about what they sat and not from either parent". Another father

⁵² It should be noted that the OCL has the discretion to refuse a case due to financial and lack of available resources. Moreover, it can take up to four weeks before a decision is made whether to accept the case, and then perhaps only to have it rejected. Completion of a clinical investigation by the OCL is normally 3 to 6 months.

who expressed initial doubt about the process as he wanted the allegations about him confirmed as untrue, but concluded:

....maybe if [the social worker] did bring up those allegations she [daughter] would have probably gone into defense mode....so it's a good process to talk about it because they didn't get on the exact topic that it was supposed to be on [the allegation about him]. So it's a good way for a kid to feel comfortable; so it's a smart way [of obtaining child's views on issue without directly asking about the allegation] of going about it.

The majority of the parents reported that their children were comfortable with the social worker and would recommend to other parents and children that this is a good way of obtaining children's preferences and perspectives. There were also cautionary comments made by parents about this process. For example, one mother thought it was, "great process" but, expressed concern as her son who has ADHD did not say much the particular day that she brought him to the interview: "So basically the one day that he went he just closed up....he didn't speak at all my little guy".

Two mothers expressed concern as they believed their children were alienated from them, and believed that this process only supported their children's views against them as parents. One of these mothers stated: "It ... completely and utterly counterproductive to our particular situation, because in a situation of parental alienation, the children are going to say exactly what they are told to say and what they have been trained to say. So I don't think the program is effective in this context.....well you know because they are 12 and 15 we're going to listen to what they say...."

Perspectives of Professionals

(i) Social Workers

It was encouraging to note that the social workers who participated in this study also were positive about the process and the utility of these Reports. Six of the 29 social workers had prior experience with this type of reports in their private practice, and one social worker had previously testified in court on a privately-ordered Views of the Child Report. As noted, they were experienced clinicians, having completed both *CJA* s.112 reports and *CLRA* s.30 assessments for years, some also having worked in child welfare. One might have expected that these experienced clinicians would express concerns about the lack of information from collateral sources, as before the Pilot Project began some Ontario mental health professionals made comments at education conferences questioning the value of reports prepared with only two interviews and without collateral information or discussions with parents and their lawyers. However, the social workers who participated in the research project were overall very positive about Views of the Child Reports, with comments including:

I thought one of the really nice things doing this project was empowering children to give them voice....I was only the medium....kids felt that had a part to play.

I see value to it [VCR]....one caveat is 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], child gets lost in report; this is focused on child.

Professionallyway less burdensome than OCL reports.

Really enjoyed doing it...child was very insightful...there is value to their voice.

I appreciate that this being properly researched.

While efforts were made to provide all professionals and parents involved with written materials about the Pilot Project and expectations for the Reports⁵³, one clinician who completed several Reports for this project stated that some parents and lawyers did not understand the scope and purpose of the Reports:

...just not understanding the product. People in general confuse the VOC with a s.112 investigation through the OCL. They are trying to send me authorizations for CAS, Police, etc. When I tell them that I am not contacting any collaterals, they get excited that *I need* to understand the issues.

Another social worker complained:

Some folks require a lot of chasing and rescheduling, and there could be time spent with counsel and reviewing more court documents.

Some of the social workers also made other cautionary comments about children with learning challenges and developmental delays, such as:

As the child did not speak a lot, it would have helped with more intake information.

[It is unfortunate] not being able to tell the court if the child is being influenced as she is not consenting to provide that information to the court...how information is being used by court then?

I'm still pondering the use of the VOC for a 5 and 6-year old - with developmental delays and ADHD challenges. I trust that the court is not relying solely on that information.⁵⁴

A number of clinicians commented on the relatively low cost of these Reports.

⁵³ Information Sheets for Parents, Lawyers and Judges and can be obtained from the first author.

⁵⁴ The protocol for the project had a minimum age of 7 years for inclusion, though one case involved a 6-year old.

I think it could be a financially accessible private tool for families that aren't accepted by the OCL. From my perspective of OCL work, VCR's are easy to incorporate..... 7 hours is not quite enough and privately, I would look for 10 hours.

As much as I prefer to see folks in my office [as generally expected for the Pilot Project], home visits provide a rich context and with little kids, they seem more relaxed at home than in my office.

(ii) Parents' Lawyers

The majority of the parents' lawyers and judges appreciated the quick turnaround for the Views of the Child Reports. While they expressed differing opinions about whether there should be three instead of two interviews, and whether collaterals should also be interviewed, they all saw the utility to these Reports when there were no serious concerns being raised about parenting capacity. The lawyers' comments were generally very positive and included:

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

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

Excellent program and puts the child in the centre.

Fundamental in settling case.

One lawyer expressed a cautionary note:

Alienation cases can be problematic [for this type of Report.]

(iii) Judges

The vast majority of judges were also generally positive about these reports with comments such as:

It [Report] settled all 3 or 4 of the cases where ordered, cases that were outstanding for years and complex.

It [Report] helped settle the case. I asked the parties about its influence on them. They [parents] were both very positive about its effect in settling the case. The mother said that the child reported feeling gratified that her [child] voice has been heard.

Speed of getting feedback is great.

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

Lots of times do not need collaterals and full story.

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

An effective way of hearing from children.

One judge sounded a note of caution: "I am concerned if resources are diluted and these reports are ordered instead of s.112 [full OCL investigation]." Another judge expressed a positive comment, but noted that there was "not a lot of knowledge of process initially."

Summary of the Different Perspectives

While the majority of participants (e.g. children, parents/guardians, clinicians, parents' lawyers, and judges) expressed positive views of the utility of these Reports, there were important cautionary issues that were raised. For example, whether, and if so, how should these reports be used in cases: (1) where a child refuses to visit with their other parent; (2) where children have special needs that affect communication, such as learning problems or developmental delays; and (3) where one parent has not had any contact for a long period of time and the child is unfamiliar with that parent. These issues will be discussed more fully in the final section below.

Six Cases: Multiple Perspectives

In order to give some context for the comments above, in this section we discuss six cases involving VCR's where we were able to obtain a range of perspectives from different participants. The primary issue in dispute in most of these cases was parenting time and visitation, with each litigant claiming to know what their children wanted. It is important to appreciate that without a Views of the Child Report, many of these children would have had little effective input into the decision-making process of their parents or the court. Notably, a number of the cases settled based directly on the Report.

In the one case, all the parties were represented (e.g. mother, father, aunt/uncle). The central issue in dispute was what type of schooling that the girl would have, as she was primarily residing with her aunt and uncle. There were religious issues in the background to this dispute. The girl was clear that she wished to continue her education through religiously-based home schooling that her aunt and uncle would provide, rather than in a traditional school setting. She reported: "This [Report] was a good idea" to allow her to "speak for herself." Her father reported that he had not have a good experience with a prior OCL Clinical Investigation Report prepared under s. 112 of the *Court of Justice Act*, and that he was "happy to hear the child speak for herself" through the Views of the Child Report. The mother's lawyer felt that while she would have wanted a "more in-depth [report and was].....concerned about the lack of detail," noting that the Report did not support her client's position. The lawyer for the aunt and uncle, who was more satisfied with the actual content, and noted that the case settled based on the Report, commenting that the Report was "good as only views of the child.....very [helpful] certainly for settlement. It was made very clear.....all counsel knew what the question was and that was what the judge wrote in endorsement, so it helped in this case.....it settled the case".

In a second case, the mother was represented and the father was self-represented. The case began when the mother, with whom the 15-year old daughter resided, sought increased child support, and the father responded with a claim for increased time with their daughter. The mother believed that the views of the daughter should be heard, but was concerned that the daughter was under the influence of her father and would say that she wanted to spend more time with him. The mother commented that: “Kids need a voice”....though it did not work” for her as she felt that her daughter’s views were unduly influenced by her father. The father denied any influence on the daughter, and stated that the VCR, “was a good way to hear and see from children’s eyes”. The mother’s lawyer observed that this is a much better and faster way to ascertain the child’s view for this type of case than the usual OCL clinical investigation as parties “usually have to wait to see if the [OCL] accepts it, and then if not,” decide what will happen. The 15-year old girl stated she was comfortable with the worker and that she had said: “Everything and did have not much more to say.” She also commented that it was “cool to go over the report, and cool that I am doing this.” She also stated, “it [use of VCR’s] should continue”.

In the third case, the mother was represented and the father was self-represented. Each parent was seeking sole custody of their 13-year old daughter, who for years since separation had been living on and off with each of them. At the time of the application, she was primarily living with her father. The mother was alleging that the father was abusing alcohol, and should move from the father to her. After the preparation of the Views of the Child Report, the parents settled the case, with the child residing primarily with her mother and having visits her father. The parents were both generally satisfied, commenting:

The judge requested it [report]; it was quick; it was actually good, but disagreed with report as [my daughter's] words were changed. [Mother]

My daughter was comfortable with [social worker]; allegations not really dealt with, but a good report; would recommend it to others. [Father]

The mother's lawyer was also satisfied, noting due to the girl's stated wishes she "went from not seeing her mother to living with her now... [The Report] really validated issues and was quick."

The social worker who prepared the Report also commented positively: "I really liked it; they read [children] report and commented on it....maybe a better way to get views and preferences."

The girl who was the subject of the Report commented that: "It felt good, certain things [that I] said not really there.⁵⁵ For me it was a good feeling."

In a fourth case, both parents were represented and arguing over the continuation of the 50/50 shared care arrangement of 2 children, ages 14 and 11 years. The mother had concerns about whether the special needs of their 11-year old boy were being met with this type of arrangement, as well as about whether the wishes of her daughter were being properly taken into account. In this case, the boy needed encouragement from his sister and both parents to engage in the interviews with the clinician. The matter settled on an interim basis to try out the arrangements, with an expected update to be prepared by the same worker at a later date on a fee-for-service basis. The parents both seemed very satisfied with the process, with the mother stating that: "The judge requested it [report]. 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 [it] needs follow up." The father stated: "My lawyer suggested this....it was expedited and great....my children wanted to try [an arrangement] out for 3 months...it is a great process for

⁵⁵ The mother reported that the social worker did telephone to go over the child's information, but her [the mother] telephone number was disconnected at the time.

hearing from children directly.” Their daughter, aged 14, reported that at first she “didn’t care to go,” but once there she “was comfortable with [the social worker], yes, it helped to figure things out....” The social worker who prepared the Report commented that “this as an evolving process, wise procedurally,” but she noted that it is “only helpful for children who want to express a view... [here the] boy did not.”

In the fifth case, the mother was represented and the father was self-represented. The 9-year old boy lived with his mother and visited with the father was on alternate weekends and 2 evenings during the week after school. The mother wanted less times with the father as she had concerns about father’s new partner and as a result of the mother’s reports, child welfare had investigated but closed the file. The matter settled based on the views of the child about wanting to see his father, with continued visits to his father and new partner. The social worker who prepared the Report observed that “when I writing it up, I was not sure I understood issues...[as] there was a reference to CAS that I was unclear about.....but this is about child[’s view] not all other views.” The mother was not satisfied with the Report, noting the “judge requested it,” but the Report made “me uncomfortable as social worker was asking questions [to the son] like I did something wrong. [I have] seen report and only about me and not liking the girlfriend...report not helpful at all.” Given the outcome, it is not surprising that the father was much more satisfied, saying the report was “helpful....son was comfortable with the social worker....for sure [good] to have these reports done, [as otherwise] he/she said usually.” Most significantly 9-year old boy said: “I was comfortable and did read over report.”

Last, in the sixth case, there were 3 siblings, two boys ages 14 and 16 years and a 13-year old girl, all living with their grandmother, while their mother was seeking access. The parties had litigated about the issues before; the mother was represented and the grandmother was self-

represented. The children had clear views about wanting only limited contact with their mother. The case settled based on an agreement that visits would occur at the children's discretion. The grandmother was very positive about the VCR, commenting: "Each child wanted to be heard and felt the interview with the social worker covered all issues that they wanted." The grandmother favourably compared the Views of the Child Reports with the full OCL clinical investigation undertaken in prior proceedings between the same parties: "Better and faster; done in 30 days vs 4 -5 months." Although the mother declined to be interviewed for the research study, her lawyer commented: "The kids were older...regardless if [the mother] was handed the access order, they were going to pretty much do whatever they wanted anyways, so it really wouldn't have mattered....[The Report] was good for settlement because once we got information and understood, it was obvious that, you know there was really nothing else to go off of, the issue had crystalized." The children were clearly pleased to have the opportunity to be heard: The 13-year girl said: "I felt heard." One of her brothers commented: "I was glad that I got to say what I wanted." Their 16- year old brother observed: "It was a bit annoying to go, but I wanted to talk."

When a Views of the Child Report Can Be Helpful

Interviews with the parents, parents' lawyers, clinicians and judges in this study suggest that VCR's can be most useful when a dispute between parents is relatively focused and there is no complex 'clinical' or parenting issues involved (e.g. concerns of abuse of the child; alcohol or drug problems, neglectful parenting, mental health concerns, etc.) and a more in-depth child custody and access assessment may be more appropriate. Further, many of the parents' lawyers, in particular, suggested that this type of Report should be used at an early stage of a proceeding

where parents disagree about the child's preferences and perspectives, and can allow all involved to gain a better understanding of the child's views, and may serve a useful settlement or triage function at this stage of the proceedings.

The majority of parents' lawyers and judges believed these Reports can be valuable to help settle a case, especially if the child is older and the parents have different understandings of the child's views. The Reports can also be useful if there is a lack of reliable information about the child's preferences and preferences, or there has been a lengthy time since a child custody assessment was conducted.

Parents' lawyers and judges had differing views about whether this type of Report is useful where a child who refuses to visit the other parent and there are concerns that child might simply "parrot" the preferred parent's views. However, the majority of both parents' lawyers and judges believe that this type of Report is useful even in these cases where alienation could be a factor, to learn what the child says that could support or refute the concerns raised by each parent.

Good Practices

The purpose of this Pilot Project and research study was to learn more about the use of Views of the Child Reports, both what may be good practices and whether there are practices that raise concerns. Given the lack of consistency in approaches across Canada, and the very limited research literature in this area, the suggestions for Good Practices and Interviews that were used were not meant to be overly prescriptive or applied in a rigid manner. For example, although the protocol indicated that two interviews were to be conducted in person, in a few cases due to distances involved, an interview with a child was conducted over the telephone, or

three interviews were held, with the last interview held over the phone to confirm the contents of the Report. Further, although the protocol stipulated that there were to be two interviews, with the child brought to each interview by a different parent (or party to the litigation), there were a few children who refused to come for an interview with one parent; these children were nevertheless interviewed twice, once accompanied by the ‘favoured’ parent and the other time at school.

Identifying Qualified Mental Health Professionals

There are different practices in Canada about whether this type of Report should be prepared by a lawyer or mental health professional. Undoubtedly, what is the most important matter is that the professional has appropriate training, skills and experience for interviewing children, and understands the purpose of the VCR. Lawyers with experience in child representation may do a very good job with this type of Report. However, we found that having experienced clinicians prepare these Reports allowed for a cost-effective and relatively consistent approach to their preparation. Clinicians with experience in undertaking child custody and access assessments should have the training to identify children who may exhibit hesitation in talking about their situation and may facilitate more openness with the child. There is a concern that lawyers without specific training may be more concerned with getting at “the truth” rather than allowing the child to express their own perceptions.

Clinicians are also trained in identifying affect and body posture that may signal a concern that further investigation into the case is warranted; while the clinician should offer the child confidentiality, social workers are legally obliged to report suspected child abuse or neglect

to the child welfare authorities; not all lawyers understand the obligation to make this report when it comes to children who are not their clients.

We recommend that in any jurisdiction where these Reports are prepared, a panel or roster should be established for this type of Report, whose members have both initial training in the purpose and scope of this type of Report, as well as on-going supervision and support.

Initial Contact with Each Parent

Many clinicians involved in this study reported that while the focus is solely on children they would have appreciated more contextual information before interviewing the child. Although the court was expected to provide information and each parent was required to complete a short Intake Form, in many cases the information supplied was very limited. We therefore recommend that the clinician have a telephone conversation with each parent based on their Intake Form to inquire what the parent hopes will be learned in the interview process with their child (likely 20 – 30 minutes with each parent). This conversation will provide the clinician with some context for the interviews with the child, and may make settlement more likely as parents may feel that they have “been heard.”

In addition, the clinician should make clear the purpose and limited scope of the Views of the Child Report. The information obtained from the interview with each parent/guardian should be part of the written Report.

Consistent with the comments of most of the clinicians and parents’ lawyers involved in this study, we recommend that there should not be a review of court documents, contact with collaterals or discussion with parent’s lawyers as part of the process of preparation of a Views of the Child Report. That type of inquiry is needed for a full assessment, but would add to the expense of these Reports, and lead to uncertainty about their scope and purpose.

Location and Circumstances of Interviews

As required by the protocol, most of the clinicians had two separate office interviews with each child having been brought by each parent once. However, there were situations that where one parent did not have any contact with the child during the period when the interviews occurred or distances precluded a face-to-face interview, or one parent bringing in a child. While it is valuable and addresses fairness and neutrality to have each parent bring the child to one interview each, there also needs to be some flexibility when distance, expense for parent, and comfort level for the children should be taken into account to allow interviews to be conducted over the phone, by skype, in the child's home, or a setting like the child's school. While there will be situations where the child will not be brought to one interview by each litigant, the clinician must always be aware of the need for fairness and neutrality, and note in the Report the locale and circumstances of each interview.

Obtaining Consent from Each Child about Confidentiality

While many clinicians who conduct child custody and access assessments do not typically ask children's permission to be interviewed or review the content of their interview, this was a vital aspect of the protocol for Views of the Child Reports in this project. This tends to increase the willingness of children to be candid, and ensures that the child is, at the end of the process, comfortable with the information that parents will be provided. While there may be some children who refuse to express a preference knowing that their parents will be informed, they may nevertheless provide valuable information about their perspectives. In most cases, the social worker reviewing the draft Report with the child can negotiate appropriate wording that the child is comfortable with while still conveying the child's views.

Report Content

There were inconsistencies in how the Reports were written, despite the fact that a Report Template was provided to the social workers as part of the training. More consistency in the content and format of these Reports would provide better access and context to the information provided. While each case and the children may present with different issues, it would be valuable for these Reports to have a standard format. We recommend the following at the start of the Report:

1. Court file number, level of court and location; date of request and completion of report;
2. Names of all parties and their relationship to the children;
3. Child's complete names and date of birth;
4. Name of each counsel or whether the party is self-represented;
5. Name of the Report writer, including their professional designations;
6. Reason the Report was requested by each party and, if stated by the judge;
7. Summary of current parenting situation, and any particular issue of the case (e.g. a parent has declined to bring the child in, has not seen child for some time, etc.);
8. Confirmation that the child consented to the preparation of the Report and reviewed its contents; and
9. An acknowledgment that the Report concerns only the child's perspectives and does not constitute any type of child custody and access assessment or provide any parenting recommendations.

We also recommend the following should also be included in each Report:

- a. date and location of each interviews with child and information about who accompanied the child to each interview;
- b. clarify if siblings are interviewed separately or together (should normally be separate); if there are siblings, whether interviewed jointly or separately, it should be clear what views were expressed at which interview and by which child.
- c. Background information: telephone calls with parents and/or counsel to arrange interviews and any issues making these arrangements if present that impacted on the completion of the VCR report.
- d. Observations of the child: the Report should not include recommendations, but should provide observations about the child's behaviour and affect during the interviews.
- e. Summary: there should be a summary of each child's views of issues, as related to the reason for the report; any statement about consistency or inconsistency of the child's views over time.
- f. A statement about any recommendations for further services, such as a full assessment by the OCL, and whether a report was made to the Children's Aid Society.

Practice and Policy Recommendations

As aptly stated in *B.J.G. v. D.L.G.* by Justice Donna Martinson (retired),

“all children in Canada have legal rights to be heard in all matters affecting them”

We believe that Article 12 of the *Convention on the Rights of the Child* requires that each child who the capacity to express their perspectives or preferences should be given opportunity to participate early and throughout the family dispute resolution process, including at the stage of judicial family case conferences, settlement conferences, and court hearings or trials. The child should be consulted about the manner in which they participate.

While the results of this study contribute to the limited empirical knowledge about Views of the Child Reports, it is apparent that, *for the right cases*, these Reports can be a useful, expeditious and cost-efficient way of engaging children in the justice process and allowing their perspectives to be shared with their parents and ultimately to the decision-maker. In too many

cases at present, children's views are not being reliably shared with parents, their lawyers or judges⁵⁶. This research study suggests that the preparation of these Reports and the sharing of children's views promote settlement, saving money for the parties and the government, and promoting the interests of children.

It is clear that Views of the Child Reports have a place in the continuum of services provided to children and families, and that they can be an effective means of ensuring that children's voices are heard in family justice disputes, including in mediation and arbitration. If undertaken early in the process, a VCR can serve a triage function, to help ascertain how the child is experiencing parental separation, and help identify whether or not further clinical investigation is necessary to assist the court in decision-making. As one lawyer interviewed for this project thoughtfully stated:

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

Notably close to half the cases where a Report was prepared resulted in a settlement based on the Report; three were referred to a child welfare agency because they were indications of parental maltreatment during their interviews, two cases were referred for a more thorough and detailed investigation and report by the OCL as the social workers expressed concern about the child's situation.

For many cases, Views of the Child Reports may be a cost-effective, sensitive way to involve children in the dispute resolution process and ensure that their voices are heard. They are much less expensive to obtain than custody and access assessments and can be prepared quickly,

⁵⁶ Saini, M., Birnbaum, R., Bala, & McLarty, B. (2016). Understanding pathways to family dispute resolution and justice reforms: Ontario court file analysis and survey of professionals. *Family Court Review*, 53(3), 383-397.

usually without delaying the course of the proceedings and can sometimes be prepared on the same day they are requested. They may also be less intrusive for the child and parents than either a full custody and access assessment, a s.112 O.C.L. report, a judicial interview or the appointment of counsel for the child. Views of the Child Reports, however, are only one means of providing children with access to justice. They are **not** meant to replace child legal representation, child-inclusive mediation, child custody and access assessments or a judicial interview with a child. Rather these Reports provide another tool in the family justice toolbox that allows for children's views and preferences to be directly heard and shared with their parents and the decision-maker.

Similar to other approaches used to obtain perspectives and preferences from children for family dispute resolution purposes, there are cautions that need to be considered about Views of the Child Reports, and limitations to this research study. It is important to recognize that all the cases in this Pilot Project were ones where both the parents agreed to the preparation of a Report, and a judge was willing to make a referral. In addition, Views of the Child Reports may not reveal the true views and preferences of children who are subject to parental pressure or manipulation, or whose views may be changing. Although all of the children involved in research project were articulate and thoughtful in sharing their views and preferences, some children have emotional or cognitive limitations that may negatively impact their ability to express themselves. This can be a concern given that these Reports are based on just two interviews with the child, and there is no effort to collect background information about the families (e.g., speaking to parents, parents' lawyers, or reviewing court documents) or contact with collateral sources (e.g. teachers, doctors) to provide more context.

Further, there needs to be caution about the use of these Reports where there is concern about domestic violence issues or where a child does not wish to have contact with one parent. There were a number of social workers, parents' lawyers and parents who participated in this study who raised this note of caution, as they believe that this process may harm children who are already influenced by the parent that they reside with. While these cases can be challenging for any professional involved, we argue that even where there is domestic violence or "alienation" concerns, efforts must still be made to allow children the opportunity to share their perspectives and preferences. It is, however, clear that not all children want to be involved or express their views and this must be respected, and there are cases in which children's stated views may be discounted due to undue parental influence.

More longitudinal follow up on outcomes and process is needed to assist in identifying the potential harm and benefit to children who are invited to speak to different professionals about their views and preferences. Further research also needs to explore the differences in views and preferences of siblings, if any, and how that might impact on children's views and preferences. While this research focused solely on child custody and access disputes, expanding the research to include children who are subject to child welfare proceedings is equally important. As a First Principle, *all children* should have the opportunity to be heard in a manner that they are comfortable with.

Ontario Implementation

In Ontario, there must be more discussion of who provides these Reports and how are they are funded. In our view the Office of the Children's Lawyer should be authorized by the government to add Views of the Child Reports to its suite of services, with its clinical

investigators responsible for their preparation. Adding to the services of Child Representation by Lawyer, Clinical Investigations, and Legal Representation with A Clinical Assist, also providing for use of Views of the Child Reports, in appropriate cases, will give the Office greater flexibility to carry out its mandate and assist the courts in a timely manner.

There is also a role for parents, at least those with necessary resources, to pay for the preparation of these Reports as part of the costs that they bear for dispute resolution. Notably since the beginning of this project in May 2016, we understand that there has been growing use of these Reports by family lawyers in Ontario on consent of the parties; for parents, preparation of a Views of the Child Report by a mental health professional can be a cost effective and child-focussed way to help make parenting plans; or at the very least, engage in dialogue with their children about their views and preferences. At present, however, these reports should only be prepared on consent of both parties.⁵⁷

The Reports in this Study were prepared with consent of the parties. Arguably s. 30 of the *Children's Law Reform Act* and s. 112 of the *Courts of Justice Act* are broad enough to allow a court or the Children's Lawyer to direct the preparation of these Reports without the consent of the parents. However, it must be acknowledged that the legislation in Ontario does not explicitly allow for these Reports, and legislative amendments, or at least a Practice Direction, would be desirable.

While we are advocating action in Ontario now, clearly there needs to be much more discussion and research involving the legal community, mental health professionals, judges, the government, professional regulatory bodies, and most importantly, children and youth

⁵⁷ See *V.F. v. Halton Children's Aid Society*, 2016 ONCJ 111, per Kurz J. where a Views of Child Report was prepared in a high conflict separation without the father being informed, and given virtually no weight by the court.

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themselves, so that children's participation can be truly meaningful to them, to their parents and to the courts during times of family breakdown.

APPENDIX 1

Views of the Child Report, Intake Form (to be completed by each party)

TELL US ABOUT YOURSELF

Your full legal name:

You are the Applicant Respondent

Your Relationship to the children: Mother Father Other (Please specify)

Current Address (including postal code):

Telephone Number where we can reach you:

Do you have a lawyer? Yes No

If you have a lawyer, what is your lawyer's name, address and telephone number:

TELL US ABOUT YOUR RELATIONSHIP WITH THE OTHER PARTY

What is your current relationship to the other party in the court case?

Married Divorced Separated Never lived together Other (Please specify)

When did your relationship begin?

When did your relationship end?

Are you and the other party currently living in the same house? Yes No

TELL US ABOUT THE ISSUES IN DISPUTE WITH THE OTHER PARTY

What are you the current parenting arrangements? (Please specify)

What are some of your concerns about the current parenting arrangements?

What are you asking the court for?

TELL US ABOUT YOUR CHILDREN

The children's names and dates of birth:

Male Female Name: Date of Birth: (Year, Month, Day)

Male Female Name: Date of Birth: (Year, Month, Day)

Male Female Name: Date of Birth: (Year, Month, Day)

Male Female Name: Date of Birth: (Year, Month, Day)

Do any of your children have any special emotional, psychological, education or physical needs?

Yes No I don't know.

If yes, please give details:

I certify that I have reviewed the contents of this form and that the information is accurate and true.

Signature of Party

Date

Appendix 2

Views of the Child (VCR) Reports Pilot Project

Good Practices [Interview Protocol]

A Views of the Child Report is not an assessment. It must be child-focused. It is also not privileged. The author should not make any recommendations concerning custody and/or access or any other issue. Diagnostic terms should be avoided in the Report.

The Authors of the Reports shall be mental health professionals.

Preferably, the Court will define the issues for the VOC Report.

Age

A VOC Report shall only be completed for children who are seven (7) years of age and older.

Informed Consent

The Author shall confirm that the Report has been reviewed with the child and that the Author has obtained the child's consent, if required.

If the Author is unable to obtain the child's consent, the Author will not prepare a report, unless ordered to do so by the court.

Number of Interviews of the Child

There shall be a minimum of two (2) interviews of each child.

Parents/Guardians

The Author shall only meet with the child. The parents or guardians should not be interviewed for the Report.

Each parent or guardian shall bring the child once each to the Author's office.

Perceived Influences

The Author shall report any perceived influences on the child's views and preferences in the Summary section of the Report.

Author Unable to Complete the Report

If the Author is not able to complete a VOC Report, the Author shall describe the issues/reasons for not being able to complete it.

Filing the Report with the Court

The VOC shall be filed with the Court by the OCL only.

Appendix 3

SUGGESTIONS FOR VCR INTERVIEWS

NOTE: Never ask the same question twice!!! Give the child lots of time to respond.

Interview Stages/ Purpose	Sample Questions	Considerations
<p>1.INTRODUCTION</p> <p>Review names, reason child is there, child wishes to participate, interviewer's role,</p> <p>Go over consent form with child and ensure they want to participate.</p>	<p>Do you know why you're here?</p> <p>What have your mom and dad/anyone else told you about coming here?</p> <p>I am here to listen to what you want to tell the judge, and your parents.</p> <p>I want to go over why you are here. Go over consent form and have child sign. If you believe child does not understand consent, then do not have child sign form.</p> <p>What you say is very important. I don't want to forget anything so I'm going to try to write it all down.</p> <p>Do you have any questions before we begin?</p>	<p>Assure the child that they are NOT making the decision. Helping adults to make decision. Assure the child:</p> <ul style="list-style-type: none"> - interview is private - only share information they want shared - can ask questions at any time - can take a break at any time
<p>2.ESTABLISH RAPPORT</p>	<p>How are you feeling now that Mom and Dad are living apart?</p>	<p>Be empathetic (lots of kids feel sad when Mom and Dad decide to live apart) / ask general questions</p>
<p>3. SEPARATION SPECIFIC INFO</p>	<p>What's happened since Mom and Dad stopped living together?</p> <p>How are things at school?</p> <p>How are things with your friends?</p>	
<p>4. EXPLORE</p> <ul style="list-style-type: none"> - Living arrangements - child's thoughts, reactions, feelings, and suggestions 	<p>Are you living sometimes at Mom's house and sometimes at Dad's house? How is that going?</p> <p>What do you do at Mom/Dad's house?</p> <p>How do you feel when you're at Dad's/ Mom's house?</p> <p>What do you like to do at Mom's/ Dad's house?</p> <p>What things don't you like at Mom's/Dad's house?</p> <p>Is anyone at Mom/Dad's house when you're there?</p> <p>What is it like doing homework at Mom/Dad's house?</p> <p>What do you do with your friends at Mom/Dad's house?</p> <p>What clothes/toys do you keep at Mom/Dad's house? How do you decide what to keep at</p>	<p>The intake form from parents or the court endorsement may indicate a specific issue to address.</p> <ul style="list-style-type: none"> - consider any changes in living - views of each parent & communication - advice or specific requests for parents -raise issues of what might help child (e.g. less conflict, stop blaming other parent, be more/less flexible with times/activities, etc)

	<p>Mom/Dad's house?</p> <p>Do you have any suggestions of how things could work for you living between Mom and Dad's house?</p>	
<p>5. REVIEW (this can be done throughout the interview or at the end of the interview)</p>	<p>I've written down what you said. Can I read back to you what you have said to me? Is there anything that needs to be changed?</p> <p>Is it okay if I share this with Mom, Dad, and the Judge? (if yes – okay, if no – clarify what parts okay/not okay).</p>	<p>Ensure the child's views are written down accurately - word for word has a much greater impact on the receiver of the information as well as the child's own words (use quotes).</p> <p>Ensure the child knows he/she is not making the decision. Information will help adults make decisions about child</p>
<p>6. DEBRIEF QUESTIONS</p> <p>Please ensure you go over these questions.</p>	<p>PLEASE ASK THE CHILD THESE QUESTIONS:</p> <p>1. Who do you talk to when you want to talk or have questions about what's going on with Mom or Dad?</p> <p>2. We have spent the last (1/2 hour/1 hour) talking about your feelings, about what is going on with where you have been living, how much time you want to spend with Mom and Dad. A. How has this talk been for you?</p> <p>B. Is there anything you want to add to what you have already said?</p> <p>3. What do you think the adults will do with what you have said today?</p> <p>4. Do you have any concerns or worries?</p>	
<p>7. CLOSURE</p> <p>Ensure child knows what happens next.</p> <p>Give child an opportunity to ask any final questions.</p> <p>Give child your phone number.</p> <p>Thank child for coming.</p>	<p>We are just about finished:</p> <p>What are you doing when you leave here?</p> <p>Would it be useful if I send you what I wrote down for you to review before I send it off to your mom and dad and judge?</p> <p>If that would be a useful thing, where would you like me to send it: your school, your home, or to some other person that you could review it with?</p> <p>Once you have reviewed it, it would be important for you to get back to me if there are any mistakes.</p> <p>Here is my telephone number. If you forgot to tell me something today you can call and tell me.</p> <p>Do you have any questions?</p> <p>Thank you for coming today.</p>	<p>Tell child what will happen next. Don't end abruptly.</p> <p>Provide the child with your phone number if they want to tell you something they forgot to say</p>

Appendix 4

Views of the Child/ren Report

Court File Number

APPLICANT: (Mother/Father)

RESPONDENT: (Mother/Father)

SUBMITTED BY:

COUNSEL FOR APPLICANT:

COUNSEL FOR RESPONDENT:

The following issues were identified by the Court or parents as issues to be addressed:

- 1.
- 2.
- 3.

VIEWS OF THE CHILD:

- Children’s views form the focus and body of the report

CLINICAL OBSERVATIONS OF CHILD:

Child 1 _____

Non-verbal:

Affect:

Cognitive Functioning:

Significant physical characteristics or behaviour:

Child 2 _____

Non-verbal:

Affect:

Cognitive Functioning:

Significant physical characteristics or behaviour:

Child 3 _____

Non-verbal:

Affect:

Cognitive Functioning:

Significant physical characteristics or behaviour:

SUMMARY:

Reflects the views of the child/ren regarding their relationship with each parent, in the context of the issues before the court

- I confirm that I have reviewed this report with the child(ren).
- I confirm that I have obtained the child(ren)'s informed consent, where required.

Print Name

Signature

Date

Appendix 5 – Court Endorsement

Court File Number

(Name of court)

au

**Views of the Child Report
Endorsement**

(Court office address)

Applicants(s)

Full legal name & address for service-- street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Lawyer's name & address-- street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Respondents(s)

Full legal name & address for service-- street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Lawyer's name & address-- street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

1. A *Views of the Child Report* shall be prepared in this case by a mental health professional assigned by Katherine Kavassalis, Deputy Director, Office of the Children's Lawyer.
2. This report is being ordered to address the following issues:

- a The child [insert name]'s preferred residential schedule
- b The child [insert name]'s educational needs or the following specific education issue:

- c A request for relocation by a parent
- d Changes to an existing parenting plan
- e Other:

3. A copy of this endorsement and the parties' completed intake forms shall be provided to Ms. Kavassalis by court staff within 1 business day of the date of the endorsement.
4. Each party shall arrange for and attend the mental health professional's meetings/communications with the children, in a timely fashion.
5. The Views of the Child Report shall be completed, delivered to the parties and filed with the Court within 30 days unless the Court orders otherwise.

Judge

Date