

**CONSULTATION ON THE VOICE OF THE CHILD
AT THE 5TH WORLD CONGRESS ON
FAMILY LAW AND CHILDREN'S RIGHTS**

Submitted to:

Justice Canada

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EXECUTIVE SUMMARY

The purpose of this project was twofold: (1) to identify issues that have arisen, both across Canada and internationally, in attempts to allow the voice of the child to be heard in family law proceedings; and (2) to identify best practices in this area, which can be utilized for jurisdictions that are trying to enhance mechanisms for hearing the voice of the child, and in particular that might be implemented in Canada.

The following research questions were addressed in this project:

- (1) What mechanisms for hearing the voice of the child are used in Canada?
- (2) What mechanisms for hearing the voice of the child are used in other countries?
- (3) What factors are important to consider when deciding what weight should be given to children's views?
- (4) What problems have jurisdictions encountered in implementing mechanisms for hearing the voice of the child?
- (5) What solutions have been identified to deal with the problems?
- (6) Are there mechanisms used in other countries that could be implemented in Canada?

The consultation was held in conjunction with the 5th World Congress on Family Law and Children's Rights, in Halifax, Nova Scotia, August 23-26, 2009. The project consisted of three components: (1) a focused international literature review; (2) a survey to be completed by conference participants; and (3) a workshop, facilitated by experts in the area, that introduced participants to the topic and provided an opportunity for discussion of specific issues.

Conclusions relevant to each of these research questions are discussed below.

What mechanisms for hearing the voice of the child are used in Canada?

The research literature presented in Chapter 2.0 emphasized the importance of giving children a voice in family law proceedings that affect them. This view was also shared by all of the workshop participants at the 5th World Congress on Family Law and Children's Rights. It is apparent from the results of this study that Canada is making a wide variety of mechanisms available for doing so.

In Canada, a wide variety of mechanisms are used for hearing the voice of the child, although some mechanisms are more frequently used than others. All Canadian survey respondents reported the use of evaluation or assessment reports, and the vast majority reported that testimony by mental health professionals and legal representation for children are the most commonly used. Approximately two-thirds of Canadian respondents reported that written or video submissions by children and judicial interviews with children are mechanisms available to hear the voice of the child. Approximately one-half of Canadian respondents stated that

legislative provisions that children's views must be considered have been enacted in their jurisdiction. Few Canadian respondents reported that mandatory mediation involving the child and parents and non-legal representation for children are available. The surveys indicated that testimony by a child is also widely used in Canada, though some respondents may have been confused by this question, and may have been referring to testimony in other proceedings, such as criminal proceedings, as the literature suggests that, outside Quebec, direct testimony by children in family law proceedings is rare.

What mechanisms for hearing the voice of the child are used in other countries?

To put Canada in the global context, the mechanisms for hearing the voice of the child in other countries were also examined. Like Canada, the most common mechanisms reported by international respondents were the use of evaluation or assessment reports, legal representation for children, and testimony by mental health professionals. Unlike Canada, however, international respondents were considerably less likely to report the use of testimony by children; within Canada, there is considerable variation in the extent to which children are interviewed by a judge or testify in court, with these practices more common in Quebec.

International respondents were more likely to report the use of judicial interviews with children and legislative provisions that children's views must be considered. Similar to their Canadian counterparts, few international respondents, stated that mandatory mediation involving the child and parents and non-legal representation for children are available.

Like Canada, it is apparent that other countries are seriously addressing the need to hear children's views in family law matters that affect them, and a wide variety of mechanisms are available. In fact, the international respondents were more likely to report that the need to consider the voice of the child has been formally recognized in their legislation. It appears that in other countries, however, judicial interviews with children may be used in place of direct testimony by children in court, perhaps to minimize the negative effects of the court process on children.

International respondents were also more likely to report the availability of mediation involving the child and parents than were Canadian respondents. This finding was true for both voluntary and mandatory mediation, although mandatory mediation was less frequently reported.

What factors are important to consider when deciding what weight should be given to children's views?

Almost all of the survey respondents thought the following factors were important when deciding how much weight to give to a child's views: age of child; ability of child to understand the situation; indication of parental coaching; child's reasons for views; ability of child to communicate; child's emotional state; and presence of domestic violence. While all of these factors were rated as important, several respondents commented that decisions regarding how much weight to give to a child's views need to be considered on a case-by-case basis, taking into account characteristics of both the child and the circumstances surrounding the case.

Not surprisingly, when survey respondents were asked how much weight should be given to a child's wishes at various ages, the amount of weight increased with the age of the child. This

finding is consistent with the literature presented in Chapter 2.0, which found that there is a lack of consensus on how old children should be before they are consulted. All of the workshop participants agreed that there should not be a statutory age for children to participate in family law proceedings. Similar to the views expressed by the survey respondents, workshop participants thought that a child-focused approach should be used to make the decision.

What problems have jurisdictions encountered in implementing mechanisms for hearing the voice of the child, and what solutions have been identified to deal with the problems?

It is evident from this project and the research literature that children have a right to be heard in family law proceedings. What is less clear, however, is how best to implement this right. Undoubtedly the methodology employed will be affected by the child's age and preferences, the resources available, and the attitude of the judge, lawyers and parents.

When asked what problems their jurisdiction has encountered in implementing mechanisms for hearing the voice of the child, the most common comment made by survey respondents related to a lack of resources and financing for programs and assessments. Not surprisingly, when asked about solutions to this project, survey respondents commented that more funding is needed. Specifically, respondents identified a need for more funding for programs, evaluations and assessments, mediation, professional training, and legal aid.

Another problem that survey respondents commented on was the role confusion experienced by lawyers who are representing children. When asked specifically about this issue in the survey, over two-thirds of the respondents stated that the lawyer acts as a friend of the court sometimes or often, while over three-quarters stated that the lawyer acts as a best interests guardian sometimes or often. Over four-fifths stated that the lawyer acts as a traditional advocate sometimes or often. This suggests that there is ambiguity regarding the appropriate role that lawyers for children should adopt. When asked if lawyers can advocate for a position contrary to the child's wishes, 15 percent of the survey respondents said this never happens. In the literature review presented in Chapter 2.0, it was found that children were not looking for legal representation as such, but rather they wanted to tell their stories to those making decisions about them. Some survey respondents suggested that guidelines should be adopted for lawyers who are representing children.

There was considerable controversy, especially in the workshop, about judicial interviewing of children, including fundamental questions such as when and why this should be done, and more practical questions, such as whether the parents should be provided with a transcript of the interview. It is clear that there is a need for further dialogue and research on these questions, with the potential for jurisdictions where judicial interviewing is rarely done to learn from the experience in jurisdictions where it is more common.

Another common problem highlighted by survey respondents was the lack of professional training. Respondents specifically mentioned the need for training for lawyers representing children and for judges who are interviewing children. Respondents also commented on the need for policies and guidelines in a number of areas, including interviewing children, conducting assessments, and how best to ascertain children's wishes and what weight to give them.

Are there mechanisms used in other countries that could be implemented in Canada?

It was encouraging that the findings of this study indicate that the mechanisms used in Canada for hearing the voice of the child are, for the most part, the same as those used internationally. However, there would appear to be very significant variation across Canada in the use of methods of obtaining a child's participation, and Canadian respondents and workshop participants expressed real concerns about the lack of resources and training for professionals. It is apparent that professionals and policy makers in different Canadian jurisdictions could learn a great deal from one another.

There is a clear need for further research to determine the most effective methods for obtaining children's views. There are benefits and risks associated with the various mechanisms, and research evidence is needed to determine which mechanisms allow children to participate in family law proceedings but do not further damage the family relationships and children.

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1.0 INTRODUCTION

1.1 *Background*

The National Judicial Institute (NJI), in partnership with the Canadian Research Institute for Law and the Family (CRILF), conducted a consultation on the voice of the child in family law proceedings. Data for the consultation were collected at the 5th World Congress on Family Law and Children's Rights in Halifax, Nova Scotia, August 23-26, 2009.

Article 12 of the U.N. Convention on the Rights of the Child gives children the right to be heard in proceedings affecting them. It states:

12(1) State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

While over 200 countries have ratified the U.N. Convention on the Rights of the Child, there is great variation in the way in which they ensure that children's voices are shared with decision makers in court proceedings arising out of parental separation and divorce.

Within Canada there is a range of ways in which the views, preferences and experiences of children are brought into the decision-making process. Methods of hearing the voice of the child include:

- Through a report prepared by a court-appointed mental health professional (social worker or psychologist – often called an evaluator or assessor) after a series of interviews with the child. This report may focus solely on the wishes and perceptions of the child, though more commonly it is part of a broader report about the child's best interests;
- Through a report (or affidavit) prepared by a neutral lawyer or mental health professional after a single interview with a child (e.g., the "Voice of the Child" reports in Kelowna);
- Through testimony of a mental health professional who has interviewed the child and is retained by a parent;
- Having a lawyer for the child;
- Having the child testify in court (in Canada, this appears to occur only in Quebec);
- Having an interview of the child by the judge in chambers;

- Allowing parties (i.e., parents) to testify about what the child has told them (i.e., hearsay evidence) through their oral testimony (or video/audiotape) or by calling other witnesses (e.g., teachers);
- Allowing the child (or parent) to submit a letter, email or videotaped statement.

There is considerable controversy over issues related to some of these mechanisms. For example, in Ontario there has been considerable recent controversy over whether judges should interview children, and whether lawyers of children should take a position contrary to the wishes (or instructions) of the child. In British Columbia the “Voice of the Child” reports (Kelowna) are also controversial, considered useful by many, but so brief that others have expressed concerns.

The method chosen will depend on several considerations including:

- matters at issue;
- resources available and efficiency of the justice system;
- getting the best information possible before the decision-maker;
- child’s age and capacity;
- attitude of child;
- stage of process (e.g., interim or final);
- nature of dispute resolution process (e.g., mediation/negotiation/litigation);
- concerns about fairness to parties;
- concerns about fairness to the child; and
- legal framework and attitude of decision-maker.

Article 23 of the 1996 *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children* states that recognition of measures taken by the authorities of a Contracting State may be refused “... if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State.” Given the likely implications of this Article on proceedings in Canada, it is important for Justice Canada to know the views of family justice system professionals of how implementation of the Hague Convention will affect family law in Canada.

The World Congress offered a unique opportunity to explore these issues both across Canada and in the international context. The project provided a mechanism for identifying and examining practical options on how best to hear the voice of the child in family law proceedings.

1.2 Purpose of the project

The purpose of this project was twofold:

(1) to identify issues that have arisen, both across Canada and internationally, in attempts to allow the voice of the child to be heard in family law proceedings; and

(2) to identify best practices in this area, which would be very useful for jurisdictions that are trying to enhance mechanisms for hearing the voice of the child, and in particular that might be implemented in Canada.

1.2.1 Research questions

The following research questions were addressed in this project:

- (1) What mechanisms for hearing the voice of the child are used in Canada?
- (2) What mechanisms for hearing the voice of the child are used in other countries?
- (3) What factors are important to consider when deciding what weight should be given to children's views?
- (4) What problems have jurisdictions encountered in implementing mechanisms for hearing the voice of the child?
- (5) What solutions have been identified to deal with the problems?
- (6) Are there mechanisms used in other countries that could be implemented in Canada?

1.3 Methodology

The consultation was held in conjunction with the 5th World Congress on Family Law and Children's Rights, in Halifax, Nova Scotia, August 23-26, 2009. The project consisted of three components: (1) a focused international literature review; (2) a survey to be completed by conference participants; and (3) a workshop, facilitated by experts in the area, that introduced participants to the topic and provided an opportunity for discussion of specific issues. These components are described in more detail below.

1.3.1 International literature review

A focused international literature review on current research relating to the voice of the child in legal proceedings was conducted. This review complements a recent extensive literature review conducted for Justice Canada by Rachel Birnbaum (2009), and focuses on recent developments in other countries in the past five years. Preliminary findings from this review provided an important context for the consultation, grounding the findings within research evidence and theoretical debates. The literature review was also useful in formulating the research questions and developing the survey instrument.

1.3.2 Survey

A questionnaire on the topic of the voice of the child was distributed to all conference delegates with their registration materials (please see Appendix A). Participants were asked to return completed questionnaires to the Registration Desk anytime during the conference. The survey provided delegates the opportunity to discuss the manner in which hearing the voice of the child has been conceptualized and implemented in family law within their jurisdiction. Further, the

survey provided participants with an opportunity to comment on issues or problems they have experienced in this area. The survey was developed in consultation with the project's legal consultants and CRILF Advisory Committee, and its content was informed by the international literature review.

A total of 82 surveys were completed and returned. The qualitative data were coded, and the qualitative and quantitative data were cleaned and entered into SPSS.

1.3.3 Workshop

A notice about the workshop was distributed to all conference delegates with their registration materials, and the workshop was mentioned during the conference's opening plenary session. The workshop was intended to gain in-depth information from an international group of professionals attending the conference regarding the mechanisms for ensuring that the voice of the child is heard in their jurisdictions, as well as a discussion regarding best practices in this area. The workshop was scheduled in consultation with the World Congress organizers, and was held on August 26, 2009 from 11:00 a.m. to 12:30 p.m. The workshop was open to all conference participants, and approximately 75 delegates attended.

The workshop was chaired by Professor Janet Walker, who also gave a brief introduction of the issue to participants at the beginning of the workshop. The workshop was facilitated by Professor Nick Bala and Ms Marie Gordon, Q.C. A workshop outline was developed, and is contained in Appendix B. Notes were taken during the workshop by three recorders. At the conclusion of the workshop, participants were asked to complete a one-page evaluation form regarding their views of the workshop. Twenty-nine evaluations were completed and returned.

1.4 *Limitations*

Certain limitations to the data presented in this report may affect the ability to generalize the findings to all professionals working in this area. Specifically, it should be kept in mind that participants in the project do not represent a random sample of individuals in the professional and legal communities. Attendees at the 5th World Congress on Family Law and Children's Rights were largely lawyers, judges and other professionals who are among the most engaged in and knowledgeable of family law. In addition, the sample is not geographically representative of lawyers, judges and other professionals across Canada and internationally. Since the majority of survey respondents were from Canada and the remaining respondents were from a variety of different countries, it was not appropriate to conduct international comparisons.

1.5 *Organization of the report*

The next chapter provides the focused international literature review. Chapter 3.0 presents the results from the Survey on the Voice of the Child in Family Law Proceedings. The results of the workshop are presented in Chapter 4.0, along with the results of the Workshop Feedback Form. Chapter 5.0 summarizes the findings and discusses the best practices for hearing the voice of the child in family law proceedings. Copies of the Survey, Workshop Outline, and Workshop Feedback Form are contained in the appendices.

2.0 INTERNATIONAL LITERATURE REVIEW

2.1 *Introduction*

Debates about the role of children in family proceedings are not new. In the past, children's indirect involvement has been encouraged, with family welfare professionals tasked to talk to children and to ascertain their wishes and feelings and report these to the court. In recent years, in large part due to Article 12 of the U.N. Convention on the Rights of the Child, the "voice of the child" debate has escalated in jurisdictions across the western world. Few family law practitioners would argue against Article 12, but there remain four key questions:

- How should children's voices be heard?
- When should they be heard?
- Where should they be heard?
- Who should hear them?

Central to the debate is the seemingly controversial view that children should have the right to talk to judges and judges should make such a conversation possible and meaningful.

Over 200 countries have ratified the U.N. Convention on the Rights of the Child. While most recognise the child's right to be heard in judicial proceedings, not many guarantee it (Howe and McIsaac, 2008). In England and Wales there is no legal requirement on education authorities, schools, health services, local authorities, parents or the government to give consideration to the ascertainable wishes and feelings of children, and children have no legal right to be consulted. Nevertheless, family law protocols suggest that courts should take account of the ascertainable wishes and feelings of each child in decisions which impact on them, but how these are heard is left open. In reality, family law practitioners prefer to leave it to a child's parents to talk to the child and ascertain the child's wishes and feelings, sometimes reminding parents of the importance of doing so. Research indicates that relatively few parents are able to undertake this task effectively (Walker, 2001; Walker et al., 2007) and, for the most part it is only when parents are unable to resolve disputes themselves that the court steps in and requires reports to be prepared that involve social welfare professionals talking to children and reporting their views as part of an assessment. However, new legislation and new policies are seeking to put children at the heart of consultation.

The Rt. Hon Sir Mark Potter, President of the Family Division in England and Wales, believes that the reluctance of judges to talk to children is rooted in the rules of evidence and the adversarial mode of trial (Potter, 2006). Current assumptions in family law also contribute to this reluctance. Many family law practitioners assume that: (1) parents know best what is in their children's best interest; (2) agreements made privately out of court are better than those imposed by courts; (3) parents are the best people to talk with their children; and (4) professionals should intervene only when necessary.

These assumptions have led to a set of beliefs that private agreements are always superior to court processes and that families should be encouraged to find their own solutions. As Sawyer (2006) has argued, in the family law paradigm, the idea of the child is dependent on the family;

the child rarely has a positive separate legal identity. Over 20 years ago, Einhorn (1986) described decision-making in family law as:

a knot of contradictions, reflecting society's changing values about human nature; a history of flip-flopping assumptions about what men, women and children are like, what's good for them and who owes what to whom. (p. 120.)

The U.N. Convention allows an opportunity to move away from flip-flopping assumptions and to look more closely at the key questions about how we ensure that "each child has a voice that is heard, understood and respected in the family courts, in a way that is consistent with and responds to each child's wishes, competence and understanding" (CAFCASS, 2007: 1).

European countries, such as Germany, Italy and Sweden, put more emphasis on children participating in family proceedings but children's direct participation remains low (Resetar and Emery, 2008). In Australia, a country which has spearheaded reforms in family law over the last 30 years, judges have the right to see children but few do so. While Australian judges tend to agree that children's views should carry weight and that transparency in family proceedings is important, they tend to place high reliance on professionals reporting children's views (Parkinson and Cashmore, 2007).

There is a lack of consensus about how to ascertain the wishes and feelings of children; how old children should be before they are consulted; a sense that girls are more mature than boys at the same age; a belief that adults know best; and an idealized notion of the innocence of childhood (James, James, and McNamee, 2004). There are judges who firmly believe in consulting directly with children if children want to be consulted: in Quebec it is a duty of judges to talk to the children in family proceedings and the majority are very positive about this practice. In England, District Judge Nicholas Crichton (2006) has endorsed these views:

I firmly believe that children and young people should be given all the information appropriate to their age and understanding ... When a child expresses an interest in attending court, the CAFCASS [Children And Family Courts Advisory and Support Service] officer should discuss with the judge how they might accommodate the child's wishes ... At the end of the day I do not believe that courts should be making such important decisions in children's lives unless they are prepared to look them in the eye and explain why.

Judges who see children believe that there are several benefits (Krinsky and Rodriguez, 2006):

- the child is an important source of information;
- the judge can ascertain the child's wishes and feelings at first hand;
- options can be explored;
- information about the child is up-to-date in the here-and-now;
- seeing a child shows respect; and
- the conversation can be an important step in promoting settlement.

Research has indicated that the majority of Australian and Canadian judges have been firmly opposed to the idea (Parkinson and Cashmore, 2007; Paetsch, Bertrand, and Bala, 2006). These judges believe that:

- they have insufficient skills and lack appropriate training;
- they lack psychological knowledge;
- a single conversation is superficial;
- it would be too stressful for children;
- they cannot see any benefits; and
- older judges might be too intimidating to children.

Clearly, there are tensions here and further debate is timely and necessary. How are children's rights under Article 12 to be upheld if the direct participation of children and young people in court proceedings is not an option?

2.2 *Relevant research findings*

There is now a substantial body of research from across western jurisdictions that portrays a consistent message: children do not like being kept in the dark about family proceedings which impact on their lives (Aubrey and Dahl, 2006; Bala, Talwar, and Harris, 2005; Birnbaum, 2007; Birnbaum and Bala, 2009; Cashmore and Parkinson, 2008; Salisbury, 2005). In summary, children want:

- to have a voice;
- to be listened to and heard;
- to have their views respected and believed;
- to be treated as individuals;
- to be told what is happening;
- to be given clear, age-appropriate information;
- flexibility in arrangements;
- decisions to be child-centred not adult convenient; and
- to say how they feel and what matters to them and how they see the future

Many children go further and want the opportunity to talk to the judge who is going to make the decision that will have long-term repercussions for their future.

When challenged about whether children should be given the opportunity to speak to a judge, many practitioners have voiced concerns that involving children in family law proceedings puts pressure on children to make choices and take responsibility for making decisions that should be taken by adults. Parents also tend to want to protect children, believing that talking to them will cause unnecessary distress or that they are too young to understand the situation. Research contradicts these widely held beliefs, however. Children generally do not believe that they need to be "protected" from the court processes (Salisbury, 2005) and wonder how old they have to be before adults will listen to them. They are able to distinguish between participation and being asked to make choices. Children do not want to be the decision-maker, but many want to be involved in the process. Children aged 7 upwards have said that they would like to "have a say." Some studies have suggested that children as young as three can participate successfully in

appropriately-conducted interviews (Aubrey and Dahl, 2006). Children's wish to see a judge is usually because they do not trust parents and social welfare practitioners to represent their views correctly. In one study, nearly two-thirds of parents in divorce proceedings said they had not talked to or consulted their children at any stage: their children often felt marginalized and silenced (Walker et al., 2004). These parents gave similar reasons to those put forward by judges for not talking to their children about what is happening in their lives: children are "too young" (even aged 16); "children shouldn't have to choose," "it's all too difficult and upsetting"; and many parents said that they did not know how to talk to their children about such sensitive and painful issues.

2.2.1 The role of family lawyers

The Family Advice and Information Service (FAInS) was established in England and Wales by the Legal Aid Board in 2002 to encourage family lawyers to take a more holistic approach to practice, which would involve offering support to parents in talking to their children. Walker et al. (2007) found that there was little evidence that lawyers offered this kind of support or that they actively encouraged parents to ascertain their children's wishes and feelings. The lawyers for parents were clearly sensitive to the situation in which their clients found themselves and ready to listen to their concerns, but the conversations rarely involved discussion about how the children were feeling and what their wishes were. The researchers interviewed 18 children aged between 8 and 16 whose parent(s) had consulted a FAInS lawyer who had been briefed to encourage parents to talk to their children and ascertain their wishes and feelings. The children and young people interviewed subsequently had not been involved and their testimony confirmed the findings from previous studies:

- children were not invited to participate in family law processes;
- they lacked support; and
- they frequently felt disempowered and helpless.

A number of case studies demonstrated the sheer frustration felt by some of the children that they were not consulted, not allowed to go to court and talk to the judge themselves and not able to influence the decisions that were being taken (Richards, Day-Sclater, and Webber, 2007). The connecting thread across all the interviews with children was that of wanting opportunities to make their voices heard. They were not looking for legal representation as such, but to be able to tell their own stories so that these would be understood by those making the decisions.

Walker et al. (2007) concluded that there is no consistent framework, either informal or formal, for children to participate in proceedings that affect their lives. Moreover, the exclusion of children can have long-term psychological consequences for them and broader social consequences for families. It is important, therefore, to shift the discourse away from one which sees children as incompetent to express their views and adults as better able to represent them to one which acknowledges children as competent social actors, able to participate in age-appropriate ways in processes which change their lives.

2.2.2 Child responsive court programs

There are many different ways in which children can be supported and included in family law processes and the research suggests that more thought should be given to how courts can be more

child-friendly and respectful of children. Some children who have been to court have described it as a disappointing experience because the building and the whole atmosphere were seemingly designed to exclude children (Fortin, Ritchie, and Buchanan, 2006; Pike and Murphy, 2006; Walker et al., 2007).

A number of child responsive court programs are now in existence and the research evidence is largely positive. In Australia, a relatively new court program aims to educate and focus parents on the needs of their children, facilitate out-of-court settlements, and involve children via family consultants (McIntosh, Bryant, and Murray, 2008). The program involves the judiciary, and early findings show that parents are more satisfied with the process and the outcomes, parents are better able to manage conflict, judges have a higher level of connection with the case and Article 12 is given meaningful effect.

Parkinson, Cashmore, and Single (2007) found that children who had been the subject of contested proceedings were generally keen to use the opportunity to talk to the judge. Moreover, parents were generally supportive of their children talking to the judge, although resident parents tended to be more in favour than non-resident parents. Another initiative in Australia involves children directly in family mediation (McIntosh et al., 2008). Early findings demonstrate that this program:

- gives children a safe avenue to express their views
- upholds their rights to be heard and to participate
- leads to a higher level of repair in the parental relationship
- improves the emotional availability of parents to children
- produces developmentally sensitive agreements which are desirable
- improves father-child relationships
- helps fathers to regain confidence in a co-parental relationship

The research suggests that not all families are suitable for this kind of process and there is a need to screen out entrenched high-conflict cases and those involving personality disturbance and mental health problems. Nevertheless, the involvement of children has been particularly positive and produces beneficial impacts over and above those usually associated with mediation.

2.2.3 Family group conferencing

Another way to involve children is via family group conferencing (FGC). This began in New Zealand in 1989 in response to Maori concerns that the family justice system was unsupportive of families and made decisions about children's lives without full consultation with the family. The principles of FGC demand that decisions are to be taken in consultation with the family and that family members, including children, should be empowered to seek their own solutions in order to make things better for children.

Originally, FGC was used only in cases involving child protection matters, but the approach has been extended across family and youth justice in New Zealand and elsewhere during the last 19 years. Families are encouraged to plan for and participate in their FGC and research has shown that about 50 percent of the children in New Zealand cases are active participants. It indicates,

also, that levels of satisfaction are high, families prefer FGC to court processes and their participation is considerably enhanced (Hudson et al., 1996).

Family group conferencing is also used in the UK in public law proceedings and studies in England and Scotland have shown positive results. Holland et al. (2003) found that FGC has the potential to democratize family decision-making. It ensures that children remain central in decision-making (Dalrymple, 2002), and it makes children feel valued, consulted and included (Bell and Wilson, 2006). There would seem to be considerable potential for the principles and practice of FGC to be extended to include private family law proceedings, particularly in light of developments in collaborative law, which enable family lawyers to work in partnership with mediators and other professionals. It would require a distinct shift in family law practice and in mind-sets, but could offer a very important way forward. If new initiatives do not directly involve children, then an important opportunity will be lost and children will remain marginalized. Practitioners have been somewhat reluctant to embrace FGC and referrals are often low. Inflexible legal structures and processes would need to change; multi-agency partnerships and multi-disciplinary practice would need to be strengthened; and good preparation would be needed for family members to be fully participative (Brown, 2003).

2.3 *Summary*

Our initial review of the literature highlighted that most children and adolescents feel powerless in situations of family change, find themselves in situations over which they have little control, feel they have no say, and want to know what is happening to them and to have a voice. Not all children will choose to be active participants, but they would all like to be asked. A continued lack of participation can marginalize children, put a barrier between children and adults, reduce a child's sense of self, lead to feelings of frustration, confusion, anger, alienation and distrust, and take away children's rights. By contrast, children's direct participation in family proceedings and in decisions which impact on them could empower them to develop a sense of social competence, understand the relationships between actions, decisions, and their consequences, develop responsibility and ownership of situations, develop skills in citizenship, and develop protective factors in their lives.

Children's narratives are usually very different to those of their parents. They see situations differently: for example, contact and access are simply a means to an end – legal constructs which enable children to stay in touch with parents. Children talk about time very differently to adults and can often find novel solutions to seemingly intractable high conflict disputes. For children, it is the quality of relationships that is really important, and their insights can make sure everyone in the family justice system stays focused on how their best interests might be met. Family law disputes are too frequently about parents' struggles which have been re-framed as being about children's best interests.

Responsive, evidence-based family law practices that serve the best interests of the child need to learn from a range of disciplines, including family law, human rights, developmental psychology and public health. Mnookin (1975, pp. 260–61) set some challenges over 30 years ago which remain pertinent today:

Deciding what is best for a child poses a question no less ultimate than the purposes and values of life itself. Should the judge be primarily concerned with

the child's happiness? Or with the child's spiritual and religious training? Should the judge be concerned with the economic "productivity" of the child when he grows up? Are the primary values in life in warm interpersonal relationships or in discipline and self-sacrifice? ... [W]here is the judge to look for the set of values that should inform the degree of what is best for the child? Normally, the custody statutes do not themselves give content or relative weights to the pertinent values. And if a judge looks at society at large, he [sic] finds neither a clear consensus as to the best child rearing strategies nor an appropriate hierarchy of ultimate values. (pp. 260-261.)

In the debate about giving effect to Article 12 of U.N. Convention on the Rights of the Child, consideration needs to be given to the kinds of structures, procedures and mechanisms that can enable children's participation in family proceedings. There are no quick fixes. In 1973, Rodham declared that children's rights remained a "slogan in search of a definition." Without a fundamental acceptance of the child as a person with rights, the determination of best interests remains an adult activity (Moloney, 2008).

The research has shown that no one way of consulting and involving children offers a panacea and that there are benefits and risks associated with all of them. These have to be weighed, and different kinds of family law matters might be better dealt with by certain kinds of programs and approaches and not others. There is a growing recognition, however, that if children are to participate in family proceedings and if they are to have the opportunity to talk directly to a judge, then appropriate training, preparation and clear guidelines would all need to be agreed. Research also indicates that there is much to be gained by giving children the chance to have a greater voice in family proceedings – so in our view, the questions of how, when and where merited further debate if cultural change towards more child-centred family justice systems is to be promoted.

Three major challenges have been identified for family law processes in the twenty-first century. These are:

- (1) How best to support parents (particularly separated parents) to maintain positive, constructive, loving relationships with their children.
- (2) How best to support children to maintain a positive, constructive, loving relationship with each parent and wider family members.
- (3) How to meet children's best interests when parents are locked into conflict (either with each other or with the state).

We would add a fourth:

- (4) How best to ensure that children have a voice and to develop effective practices that are child-focused and child-inclusive.

In July 2009, the UN Committee on the Rights of the Child adopted a "General Comment" on Article 12, outlining the parameters of the right to be heard and State obligations in this regard. The Committee underlines the importance of hearing the voice of the child during parental

separation and divorce and urges States to avoid tokenistic approaches, which limit children's ability to express their views or which fail to give their views due weight. The Committee is of the view that if children's participation is to be effective and meaningful, it needs to be understood as a process and not as an individual, one-off event. It lays out a number of basic requirements that all States should integrate into their legislative and other family law processes for hearing the voice of the child. These requirements are that processes should be: transparent and informative; voluntary; respectful; relevant; child-friendly; inclusive; safe and sensitive to risk; and accountable. Moreover, adults should be prepared and given the skills and support to involve children. The Committee has taken the position that once a child is deemed capable of forming their own view, then they should have the option of being heard directly by a judge. It urges States to move away from setting age limits, in favour of an individualized case-by-case approach.

The Committee's report is an important and timely step forward in the debate about how to give effect to the UN Convention in general and Article 12 in particular. Of specific note is the expectation that if the child's right to be heard is not respected in circumstances in which he or she is capable of forming a view then legislation must be put in place to offer redress to the child via an appeals or complaints procedure, accessible to the child.

3.0 SURVEY ON THE VOICE OF THE CHILD IN FAMILY LAW PROCEEDINGS

3.1 *Demographics of survey respondents*

The Survey on the Voice of the Child in Family Law Proceedings was completed by 82 delegates to the 5th World Congress on Family Law and Children’s Rights. Almost two-thirds of the respondents were female (61.7 percent) and 38.3 percent were male. Table 3.1 presents the country in which participants work. Just over one-half (54.4 percent) of respondents were from Canada, while one-quarter (26.6 percent) were from Australia. The remaining respondents were from a variety of countries including the United Kingdom, United States, and Israel.

Table 3.1 Respondents’ country of residence

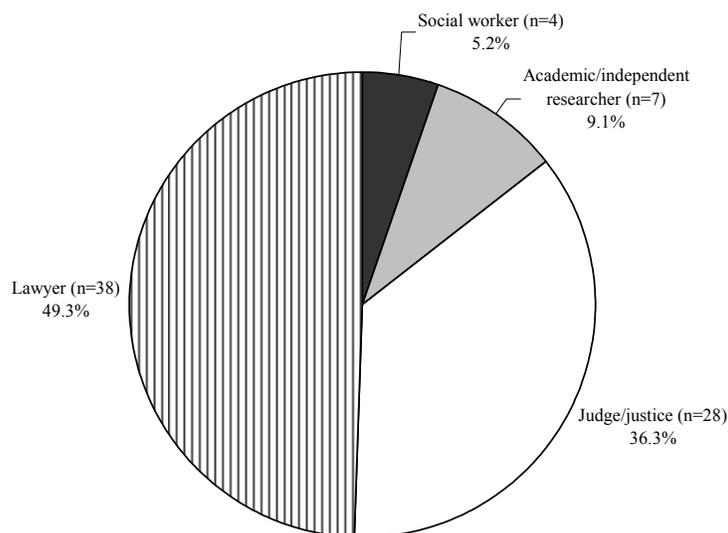
Country	n	%
Canada	43	54.4
Australia	21	26.6
United Kingdom	6	7.6
United States	2	2.5
Israel	2	2.5
Mozambique	1	1.3
Nigeria	1	1.3
China	1	1.3
Sri Lanka	1	1.3
New Zealand	1	1.3
Total	79	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N=82; Missing cases=3.

Respondents’ primary profession is shown in Figure 3.1. The majority of participants were legal professionals: 48.1 percent were lawyers and 35.4 percent were judges. Relatively few respondents indicated that they were academics/independent researchers (8.9 percent) or social workers (5.1 percent).

Figure 3.1 Respondents' profession



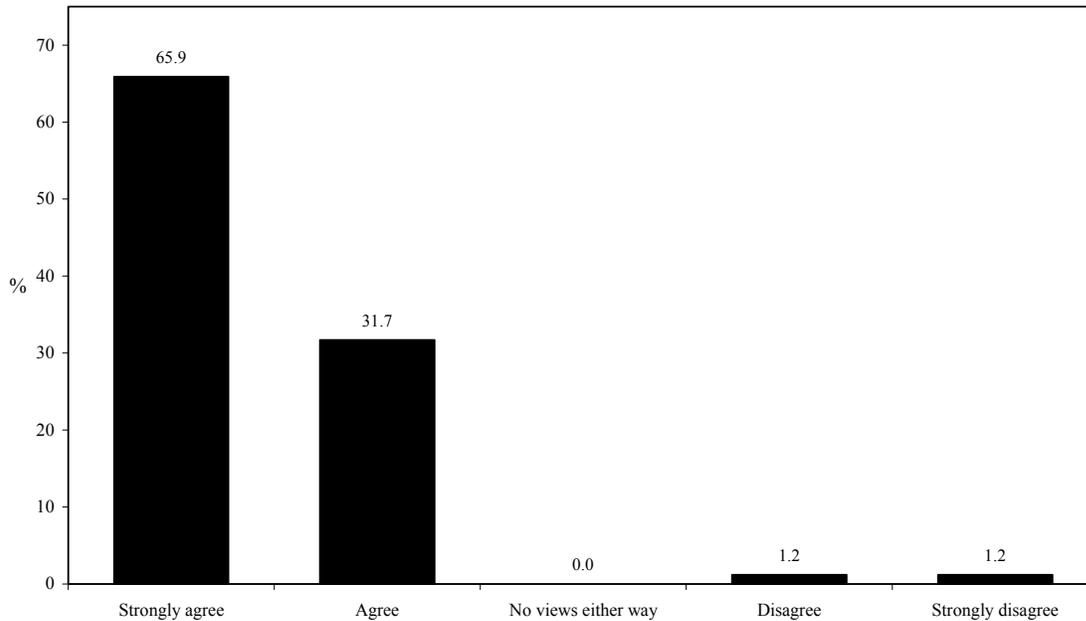
Source of data: Survey on the Voice of the Child in Family Law Proceedings.
Total N=82; Missing cases=3.

When asked how many years experience they had in their stated profession, responses varied widely and ranged from 1 to 45 years. The mean length of experience was 19.4 years (median = 21 years).

3.2 *Hearing the voice of the child*

The survey asked respondents a number of questions regarding their opinions on hearing the voice of the child in family law proceedings and the mechanisms that are used in their jurisdiction for doing this. Figure 3.2 presents the extent that participants thought that children should have the right to voice their views in family law proceedings that affect them. Almost all respondents (97.6 percent) either strongly agreed or agreed that children have the right to have their voice heard. Only 2.4 percent of respondents disagreed or strongly disagreed with this statement.

Figure 3.2 Extent to which respondents agree that children should have the right to voice their views in family law proceedings that affect them



Source of data: Survey on the Voice of the Child in Family Law Proceedings.
Total N=82.

3.2.1 Availability of mechanisms for hearing the voice of the child

When asked if their jurisdiction has mechanisms for ensuring that the voice of the child is heard, all respondents indicated that they do. Table 3.2 presents the proportion of respondents from Canada, other countries, and the total sample who indicated that various mechanisms for hearing the voice of the child are available in their jurisdiction. The mechanisms most commonly available as reported by the total sample are assessment or evaluation reports (100 percent), legal representation for children (93.9 percent), and testimony by a mental health professional/social worker who has interviewed the child (92.7 percent). Mechanisms that were least frequently available were mandatory mediation involving the child (11 percent) and non-legal representation for the child (12.2 percent). Two respondents indicated that other mechanisms were available in their jurisdictions. These mechanisms were brief, focused investigations by a court-appointed neutral who, by statute, must interview the child if the child is old enough, and Views of the Child report.

Table 3.2 Percentage of respondents from Canada, other countries, and the total sample reporting mechanisms used in their jurisdiction to enable children to voice their views

Mechanism	Canada		Other Countries		Total Sample	
	n	%	n	%	n	%
Testimony in court by child	36	83.7	18	50.0	57	69.5
Submission by child	29	67.4	18	50.0	49	59.8
Testimony by mental health professional/social worker who has interviewed the child	40	93.0	33	91.7	76	92.7
Testimony by other adults who know the child regarding child's wishes	25	58.1	27	75.0	55	67.1
Assessment or evaluation report	43	100.0	36	100.0	82	100.0
Mandatory mediation involving the child and parents	2	4.7	7	19.4	9	11.0
Voluntary mediation involving the child and parents	12	27.9	17	47.2	31	37.8
Legal representation for child	39	90.7	35	97.2	77	93.9
Non-legal representation for child	4	9.3	7	19.4	10	12.2
Judicial interview with child	29	67.4	29	80.6	61	74.4
Legislative provision that children's views must be considered	22	51.2	29	80.6	52	63.4
Other	1	2.3	1	2.8	2	2.4

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N=82; n for Canada=43; n for other countries=36; missing cases on country=3; multiple response data.

There were some differences reported by respondents from Canada and other countries regarding the extent to which mechanisms for hearing the voice of the child are used in their jurisdictions. In Canada, testimony in court by children was reported in the survey to be considerably more likely to be used (83.7 percent) than in other countries (50 percent).¹ Similarly, respondents from Canada were more likely to report that submissions by children are used (67.4 percent) than were respondents from other countries (50 percent). Respondents from Canada were less likely to report that testimony by other adults who know the child regarding the child's wishes is used (58.1 percent) than were respondents from other countries (75 percent). Mandatory mediation involving children and parents is more likely to be used in other countries (19.4 percent) than in Canada (4.7 percent). Similarly, voluntary mediation involving children is more likely to be used in other countries (47.2 percent) than in Canada (27.9 percent). Respondents from other countries were more likely to report that judicial interviews with children are used in their jurisdictions

¹ The surveys indicated that testimony by a child is widely used in Canada, though some respondents may have been confused by this question, and been referring to testimony in other proceedings, such as criminal proceedings, as the literature clearly indicates that, outside Quebec, direct testimony by children in family law proceedings is rare.

(80.6 percent) than were respondents from Canada (67.4 percent). Finally, other jurisdictions are more likely to have legislative provisions that children’s views must be considered (80.6 percent) than is Canada (51.2 percent). Because non-Canadian respondents were from a variety of other countries, it was not appropriate to combine them into a single group for subsequent analyses; therefore the remaining results are presented for the total sample.

3.2.2 Opinions on mechanisms for hearing the voice of the child

Participants were asked if, in their view, various mechanisms for hearing the voice of the child are “good.” Table 3.3 presents the proportion of respondents who thought that each mechanism is good by their profession and for the total sample.

Table 3.3 Percentage of respondents who think various mechanisms for hearing the voice of the child are good by profession and total sample

Mechanism	Lawyers		Judges/justices		Other ¹		Total sample	
	n	%	n	%	n	%	n	%
Testimony in court by child ²	10	27.0	6	25.0	5	41.7	22	29.3
Submission by child ³	16	47.1	6	24.0	4	40.0	26	36.6
Testimony by mental health professional/social worker ⁴	30	85.7	25	92.6	11	84.6	68	87.2
Testimony by other adult such as parents or teachers ⁵	22	61.1	13	50.7	8	72.7	45	59.2
Assessment or evaluation report ⁶	32	86.5	26	92.9	10	83.3	71	88.8
Mediation involving child and parents ⁷	26	81.3	15	71.4	8	66.7	50	75.8
Legal representation for child ⁸	35	97.2	24	88.9	9	75.0	71	91.0
Judicial interview with child ⁹	19	54.3	16	61.5	7	53.8	43	56.6

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N=82; Missing cases on profession=3.

¹Other includes academics/independent researchers, social workers, state advocate and court registrar.

²Missing cases on mechanism =7.

³Missing cases on mechanism =11.

⁴Missing cases on mechanism =4.

⁵Missing cases on mechanism =6.

⁶Missing cases on mechanism =2.

⁷Missing cases on mechanism =16.

⁸Missing cases on mechanism =4.

⁹Missing cases on mechanism =6.

One-quarter of the lawyers (27 percent) and the judges (25 percent) thought that testimony in court by the child is a good mechanism; a larger proportion of the other professionals (41.7 percent) thought that this is a good mechanism. When asked to give reasons for their opinion, 74 respondents provided 113 comments. The most common reasons provided were that the court is potentially emotionally abusive to children and they should be shielded from the courtroom (n=31), having children testify tends to put them in the middle of the conflict (n=10), and that whether children should testify depends on the child and the facts of the case (n=10). Examples of comments were:

It tends to put the child in the middle of the conflict. I feel that a skilled, neutral investigator/evaluator appointed by the court can allow a child to give her/his voice more accurately and effectively.

The court process and setting is too intimidating and is less likely to evoke a honest response as the child would be “face-to-face” with parents. I think this would put too much pressure on the child, but I think joint sessions with a social worker, independent lawyer and the judge would be best.

A higher proportion of lawyers (47.1 percent) than judges/justices (24 percent) thought that submissions by children (e.g., letter, e-mail, standardized forms, videotapes) are a good mechanism for hearing the voice of the child; 40 percent of the other professionals viewed this mechanism as good. When asked to provide reasons for their opinion, 72 respondents provided 93 comments. The most common comments were that children are often coached by an adult to make these types of statements (n=31), this mechanism needs to be more structured to ensure accuracy and credibility (n=11), and that while a submission by a child is better than direct testimony, such submissions usually do not allow for focused questions to better understand what the child wants to get across (n=9).

A substantial majority of respondents (87.2 percent) thought that testimony by a mental health professional/social worker is a good mechanism for hearing the voice of the child. When asked to provide reasons for their views, 72 participants provided 86 comments. The most common views were that this testimony is non-biased (n=36), this testimony can be good or bad, depending on the professional and their level of skill (n=9), and this testimony is good background information and explains family dynamics and the child’s intellectual and emotional state (n=8). One respondent commented that “*Qualified professionals who see children on several occasions are in a very good position to give accurate information to the court.*”

Respondents were less positive about testimony given by other adults such as parents or teachers: 61.1 percent of lawyers thought that this is a good mechanism, compared to 50.7 percent of judges/justices and 72.7 percent of other professionals. When asked to explain their opinion, 66 respondents provided 84 comments. The most commonly offered reasons were that testimony by non-related, third parties is preferable (n=14), that this practice is not the best, but is useful as part of the overall picture (n=12), and that parents can provide framework and background only (n=8). One respondent cautioned that “*While it may be useful to hear from teachers or someone similar, the parent’s testimony is often biased or related to their own agendas.*”

Assessment or evaluation reports were favourably viewed by almost all respondents, with 88.8 percent indicating that these are good mechanisms for hearing the voice of the child. When asked

for reasons for their opinion, 67 participants provided 79 comments. The most common comments were that such reports follow professional and court standards (n=15), the professional can obtain a good idea of the child's wishes through appropriate in-depth interviews (n=13), it depends on how balanced and impartial the reports are (n=6), it is typically non-biased and can provide context to the situation (n=6), and it gives a fuller picture (n=6).

Three-quarters of participants (75.8 percent) thought that mediation involving the child and parents is a good mechanism for hearing the voice of the child: lawyers were most positive about this mechanism (81.3 percent) while other professionals were least positive (66.7 percent). When asked for reasons for their views, 60 respondents offered 86 comments. The most frequently provided comments were that mediation can be a powerful problem-solving mechanism, but should only be considered in appropriate cases (e.g., not in cases of family violence) (n=10), the child seems to benefit from this opportunity (n=8), and it is less threatening than court (n=7).

Almost all participants (91 percent) thought that legal representation for the child is a good mechanism for hearing the child's views: lawyers were most positive about this mechanism (97.2 percent) while other professionals were least positive (75 percent). Respondents were asked to provide reasons for their opinion and 59 participants provided 77 comments. The most common response was that this is a good mechanism if the role of the lawyer is clear and the lawyer has training in the proper representation of children (n=12), lawyers are trained to be advocates and to advance their clients' wishes (n=9), and lawyers can protect a child's legal interests (n=7). One respondent commented, however, that "*Almost invariably the lawyer appointed has limited time and resources to get an accurate idea of the child's wishes.*"

Just over one-half of respondents (56.6 percent) thought that judicial interviews with children are a good mechanism for hearing their views. Judges/justices were most positive about this mechanism (61.5 percent). When asked for reasons for their views, 67 participants offered 98 comments. The most frequently provided comments were that judges have a lack of training, insufficient time, and procedural difficulties to conduct interviews (n=16), that it depends on the circumstances (n=10), and that judicial interviews allow the judge to have insight into the child's personality and needs (n=9). One respondent noted that "*Many of the children want to speak to the judge – it allows them to feel a sense of participation – that their opinion matters.*"

3.2.3 Testimony by children

The 57 respondents who indicated that children are allowed to give testimony during family law proceedings in their jurisdiction were asked several questions regarding how this is done and their responses are presented in Table 3.4. Almost one-half of participants (46 percent) stated that legislation in their jurisdiction has altered the rules of evidence to facilitate testimony by children. A majority of respondents (61.2 percent) indicated that their legislation includes provisions to aid children in giving testimony such as the use of screens, closed-circuit television, videotaped testimony and support persons.

Relatively few respondents (19 percent) indicated that their jurisdiction has child-friendly courtrooms for use in family law proceedings. Just over one-third of participants (39.6 percent) stated that their jurisdiction provides court preparation for children. Almost all respondents (97.8 percent) indicated that children who are testifying can be accompanied by a professional, lawyer, or other adult other than their parents while giving testimony.

Table 3.4 Percentage of respondents reporting on various questions regarding children giving testimony in their jurisdiction

Question	Yes		No		Total	
	n	%	n	%	n	%
Has your legislation altered the rules of evidence to facilitate testimony by children?	23	46.0	27	54.0	50	100.0
Does your legislation include provisions to aid children in giving testimony?	30	61.2	19	38.8	49	100.0
Does your jurisdiction have child-friendly courtrooms for use in family court proceedings?	8	19.0	34	81.0	42	100.0
Does your jurisdiction provide court preparation for children?	19	39.6	29	60.4	48	100.0
Can children be accompanied by a professional, a lawyer, or another adult (other than the parents)?	45	97.8	1	2.2	46	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N of respondents reporting that children can give testimony in their jurisdiction=57.

3.2.4 Submissions by children

Respondents who indicated that their jurisdiction allows submissions by children (n=49) were asked how this is accomplished. Their responses are shown in Table 3.5. The substantial majority of participants (83.3 percent) stated that their jurisdiction allows admission of documents authored by children. Three-quarters of respondents (75 percent) indicated that their jurisdiction allows admission of videotaped interviews with children made by professionals. Almost two-thirds of respondents (61.1 percent) also stated that their jurisdiction allows submission of videotapes made by parents and children. Few respondents (15.6 percent), however, stated that their jurisdiction has a standardized tool for recording children’s wishes.

Table 3.5 Percentage of respondents reporting on various questions regarding submissions by children in family law proceedings in their jurisdiction

Question	Yes		No		Total	
	n	%	n	%	n	%
Does your jurisdiction allow admission of documents authored by children?	35	83.3	7	16.7	42	100.0
Does your jurisdiction allow admission of videotaped interviews by professionals with children?	30	75.0	10	25.0	40	100.0
Does your jurisdiction allow admission of videotapes made by parents and children?	22	61.1	14	38.9	36	100.0
Does your jurisdiction have a standardized tool for recording children’s wishes?	7	15.6	38	84.4	45	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N of respondents reporting that submissions by children are allowed in their jurisdiction=49.

3.2.5 Testimony by professionals and other adults

The 79 respondents who indicated that professionals and other adults are allowed to give testimony regarding a child’s wishes in their jurisdiction were asked a series of questions about how this is done, and their responses are presented in Table 3.6. The substantial majority of participants (83.6 percent) indicated that legislation in their jurisdiction allows exceptions to the hearsay rule for admissibility of children’s out-of-court statements. Similarly, most participants (83.3 percent) indicated that their court allows hearsay evidence from parents. Few respondents (16.9 percent), however, stated that hearsay evidence from parents is given as much weight as hearsay evidence from expert witnesses.

Table 3.6 Percentage of respondents reporting on various questions regarding professionals and other adults giving testimony about children’s wishes in their jurisdiction

Question	Yes		No		Total	
	n	%	n	%	n	%
Does your legislation allow exceptions to the hearsay rule of admissibility of children's out-of-court statements?	56	83.6	11	16.4	67	100.0
Does your court allow hearsay evidence from parents?	60	83.3	12	16.7	72	100.0
Is hearsay evidence from parents given as much weight as hearsay evidence from expert witnesses?	11	16.9	54	83.1	65	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N of respondents reporting that professionals and other adults can give testimony regarding children's wishes in their jurisdiction=79.

3.2.6 Assessment/evaluation reports

All respondents indicated that assessment or evaluation reports are used in their jurisdiction. These respondents were asked a number of questions regarding how assessment reports are used, and their responses are presented in Table 3.7. Almost all participants (98.8 percent) indicated that courts in their jurisdiction can order an assessment. Only one-fifth of respondents (20 percent) stated that the government always pays for assessment reports in family law cases. However, a substantially larger proportion of respondents (90.7 percent) indicated that the government pays for assessment reports in some cases.

When asked if parents are provided with copies of assessment reports, almost all participants (92.5 percent) reported that they are. Slightly over one-half of respondents (54.5 percent) indicated that there are measures in their jurisdiction to restrict a child’s access to assessment reports.

Table 3.7 Percentage of respondents reporting on various questions regarding the use of assessment reports in their jurisdiction

Question	Yes		No		Total	
	n	%	n	%	n	%
Can the court order an assessment in your jurisdiction?	80	98.8	1	1.2	81	100.0
Does the government always pay for assessment reports in family law proceedings?	16	20.0	64	80.0	80	100.0
Does the government pay for assessment reports in some family law proceedings?	68	90.7	7	9.3	75	100.0
Are parents provided with copies of assessment reports?	74	92.5	6	7.5	80	100.0
Are there measures to restrict a child’s access to the reports?	42	54.5	35	45.5	77	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.
 Total N of respondents reporting that assessment reports are used in their jurisdiction=82.

3.2.7 Mediation

A total of 39 respondents stated that mediation with a child and parents is used in their jurisdiction. These respondents were asked a number of questions regarding the use of mediation, and their responses are shown in Table 3.8. When asked if the mediator receives specialized training in interviewing children, the substantial majority of respondents stated that they do, either often (57.1 percent) or sometimes (34.3 percent). Only 5.7 percent of participants indicated that the mediator never meets with the child without his or her parents present; the majority of respondents (54.3 percent) said that this happens at least sometimes in their jurisdiction. Almost three-quarters of respondents stated that the child meets with the mediator on more than one occasion at least sometimes (71.4 percent); 17.1 percent of respondents said that this happens often.

When asked if the mediator meets with the child and parents together, most respondents indicated that this happens either often (34.3 percent) or sometimes (60 percent). Equal proportions of participants (42.2 percent) stated that the child can decide what information is shared with his or her parents either often or sometimes. Finally, only one participant stated that the government never pays for mediation in family law proceedings in their jurisdiction; 44.4 percent reported that this happens often and 52.8 percent indicated that this occurs sometimes.

Table 3.8 Percentage of respondents reporting on various questions regarding mediation involving the child and parents in their jurisdiction

Question	Often		Sometimes		Never		Total	
	n	%	n	%	n	%	n	%
Does the mediator receive specialized training in interviewing children?	20	57.1	12	34.3	3	8.6	35	100.0
Does the child meet with the mediator without his/her parents being present?	14	40.0	19	54.3	2	5.7	35	100.0
Does the child meet with the mediator more than once?	6	17.1	25	71.4	4	11.4	35	100.0
Does the mediator meet with the child and parents together?	12	34.3	21	60.0	2	5.7	35	100.0
Can the child decide what information is shared with the parents?	14	42.4	14	42.4	5	15.2	33	100.0
Does the government pay for mediation in family law proceedings?	16	44.4	19	52.8	1	2.8	36	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N of respondents reporting that mediation involving the child and parents is used in their jurisdiction=39.

3.2.8 Legal representation for children

The 77 participants who indicated that legal representation for children is available in their jurisdiction were asked several questions regarding how this is done, and their responses are presented in Table 3.9. Almost one-third of respondents (29.4 percent) stated that the lawyer never acts as a friend of the court (*amicus curiae*) in their jurisdiction. However, most participants indicated that the lawyer acts as a best interests guardian (*guardian ad litem*) either often (32.4 percent) or sometimes (43.7 percent). Most respondents also stated that the lawyer acts as a traditional advocate either often or sometimes (84.3 percent).

Only one respondent stated that the government never pays for legal representation for the child; a majority of respondents said that this happens often (54.1 percent). Three-quarters (76.1 percent) of respondents said that lawyers acting on behalf of children receive specialized training either often or sometimes. When asked if the child’s lawyer can advocate for a position contrary to the child’s wishes, the majority of respondents (63.6 percent) said that this occurs sometimes. Finally, when asked if the lawyer can disclose information from the child if it is in the child’s best interests to do so, 81 percent of respondents said this occurs often or sometimes.

Table 3.9 Percentage of respondents reporting on various questions regarding legal representation for children in their jurisdiction

Question	Often		Sometimes		Never		Total	
	n	%	n	%	n	%	n	%
Does the lawyer act as friend of the court (<i>amicus curiae</i>)?	13	19.1	35	51.5	20	29.4	68	100.0
Does the lawyer act as a best interests guardian (<i>guardian ad litem</i>)?	23	32.4	31	43.7	17	23.9	71	100.0
Does the lawyer act as a traditional advocate?	28	40.0	31	44.3	11	15.7	70	100.0
Does the government pay for legal representation for the child?	40	54.1	33	44.6	1	1.4	74	100.0
Do counsel acting on behalf of children receive specialized training?	30	42.3	24	33.8	17	23.9	71	100.0
Can the lawyer advocate for a position contrary to the child's wishes?	14	21.2	42	63.6	10	15.2	66	100.0
Can the lawyer disclose information from the child if it is in the child's best interests to do so?	17	27.0	34	54.0	12	19.0	63	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N of respondents reporting that legal representation for children is available in their jurisdiction=77.

3.2.9 Judicial interviews with children

A total of 61 respondents stated that judges in their jurisdiction conduct interviews with children. Table 3.10 presents participants' answers to a number of questions regarding this mechanism for hearing the voice of the child. The majority of respondents (56.6 percent) indicated that judges do not receive specialized training in interviewing children in their jurisdiction; only 5.7 percent said that this occurs often. Almost two-thirds of participants (64.8 percent) stated that judges never conduct interviews with children in open court. Almost all respondents (96.3 percent) said that judges conduct interviews with children in chambers often or sometimes. Over three-quarters of participants (77.8 percent) indicated that the parents are never present during a judicial interview.

Equal proportions of respondents (47.1 percent) stated that the child's lawyer, if appointed, is present during a judicial interview either often or sometimes. One-third of participants (33.3 percent) stated that a mental health professional is never present during a judicial interview in their jurisdiction; almost one-half (49 percent) said that this occurs sometimes.

Table 3.10 Percentage of respondents reporting on various questions regarding judicial interviews with children in their jurisdiction

Question	Often		Sometimes		Never		Total	
	n	%	n	%	n	%	n	%
Do judges receive specialized training in interviewing children?	3	5.7	20	37.7	30	56.6	53	100.0
Do judges conduct the interview in open court?	4	7.4	15	27.8	35	64.8	54	100.0
Do judges conduct the interview in chambers?	25	46.3	27	50.0	2	3.7	54	100.0
Are the child's parents present during the interview?	0	0.0	12	22.2	42	77.8	54	100.0
If applicable, is the child's lawyer present during the interview?	24	47.1	24	47.1	3	5.9	51	100.0
Is a mental health professional present during the interview?	9	17.6	25	49.0	17	33.3	51	100.0
Is a record kept of the interview?	25	51.0	19	38.8	5	10.2	49	100.0
Do the parents have a right to be informed about the contents of the interview?	27	52.9	19	37.3	5	9.8	51	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

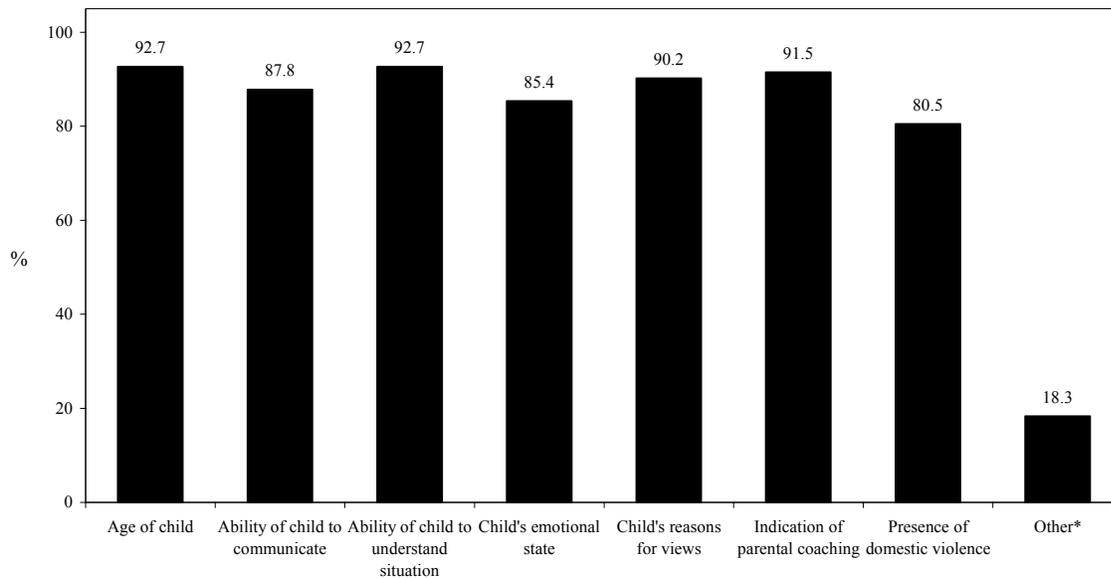
Total N of respondents reporting that judicial interviews with children are used in their jurisdiction=61.

The substantial majority of respondents said that a record of a judicial interview with a child is kept either often (51 percent) or sometimes (38.8 percent). Finally, when asked if parents have a right to be informed about the contents of a judicial interview, the majority of participants said often (52.9 percent) or sometimes (37.3 percent).

3.2.10 Factors considered when deciding how much weight to give to a child's views

Respondents were asked whether a number of different factors should be considered when deciding how much weight should be given to a child's views, and their responses are presented in Figure 3.3. All factors were considered important by the substantial majority of respondents. Factors rated as important by the greatest number of respondents were the age of the child (92.7 percent), the ability of the child to understand the situation (92.7 percent), an indication of parental coaching/manipulation/alienation (91.5 percent), and the child's reasons for his or her views (90.2 percent). A factor rated as important by a somewhat smaller portion of the respondents, but still a majority, was the presence of domestic violence (80.5 percent).

Figure 3.3 Proportion of respondents reporting that various factors are important when deciding what weight should be given to a child's views



Source of data: Survey on the Voice of the Child in Family Law Proceedings.
Total N=82.

* Examples of "other" factors include personality, individual needs, interests, abilities and disabilities, maturity of child, and cultural/linguistic factors.

Participants were asked to list any other factors that they thought should be considered when deciding how much weight to place on a child's views, and 15 respondents offered 18 comments. The most common responses were the personality, individual needs, interests, abilities, and disabilities of the child (n=4), the maturity of the child (n=3), and how strongly the child feels about his or her views (n=3).

3.2.11 Weighing children's views at various ages

Participants were asked how much weight should be given to the views of a child at various ages, and their responses are presented in Table 3.11. As might be expected, participants thought that the amount of weight that should be given to a child's views should increase with increasing age. Almost one-third of respondents (31.2 percent) thought that no weight should be given to the views of a child under six years of age. For children from 10 to 13 years of age, almost three-quarters of participants (71.4 percent) thought that a lot of weight should be given to their views; for children 14 to 15 years of age and 16 years of age and older, this proportion increased to 96.1 percent and 98.7 percent, respectively.

Table 3.11 Respondents’ ratings of how much weight should be given to the wishes of children at various ages

Child’s age	None		A little		A lot		Total	
	n	%	n	%	n	%	n	%
Under 6 years	24	31.2	45	58.4	8	10.4	77	100.0
6 to 9 years	7	9.1	54	70.1	16	20.8	77	100.0
10 to 13 years	0	0.0	22	28.6	55	71.4	77	100.0
14 to 15 years	0	0.0	3	3.9	74	96.1	77	100.0
16 years and older	0	0.0	1	1.3	76	98.7	77	100.0

Source of data: Survey on the Voice of the Child in Family Law Proceedings.
Total N=82.

3.2.12 Opinions regarding children’s participation in family law proceedings

Table 3.12 presents respondents’ opinions regarding various aspects of children’s participation in family law proceedings by profession of respondents and the total sample. When asked if children’s participation in family law proceedings that affect them should be mandatory, only 10.7 percent of judges/justices, 22.2 percent of lawyers, and 23.1 percent of other professionals thought that it should. When asked to give reasons for their answer, 65 respondents provided 85 comments. The most common comments were that some children may not want to be involved and this should be respected (n=35), it depends on the circumstances (n=14), it is not appropriate for every child (n=7), and that participation may be damaging to the child (n=6).

Most respondents in all professional groups thought that information that children provide regarding their wishes should be made available to their parents. Non-legal professionals were most likely to agree with this statement (81.8 percent), while judges were somewhat less likely to agree with it (65.2 percent). Participants were asked to provide reasons for their views, and 69 respondents provided 97 comments. The most frequent comments were parents should be told of the child’s basic wishes, but they don’t need to be told the details (n=24), informing the parents may place the child in a difficult situation (n=11), and the process has to be transparent (n=11). Examples of comments made by respondents were:

It needs to be framed in a way which does not cause significant alienation but assists parents in being better parents [by putting] structures in place that possibly assist adults in the child’s life to work together in the future for the benefit of the child.

Due process (fairness) requires this, and parents may shed light on significance of child’s wishes/views. But [we] need to protect child from inappropriate pressure.

Table 3.12 Percentage of respondents who agree with various statements regarding children’s participation in family law proceedings by profession and total sample

Statement	Lawyers		Judges/justices		Other ¹		Total sample	
	n	%	n	%	n	%	n	%
Should children’s participation in family law proceedings that affect them be mandatory? ²	8	22.2	3	10.7	3	23.1	14	17.5
Should the information that children provide regarding their wishes be made available to their parents? ³	26	78.8	15	65.2	9	81.8	52	74.3
Should the information that children provide regarding their wishes be shared in the courtroom? ⁴	11	60.9	7	70.0	6	60.0	28	63.6

Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N=82; Missing cases on profession=3.

¹Other includes academics/independent researchers, social workers, state advocate and court registrar.

²Missing cases on statement=2.

³Missing cases on statement=12.

⁴Missing cases on statement=12. A total of 26 respondents stated that family law proceedings are closed to the public in their jurisdiction. These cases are excluded.

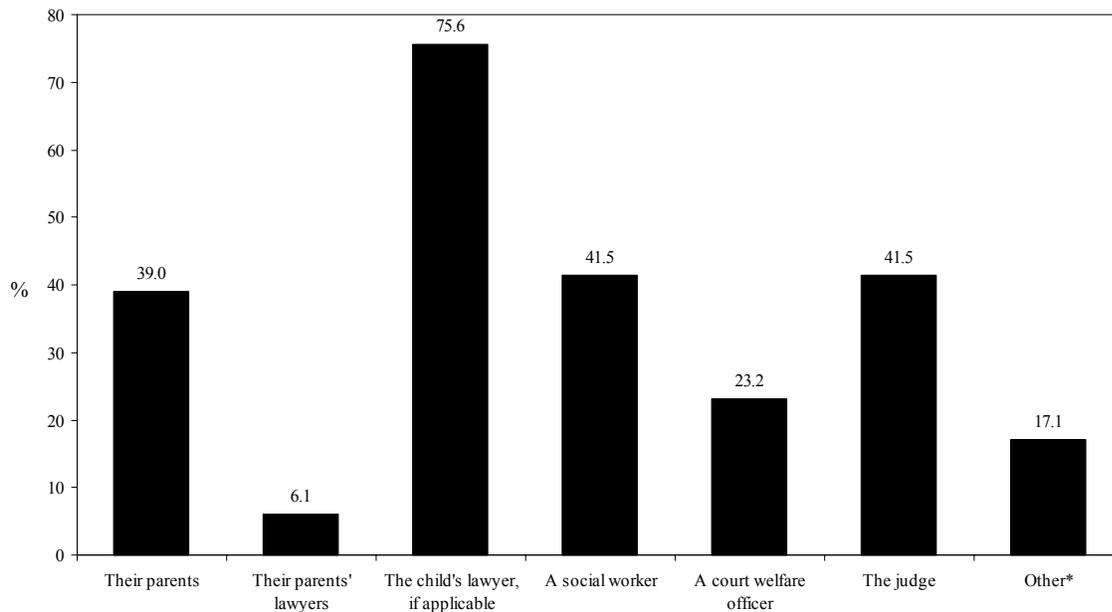
When the respondents who indicated that family law proceedings in their jurisdiction are open to the public were asked if information regarding children’s wishes should be shared in the courtroom, almost two-thirds of participants (63.6 percent) thought that they should. Judges/justices were most likely to think that this information should be shared in the courtroom (70 percent). When asked to provide reasons for their opinion, 40 respondents provided 52 comments. The most common comments were it is part of evidence (n=8), only if the child has given consent (n=6), and keep the child/family identity protected (n=5). One respondent said “*It is an essential part of the case and justice must be seen to be done.*” Another respondent commented “*Since children are not parties they have no control over the process, how the information will be ‘translated’ or how it will be used.*” One respondent was strongly opposed, and stated “*While I struggle with the sharing of the child’s wishes with her/his parents, it is clear to me that the child’s wishes have no place to be shared to the public.*”

3.2.13 Informing children of the court’s decisions

Figure 3.4 presents participants’ opinions regarding who should be responsible for informing children of the court’s decisions in matters that affect them. Three-quarters of respondents (75.6 percent) thought that the child’s lawyer should be responsible for informing them, if they have a lawyer. Considerable fewer respondents thought that the task of informing the children should fall to the judge (41.5 percent), a social worker (41.5 percent), their parents (39 percent), or a court welfare officer (23.2 percent). Very few participants thought that children should be informed of the court’s decisions by their parents’ lawyers (6.1 percent). When asked if any

other person should be responsible for informing children, 14 respondents provided 16 comments. The most common comment was that it depends on the circumstances (n=10), followed by whomever is the child's support person (n=6).

Figure 3.4 Proportion of respondents who think various people should be responsible for informing the child of the court's decisions in matters affecting them



Source of data: Survey on the Voice of the Child in Family Law Proceedings.

Total N=82.

* Examples of "other" factors include it depends on the circumstances and whomever is the child's support person.

3.2.14 Additional comments

Respondents were asked if their jurisdiction has any special programs for hearing the voice of the child, and 42 respondents (51.2 percent) stated that they do. These respondents were asked to describe these programs and provided 72 comments. The most common comments were that lawyers are appointed to represent children and youth (n=21), assessments and reports are used (n=15), and independent third parties are appointed by the court (n=5).

Respondents were also asked if their jurisdiction has encountered any problems in implementing programs or mechanisms for hearing the voice of the child, and 35 respondents (52.7 percent) indicated that they have. These participants were asked to describe the nature of these problems, and 34 participants made 59 comments. The most frequently provided comments were that there are insufficient resources and money for programs such as attorneys for children and psychological evaluations (n=16), there is role confusion for children's lawyers (n=5), there is no consistency in how the voice of the child is heard (n=4), and there are no standards/guidelines for interviewing the child (n=4).

When asked what solutions have been identified for dealing with these problems, 24 respondents made 38 comments. The most common comments provided were that all parties involved on a professional level in working with children should have the appropriate training to do so,

including the judiciary (n=8), more funding was provided (n=6), and guidelines for lawyers representing children were adopted (n=4).

Finally, participants were asked if they had any additional thoughts about how best to hear the voice of the child in family law proceedings, and 30 respondents offered 65 comments. The most frequently provided comments were that an interdisciplinary/interagency approach is needed (n=7), more lawyers for children who are properly trained are needed (n=7), interviews and testimony should always be recorded (n=3), and proper guidelines for children's representation and programs for appointment of properly trained counsel are needed (n=3).

An example of a comment regarding the interdisciplinary/interagency approach is:

Ideally a social worker/mental health professional should be involved. The child needs to have more than a couple of meetings with this person. The mental health professional should have special expertise in working with children during separation. Information about the child should be shared outside court, at least as a start. If the child wishes to share their views with the parents, the mental health professional should first coach the child and then support them during this process. A team process must be used – the mental health professional should have equal status with the legal professionals on the team. An interdisciplinary collaborative process is one example of how a team approach can assist in having children have a voice (not a choice).

One respondent cautioned that “Children being directly involved in Court proceedings has a high risk of damaging them,” and further commented that:

Children often feel responsible for the breakdown of their family. They should not be made to feel responsible for the outcome of litigation. They do not realize how permanent the record of their involvement is. In my view independent representation of children is good so as to present all relevant objective material. Assessment reports by experts within and outside the Court can assist parents to understand their children's dilemma.

One respondent felt strongly about legal representation for children and commented:

Children need their own lawyer. The role of this lawyer might be to advocate on behalf of the child, to offer advice and representation to the child, to act as a friend of the Court (to offer an opinion to the Court) and simply to offer the child's view. Ideally the child's lawyer would combine all these functions.

Finally, some respondents commented on the overall process for hearing the voice of the child in family law proceedings. Examples were:

It is not just about hearing the wishes/feelings of a child or the evidence of other facts which a child can give: it is about participation of the child in proceedings and respecting the child's right to participate as he/she wishes – even if it means interviewing the judge to get an explanation of the court's decision. Children are not goods: they are people.

Hearing the child's views is a process – not something achieved by a single event (or interview) and best achieved by a variety of routes – including the reported opinions of the parents, the child's lawyer (via submission), an accredited Court appointed independent assessor, and sometimes a conversation with the judge. Sometimes evidence from a teacher or member of extended family may be helpful. Involvement of the child is not only to gather information. It is also important in establishing rapport between the child and the process, to lend some understanding of what is coming in the child's life.

4.0 THE WORKSHOP

The workshop was intended to gain in-depth information from an international group of professionals attending the conference regarding the mechanisms for ensuring that the voice of the child is heard in their jurisdictions, as well as allowing for a discussion regarding best practices and controversial issues in this area. The workshop was conducted during a 90-minute session, which began with a brief introduction by Professor Janet Walker of the Institute for Health and Society at Newcastle University. Professor Walker explained the purpose of the project and the background to the issue. The workshop was led by two facilitators (Professor Nicolas Bala and Marie Gordon, Q.C.) and three recorders were available to take notes on the discussion. A list of questions was prepared by CRILF to assist the facilitators in guiding the discussion (see Appendix B).

The workshop participants were first asked their country of origin, as well as their profession. A show of hands revealed that approximately 60 percent of the attendees were Canadian, 20 percent Australian, 5 percent from the United Kingdom, and 5 percent from the United States. The remaining 10 percent were from other countries, including Japan, Israel, China, Portugal, Sri Lanka, India, Malta, and Nigeria. Roughly 40 percent of the participants were lawyers, with nearly one-half of them having experience as child representatives. Approximately one-quarter were judges, with the remainder being educators, researchers, government/policy representatives, students, or social work/mental health professionals. Prior to the start of the discussion, a question was asked regarding what type of law the workshop was to focus on. It was determined among the facilitators and the participants that the workshop would focus on private law (e.g., separation, divorce, etc.) and not child welfare proceedings.

4.1 *Workshop results*

Participation of children in family law proceedings

Workshop participants were first asked whether they thought children should participate in family law proceedings. All of the participants agreed that children should participate in one form or another. Participants were then asked whether their jurisdiction does a good job of hearing the voices of children, with only one-third indicating the affirmative. A lawyer from Canada observed that the extent to which children's voices are heard varies even *within* jurisdictions, explaining that while courts in urban areas do well in this regard, rural communities do not have the resources to do so.

Age of participation

Next, the discussion focused on whether a minimum age should be stipulated for children to participate in the family law process. Participants provided examples from their own jurisdictions regarding whether the age of children is a factor in their voice being heard. Some participants explained that in their jurisdictions, children must be of a minimum age before they can come to court to express their views, with ages ranging from 6 to 15 years of age; however, in most of these places, younger children could be heard by a social worker or in mediation. In other cases, a minimum age was stipulated in statutes, but participants noted that the judge would

use discretion with regard to younger children. In many jurisdictions, participants stated that there was no stipulated age, but rather, judges determined a child's participation on a case-by-case basis, considering the views of parents/lawyers and the age/maturity of the child.

A number of participants stated that a judge would interview a younger child in the presence of older siblings, who could support the younger child. One respondent from England, echoed by a number of others, noted that you cannot assess the ability of children to express their wishes and feelings by a "crude arithmetical line at an age," stressing that there are different ways that children can communicate their perspectives. Many agreed that the child's developmental maturity should be the deciding factor. Participants in those jurisdictions where there is an established age for participation stated that their courts are currently looking at abandoning an age limit in favour of an individualized assessment of capacity. At the conclusion of the discussion, the question was posed as to how many favoured a statutory age established presumptively. Respondents unanimously agreed that there should not be a statutory age, but rather, a child-focused, child development approach should be used to make the decision as to whether the child participates in court proceedings and/or a judicial consultation.

The judicial interview

The workshop participants were then asked a number of questions specifically regarding judges interviewing children for the purposes of family law proceedings. As previously stated, participants unanimously agreed that children should participate in the family law process in one way or another. However, when asked whether a judge should be permitted to interview children, a small number expressed the view that they should not. Some also stated that it depends on the meaning of "interview." For the purpose of the workshop, it was established that an "interview" referred to "a meeting in a non-witness setting," often (but not necessarily) the judge's chambers.

The participants who did not favour a judge interviewing children expressed concern over whether judges have sufficient training in interviewing children, stating that there are few safeguards in place ensuring that the interviews are done appropriately. The participants further stated that interviewing children should not be the role of the judge, but rather that other professionals with training and expertise in this area (e.g., social workers) are better suited to this role.

A majority of the participants agreed that judges should be able to interview children. These participants were asked when and how judicial interviews should be conducted. One judge from Australia explained that it was their practice to only conduct the interview with the consent of both parents. The interview is conducted in an informal setting, in the presence of other parties supporting the child – the child's lawyer, a psychologist, etc. A social worker collects the information from the interview, and once the child exits, provides the report to the court. A social worker from Canada stressed that the interview must be conducted only after the child has been properly prepared and understands the situation; however, proper preparation, the participant explained, depends heavily on the resources available (e.g., a child's lawyer or social worker). A judge from Canada expanded on this comment, stating that a judicial interview should not be conducted simply because there is a lack of resources to hear the child's voice any other way. It seemed that there is considerable variation across Canada in the extent to which

judicial interviewing takes place, with judges from Quebec having the most experience with this practice.

Some participants stated that context and the status of the child must be factored in when considering a judicial interview. A lawyer from Canada suggested that it would be best if the judge builds rapport with a child over three to four sessions rather than meeting with a child immediately prior to the decision. When asked, in their experience, how many interviews a judge typically conducts with one child or sibling group, the majority who answered stated that only one interview was conducted.

Finally, one participant from Australia suggested that the issue of judicial interviews relates to a greater debate over the court's approach to family law cases. The participant suggested moving away from an adversarial approach to a more inquisitorial style, where judges pursue more information to make better decisions for children and families. The participant further stated that in family law cases, interviewing children is an important part of this process.

Confidentiality of the child interview

Participants were asked to consider whether the information that children provide during a judge's interview/discussion should be made available to the parents. Roughly one-third of the group indicated that there should be no confidentiality, with an additional one-third indicating there should be partial confidentiality. A number of respondents pointed to the importance of building trust and rapport with the child, and that this relationship is jeopardized if the judge communicates information from the interview with the parents without the child's consent. One participant from Israel stated that it is important to give the child some control over what is divulged to the parent, and provide them with an open space to talk freely about their thoughts and feelings. A judge from Canada stated that to them, if a child requests confidentiality, it is granted.

Some concerns were expressed with regard to judges keeping information provided by children confidential, one being that judges must remember that it is only the reality of the child that is communicated, and that other views must be factored into the decision. A judge from Australia expressed concern about judges making decisions using confidential information that is not divulged to the parties upon informing them of the decision. One participant suggested that a summary of the judge's discussion with the child be provided to the parents, respecting what the child has asked to be kept confidential. Many participants expressed that no clear "rule" can be applied regarding confidentiality of the information provided in a child interview, and that careful consideration must be given on a case-by-case basis regarding the decision to divulge to parents what has been communicated. Many felt that, in most cases, the children are comfortable with their parents being informed.

Informing children of decisions

The issue of whose responsibility it is to inform children of the judge's decision was also discussed. Approximately one-quarter of the group indicated that it is the judges' responsibility. One judge from Canada expressed that if children are involved in the process from the start, it should be the responsibility of the judge to inform them; however, it becomes more difficult if children have not been involved, as rapport has not been built between them and the judge.

Another judge from Canada felt that children are more accepting of the decision if it comes from the judge, believing that it helps with the transition they are about to experience. It was further suggested that the judge should tell the children in a sensitive, age appropriate fashion, which the participant also felt points to the importance of training judges. Finally, one participant, a researcher from Canada, expressed the view that children should be *asked* about how they would like to learn of the decision in order to ensure they are heard in a manner that is most suitable for children.

Mechanisms to hear the voice of the child

With regard to the mechanisms that may be used to hear the voice of the child, the discussion focused primarily on video evidence in family cases about a child's views. The workshop participants were asked whether they had previous experience where videotapes have been used to communicate the child's voice, with approximately one-third of the group indicating they had. However, only a fraction of these participants stated that the video was actually viewed by the judge and included as evidence. The use of video was generally regarded as questionable, particularly if it is the parents that provide it.

Doing no harm

The workshop also included a short discussion with regard to balancing the harm done by doing a judicial interview. One judge from Canada felt that more harm is being done if a rule is established that there will be "absolutely no interviews" of children by judges. The participant indicated that this is particularly important given decisions must be made in a timely manner, so as to minimize the uncertainty for the child. For example, if a child is involved in a custody dispute for a number of years, would doing the interview cause more harm? Another judge felt that a child of any age *must* be heard if he/she requests to be, as a child's request to see the judge is often not for evidentiary purposes, but rather to ask questions and express their feelings and experiences. This judge further explained that harm is minimized and a child is more accepting of the decision if the judge talks to the child, listens, and informs the child of the decision – even if it is not what the child wanted.

4.2 *Workshop feedback*

Workshop participants were provided with a Workshop Feedback Form which they were requested to complete and leave on their chair following the session (see Appendix C). The form asked them the extent to which they agreed with a number of statements regarding the organization and format of the workshop. Table 4.1 presents respondents' ratings of these statements on a five-point scale ranging from "Strongly Disagree" to "Strongly Agree."

Table 4.1 Respondents' ratings of the extent to which they agreed with several statements regarding the workshop

Statement	Strongly disagree		Disagree		Neither agree nor disagree		Agree		Strongly agree		Missing		Total	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
The workshop was well organized.	0	0.0	0	0.0	3	10.3	12	41.4	13	44.8	1	3.4	29	100.0
The Chair and Facilitators were knowledgeable about the topic.	0	0.0	0	0.0	1	3.4	5	17.2	21	72.4	2	6.9	29	100.0
I had an opportunity to participate to the extent that I wanted.	0	0.0	0	0.0	5	17.2	10	34.5	14	48.3	0	0.0	29	100.0
I found the workshop informative.	0	0.0	2	6.9	1	3.4	11	37.9	15	51.7	0	0.0	29	100.0
The time allotted for the workshop was appropriate.	5	17.2	9	31.0	2	6.9	10	34.5	2	6.9	1	3.4	29	100.0
The room where the workshop was held was appropriate.	0	0.0	4	13.8	4	13.8	11	37.9	9	31.0	1	3.4	29	100.0

Source of data: Workshop Feedback Form.
Total N=29.

When asked if they thought the workshop was well organized, none of the participants disagreed with the statement and almost all (86.2 percent) agreed or strongly agreed. Only three respondents stated that they neither agreed nor disagreed with the statement. The next question asked respondents if they thought that the Chair and Facilitators were knowledgeable about the topic. Once again, no participants disagreed with this statement, and almost all strongly agreed (72.4 percent) or agreed (17.2 percent) that the Chair and Facilitators were knowledgeable.

Respondents were asked if they had an opportunity to participate in the workshop to the extent that they wanted, and the substantial majority (82.8 percent) agreed or strongly agreed with this statement. Five participants (17.2 percent) neither agreed nor disagreed with this statement and no respondents disagreed with it. When asked if they found the workshop informative, once again the response was overwhelmingly positive, with 89.6 percent of respondents either agreeing or strongly agreeing with this statement. Two participants disagreed with this statement and one respondent neither agreed nor disagreed.

The only significant concerns about the workshop related to the time allotted and the room in which the workshop was held. When asked if the time allotted for the workshop was appropriate, almost one-half of respondents (48.2 percent) either disagreed or strongly disagreed, suggesting that more time was required, while only 41.4 percent of participants agreed or strongly agreed that the time allotted was appropriate. Respondents were also asked if the room in which the workshop was held was appropriate. Over two-thirds of participants (68.9 percent) agreed or strongly agreed with this statement; however, 13.8 percent disagreed and an additional 13.8 percent neither agreed nor disagreed.

When asked if they had any other comments they wished to make regarding the workshop, 14 participants provided 23 comments. The most common comments were that the workshop was very useful/excellent work (n=6) and that there was not enough time (n=6). Other comments provided by more than one respondent were that a circular layout would have been preferable (n=3) and that the questions posed lacked clarity and nuance (n=2).

5.0 SUMMARY AND CONCLUSIONS

This chapter presents a summary of the findings from the survey and the workshop by topic area. It concludes with a discussion of the findings regarding practices and mechanisms for hearing the voice of the child in family law proceedings.

5.1 *Summary of survey and workshop findings*

5.1.1 Demographics of survey respondents and workshop participants

- Almost two-thirds of survey respondents were female.
- Over one-half of the survey respondents were from Canada, and over one-quarter were from Australia.
- Similarly, the majority of workshop participants were Canadian or Australian.
- Almost one-half of survey respondents were lawyers, and over one-quarter were judges/justices.
- On average, survey respondents had almost 20 years of experience in their profession.

5.1.2 Availability of mechanisms for hearing the voice of the child

- Almost all survey respondents agreed that children have the right to have their voice heard in family law proceedings that affect them, and all respondents reported that their jurisdiction has mechanisms for ensuring that the voice of the child is heard.
- All workshop participants agreed that children should participate in some form in family law proceedings.
- The most common mechanisms reported by survey respondents for hearing the voice of the child were: assessment or evaluation reports; legal representation for the child; and testimony by mental health professional/social worker who has interviewed the child.
- Mechanisms that were least frequently available were mandatory mediation involving the child and the parents and non-legal representation for the child.
- There were some differences reported by respondents from Canada and other countries regarding the extent to which mechanisms for hearing the voice of the child are used. For example, testimony in court by children and submissions by children are more likely to be used in Canada than in other countries. Judicial interviews with children and mediation with parents and children were more likely to occur in other countries than in Canada. There is, however, considerable variation across Canada in the extent to which judicial interviewing takes place, with more in Quebec.

5.1.3 Opinions on mechanisms for hearing the voice of the child

- Only one-third of workshop participants thought that their jurisdiction does a good job of hearing the voice of the child.
- The mechanisms for hearing the voice of the child that survey respondents were most likely to rate as good were: legal representation for the child; assessment or evaluation reports; and testimony by mental health professional/social worker.
- Mechanisms that survey respondents were least likely to rate as good were: testimony in court by child and submission by child.
- Lawyers and other professionals were considerably more supportive about written or video submissions by children and testimony by other adults such as parents or teachers than were judges.

5.1.4 Testimony by children

- Over two-thirds of survey respondents indicated that their jurisdiction allows children to give testimony during family law proceedings.
- Almost half of these survey respondents reported that legislation in their jurisdiction has altered the rules of evidence to facilitate testimony by children in family law cases.
- Almost two-thirds of survey respondents indicated that legislation in their jurisdiction includes provisions to aid children in giving testimony.
- Only one-fifth of survey respondents stated that their jurisdiction has child-friendly courtrooms, while just over one-third of respondents indicated that their jurisdiction provides court preparation for children.
- Almost all survey respondents indicated that children who are testifying can be accompanied by a support person other than their parents.

5.1.5 Submissions by children

- Almost two-thirds of survey respondents indicated that their jurisdiction allows written or video submissions by children and over four-fifths of these survey respondents stated that their jurisdiction allows admission of documents authored by children.
- Three-quarters of survey respondents indicated that their jurisdiction allow admission of videotaped interviews of children made by professionals, while almost two-thirds reported that their jurisdiction allows submission of videotapes made by parents and children.
- Workshop participants thought that the use of videotaped evidence was generally regarded as questionable, particularly if it is provided by the parents.

- Few survey respondents stated that their jurisdiction has a standardized tool for recording children's wishes.

5.1.6 Testimony by professionals and other adults

- Almost all survey respondents reported that professionals and other adults can give testimony regarding a child's wishes in their jurisdiction.
- Over four-fifths of survey respondents reported that legislation in their jurisdiction allows exceptions to the hearsay rule for admissibility of children's out-of-court statements.
- Most survey respondents reported that their courts allow hearsay evidence from parents; however few stated that hearsay evidence from parents is given as much weight as hearsay evidence from expert witnesses.

5.1.7 Assessment/evaluation reports

- All survey respondents indicated that assessment or evaluation reports are used in their jurisdictions, and almost all respondents indicated that courts in their jurisdiction can order an assessment.
- Only one-fifth of survey respondents stated that the government always pays for assessments reports; however a substantially larger proportion indicated that the government pays for assessment reports in some cases.
- Almost all survey respondents stated that parents are provided with copies of assessment reports, while slightly over one-half indicated that there are measures in their jurisdiction to restrict a child's access to reports.

5.1.8 Mediation

- Almost one-half of survey respondents reported that involvement of a child in the parent's mediation is used in their jurisdiction.
- The substantial majority of these respondents stated that the mediator receives specialized training in interviewing children either often or sometimes.
- Almost all survey respondents stated that when the mediator meets with the child, the parents are present.
- Survey respondents reported that the mediator usually meets with the child more than once, and also usually meets with the child and parents together.
- Most survey respondents reported that the child can decide what information is shared with the parents.

- Almost all survey respondents stated that the government pays for mediation in family law proceedings in at least some cases in their jurisdiction.

5.1.9 Legal representation for children

- Almost all survey respondents reported that legal representation for children is available in their jurisdiction.
- Over two-thirds of these survey respondents stated that the lawyer acts as a friend of the court sometimes or often, while over three-quarters stated that the lawyer acts as a best interests guardian sometimes or often. Over four-fifths stated that the lawyer acts as a traditional advocate sometimes or often.
- All but one respondent indicated that the government pays for legal representation for the child in at least some cases.
- Three-quarters of survey respondents stated that counsel acting on behalf of children receive specialized training either sometimes or often.
- Over four-fifths of survey respondents reported that the child's lawyer can advocate for a position contrary to the child's wishes, and can disclose information from the child if it is in the child's best interests to do so.

5.1.10 Judicial interviews with children

- Three-quarters of survey respondents reported that judges in their jurisdiction conduct interviews with children, and the majority of workshop participants agreed that judges should be able to interview children.
- Over one-half of the survey respondents stated that judges have no specialized training in interviewing children, and some workshop participants indicated that in their view interviewing children should be the responsibility of professionals with expertise and training in the area rather than judges.
- Almost two-thirds reported that judges never conduct the interview in open court, while almost all stated that the interview is conducted in chambers.
- Over three-quarters of survey respondents indicated that the child's parents are never present during the interview, while almost all stated that the child's lawyer, if appointed, is present during the interview. Two-thirds of survey respondents stated that a mental health professional is present during the interview at least sometimes.
- The substantial majority of survey respondents said that a record of a judicial interview with a child is kept either often or sometimes. A substantial majority of respondents also indicated that parents have a right to be informed about the contents of a judicial interview often or sometimes. However, in the workshop there was significant support for the view that judges should have the discretion about what to communicate to the parents;

while parents should know the gist of what the child said, they do not need a verbatim transcript.

5.1.11 Factors considered when deciding how much weight to give to a child's views

- The following factors were rated as important when deciding how much weight to give to a child's views by over four-fifths of survey respondents: age of child; ability of child to understand the situation; indication of parental coaching; child's reasons for views; ability of child to communicate; child's emotional state; and presence of domestic violence.
- As might be expected, survey respondents thought that the amount of weight that should be given to a child's views should increase with increasing age. For example, almost one-third of respondents thought that no weight should be given to the views of a child under 6 years of age, while almost all respondents thought that a lot of weight should be given to children 14 years of age and older.
- All workshop participants thought that there should not be a statutory age for children to participate in family law proceedings, but rather an individualized child-focused approach should be used to make the decision.

5.1.12 Opinions regarding children's participation in family law proceedings

- Fewer than one-fifth of survey respondents thought that children's participation in family law proceedings that affect them should be mandatory. Judges/justices were less likely to think children's participation should be mandatory than were lawyers and other professionals.
- Three-quarters of survey respondents thought that the information children provide regarding their wishes should be made available to their parents.
- Approximately one-third of workshop participants thought there should be no confidentiality, while one-third thought there should be partial confidentiality.
- Almost two-thirds of survey respondents thought that information children provide regarding their wishes should be shared in the courtroom.

5.1.13 Informing children of the court's decisions

- Three-quarters of survey respondents stated that the child's lawyer, if they have one, should be responsible for informing the child of the court's decisions in matters affecting them.
- Approximately two-fifths of survey respondents thought the task should fall to the child's parents, a social worker, or the judge.

- Approximately one-quarter of workshop participants thought judges should inform children of the court's decisions.
- Very few survey respondents thought that the parents' lawyers should be responsible for informing the child of the court's decision.

5.2 Conclusions

The purpose of this project was twofold: (1) to identify issues that have arisen, both across Canada and internationally, in attempts to allow the voice of the child to be heard in family law proceedings; and (2) to identify best practices in this area, which can be utilized for jurisdictions that are trying to enhance mechanisms for hearing the voice of the child, and in particular that might be implemented in Canada.

The following research questions were addressed in this project:

- (1) What mechanisms for hearing the voice of the child are used in Canada?
- (2) What mechanisms for hearing the voice of the child are used in other countries?
- (3) What factors are important to consider when deciding what weight should be given to children's views?
- (4) What problems have jurisdictions encountered in implementing mechanisms for hearing the voice of the child?
- (5) What solutions have been identified to deal with the problems?
- (6) Are there mechanisms used in other countries that could be implemented in Canada?

Conclusions relevant to each of these research questions are discussed below.

What mechanisms for hearing the voice of the child are used in Canada?

The research literature presented in Chapter 2.0 emphasized the importance of giving children a voice in family law proceedings that affect them. This view was also shared by all of the workshop participants at the 5th World Congress on Family Law and Children's Rights. It is apparent from the results of this study that Canada is making a wide variety of mechanisms available for doing so.

In Canada, a wide variety of mechanisms are used for hearing the voice of the child, although some mechanisms are more frequently used than others. All Canadian survey respondents reported the use of evaluation or assessment reports, and the vast majority reported that testimony by mental health professionals and legal representation for children are the most commonly used. Approximately two-thirds of Canadian respondents reported that written or video submissions by children and judicial interviews with children are mechanisms available to hear the voice of the child. Approximately one-half of Canadian respondents stated that

legislative provisions that children's views must be considered have been enacted in their jurisdiction. Few Canadian respondents reported that mandatory mediation involving the child and parents and non-legal representation for children are available. The surveys indicated that testimony by a child is also widely used in Canada, though some respondents may have been confused by this question, and may have been referring to testimony in other proceedings, such as criminal proceedings, as the literature suggests that, outside Quebec, direct testimony by children in family law proceedings is rare.

What mechanisms for hearing the voice of the child are used in other countries?

To put Canada in the global context, the mechanisms for hearing the voice of the child in other countries were also examined. Like Canada, the most common mechanisms reported by international respondents were the use of evaluation or assessment reports, legal representation for children, and testimony by mental health professionals. Unlike Canada, however, international respondents were considerably less likely to report the use of testimony by children; within Canada, there is considerable variation in the extent to which children are interviewed by a judge or testify in court, with these practices more common in Quebec.

International respondents were more likely to report the use of judicial interviews with children and legislative provisions that children's views must be considered. Similar to their Canadian counterparts, few international respondents, stated that mandatory mediation involving the child and parents and non-legal representation for children are available.

Like Canada, it is apparent that other countries are seriously addressing the need to hear children's views in family law matters that affect them, and a wide variety of mechanisms are available. In fact, the international respondents were more likely to report that the need to consider the voice of the child has been formally recognized in their legislation. It appears that in other countries, however, judicial interviews with children may be used in place of direct testimony by children in court, perhaps to minimize the negative effects of the court process on children.

International respondents were also more likely to report the availability of mediation involving the child and parents than were Canadian respondents. This finding was true for both voluntary and mandatory mediation, although mandatory mediation was less frequently reported.

What factors are important to consider when deciding what weight should be given to children's views?

Almost all of the survey respondents thought the following factors were important when deciding how much weight to give to a child's views: age of child; ability of child to understand the situation; indication of parental coaching; child's reasons for views; ability of child to communicate; child's emotional state; and presence of domestic violence. While all of these factors were rated as important, several respondents commented that decisions regarding how much weight to give to a child's views need to be considered on a case-by-case basis, taking into account characteristics of both the child and the circumstances surrounding the case.

Not surprisingly, when survey respondents were asked how much weight should be given to a child's wishes at various ages, the amount of weight increased with the age of the child. This

finding is consistent with the literature presented in Chapter 2.0, which found that there is a lack of consensus on how old children should be before they are consulted. All of the workshop participants agreed that there should not be a statutory age for children to participate in family law proceedings. Similar to the views expressed by the survey respondents, workshop participants thought that a child-focused approach should be used to make the decision.

What problems have jurisdictions encountered in implementing mechanisms for hearing the voice of the child, and what solutions have been identified to deal with the problems?

It is evident from this project and the research literature that children have a right to be heard in family law proceedings. What is less clear, however, is how best to implement this right. Undoubtedly the methodology employed will be affected by the child's age and preferences, the resources available, and the attitude of the judge, lawyers and parents.

When asked what problems their jurisdiction has encountered in implementing mechanisms for hearing the voice of the child, the most common comment made by survey respondents related to a lack of resources and financing for programs and assessments. Not surprisingly, when asked about solutions to this project, survey respondents commented that more funding is needed. Specifically, respondents identified a need for more funding for programs, evaluations and assessments, mediation, professional training, and legal aid.

Another problem that survey respondents commented on was the role confusion experienced by lawyers who are representing children. When asked specifically about this issue in the survey, over two-thirds of the respondents stated that the lawyer acts as a friend of the court sometimes or often, while over three-quarters stated that the lawyer acts as a best interests guardian sometimes or often. Over four-fifths stated that the lawyer acts as a traditional advocate sometimes or often. This suggests that there is ambiguity regarding the appropriate role that lawyers for children should adopt. When asked if lawyers can advocate for a position contrary to the child's wishes, 15 percent of the survey respondents said this never happens. In the literature review presented in Chapter 2.0, it was found that children were not looking for legal representation as such, but rather they wanted to tell their stories to those making decisions about them. Some survey respondents suggested that guidelines should be adopted for lawyers who are representing children.

There was considerable controversy, especially in the workshop, about judicial interviewing of children, including fundamental questions such as when and why this should be done, and more practical questions, such as whether the parents should be provided with a transcript of the interview. It is clear that there is a need for further dialogue and research on these questions, with the potential for jurisdictions where judicial interviewing is rarely done to learn from the experience in jurisdictions where it is more common.

Another common problem highlighted by survey respondents was the lack of professional training. Respondents specifically mentioned the need for training for lawyers representing children and for judges who are interviewing children. Respondents also commented on the need for policies and guidelines in a number of areas, including interviewing children, conducting assessments, and how best to ascertain children's wishes and what weight to give them.

Are there mechanisms used in other countries that could be implemented in Canada?

It was encouraging that the findings of this study indicate that the mechanisms used in Canada for hearing the voice of the child are, for the most part, the same as those used internationally. However, there would appear to be very significant variation across Canada in the use of methods of obtaining a child's participation, and Canadian respondents and workshop participants expressed real concerns about the lack of resources and training for professionals. It is apparent that professionals and policy makers in different Canadian jurisdictions could learn a great deal from one another.

There is a clear need for further research to determine the most effective methods for obtaining children's views. There are benefits and risks associated with the various mechanisms, and research evidence is needed to determine which mechanisms allow children to participate in family law proceedings but do not further damage the family relationships and children.

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APPENDIX A

**SURVEY ON THE VOICE OF THE CHILD
IN FAMILY LAW PROCEEDINGS**



SURVEY ON THE VOICE OF THE CHILD IN FAMILY LAW PROCEEDINGS

The National Judicial Institute and the Canadian Research Institute for Law and the Family are conducting this survey as part of a project funded by the Department of Justice Canada. The goal of the project is to learn how best to bring the voice of the child into family law proceedings. Article 12 of the U.N. Convention on the Rights of the Child gives children the right to be heard in proceedings affecting them. While over 200 countries have ratified the U.N. Convention on the Rights of the Child, there is considerable variation in the way in which they ensure that children's voices are shared with decision makers.

Everyone attending the 5th World Congress on Family Law and Children's Rights is invited to contribute to the project via this survey. We hope you will take the opportunity to tell us how hearing the voice of the child has been conceptualised and implemented in family law cases (i.e., separation and divorce) in your jurisdiction. The findings from the survey will be included in a final report that will be available to all the delegates.

We would appreciate your assistance in completing this survey. Please be assured that your anonymity will be maintained and that responses will not be attributed to individuals.

After completing the survey, please drop it off at the Registration Desk anytime during the conference (lower level of the Convention Centre). Alternatively, the survey may be mailed back to us at:

Canadian Research Institute for Law and the Family
One Executive Place
Suite 510, 1816 Crowchild Trail N.W.
Calgary, Alberta, Canada T2M 3Y7

Thank you for your cooperation in completing this survey.

SURVEY ON THE VOICE OF THE CHILD IN FAMILY LAW PROCEEDINGS

1.0 Demographic Information

- 1.1 In what city/town and country do you work? _____
- 1.2 What is your gender? Male Female
- 1.3 What is your primary profession?
- | | |
|-------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Lawyer | <input type="checkbox"/> Social Worker |
| <input type="checkbox"/> Judge/Justice | <input type="checkbox"/> Government Policy Analyst |
| <input type="checkbox"/> Psychiatrist/Psychologist | <input type="checkbox"/> Academic/Independent Researcher |
| <input type="checkbox"/> Other (please specify) _____ | |
- 1.4 How many years of experience do you have in this profession? _____ years

2.0 Hearing the Voice of the Child

The United Nations *Convention on the Rights of the Child* establishes the right of the child (everyone below the age of 18 years) to participate in decisions that affect his or her life.

- 2.1 To what extent do you agree that children should have the right to voice their views in family law proceedings that affect them?
- Strongly Agree Agree No Views Either Way Disagree Strongly Disagree
- 2.2 Does your jurisdiction have mechanisms to ensure that the voice of the child is heard?
- Yes No
- 2.3 What mechanisms, if any, are used *in your jurisdiction* to enable children to voice their views? (Please tick (✓) all that apply.)
- Testimony in court by child
 - Submission by child (e.g., letter, e-mail, standardized form/kit, videotape)
 - Testimony by mental health professional/social worker who has interviewed the child
 - Testimony by other adults who know the child (e.g., parent(s), teachers) regarding child's wishes
 - Assessment or evaluation report
 - Mandatory mediation involving the child and parents
 - Voluntary mediation involving the child and parents
 - Legal representation for child
 - Non-legal representation for child
 - Judicial interview with child
 - Legislative provision that children's views must be considered
 - Other (please specify) _____

2.4 Do you consider that allowing the child to give testimony in court is a good mechanism for his or her voice?

Yes No

Please give reasons for your answer. _____

2.5 Can children give testimony during family law proceedings in your jurisdiction? Yes No

If yes:

Yes No

- has your legislation altered the rules of evidence to facilitate testimony by children (e.g., competency inquiry modified)?
- does your legislation include provisions to aid children in giving testimony (e.g., screens, closed-circuit television, videotaped testimony, support person)?
- does your jurisdiction have child-friendly courtrooms for use in family court proceedings?
- does your jurisdiction provide court preparation for children?
- can children be accompanied by a professional, a lawyer, or another adult (other than the parents)?

2.6 Do you consider that a submission by a child (e.g., letter, e-mail, standardized form/kit, videotape) is a good mechanism for hearing the voice of the child? Yes No

Please give reasons for your answer. _____

2.7 Does your jurisdiction allow submissions by children in family law proceedings? Yes No

If yes:

Yes No

- does your jurisdiction allow admission of documents authored by children (e.g., letters, e-mails)?
- does your jurisdiction allow admission of videotaped interviews by professionals with children?
- does your jurisdiction allow admission of videotapes made by parents and children?
- does your jurisdiction have a standardized tool for recording children's wishes (e.g., form, kit)?

2.8 Do you consider that testimony by mental health professionals/social workers (i.e., hearsay statements) is a good mechanism for hearing the voice of the child? Yes No

Please give reasons for your answer. _____

2.9 Do you consider that testimony by other adults such as parents or teachers (i.e., hearsay statements) is a good mechanism for hearing the voice of the child? Yes No

Please give reasons for your answer. _____

2.10 Can professionals and other adults give testimony about a child's wishes during family law proceedings in your jurisdiction? Yes No

If yes:

	Yes	No
- does your legislation allow exceptions to the hearsay rule for admissibility of children's out-of-court statements?	<input type="checkbox"/>	<input type="checkbox"/>
- does your court allow hearsay evidence from parents?	<input type="checkbox"/>	<input type="checkbox"/>
- is hearsay evidence from parents given as much weight as hearsay evidence from expert witnesses?	<input type="checkbox"/>	<input type="checkbox"/>

2.11 Do you consider that assessment or evaluation reports prepared by mental health professionals/social workers are a good mechanism for hearing the voice of the child?
 Yes No

Please give reasons for your answer. _____

2.12 Are assessment reports used in your jurisdiction? Yes No

If yes:

	Yes	No
- can the court order an assessment in your jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>
- does the government always pay for assessment reports in family law proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
- does the government pay for assessment reports in some family law proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
- are parents provided with copies of assessment reports?	<input type="checkbox"/>	<input type="checkbox"/>
- are there measures to restrict a child's access to the reports?	<input type="checkbox"/>	<input type="checkbox"/>

2.13 Do you consider that mediation involving the child and parents is a good mechanism for hearing the voice of the child? Yes No

Please give reasons for your answer. _____

2.14 Is mediation involving the child and parents used in your jurisdiction? Yes No

If yes:

- | | Often | Sometimes | Never |
|--------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| - does the mediator receive specialized training in interviewing children? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - does the child meet with the mediator without his/her parents being present? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - does the child meet with the mediator more than once? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - does the mediator meet with the child and parents together? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - can the child decide what information is shared with the parents? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - does the government pay for mediation in family law proceedings? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

2.15 Do you consider that legal representation for the child is a good mechanism for hearing the voice of the child? Yes No

Please give reasons for your answer. _____

2.16 Is legal representation for children available in your jurisdiction? Yes No

If yes:

- | | Often | Sometimes | Never |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| - does the lawyer act as a friend of the court (<i>amicus curiae</i>)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - does the lawyer act as a best interests guardian (<i>Guardian ad litem</i>)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - does the lawyer act as a traditional advocate? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - does the government pay for legal representation for the child? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - do counsel acting on behalf of children receive specialized training? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - can the lawyer advocate for a position contrary to the child's wishes? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - can the lawyer disclose information from the child (i.e., breach solicitor/client privilege) if it is in the child's best interests to do so? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

2.17 Do you consider that a judicial interview is a good mechanism for hearing the voice of the child? Yes No

Please give reasons for your answer. _____

2.18 Do judges in your jurisdiction conduct interviews with children? Yes No

If yes:

- | | Often | Sometimes | Never |
|------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
| - do they receive specialized training in interviewing children? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| - do they conduct the interview in open court? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

	Often	Sometimes	Never
- do they conduct the interview in chambers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- are the child's parents present during the interview?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- if applicable, is the child's lawyer present during the interview?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- is a mental health professional present?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- is a record kept of the interview?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- do the parents have a right to be informed about the contents of the interview?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.19 Which of the following factors do you think are important when deciding what weight should be given to the child's views? (Please tick (✓) all that apply.)

- Age of child
- Ability of child to communicate
- Ability of child to understand the situation
- Child's emotional state
- Child's reasons for views
- Indication of parental coaching/manipulation/alienation
- Presence of domestic violence
- Other (please specify) _____

2.20 In general, how much weight should be given to the wishes/preferences of a child at the following ages?

	None	A Little	A Lot
Under 6 years of age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 to 9 years of age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 to 13 years of age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 to 15 years of age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16 years or older	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2.21 Should children's participation in family law proceedings that affect them be mandatory?

- Yes No

Please give reasons for your answer. _____

2.22 Should the information that children provide regarding their wishes be made available to their parents?

- Yes No

Please give reasons for your answer. _____

APPENDIX B
WORKSHOP OUTLINE

WORKSHOP OUTLINE

Topic: Session 7.2: The Voice of the Child in Family Law Proceedings

Date: Wednesday, August 26, 2009, 11:00 a.m. – 12:30 p.m.

Chair: Janet Walker

Facilitators: Marie Gordon and Nick Bala

Recorders: Leslie MacRae, Amanda Dillman and Jennifer Kooren

General Instructions for Chair

Thank participants for attending the workshop. Explain that the workshop is part of a larger project being conducted by Canada's National Judicial Institute and the Canadian Research Institute for Law and the Family for Justice Canada. The purpose of the project is twofold: (1) to identify issues that have arisen, both across Canada and internationally, in attempts to allow the voice of the child to be heard in family law proceedings; and (2) to identify best practices in this area, which would be very useful for jurisdictions that are trying to enhance mechanisms for hearing the voice of the child, and in particular that might be implemented in Canada.

In addition to this workshop, a survey has been given to all delegates in their registration packages. Ask participants, if they haven't yet done so, to complete the survey and drop it off at the registration desk prior to the end of the congress. The findings from the workshop and the survey will be presented in a final report that will be available to all delegates following the congress.

[Intro to topic by Jan]

General Instructions for Facilitators

Unfortunately, we have no way of knowing how many people will be attending this session. If a large number of participants attend the session, the facilitators may decide to split the group at this point. How this might be done can be discussed at the lunch meeting on Sunday, August 23rd. There are two facilitators and three recorders to provide flexibility for this format. We have also ordered two easels with flipcharts and markers to use if desired.

A portable microphone has been ordered to facilitate comments from participants. Please ask participants to use the microphone when speaking, and to identify their profession and city and country. Explain to participants that any comments made

during the workshop will not be attributed to individuals, but may indicate the speakers' profession and jurisdiction.

Questions

By a show of hands, how many of you think that hearing the voice of the child is important in family law proceedings? Why or why not?

How many think that their jurisdiction does a good job in hearing from children in family law proceedings?

How many think that the participation of children who are old enough to express views should be mandatory in family law proceedings that affect them? Why or why not?

How many think that the information that children provide regarding their wishes and perceptions should be made available to their parents? Why or why not? How?

What factors are important when deciding what weight should be given to the child's views? For each of the factors identified, ask how many participants agree that that is an important factor. Why or why not?

How do you determine what weight should be given to the views of children at different ages?

Whose responsibility should it be to inform children of the court's decisions in matters affecting them?

What are the best mechanisms to ensure that the voice of the child is being heard? For each mechanism given, ask how many participants agree that that is a good mechanism. Why or why not?

- child as witness in court (parents present)
- judicial interview (without parents present)
- submission of statement/e-mail/video
- lawyer for child
- interview with social worker/mental health professional who is doing assessment
- statements brought to court by parents, teachers, etc. (i.e., hearsay)
- mediation

If Children's Lawyers are used in your jurisdiction, what model is used (e.g., best interests/*amicus curiae* vs. traditional advocate)? What model works best?

In your experience, are there any mechanisms that don't work well? Why don't they?

In your experience, are there some mechanisms that work better than others in certain situations? What are they?

Does your jurisdiction have any special programs for hearing the voice of the child? For each program, ask for description, whether any problems were encountered in implementing them and, if so, how they overcame them.

At the end of session, remind participants again to complete their survey and drop it off at the Registration Desk (lower level of the Convention Centre). (There will be extra copies of the survey at the session.) Also, Joe Hornick will hand out copies of a one-page feedback form during the session. Please ask participants to complete the form and leave it on their chair.

APPENDIX C

WORKSHOP FEEDBACK FORM

FEEDBACK FORM

WORKSHOP ON THE VOICE OF THE CHILD IN FAMILY LAW PROCEEDINGS

Please indicate the extent to which you agree or disagree with the following statements.

	Strongly Disagree	Disagree	Neither Agree Nor Disagree	Agree	Strongly Agree
<i>The workshop was well organized.</i>	1	2	3	4	5
<i>The Chair and Facilitators were knowledgeable about the topic.</i>	1	2	3	4	5
<i>I had an opportunity to participate to the extent that I wanted.</i>	1	2	3	4	5
<i>I found the workshop informative.</i>	1	2	3	4	5
<i>The time allotted for the workshop was appropriate.</i>	1	2	3	4	5
<i>The room where the workshop was held was appropriate.</i>	1	2	3	4	5

Do you have any other comments regarding the workshop?

Please leave your feedback form on your chair.

If you haven't already done so, please complete the Survey on the Voice of the Child in Family Law Proceedings that was included in your registration bag, and return it to the Registration Desk on the lower level of the Convention Centre.

Thank you!