



**CHILDREN'S PARTICIPATION IN JUSTICE PROCESSES:
FINDING THE BEST WAYS FORWARD**

RESULTS FROM THE SURVEY OF PARTICIPANTS

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1.0 INTRODUCTION

The UN Convention on the Rights of the Child gives children the right to be heard in proceedings affecting them. Within Canada there is a range of ways in which the views, preferences and experiences of children may be brought into the decision-making process, including:

- evaluative voice of the child reports prepared by mental health professionals;
- the testimony of mental health professionals who have interviewed children;
- custody and access reports prepared by mental health professionals or court-attached counsellors;
- the appointment of children's counsel;
- the affidavit or oral evidence of children;
- non-evaluative voice of the child reports prepared by mental health professionals, lawyers and other non-mental health professionals with training in interviewing children;
- judicial interviews of children in court or chambers;
- the parties' evidence about what the child has told them; and
- the child's statement to the court by letter, e-mail, or videotape.

Previous research conducted by the Canadian Research Institute for Law and the Family found that, in Alberta, there is a lack of consensus regarding the role and approach of children's counsel and on the mechanisms through which children can have their voices heard with the least amount of anxiety, fear and trauma, and the least amount of damage to their relationships with others (Bertrand, Bala, Birnbaum & Paetsch, 2012). While the Law Society of Alberta and Alberta's Legal Representation for Children and Youth program have adopted policies directing lawyers for children to take an instructional advocacy approach whenever possible, one-third of the respondents to the Institute's survey of Alberta lawyers indicated that a paternalistic best interests approach is preferable. This discrepancy mirrors the lack of consensus around this issue across jurisdictions. Indeed, while the instructional advocacy approach is commonplace in Alberta, the Policy Statement of the Ontario Children's Lawyer instructs lawyers for children to take a best interests approach.

The research is clear, however, that parental conflict can have serious impacts on children's short- and long-term wellbeing and outcomes (Divecha, 2014; Gilmour, 2004; Lucas, Nicholson & Erbas, 2013; Reynolds, Houlston, Coleman & Harold, 2014). Further, there is a substantial body of research from across western jurisdictions that portrays a consistent message: children want to have a say in family proceedings that impact on their lives (Aubrey & Dahl, 2006; Bala, Talwar & Harris, 2005; Birnbaum, 2007; Birnbaum & Bala, 2009; Cashmore & Parkinson, 2008; Salisbury, 2005). The research shows that 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. (Paetsch et al., 2009, p. 7.)

Children's Participation in Justice Processes: Finding the Best Ways Forward was a two-day national symposium that brought together a broad, multidisciplinary spectrum of leading stakeholders to share information and dialogue about how the voices of children and youth are heard, how their interests are protected and how their evidence is received in justice processes. The symposium, which was held in Calgary in September 2017, was organized by the Canadian Research Institute for Law and the Family and the Office of the Child and Youth Advocate (OCYA), with generous funding from the Alberta Law Foundation and OCYA. This gathering of leading experts and stakeholders provided the Institute with an opportunity to survey an informed and involved pool of participants regarding their perceptions and experiences with children's participation in justice processes.

Preliminary findings were presented at the conclusion of the symposium. This report presents the final results of the survey of symposium participants. The findings from the results are discussed, and recommendations are made for moving forward.

1.1 Methodology

1.1.1 Survey

The survey of participants was conducted electronically using SurveyMonkey, an online service for developing and administering surveys, and contained questions designed to obtain both quantitative and qualitative data. Some questions were asked of all participants; some were dependent on participants' occupations. All questions in the survey were intended to build on research previously conducted by the Institute to enrich the data already obtained, and to allow for future analyses to examine changes in opinion and practice over time (Bertrand, Bala, Birnbaum & Paetsch, 2012; Paetsch, Bertrand, Bala

& Hornick, 2005; Paetsch, Bertrand & Hornick, 2001; Paetsch, Bertrand, Walker & Bala, 2009).

The survey included: demographic questions, such as gender, province/territory of work, occupation, and number of years in primary occupation; information on participants' views on hearing the voice of the child and how best to involve children in justice processes; and information on participants' experiences with children's participation in justice processes (see Appendix A for a copy of the survey).

The survey was anonymous. No identifying information was requested, unless participants chose to provide their name and email address to enter a draw for an upgraded hotel room for the symposium or a \$250 Visa gift card. Following the draw, participants' contact information was removed from the data set. Data were analyzed, both quantitatively and qualitatively, and have only been reported in aggregate form.

1.1.2 Response Rate

A total of 179 individuals attended the symposium, 102 of whom completed the survey, resulting in a response rate of 57%. It should be noted that some individuals encountered technical difficulties that prevented them from completing the survey. Numerous contacts with SurveyMonkey failed to isolate or replicate the problems experienced, and it is not known how many responses were lost or incomplete due to this problem.

1.2 Limitations

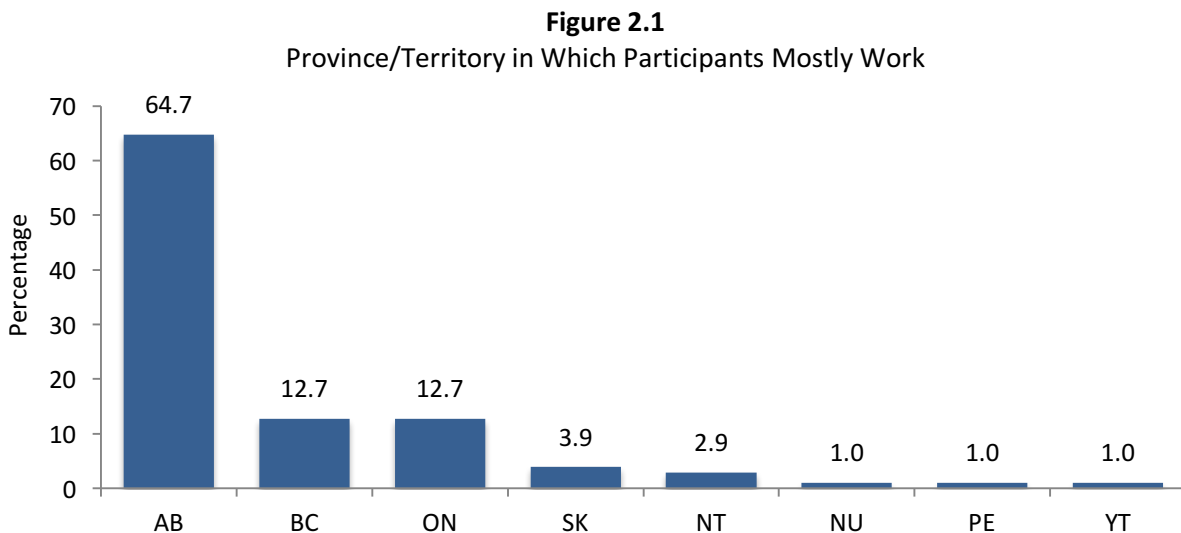
While the survey results are representative of the participants at the symposium, the participants themselves are not necessarily representative of professionals dealing with children's participation in justice processes. Most notably, the majority of participants were from Alberta, limiting the generalizability of findings to the rest of Canada. Also, the majority of respondents were lawyers. The number of judges and mental health professionals completing the survey was too low to allow for analyses by profession.

2.0 SURVEY FINDINGS

This chapter presents the results from the survey of participants at the symposium. In addition to asking registrants demographic questions on matters such as gender, province/territory of work, primary occupation, and number of years in primary occupation, the survey asked questions about participants' views on hearing the voice of the child and how best to involve children in justice processes, and solicited information on participants' experiences with children's participation in justice processes.

2.1 Demographic Information

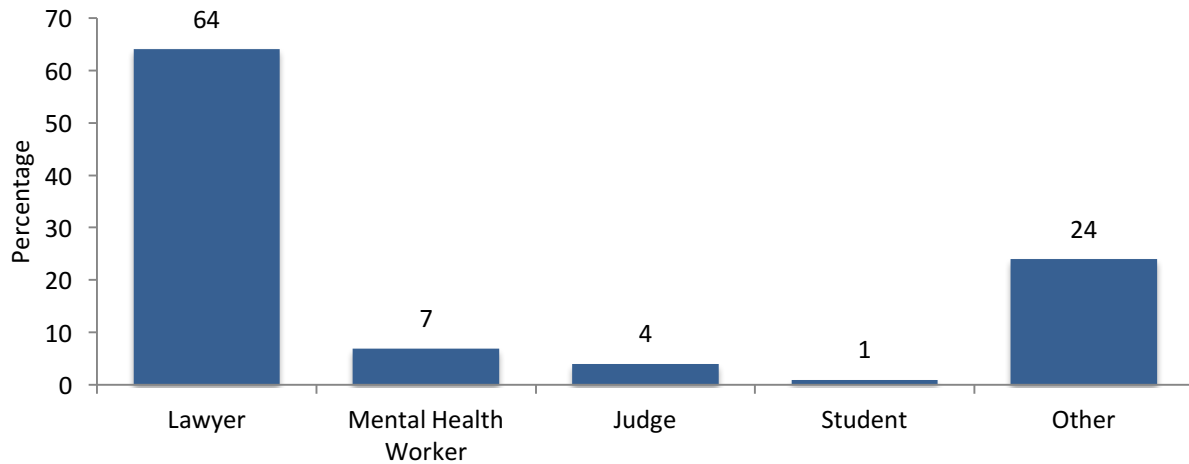
Over four-fifths of the participants were female (81.2%), and 18.8% were male; one participant declined to identify his or her gender. Almost two-thirds of the sample (64.7%) said they mostly work in Alberta, which was not surprising given that the symposium was held in Alberta; see Figure 2.1. Equal proportions of registrants worked in British Columbia (12.7%) and Ontario (12.7%), and a few participants worked in Saskatchewan (3.9%) and Northwest Territories (2.9%). Symposium participants hailed from all parts of Canada except New Brunswick.



Source of Data: Participant Survey
N=102

Registrants were asked what their primary occupation was, and the results are shown in Figure 2.2. Almost two-thirds of the participants were lawyers (64%), 7% were mental health workers, and about one-quarter (24%) were "other" occupations such as academics, government workers, and mediators. On average, participants reported working in their primary occupation for 19.1 years, although their responses ranged from 1.5 years to 45 years.

Figure 2.2
Participants' Primary Occupation



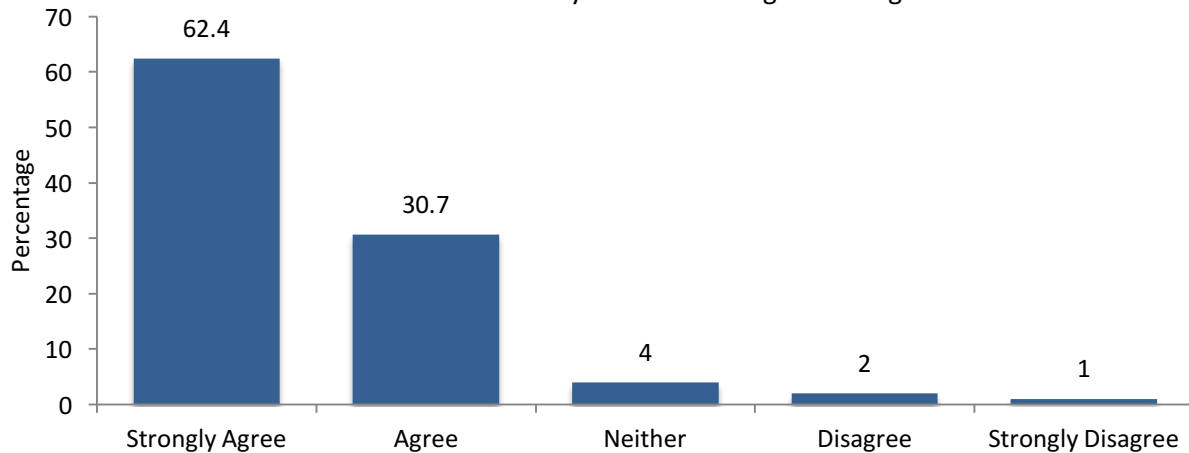
Source of Data: Participant Survey
N=102; Missing cases=2

2.2 Results from the Complete Sample

2.2.1 Hearing the Voice of the Child

All participants were asked to what extent they agreed that children should have the right to voice their views in family law proceedings that affect them. As shown in Figure 2.3, most respondents (93.1%) *strongly agreed* or *agreed* with this statement. When asked if children’s participation should be mandatory, 58.4% said *no*, 30.7% said *yes*, and 10.9% said they *don’t know*; one respondent did not answer the question.

Figure 2.3
Extent to Which Respondents Agree that Children Should Have the Right to Voice Their Views in Family Law Proceedings Affecting Them



Source of Data: Participant Survey
N=102; Missing cases=1

All participants were asked their opinion as to which are the best mechanisms for enabling children to voice their views; see Table 2.1. The majority of respondents (82.4%) rated *legal representation for the child* as the best mechanism, followed by an *assessment report* (70.6%). A *judicial interview with the child* and *non-legal representation for the child* were considered the best mechanisms by about two-fifths of the respondents (40.2% and 38.2%, respectfully). One-fifth of respondents (18.6%) rated *children’s testimony* as a best mechanism, and only 11.8% of participants agreed that a *legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation* was the best way to enable children to voice their views.

Participants were given the opportunity to specify other mechanisms that they considered were best to hear the voice of the child, and 16 respondents did so. The most common responses included experienced mediators, the involvement of mental health professionals, and legal professionals and social workers working as a team. One respondent noted, “*I think this really depends on the process that the parents have chosen to use to settle the parenting issues between them.*”

Table 2.1
Respondents’ Views on What the Best Mechanisms Are
to Enable Children to Voice Their Views

Mechanism	n	%
Legal representation for child	84	82.4
Assessment report	72	70.6
Judicial interview with child	41	40.2
Non-legal representation for child	39	38.2
Testimony by child	19	18.6
Legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation	12	11.8
Other*	16	15.7

Source of Data: Participant Survey

N=102; Multiple response data

* Other includes: experienced mediators; involvement of mental health professionals; views of the child reports; legal and social worker working as a team; use of art or drawings that represent the child’s view; depends on the child.

Participants were asked if their jurisdiction has mechanisms to hear the voice of the child, and almost all respondents said *yes* (98%); two individuals (2%) responded that they *didn’t know*. Respondents were then asked what mechanisms are used in their jurisdictions to enable children to voice their views; see Table 2.2. The majority of respondents reported that mechanisms used in their jurisdictions included: *legal representation for the child* (84.3%); *assessment or evaluation report* (84.3%); *testimony by a mental health professional or social worker who has interviewed the child* (79.4%); and *judicial interview with the child* (58.8%). Just over one-half of the participants (52.9%) said that *testimony by other adults who know the child (such as parents or teachers) regarding the child’s wishes* is also a mechanism used in their jurisdiction.

Table 2.2
 Respondents' Views on What Mechanisms Are Used in Their Jurisdictions
 to Enable Children to Voice Their Views

Mechanism	n	%
Legal representation for child	86	84.3
Assessment or evaluation report	86	84.3
Testimony by mental health professional/social worker who has interviewed the child	81	79.4
Judicial interview with child	60	58.8
Testimony by other adults who know the child (e.g., parent(s), teachers) regarding the child's wishes	54	52.9
Testimony in court	42	41.2
Submission by child (e.g., letter, email, standardized form/kit, videotape)	36	35.3
Legislative provision that children's views must be considered	32	31.4
Voluntary mediation involving the child and parents	31	30.4
Non-legal representation for child	13	12.7
Mandatory mediation involving the child and parents	5	4.9
Don't know	4	3.9
Other*	8	7.8

Source of Data: Participant Survey

N=102; Multiple response data

* Other includes: views of the child reports; parenting coordinator involvement with child and parents; voluntary involvement in court proceedings such as pre-trial conferences.

Mechanisms that less than half of respondents reported being used in their jurisdictions included: *testimony by the child in court* (41.2%); a *legislative provision that children's view must be considered* (31.4%); and *voluntary mediation involving the child and parents* (30.4%). Relatively few respondents said that *non-legal representation for the child* was used (12.7%), and only 4.9% reported that their jurisdiction had *mandatory mediation involving the child and parents*.

2.2.2 Approaches to Representing Children

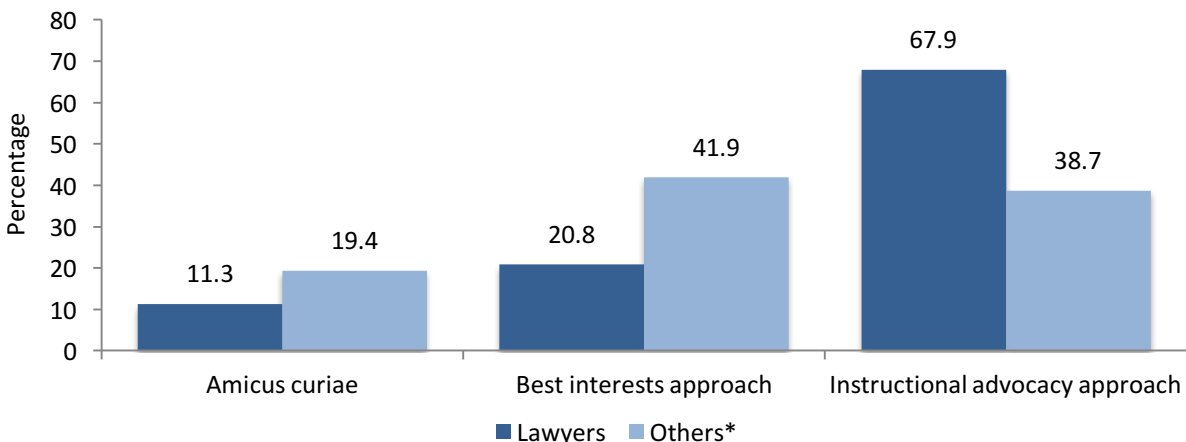
According to the literature (Bala, 2006; Bala, Talwar, & Harris, 2005; McHale, 1980), there are three different types of child legal representation:

- (1) an *amicus curiae*, or friend of the court, who ensures that all relevant evidence is before the court but does not advocate any position;
- (2) a best interests or guardian approach, in which the lawyer ensures that the child's views are before the court but advocates a position based on the lawyer's assessment of the evidence of the child's interests, taking account of the child's views as one factor in that assessment; and

- (3) an instructional advocacy approach, in which the lawyer advocates a specific position based on the child’s stated wishes or views.

Participants were asked which approach they consider to be most appropriate, assuming that the child is expressing wishes or views. The results are presented in Figure 2.4, comparing lawyers to respondents with other occupations (including mental health professionals, judges, academics, and government workers). As the Law Society of Alberta and the Office of the Child and Youth Advocate Alberta both adopted policies in 2010 requiring lawyers for children to take an instructional advocacy approach whenever possible, and almost two-thirds of the sample are from Alberta, it was not surprising that the *instructional advocacy approach* was considered most appropriate by lawyers (67.9%). Individuals with other occupations, however, viewed the *best interests approach* as most appropriate (41.9%), followed closely by the *instructional advocacy approach* (38.7%). All occupations rated the *amicus curiae approach* as least appropriate (lawyers: 11.3%; others: 19.4%).

Figure 2.4
Respondents' Views on Which Child Legal Representation Approach is Most Appropriate, by Occupation



Source of Data: Participant Survey

Lawyers n=64; Missing cases = 11

Others n= 35; Missing cases = 4

* Others includes: mental health professionals; judges; academics; government workers and other

A follow-up question asked lawyers under what circumstances they would not adopt an instructional advocacy approach, and asked respondents with other occupations under what circumstances they thought children’s lawyers should not adopt an instructional advocacy approach. The results are presented in Tables 2.3 and 2.4. The circumstance that the largest proportion of respondents agreed with for all occupations was *if it is believed that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views* (lawyers: 77.4%; others: 67.7%). Similar proportions of lawyers and individuals in other occupations reported that an instructional advocacy approach

should not be adopted *if it is believed the child wants an outcome that may expose him or her to serious risk* (lawyers: 69.8%; others: 64.5%) or *harm* (lawyers: 60.4%; others: 64.5%). Respondents were given the opportunity to write in other circumstances, and one-third of all lawyers (34%) said they would not adopt an instructional advocacy approach *if there were concerns about coaching or parental alienation*, compared to 9.7% of individuals in other occupations. A few respondents in all occupations also said they would not adopt an instructional advocacy approach *if it is believed the child lacks the capacity to understand the impact of giving instructions* (lawyers: 7.5%; others: 6.5%).

Table 2.3
Lawyers' Views as to Circumstances Under Which
They Would Not Adopt an Instructional Advocacy Approach

Circumstance	n	%
If you believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views	41	77.4
If you believe that the child wants an outcome that may expose the child to serious risk	37	69.8
If you believe that the child wants an outcome that may expose the child to harm	32	60.4
If there are concerns about coaching or parental alienation	18	34.0
If you believe the child lacks the capacity to understand the impact of giving instructions	4	7.5
Other	3	5.7

Source of Data: Participant Survey
n=64; Missing cases = 11; Multiple response question

Table 2.4
Views of Non-Lawyer Respondents as to Circumstances Under Which
They Think Lawyers Should Not Adopt an Instructional Advocacy Approach*

Circumstance	n	%
If they believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views	21	67.7
If they believe that the child wants an outcome that may expose the child to serious risk	20	64.5
If they believe that the child wants an outcome that may expose the child to harm	20	64.5
If there are concerns about coaching or parental alienation	3	9.7
If they believe the child lacks the capacity to understand the impact of giving instructions	2	6.5
Other	2	6.5

Source of Data: Participant Survey
n=35; Missing cases = 4; Multiple response question

* Others includes: mental health professionals; judges; academics; government workers and other

2.2.3 Factors Affecting Weight Given to Children’s Views

All participants were asked which factors are important when deciding what weight should be given to the child’s views. As shown in Table 2.5, over 90% of respondents viewed the *age of the child* (93.1%), the *ability of the child to understand the situation* (93.1%), and the *ability of the child to communicate* (92.2%) as important factors. Over 80% of respondents viewed an *indication of parental coaching or manipulation* (87.3%), the *child’s reasons for the views* (86.3%), and the *child’s emotional state* (83.3%) as important factors to be considered.

Respondents were given the opportunity to write in additional factors, and 11 individuals mentioned a variety of other factors (see Table 2.5). One respondent commented that the ability of the child to “*understand the situation is too broad. Every child’s views should be considered and the weight to be determined in each case. Disagreement with a child’s views or a child not meeting an adult standard of capacity should not minimize the weight to be put to the young person’s views.*”

Table 2.5
Respondents’ Views on Which Factors Are Important When Deciding
What Weight Should be Given to the Child’s Views

Factor	n	%
Age of child	95	93.1
Ability of child to understand the situation	95	93.1
Ability of child to communicate	94	92.2
Indication of parental coaching/manipulation	89	87.3
Child’s reasons for views	88	86.3
Child’s emotional state	85	83.3
Other*	11	10.8

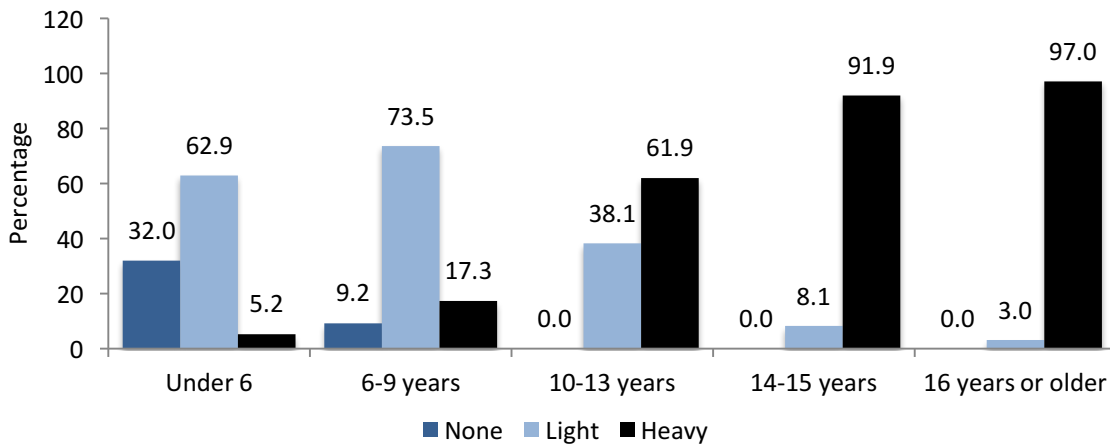
Source of Data: Participant Survey

N=102; Multiple response data

* Other includes: best interests of the child; reasonableness of what the child wants; child’s willingness to provide their views; risk to the child of expressing his/her views; significance of decision being made; supports in place to ensure child’s views are their own; every child/family is different.

Participants were then asked how much weight should be given to the preferences of a child regarding custody decisions at specified age categories, and the results are presented in Figure 2.5. As would be expected, the older the child, the more likely respondents were to report that their preferences should be weighed heavily. For example, 97% of respondents said that the preferences of children 16 years of age or older should receive *heavy weight*, compared to 91.9% of children aged 14 to 15, 61.9% of children aged 10 to 13, 17.3% of 6 to 9-year-olds, and 5.2% of children under the age of 6. Respondents were more likely to report that the preferences of children aged 6 to 9 or children under the age of 6 be given *light weight* (73.5% and 62.9%, respectively) than other weights. One-third of respondents (32%) thought the preferences of children under the age of 6 should be given *no weight*.

Figure 2.5
 Respondents' Views on How Much Weight Should be Given to the Preferences
 of a Child Regarding Custody Decisions, by Age Category



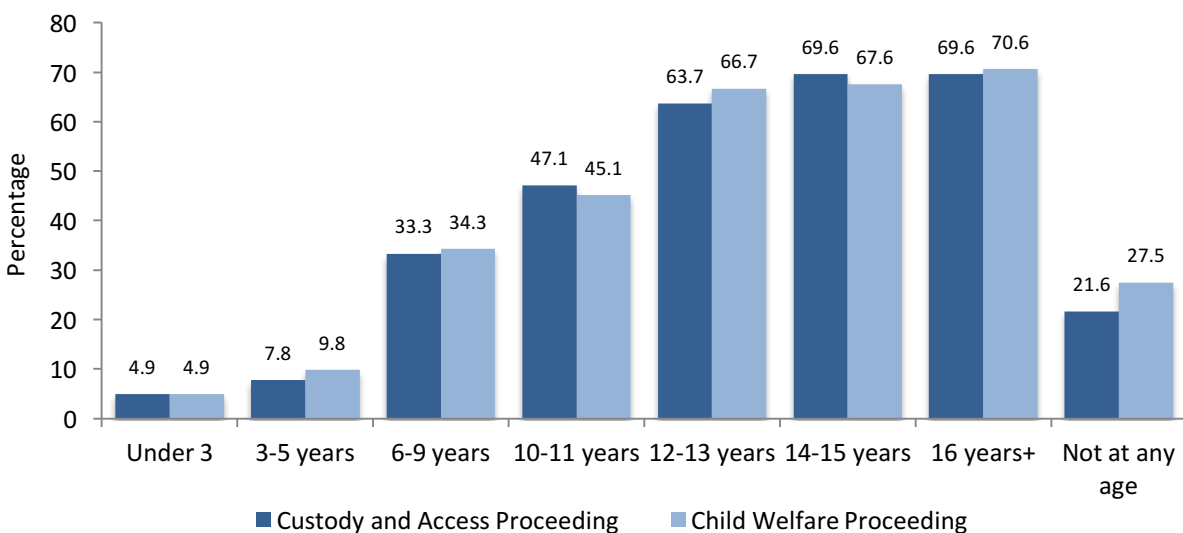
Source of Data: Participant Survey

N=102; Missing Cases: Under 6=5; 6-9 years=4; 10-13 years=5; 14-15 years=3; 16 years or older=3

2.2.4 Judicial Interviews

All participants were asked at what age they think it is appropriate for judges to interview children in both custody and access proceedings and child welfare proceedings; see Figure 2.6. The results are very similar for both types of proceedings in each age category, and the proportions of respondents who think it is appropriate for judges to interview children increase as the age category increases.

Figure 2.6
 Respondents' Views on What Age They Think it is Appropriate
 for Judges to Interview Children, by Type of Proceeding



Source of Data: Participant Survey

N=102; Multiple response data

In general, approximately two-thirds of respondents think it is appropriate for judges to interview children aged 12 and older, just under half think it is appropriate for children aged 10 to 11, and one-third think it is appropriate for children aged 6 to 9. Less than one-tenth of respondents think it is appropriate for children who are 3 to 5 years old, and only 4.9% think it is appropriate for children under 3 in either type of proceeding. About one-quarter of respondents, however, reported that they did not think it was appropriate for judges to interview children at any age (custody and access proceeding: 21.6%; child welfare proceeding: 27.5%).

2.2.5 Sharing Information

When asked if the information that children provide regarding their wishes should be made available to their parents, two-thirds of the respondents said *yes* (66.3%), 12.2% said *no*, 21.4% said they *don't know*, and four individuals did not answer the question. Participants were then asked if that information should be shared in the courtroom; just over half said *yes* (54%), one-quarter said *no* (24%), 17% said they *don't know*, and 5% said that *family law proceedings are closed to the public in their jurisdiction*; two individuals did not answer the question.

All participants were asked whose responsibility it should be to inform children of the court's decisions in matters affecting them. As indicated in Table 2.6, one-half (49%) of the respondents said it is the responsibility of the *child's lawyer, if there is one*, and one-fifth (19%) responded that the *child's parents* should be responsible for informing the child.

Table 2.6
Respondents' Views on Whose Responsibility It Should Be to Inform Children
of the Court's Decisions in Matters Affecting Them

	n	%
The child's lawyer, if there is one	49	49.0
Their parents	19	19.0
Depends on the circumstances	12	12.0
A social worker	6	6.0
The judge	4	4.0
A court welfare officer	1	1.0
The parents' lawyers	0	0.0
Don't know	3	3.0
Other*	6	6.0

Source of Data: Participant Survey

N=102; Missing cases=2

* Other includes: parents and child's therapist; parents and child's lawyer; mental health professional; someone the child trusts.

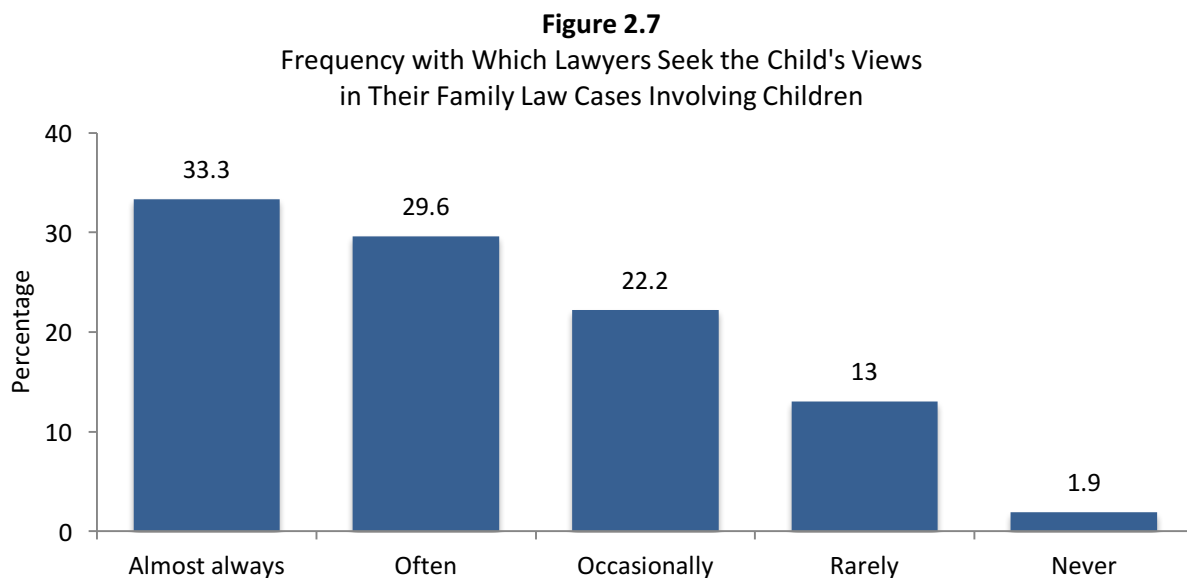
Small proportions of respondents thought the *social worker* (6%) or *judge* (4%) should have responsibility, and no respondents thought the *parents' lawyers* should have responsibility for informing the child of the court's decision. Participants were given the opportunity to specify other responses, and six individuals did so. One respondent said, "The parents if they can do so in an appropriate fashion, but if they are unable to do so, it should be someone they know – their lawyer or their social worker or counsellor." Another said, "Any of the above, depending on the circumstances. Each child and their situation is unique and should be dealt with accordingly."

2.3 Results from Lawyers Only

One of the questions on the survey asked participants what their current primary occupation was and, depending on their response, they were asked additional questions. Unfortunately, the sample sizes for judges and mental health professionals were not large enough to allow for separate analyses by these occupations. This section of the report presents the results from the questions that were asked of lawyers (n=64).

2.3.1 Lawyers' Experiences with Hearing from Children

Lawyers were asked how often they seek the child's views in their family law cases involving children; see Figure 2.7. Almost two-thirds of respondents (62.9%) said they *almost always* or *often* seek the child's views. Just less than one-quarter (22.2%) said they *occasionally* seek the child's views, and 14.9% said they *rarely* or *never* seek the child's views in their family law cases involving children.



Source of Data: Participant Survey
n=64; Missing cases=10

Lawyers were asked to indicate, in their experience, their three most frequently-used means of presenting the views of the child, and the results are presented in Table 2.7. The most frequently used mechanism was a *legal representative for the child* (59.4%), followed by an *assessment or evaluative report prepared by a mental health professional* (56.3%), and *lawyer meeting with the child and reporting to the parties and/or the court* (43.8%). Almost one-third of the lawyers (31.3%) said they frequently use a *non-evaluative report prepared by a lawyer or mental health professional (sometimes called “hear the child” or “views of the child” report)*, and over one-quarter of lawyers said they frequently use a *mental health worker to interview the child and report to the parties and/or court* (28.1%). Less than one-tenth of lawyers said they frequently use a *judicial interview with the child* (9.4%), a *non-legal representative for the child* (7.8%) or the *involvement of children in alternative dispute resolution processes* (7.8%). None of the lawyers said they frequently use the *child’s testimony* as the means to present the views of the child.

Table 2.7
Lawyers’ Views on the Most Frequently Used Means
of Presenting the Views of the Child

Means	n	%
Legal representative for child	38	59.4
Assessment/evaluative report prepared by mental health professional	36	56.3
Lawyer meeting with the child and reporting to parties and/or court	28	43.8
Non-evaluative report prepared by lawyer or mental health professional (sometimes called “hear the child” or “views of the child” report)	20	31.3
Mental health worker interview with child and reporting to parties and/or court	18	28.1
Judicial interview with child	6	9.4
Non-legal representative for child	5	7.8
Involvement of children in alternative dispute resolution processes	5	7.8
Child’s testimony	0	0.0

Source of Data: Participant Survey
n=64; Multiple response question

2.3.2 Lawyers’ Experiences with Representing Children

Lawyers were asked what percentage of their work involves family law and child protection or child welfare proceedings. On average, lawyers said that 66.2% of their work involves *family law* (n=53; range = 1 to 100), and 27.6% of their work involves *child protection or child welfare* (n=45; range = 0 to 100). Over two-thirds of the lawyers (69.8%; n=37) said that they have represented children in custody and access proceedings and of these, the average number of cases was 43.7 (n=35; range = 1 to 500). Over one-half of the lawyers (55.6%; n=30) have represented children in child welfare proceedings, and their average number of cases was 118.8 (n=29; range = 1 to 1000).

Lawyers who reported that they have represented children in custody and access or child welfare proceedings were asked to estimate the number of meetings they typically have with the child client by age category, as well as the typical length of the meeting in minutes; see Table 2.8. Overall, for both types of proceedings, the older the child, the higher the number of meetings and the longer the meeting. For example, lawyers representing children in child welfare proceedings said they had, on average, 1.8 meetings with their child clients aged birth to 3 years, compared to 2.6 meetings for clients aged 4 to 6, 4.2 meetings for clients aged 7 to 11, and 4.6 meetings for clients 12 years or older. The typical length of these meetings increased from an average of 33.3 minutes for clients aged birth to 3 years, to 64.8 minutes for clients 12 years or older.

Table 2.8
Lawyers' Views on the Typical Number and Length of Meetings They Have with Child Clients,
by Age Category and Type of Proceeding

	Custody and Access Proceeding			Child Welfare Proceeding		
	n	Mean	Range	n	Mean	Range
Typical Number of Meetings						
Birth to 3 years	23	1.4	0-4	23	1.8	0-4
4-6 years	26	2.7	0-5	22	2.6	1-5
7-11 years	32	4.1	2-10	24	4.2	2-10
12 years and older	30	4.2	2-12	24	4.6	1-10
Typical Length of Meetings (minutes)						
Birth to 3 years	19	30.5	7-120	24	33.3	7-120
4-6 years	25	42.4	15-120	24	42.1	15-120
7-11 years	31	55.3	20-120	25	58.1	20-120
12 years and older	31	60.2	30-120	26	64.8	30-120

Source of Data: Participant Survey

Lawyers who have represented children in custody and access proceedings: n=37

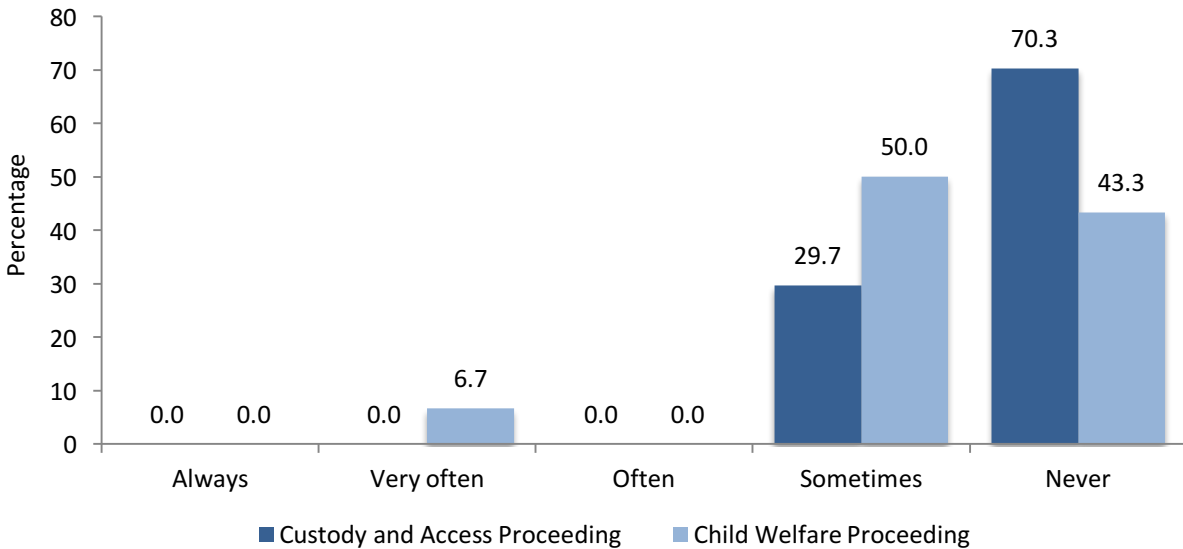
Lawyers who have represented children in child welfare proceedings: n=30

Lawyers who said they have represented children in custody and access or child welfare proceedings were also asked how often they have had a child client testify on the witness stand or speak to the judge in open court; see Figure 2.8. Almost three-quarters of the respondents (70.3%) who have represented children in custody and access proceedings said *never*, and 29.7% said *sometimes*.

The data indicate that a higher percentage of children testify during child welfare proceedings than in custody and access proceedings. One-half of the lawyers (50%) who have represented children in child welfare proceedings said they *sometimes* have a child client testify on the stand or speak to the judge in open court, 43.3% said they *never* do, and 6.7% said it happens *very often*.

Figure 2.8

Frequency with Which Lawyers Have Had a Child Client Testify on the Witness Stand in Court or Speak to the Judge in Open Court, by Type of Proceeding



Source of Data: Participant Survey

Lawyers who have represented children in custody and access proceedings n=37

Lawyers who have represented children in child welfare proceedings n=30

When asked if they ever disclose confidential information that a child has told them, 43.8% of lawyers said *yes*, and 56.3% said *no* (16 individuals did not answer the question). Lawyers who responded *yes* were then asked under what circumstances they would do so, and 21 lawyers provided 24 comments. The most common comment (66.7%) was that *the child was in need of protection and they had a duty to report*, followed by *the child gave them permission to disclose the information* (20.8% of the comments). As one lawyer said:

If the child has provided information that indicates a very serious and imminent risk of harm to the child or other individual, then I would report to a child welfare agency. However, this is done with the child's knowledge and the information shared is limited only to what is necessary to protect the child.

Lawyers were asked if they ever advocate for a position based on a child's instructions, but say that it is their own in order to protect the child; 37.5% said *yes*, and 62.5% said *no* (16 individuals did not respond). The lawyers who said *yes* were asked under what circumstances they would do so, and 16 lawyers provided 18 comments. Three-fifths of the comments (61.1%) related to *concerns about the child's safety, or possible repercussions*, and 22.2% related to *concerns about the impact on the child's relationship with the parents*. Examples of these comments are:

Child wants to preserve relationship with parent, but parent has harmed child or child fears parent.

If the child has clear and strongly held views but is anxious about having them shared with the parents. I try to avoid taking this approach, though, as it is generally not very effective. My preference is to have a frank discussion with my client about the limits of what I can achieve for them, and identifying a message that they are comfortable with me conveying.

3.0 SUMMARY, DISCUSSION AND RECOMMENDATIONS

In September 2017, the Canadian Research Institute for Law and the Family and the Office of the Child and Youth Advocate held a two-day national symposium on *Children's Participation in Justice Processes: Finding the Best Ways Forward*. This meeting of leading experts and stakeholders provided the Institute with the opportunity to survey a pool of experienced, knowledgeable participants regarding their perceptions and experiences with children's participation in justice processes. This report examines the results of the survey of symposium participants, and makes recommendations for moving forward.

3.1 Summary

3.1.1 Demographic Information

- A total of 179 individuals attended the symposium, and 102 completed the survey, resulting in a response rate of 57%.
- Over four-fifths of the respondents were female, and almost one-fifth were male.
- Almost two-thirds of the sample said they mostly work in Alberta. Over one-tenth of registrants worked in British Columbia, over one-tenth worked in Ontario, and a few participants worked in Saskatchewan, Northwest Territories, Nunavut, Prince Edward Island, and Yukon Territory.
- Almost two-thirds of the participants were lawyers, and the remaining one-third consisted of mental health workers, judges, academics, government workers, and mediators.
- On average, participants reported working in their primary occupation for 19.1 years, although their responses ranged from 1.5 years to 45 years.

3.1.2 Results from the Complete Sample

- Almost all respondents agreed that children should have the right to voice their views in family law proceedings that affect them, although less than one-third of respondents thought children's participation should be mandatory.
- Respondents viewed *legal representation for the child* as the best mechanism to enable children to voice their views, followed by an *assessment report*.
- Almost all respondents said their jurisdiction has mechanisms to hear the voice of the child, and the most common were *legal representation for the child*, an *assessment*

or evaluation report, and testimony by a mental health professional or social worker who has interviewed the child.

- When asked which child legal representation approach is most appropriate, lawyers were most likely to say the *instructional advocacy approach*, while respondents in the other occupations thought the *best interests approach* was slightly more appropriate than the instructional advocacy approach.
- All respondents agreed that an instructional advocacy approach should not be adopted *if it is believed that the child is too young to have the capacity to make a sound decision, or if the child wants an outcome that may expose him or her to serious risk or harm.*
- Over 90% of the participants thought the following factors were important when deciding what weight should be given to the child's views: *age of the child; ability of the child to understand the situation; and ability of the child to communicate.*
- Over 80% of the participants thought the following factors were important when deciding what weight should be given to the child's views: *indication of parental coaching or manipulation; the child's reasons for the views; and the child's emotional state.*
- The older the child, the more likely respondents were to report that their preferences regarding custody decisions should be *weighed heavily* in making those decisions.
- The majority of respondents thought the preferences of children aged 10 and over should be *weighed heavily* in making decisions about custody and access, and the preferences of children under the age of 10 should be *weighed lightly*. Almost one-third of respondents thought the preferences of children under the age of 6 should be given *no weight*.
- Two-thirds of the respondents thought that the information that children provided regarding their wishes should be made available to their parents. Just over one-half thought the information should be shared in the courtroom.
- In general, in both custody and access and child welfare proceedings, approximately two-thirds of respondents think it is appropriate for judges to interview children aged 12 and older, just under half think it is appropriate for children aged 10 to 11, and one-third think it is appropriate for children aged 6 to 9. About one-quarter of respondents, however, reported that they did not think it was appropriate for judges to interview children at any age.

- When asked whose responsibility it should be to inform children of the court's decisions in matters affecting them, one-half of the respondents said it is the responsibility of the *child's lawyer, if there is one*, and one-fifth said it should be the *child's parents*.

3.1.3 Results from Lawyers Only

- Two-thirds of lawyers reported that they *almost always* or *often* seek the child's views in their family law cases involving children.
- Lawyers' most frequently-used means of presenting the views of the child were: *legal representative for the child; assessment or evaluative report prepared by a mental health professional; and lawyer meeting with the child and reporting to the parties and/or the court*.
- Lawyers reported that two-thirds of their work involves *family law*, and just over one-quarter of their work involves *child protection or child welfare*.
- Over two-thirds of the lawyers said that they have represented children in custody and access proceedings and of these, the average number of cases they had handled was 43.7.
- Over one-half of the lawyers have represented children in child welfare proceedings, and their average number of such cases was 118.8.
- Lawyers who have represented children in custody and access or child welfare proceedings reported that, overall, the older the child, the higher the number of meetings they typically have with the child, and the longer the meeting they have with the child.
- Lawyers representing children in child welfare proceedings said they had, on average, 1.8 meetings with their child clients aged birth to 3 years, compared to 4.6 meetings for clients 12 years or older.
- The typical length of these meetings increased from an average of 33.3 minutes for clients aged birth to 3 years, to 64.8 minutes for clients 12 years or older.
- Almost three-quarters of the lawyers who have represented children in custody and access proceedings said they have *never* had a child client testify on the stand or speak to the judge in open court. Almost one-third said it happens *sometimes*.
- A higher percentage of children testify during child welfare proceedings than in custody and access proceedings. One-half of the lawyers who have represented

children in child welfare proceedings said they *sometimes* have a child client testify on the stand or speak to the judge in open court, and 6.7% said it happens *very often*.

- When asked if they ever disclose confidential information that a child has told them, 43.8% of lawyers said *yes*, and the most common circumstance for doing so was that the *child was in need of protection and they had a duty to report*.
- Lawyers were asked if they ever advocate for a position based on a child's instructions, but say that it is their own in order to protect the child, and 37.5% said *yes*. The most common circumstance for doing so related to *concerns about the child's safety or possible repercussions for the child*.

3.2 Discussion

It is clear from the results of this survey that family justice professionals believe that children have the right to voice their views in family law proceedings that affect them, although more than half the respondents think children's participation should be voluntary. According to the respondents, the best mechanisms to enable children to voice their views are *legal representation for the child* and *assessment reports*, and these are the mechanisms that respondents reported are used the most in their jurisdictions. When attendees at the 2004 National Family Law Program were asked that they thought the best mechanisms were to enable children to voice their views, the mechanism that was rated best by 74% of respondents was *assessment report* (compared to 71% of respondents in the 2017 survey) (Paetsch et al., 2005). Respondents to the 2017 survey were much more likely to rate *legal representation for the child* as best compared to respondents to the 2004 survey (82% compared to 65%). Respondents to the 2017 survey were also more likely to view a *judicial interview with the child* as a "best" mechanism than were respondents to the 2004 survey (40% compared to 21%).

While only 3% of respondents to the 2004 survey considered *testimony by the child* a best mechanism to enable children to voice their views, the percentage rose to 19% in the 2017 survey. However, almost three-quarters of the lawyers who said they have represented children in custody and access proceedings reported that they have never had a child client testify on the stand or speak to the judge in open court.

The current survey asked participants which type of child legal representation they thought was most appropriate, and lawyers were most likely to say the *instructional advocacy approach*, while individuals in the other occupations thought the *best interests approach* was slightly more appropriate than the instructional advocacy approach. Given that the majority of respondents were from Alberta and that the Law Society of Alberta and Alberta's Legal Representation for Children and Youth program have adopted policies directing lawyers for children to take an instructional advocacy approach whenever possible, it was not surprising that lawyers preferred the instructional

advocacy approach. However, further analyses looking at respondents from Alberta only revealed that one-quarter of lawyers (24.2%) and one-half of individuals in other occupations (50%) still believe the *best interests approach* is the most appropriate approach when representing children.

When asked under what circumstances a children's lawyer should not adopt an instructional advocacy approach, all occupations agreed that an instructional advocacy approach should not be adopted *if it believed that the child is too young to have the capacity to make a sound decision*. It may be the case, therefore, that participants' views of most appropriate approach are somewhat dependent on the age of the child, with the instructional advocacy approach being viewed as most appropriate for older children, and the best interests approach being most appropriate for younger children.

Participants were asked which factors are important when deciding what weight should be given to the child's views, and over 90% of respondents viewed the *age of the child*, the *ability of the child to understand the situation*, and the *ability of the child to communicate* as important factors. Over 80% of respondents viewed an *indication of parental coaching or manipulation*, the *child's reasons for the views*, and the *child's emotional state* as important factors to be considered. The proportion of respondents agreeing with these factors is much higher than that observed when attendees at the 2004 National Family Law Program were asked the same question (Paetsch et al., 2005). For example, the proportion of respondents agreeing that the *ability of the child to understand the situation* is an important factor increased from 77% in 2004 to 93% in 2017. Likewise, the *ability of the child to communicate* rose from 74% in 2004 to 92% in 2017, *child's reasons for views* rose from 74% in 2004 to 86% in 2017, and the *child's emotional state* increased from 65% in 2004 to 83% in 2017.

As would be expected, the current survey found that the older the child, the more likely respondents were to report that their preferences regarding custody decisions should be weighed heavily. The majority of respondents thought the preferences of children aged 10 and over should be *weighed heavily*, and the preferences of children under the age of 10 should be *weighted lightly*. When compared to the results from attendees at the 2004 National Family Law Program, respondents to the 2017 survey were more likely to give the preferences of children more weight at all age categories (Paetsch et al., 2005). For example, the percentage of respondents assigning *heavy weight* to the preferences of children aged 10 to 13 increased from 50% in 2004 to 62% in 2017, and for 6- to 9-year-olds, the percentage rose from 8.9% in 2004 to 17.3% in 2017. Likewise, the proportion of respondents who thought the preferences of children under 6 should be given *no weight* decreased from 56% in 2004 to 32% in 2017.

All participants were asked at what age they think it is appropriate for judges to interview children in both custody and access proceedings and child welfare proceedings. In general, approximately two-thirds of respondents think it is appropriate for judges to interview children aged 12 and older, just under half think it is appropriate for children

aged 10 to 11, and one-third think it is appropriate for children aged 6 to 9. A survey of a small sample of Alberta lawyers that was conducted in 2012 on children's participation in family disputes also found that the proportion of lawyers who thought judges could interview children increased with the age of the child; however, the proportions were lower than those observed in the 2017 data (Bertrand et al., 2012). For example, approximately two-thirds of respondents to the 2017 survey thought it was appropriate for judges to interview children aged 12 and older, compared to just over half of the respondents to the 2012 survey. Interestingly, however, the proportion of respondents who thought it was not appropriate for judges to interview children at any age increased substantially from 2012 to 2017. In custody and access proceedings, the percentage of respondents who said "not at any age" rose from 3.4% in 2012 to 21.6% in 2017, and in child welfare proceedings the percentage rose from 10.3% in 2012 to 27.5% in 2017.

The current survey revealed some issues where respondents' opinions differed. When asked if the information that children provide regarding their wishes should be made available to their parents, two-thirds of the respondents said *yes*, and one third said *no*, or they *don't know*. Just over half of the respondents thought the information should be shared in the courtroom, while two-fifths *disagreed*, or said they *don't know*. Respondents also differed on their views of whose responsibility it was to inform children of the court's decisions in matters affecting them. One-half of the respondents said the responsibility lies with the *child's lawyer*, if there is one, one-fifth said it was the responsibility of *the child's parents*, and over one-tenth said *it depended on the circumstances*. It would be interesting to survey children to learn their views on these issues, and the results could provide guidance to lawyers in how information should be shared with their child clients.

3.3 Conclusions and Recommendations

It is evident from the results of this survey that professionals working with children involved in family breakdown support and promote children having a say in proceedings that affect them. A greater proportion of respondents to the 2017 survey viewed mechanisms such as *legal representation for the child*, *assessment reports* and *judicial interviews with the child* as the "best" mechanisms to enable the child to voice their views than they did 13 years ago. Respondents to the 2017 survey were more likely to give more weight to the preferences of children regarding custody decisions at all age categories than in 2004, although they were also more cognizant of the need to consider various other factors when deciding what weight should be given to the child's views.

There continues to be a lack of consensus on the most appropriate approach for children's counsel to take when representing children, although the proportion of lawyers agreeing that the *instructional advocacy approach* is most appropriate has increased from 2012 to 2017. It appears that the most appropriate approach is dependent on the circumstances of the case. Further research on this issue with lawyers, judges and mental health professionals would help to clarify the best approach to take when representing children.

The current survey identified several areas where respondents were not in agreement, including the sharing of information from children with their parents, sharing information from children in the courtroom, and informing children of the court's decision. There is clearly a need for research that includes children who have had legal representation or have been interviewed by a judge to learn more about their experiences and perspectives on how to improve having their voice heard. What are the best mechanisms for hearing the voice of the child from the children's perspective? Which mechanisms allow the children to participate in legal proceedings without further damaging their family relationship? While the respondents to the current survey were experienced, having worked in their primary occupation an average of 19 years, the majority of children's lawyers reported that have never had a child client testify on the stand or speak to the judge in open court. Do children want to testify in court or is this undesirable to them?

While the information obtained from this survey is very useful, characteristics of the survey sample limited further analyses by profession, as well as the generalizability of the findings to the general population. It would be desirable to conduct a national survey of lawyers, judges and mental health professionals to obtain a more robust, representative sample on which to base recommendations.

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Glossary

Missing Cases: The number of responses on individual questions that are not available. The most common reason for missing cases in survey data is that the respondent chose not to answer a particular question.

Multiple response data: Multiple response data refers to questions in which respondents are allowed to choose more than one answer. In tables where multiple response data are presented, the percentages presented for individual items will total more than 100.

N and n: N refers to the total number of responses received to a survey while n refers to a subset of the total responses that may be selected for specific data analyses. For example, if 100 men and women respond to a survey, then $N = 100$. If 30 of those respondents identify as women, then $n = 30$ women and $n = 70$ men.

Qualitative data: Refers to data that are descriptive rather than numeric in nature. Asking survey respondents to provide their opinion in their own words is an example of a qualitative question. Qualitative data can frequently be coded into quantitative data by identifying common themes across respondents' answers, and assigning numbers to each of the themes.

Quantitative data: Refers to data that can be quantified using numbers that can then be manipulated mathematically or statistically. Asking survey respondents the extent to which they agree with a statement on a scale with the potential responses being *strongly agree, agree, neither agree nor disagree, disagree, and strongly disagree* is an example of a quantitative question. The responses can be assigned numbers ranging from 1 through 5 which can then be averaged across respondents to provide a mean score for the question.

Representativeness: The extent to which the responses to a survey are likely to reflect the responses that would be given if every potential respondent could be surveyed.

Response rate: The percentage of completed surveys returned out of the total number distributed to potential respondents.

APPENDIX A:

**CHILDREN'S PARTICIPATION IN JUSTICE PROCESSES:
FINDING THE BEST WAYS FORWARD**

PARTICIPANT SURVEY



*Children's Participation in Justice Processes: Finding the Best Ways Forward
Participant Survey*

Thank you for participating in *Children's Participation in Justice Processes: Finding the Best Ways Forward*. We would like to take this opportunity to ask you a few questions about yourself and your views on children's participation in justice processes; we will present our preliminary findings from this research at the close of the symposium.

The questions in this survey are intended to build on research previously conducted by the Institute, and enrich the data already obtained and examine changes in opinion and practice over time. These questions are not exhaustive of their subject matter as the scope of the research we conduct is limited by the available funding and staff time. If there is a critical issue or question we have not addressed, please let us know by emailing John-Paul Boyd, the Institute's executive director, at jpboyd@ucalgary.ca. We thank you in advance for your understanding.

Your participation in the survey is entirely voluntary, and you don't have to answer any questions that you would prefer not to answer. Your attendance at and experience of the symposium will be unaffected whether you choose to complete the survey or not.

Your responses to this survey are anonymous and will be kept in strict confidence by the Institute. They will not be used to identify you in our reports on the data generated, and all responses will be presented in aggregate form. The final report on the survey will be available on the Institute's website at www.crilf.ca

If you complete the survey by Friday 1 September 2017, you may choose to enter a draw to win your choice of:

a) a free Regency Club level room at the Hyatt for evenings of Thursday the 14th and Friday the 15th of September (you may cancel your existing reservation if you

have already made one)

or

b) a prepaid \$250 Visa gift card.

You will have the opportunity to enter the draw at the end of the survey.

If you have any questions or concerns about this survey or our draw, please contact John-Paul Boyd at 403-216-0340 or jpboyd@ucalgary.ca.

Demographics

In what province, territory or country do you mostly work?

- | | |
|---|--|
| <input type="radio"/> Alberta | <input type="radio"/> Ontario |
| <input type="radio"/> British Columbia | <input type="radio"/> Prince Edward Island |
| <input type="radio"/> Manitoba | <input type="radio"/> Quebec |
| <input type="radio"/> New Brunswick | <input type="radio"/> Saskatchewan |
| <input type="radio"/> Newfoundland and Labrador | <input type="radio"/> Yukon Territory |
| <input type="radio"/> Northwest Territories | <input type="radio"/> USA |
| <input type="radio"/> Nova Scotia | <input type="radio"/> Other country |
| <input type="radio"/> Nunavut | |

What is your gender?

- Male
- Female
- Other

How many years have you been working in your primary occupation? (We will ask you to identify your primary occupation later.)

*Children's Participation in Justice Processes: Finding the Best Ways Forward
Participant Survey*

Hearing from children

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
 Neither agree nor disagree
 Disagree
 Strongly disagree

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

- Yes No Don't know

What are the best mechanisms to enable children to voice their views? (Please check all that apply)

- Judicial interview with child
 Testimony by child
 Assessment report
 Legal representation for child
 Non-legal representation for child
 Legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation
 Don't know
 Other (please specify)

Does your jurisdiction have mechanisms to ensure that the voice of the child is heard?

Yes No Don't know

What mechanisms, if any, are used in your jurisdiction to enable children to voice their views? (Please check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Testimony in court | <input type="checkbox"/> Voluntary mediation involving the child and parents |
| <input type="checkbox"/> Submission by child (e.g., letter, email, standardized form/kit, videotape) | <input type="checkbox"/> Legal representation for child |
| <input type="checkbox"/> Testimony by mental health professional/social worker who has interviewed the child | <input type="checkbox"/> Non-legal representation for child |
| <input type="checkbox"/> Testimony by other adults who know the child (e.g., parent(s), teachers) regarding the child's wishes | <input type="checkbox"/> Judicial interview with child |
| <input type="checkbox"/> Assessment or evaluation report | <input type="checkbox"/> Legislative provision that children's views must be considered |
| <input type="checkbox"/> Mandatory mediation involving the child and parents | <input type="checkbox"/> Don't know |
| <input type="checkbox"/> Other (please specify) | |

Which of the following factors are important when deciding what weight should be given to the child's views? (Please check 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
- Other (please specify)

How much weight should be given to the preferences of a child regarding custody decisions at the following ages?

	None	Light	Heavy
Under 6 years of age	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6 - 9 years of age	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10 - 13 years of age	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14 - 15 years of age	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16 years of age or older	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Yes No Don't know

Should the information that children provide regarding their wishes be shared in the court room (if family law proceedings are not closed to the public in your jurisdiction)?

Yes No Family law proceedings are closed to the public Don't know

At what age do you think it is appropriate for judges to interview children in custody and access proceedings? (Please check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Under 3 years | <input type="checkbox"/> 12 - 13 years |
| <input type="checkbox"/> 3 - 5 years | <input type="checkbox"/> 14 - 15 years |
| <input type="checkbox"/> 6 - 9 years | <input type="checkbox"/> 16 years and older |
| <input type="checkbox"/> 10 - 11 years | <input type="checkbox"/> Not at any age |

At what age do you think it is appropriate for judges to interview children in child welfare proceedings? (Please check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Under 3 years | <input type="checkbox"/> 12 - 13 years |
| <input type="checkbox"/> 3 - 5 years | <input type="checkbox"/> 14 - 15 years |
| <input type="checkbox"/> 6 - 9 years | <input type="checkbox"/> 16 years and older |
| <input type="checkbox"/> 10 - 11 years | <input type="checkbox"/> Not at any age |

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

- Their parents
- The parents' lawyers
- The child's lawyer, if there is one
- A social worker
- Other (please specify)
- A court welfare officer
- The judge
- Don't know

*Children's Participation in Justice Processes: Finding the Best Ways Forward
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The next questions we would like to ask depend on your primary occupation.

What is your current primary occupation?

- | | |
|--|---|
| <input type="radio"/> Lawyer | <input type="radio"/> Academic/faculty |
| <input type="radio"/> Judge | <input type="radio"/> Student, graduate level or higher |
| <input type="radio"/> Other legal professional | <input type="radio"/> Student, undergraduate or college level |
| <input type="radio"/> Psychologist/psychiatrist | <input type="radio"/> Other academic occupation |
| <input type="radio"/> Social worker | <input type="radio"/> Elected government member |
| <input type="radio"/> Clinical counsellor | <input type="radio"/> Government employee |
| <input type="radio"/> Other mental health professional | <input type="radio"/> Other government occupation |
| <input type="radio"/> Other (please specify) | |

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[LAWYERS ONLY]

Hearing from children

How often do you seek the child's views in your family law cases involving children?

Almost always Often Occasionally Rarely Never

Which are the 3 most frequently used means of presenting the views of the child in your experience?

- Lawyer meeting with the child and reporting to parties and/or court
- Judicial interview with child
- Mental health worker interview with child and reporting to parties and/or court
- Child's testimony
- Assessment/evaluative report prepared by mental health professional
- Non-evaluative report prepared by lawyer or mental health professional (sometimes called "hear the child" or "views of the child" report)
- Legal representative for child
- Non-legal representative for child
- Involvement of children in alternative dispute resolution processes

About what percentage of your work involves:

Family law

Child protection/child
welfare

Have you ever represented children in custody and access proceedings?

Yes No

If yes, in approximately how many cases?

Have you ever represented children in child welfare proceedings?

Yes No

If yes, in approximately how many cases?

If you have represented children in *custody and access proceedings*, how many meetings do you typically have with a child client at the following ages?

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

On average, how long is your meeting with a child client in *custody and access proceeding* at the following ages? (in minutes)

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

If you have represented children in *child welfare proceedings*, how many meetings do you typically have with a child client at the following ages?

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

On average, how long is your meeting with a child client in *a child welfare proceeding* at the following ages? (in minutes)

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

The literature identifies three different types of child legal representation:

(i) an amicus curiae [friend of the court] who ensures that all relevant evidence is before the court but does not advocate any position.

(ii) a best interests [or guardian] approach where the lawyer ensures that the child's views are before the court but advocates a position based on the lawyer's assessment of the evidence about the child's interests (taking account of the child's views as one factor in that assessment).

(iii) an instructional advocacy approach, where the lawyer advocates a position based on the child's stated wishes or views.

Which approach do you consider most appropriate, assuming that the child is expressing wishes or views?

- Amicus curiae
- Best interests approach
- Instructional advocacy approach

Under what circumstances do you NOT adopt an instructional advocacy approach? Please check all that apply.

- If you believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views.
- If you believe that the child wants an outcome that may expose the child to harm.
- If you believe that the child wants an outcome that may expose the child to serious risk.
- Other circumstances (please explain below).

If other circumstances, please explain.

How often have you had a child client testify on the witness stand in court or speak to the judge in open court in a *custody and access proceeding*?

Always Very often Often Sometimes Never

How often have you had a child client testify on the witness stand in court or speak to the judge in open court in a *child welfare proceeding*?

Always Very often Often Sometimes Never

Do you ever disclose confidential information that a child has told you?

Yes No

If yes, under what circumstances?

Do you ever advocate for a position based on a child's instructions, but say that it is your own in order to protect the child?

Yes No

If yes, under what circumstances?

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[PSYCHOLOGIST/PSYCHIATRIST, SOCIAL WORKER, CLINICAL COUNSELLOR,
OTHER MENTAL HEALTH PROFESSIONAL]

Working with children and families

About what percentage of your work involves:

Providing counselling and
other therapeutic services
to *children* in relation to
family law disputes?

Providing counselling and
other therapeutic services
to *parents* in relation to
family law disputes?

Providing counselling and
other therapeutic services
to *children* in relation to
*child protection/child
welfare proceedings*?

Providing counselling and
other therapeutic services
to *adults* in relation to *child
protection/child welfare
proceedings*?

About what percentage of your work involves:

Providing reports to the
court in relation to *family
law disputes*?

Providing reports to the
court in relation to *child
protection/child welfare
proceedings*?

Children who are represented

The literature identifies three different types of child legal representation:

(i) an amicus curiae [friend of the court] who ensures that all relevant evidence is before the court but does not advocate any position.

(ii) a best interests [or guardian] approach where the lawyer ensures that the child's views are before the court but advocates a position based on the lawyer's assessment of the evidence about the child's interests (taking account of the child's views as one factor in that assessment).

(iii) an instructional advocacy approach, where the lawyer advocates a position based on the child's stated wishes or views.

Which approach do you consider most appropriate, assuming that the child is expressing wishes or views?

- Amicus curiae
- Best interests approach
- Instructional advocacy approach

Under what circumstances do you think children's lawyers should NOT adopt an instructional advocacy approach?

- If they believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views.
- If they believe that the child wants an outcome that may expose the child to harm.
- If they believe that the child wants an outcome that may expose the child to serious risk.
- Other circumstances (please explain below).

If other circumstances, please explain.

Reporting to the court

When you are preparing a report concerning a child in *a family law dispute*, how many meetings do you typically have with a child at the following ages?

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

On average, how long is your meeting with a child in *a custody and access proceeding* at the following ages? (in minutes)

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

When you are preparing a report concerning a child in *a child protection/child welfare proceeding*, how many meetings do you typically have with a child at the following ages?

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

On average, how long is your meeting with a child in *a child welfare proceeding* at the following ages? (in minutes)

Birth to 3 years?

4 - 6 years?

7 - 11 years?

12 years and older?

Do you ever disclose information a child has asked you to keep confidential?

Yes No

If yes, under what circumstances?

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[JUDGE]

Hearing from children

How often do you seek the child's views in your family law cases involving children?

Almost always Often Occasionally Rarely Never

How are the views of the child presented? (Please indicate the 3 most frequently used in your experience.)

- Lawyer meeting with the child and reporting to parties and/or court
- Judicial interview with child
- Mental health worker interview with child and reporting to parties and/or court
- Child's testimony
- Assessment/evaluative report prepared by mental health professional
- Non-evaluative report prepared by lawyer or mental health professional (sometimes called "hear the child" or "views of the child" report)
- Legal representative for child
- Non-legal representative for child
- Involvement of children in alternative dispute resolution processes

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[JUDGE, OTHER LEGAL PROFESSIONAL, ACADEMIC/FACULTY, OTHER ACADEMIC,
ELECTED GOVERNMENT MEMBER, GOVERNMENT EMPLOYEE, OTHER GOVERNMENT]

Working with children and families

About what percentage of your work involves:

Issues relating to family
breakdown and
restructuring?

Issues related to child
protection/child welfare?

Children who are represented

The literature identifies three different types of child legal representation:

(i) an amicus curiae [friend of the court] who ensures that all relevant evidence is before the court but does not advocate any position.

(ii) a best interests [or guardian] approach where the lawyer ensures that the child's views are before the court but advocates a position based on the lawyer's assessment of the evidence about the child's interests (taking account of the child's views as one factor in that assessment).

(iii) an instructional advocacy approach, where the lawyer advocates a position based on the child's stated wishes or views.

Which approach do you consider most appropriate, assuming that the child is expressing wishes or views?

- Amicus curiae
- Best interests approach
- Instructional advocacy approach

Under what circumstances do you think children's lawyers should NOT adopt an instructional advocacy approach?

- If they believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views.
- If they believe that the child wants an outcome that may expose the child to harm.
- If they believe that the child wants an outcome that may expose the child to serious risk.
- Other circumstances (please explain below).

If other circumstances, please explain.



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Thank you very much for your time!

To enter the draw for a free Regency Club level room or a \$250 prepaid Visa gift card, please click the "Next" button at the bottom of this page.



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If you would like to enter the draw for either an upgraded hotel room for the symposium or a \$250 Visa gift card, please give us your name and an email address to reach you at. Your name and email address will not be published and will not be linked to your answers to this survey. Your email address will not be used for any purpose other than to notify you if you are the winner of the prize. Your identifying information will be deleted following the draw.

Name

Email address