

Obtaining Children's Views for Litigation and Collaborative Processes

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On March 18, 2013, the Family Law Act replaced the Family Relations Act as the legal framework for all family matters in BC. One of the most profound changes is that the child's best interests are the only consideration in settling disputes between parents. It is now a requirement that the child's views must be considered "unless it would be inappropriate to do so." I anticipate that Registered Clinical Counsellors who conduct child therapy or provide Court involved services will be asked more and more frequently to offer their opinion on a child's views as part of a litigation or collaborative process. I believe this is a positive step forward for our profession as we increasingly come to be valued as experts in providing child focused information to separated and separating couple's in conflict. My hope is that RCC'S will embrace this natural evolution in our professional role rather than distance from this responsibility because there is a risk of Court involvement. This article is intended to provide practical information and tips for increasing your effectiveness in your role of child interviewer. It is based solely on my experience in interviewing children for Court/ Collaborative purposes in Family Law matters. I have authored over 120 Views of the Child Reports and interviewed over 700 children as part of a mediation process in my role as mediator, as part of a collaborative law process in my role as a Divorce Coach and in my role as a Parenting Coordinator. I hope that this article will stimulate greater awareness and dialogue in fulfilling these roles.

There are a number of considerations that the child interviewer must be aware of prior to interviewing the child and after the interview process has started. The very first consideration is obtaining the written consent of both parents. In a low conflict separation, this is usually not difficult to obtain as both parents seem to be quite reasonable and they can see the value of knowing how the children feel about the separation and obtaining their views on issues such as parenting time, residents and activities. However, in high conflict separations obtaining the written consent of both parenting can be challenging and difficult. One or both parents may

attempt to triangulate the child interviewer by asking them to interview the child without the other parent's knowledge or consent so that they can use this information in a litigation process to gain advantage over the other parent. It is imperative that the child interviewer avoid this situation both in a professional code of conduct perspective but also from a clinical perspective where triangulation is unhealthy for the family system. In the event that the child interviewer is not successful in obtaining the written consent of both parents, interviewing the child must be ordered by the Court.

Other considerations include who is the best person to interview the child. If a child therapist has already established a positive relationship with the child, this person may be the most appropriate one to provide the child's views as the parents can be assured that the child therapist is a neutral professional who has seen the child over a number of sessions and can obtain a more objective prospective about the child's views over time. In other context such as mediation, and where a child therapist has not been retained it may be appropriate for the mediator as the neutral party to interview the child and provide that information to the parents in the mediation session. However, the mediator has to be careful to obtain the parents' consent and questions from the parents that they would like the child to answer so that the mediator can retain their neutrality. Sometimes in a mediation process, if the parents trust that their approach to the child will not undo pressure on the child or that neither parent is attempting to gain advantage over the other parent, I will suggest that the parents themselves in separate interviews interview the child themselves as long as there is agreement on the questions that will be asked of the child.

Another consideration for the child interviewer is the effect on the child beginning interviewed. This is particularly relevant in separations where the child may feel a great deal of pressure from one or both of the parents to provide views that align themselves with the parent's views. The age and stage of the development with the child as well as their coping abilities need to be taken into consideration in terms of the child's ability to resist and cope with the negative effects of the high conflict separation. The child interviewer may need to assess the child's ability to retain their own independent views in the face of parental pressure and influence. Child in high conflict separations often feel caught in the middle of the parents and this can be very stressful for them. Undergoing an interview can add to that stress and pressure and so the child interviewer has to be careful to ensure that the child is protected from negative conflict that is fuelled by the parents.

Another consideration for the child interviewer is whether the child can understand the issues for which they are being interviewed and whether they can form an independent opinion about each of those issues. This is dependent on a number of factors the most significant of which

are the child's age and stage of development and cognitive ability. In my experience younger children generally speaking have more difficulty understanding more complex issues therefore the questions posed by the child interviewer need to be age appropriate and designed to elicit responses that give the parents insight into the child's understanding of the issues. In situations where the cognitive ability of the child is impaired because of developmental delays or mental challenges, the child interviewer may need to modify their approach and assess whether the child can provide an independent opinion on each of the issues. In a recent case, I interviewed a teenaged child with autism and developmental delay. After spending some time with the child, I determined that he was not able to form an independent opinion and that he was heavily influenced by the opinions of the adults around him. On the same file, his brother who also diagnosed with autism but was much higher functioning was able to provide clear and independent opinions about the issues at hand. Therefore, in providing the information to the parents which in this situation was in the form of the Views of the Child Report, I stated in the report that the views of only one of the children could be given any weight by the Court.

Another consideration by the child interviewer is the child's style of communicating and ability to communicate. Some children are very verbal and very articulate and a "talk therapy" approach is useful and appropriate. With other children, who may have a poorly ability to verbalize their thoughts and feelings, a "play therapy" type of approach tends to provide information that gives us insight into the child's world but with the use of symbolic means.

Another consideration by the child interviewer is to what extent the child may be influenced by one or both parents. In low conflict cases, this tends to be less of an issue as both parents tend to be respectful of the child's thoughts and feelings and do not perceive the child as a weapon in the war against the other parent. Conversely, in high conflict files one or both parents may use the child as a weapon against the other parent. The child will often show signs of influence such as coming into the first interview and declaring a position on a particular issue without prompting. An example of this is a child I saw who came into the first interview and told me within one or two minutes of me introducing myself that he only wanted to live with his mother.

I have learned to follow a particular sequence or process in child interviewing. I have found that this process reduces the risk of the child being negatively impacted by the interview and as well the process has helped me to be clear about how to approach the child and the types of information I will be seeking from the child. The first step in this process is to interview each of the parents and to gather background information about their separation, the issues around in which they are seeking resolution, a description of each of the children and including a

description of the children's relationships to each of the family members and the parent's recommendations for how to connect and relate to the child. I find that this first step is crucial in obtaining the parents cooperation in supporting the child interview and viewing it as a positive source of information. In the event of a high conflict separation, I am able to advise the parents that it is not in the child's best interest to attempt coach for influence the child and that the information will be obtained in a neutral and objective manner. I find that most parents when approached in this manner are cooperative in following those guidelines. The step in the process is to have each parent bring the child in for one interview. This helps me to access whether the child responds differently to my questions when brought in with one parent as compared to the other. It also gives me the opportunity to note or to observe the parent child interaction and the type of attachment that exists between the parent and the child. The child interview is conducted without either parent present. In my first interview with the child, I take time to engage the child often by being friendly and warm, asking the child their understanding of why they are speaking to me, asking them what they have been told by each parent in coming to see me and then explaining to them in an age appropriate way why their parents are seeking their opinion about particular issues. If the child interview is for a litigation process, I will often explain to the child in an age appropriate way the role of the judge, the role of lawyers, and the fact that the information provided by the child will be shared with all of those parties. If the child is anxious about the information being shared, I clarify what they feel comfortable sharing with other people and if there are particular parts of information they want me to keep confidential. My experience is that it is rare for a child to tell me that they do not want certain kinds of information disclosed to their parents or to the Court parties. I then attempt to tailor my approach and questions to the approach recommended by the parents and the age and stage and cognitive ability of the child. I also pay attention to their body language, their tone of voice, and their facial expressions as I conduct the interview and adjust my approach accordingly. My goal is always to support the child in feeling comfortable and in feeling safe in the interview.

In my child interviews I usually cover the following topics. After discussing with the child their understanding of why they are being interviewed and what their parents told them of the interview I cover the topic of confidentiality and that the information will be shared with their parents and potentially other adults as well. I usually start with topics that are more neutral for most children including where they go to school, the subjects they take in school, how they feel they have performed in school in each of those subjects and in school and out of school activities if the child feels particularly proud, I will take extra time to ask them more detailed questions about why they like that activity and how they are able to do so well in that activity. This usually helps the child to feel supported by me and to feel a connection with me through

my genuine curiosity and support of them. I then go on to discuss peer relationships and usually ask the child to tell me how many friends they have and to name some of their closest friends specifically. This gives me some idea of their friendship network and in particular their friendship network in each of their parents homes. This helps me to determine and assess how grounded and rooted the child feels in each of the parents homes. I then begin to move into what could be considered more sensitive topics. For example, I may ask the child their understanding of why the parents separated. Children respond to this topic in a variety of ways with some children saying they do not know and have no idea why their parents separated to other children who have a much more sophisticated and detailed understanding of why their parents separated. These children may have been told a number of details by one or both parents and this may have been helpful for their understanding of the separation while other children may have had a negative effect. Such as damaging their relationship with one parent who is seen as the "bad parent". The next topic I typically cover is what they like and do not like about being with of their parents and living in each of their homes. I will ask them to give me examples of what they like and what they do not like so that I am able to clearly understand their preferences. I will often ask a child what they would like their parent to change and it is quite revealing some of the answers children will give me. Another topic I cover that I cover which gives me insight into the child's extended family and the degree of support for them within that extended family network is by asking them about extended family members including grandparents, aunts, uncles and cousins. Once again this gives me insight on how grounded and rooted the child may feel in each of the parent's lives. A particular useful tool in interviewing children is the Family Relationships Test. The child is asked to name all the people they consider to be family members. They are then read statements both positive and negative statements and asked to assign family members to each of those statements. This test is quite revealing in that it tells me how the child defines their family and the feelings they have for each family member as well as the feelings they perceive that the family member has for them.

The most common issues in dispute between separating parents are where the child will live and how much time they will be spent with each parent. It becomes fairly clear to me how the child feels about each of those issues through their responses to questions about what they like and do not like about spending time with each parent and living in each parent's home. Also, the child's response to the Family Relationships Test gives me useful information about how they perceive each parent's family and how connected they feel to each family. It is not surprising therefore when a child who has disclosed earlier in the interview if they have a long list of positives about one parent and with accompanying minimal satisfaction with that parent and strong connections to that parent and their family that they state that they want to spend

the majority of the parenting time with that parent. However, at this stage in the interview I will direct questions such as “if you could tell the judge how many hours you would you spend with each parent, what would you say?” Or an example of other question might be do you feel like you are spending too much, too little or just the right amount of time with a particular parent. Most children if I have developed a good rapport with them or are feeling safe in the interview will have no problem in answering these questions directly.

The last part of the process involves reporting the information to the parents, counsel, and the court. In the context of a mediation or collaborative process, the report is a verbal report that is often given at the beginning of the process. I like to write down a lot of quotations from the child and report the quotations to the parents as this often helps them to connect to the child’s world without me editing or interpreting the child’s responses to my questions. Typically I will begin my report by complimenting the parents on the child’s strengths, in most cases the parents are quite devoted to the child and I will compliment them on what a good job they have done with the child because of these strengths. I will also report my own personal responses to the child such as I found them entertaining, or I found them to be very smart or I enjoyed their sense of humour. Where the Views of the Child Report is required, I will summarize the reasons for the report, provide some background information and then report the child’s views on each of the topics commented on above. It is important to report the content of the child’s responses as neutrally as possible. Proving quotations from the child is one way of doing this. I also find it useful to report to the parents either in a report form or in verbal format my impressions of what the child is trying to communicate. This sometimes requires me to intuitively sense how the child is feeling about the situation and particular issues. I take into account my clinical skills including my ability not only to assess the content of the child’s responses but also their non-verbal cues and the feeling sense I have in spending time with them. Parents and the Court often find this very useful to get my impressions of what the child’s inner world is like and how they are responding to the separation.

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