

Family

At divorce and separation time, the children want to be heard | John-Paul Boyd

By **John-Paul Boyd**



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(June 7, 2018, 11:03 AM EDT) -- Recent research from Rachel Birnbaum and Michael Saini provides fascinating insight into children's experience of their parents' separation and their participation in family law disputes.

In "A Qualitative Synthesis of Children's Participation in Custody Disputes," Birnbaum and Saini examine 35 qualitative studies conducted in 11 different countries involving more than 1,325 children to answer two questions: what do children say about their involvement in decision-making processes; and, whether and how children's voices are heard when their parents separate.

Birnbaum and Saini found that children want to be included in the processes that craft parenting plans for their care after separation. Children want to be consulted to be acknowledged, to exercise personal autonomy and to be better informed about the decisions being made. They do not want to have to choose between their parents but instead provide input on the arrangements made for their day-to-day care, believing that their involvement would lead to "more informed decision-making and better outcomes." Children prefer to be involved in the decision-making process early on, including at their parents' decision to separate.

Children want to be treated with respect, to be acknowledged and to be listened to in an authentic manner. Children who were allowed the opportunity to participate in an authentic way reported experiencing the change in their families as positive and were able to "maintain positive relationships with both parents." However, the children in the studies reviewed also described feelings of "vulnerability, change and loss," and expressed anxiety about being asked to choose between parents.

In "A Scoping Review of Qualitative Studies about Children Experiencing Parental Separation," Birnbaum and Saini examine 44 qualitative studies undertaken in 13 different countries involving more than 1,525 children to see what evidence exists about children's views and experiences of their parents' separation and how their views are heard.

The majority of the children in the studies reviewed in this research were surprised to learn that their parents had decided to separate and were "not informed prior to their parents' separation and were unaware of the reasons for the break-up." Children were generally sad about their parents' separation, and experienced feelings of insecurity, guilt and fear although some children felt relieved by the decision to separate, largely because of conflict and violence between their parents.

In two of the studies Birnbaum and Saini examined, the children involved said that although “shared residence arrangements were often inflexible and challenging,” the children wanted the division of their time to be “equal and fair.” However, most of the children in a third study would have preferred to adjust their parenting arrangements to see more or less of one parent.

Children generally welcome the involvement of having a trusted person other than their parents represent them in court, although the studies reviewed did not all support the conclusion that the involvement of professionals benefits children, especially among children who felt that family issues are “best kept within the family.” Most children did, however, want to be able to speak to the judge if they wished.

Children said being heard by the judge would ensure the judge didn’t misunderstand their views and that it was important to meet the person who would be making decisions about their futures, provide their input and be acknowledged. Reasons for not wanting to speak to the judge included believing that it was unnecessary, preferring to deal with family issues within the family and feeling scared by speaking to the judge. However, children do want to be heard, “whether their participation was through a lawyer, mental health professional or a judicial interview.”

The research my organization, the Canadian Research Institute for Law and the Family, has conducted over the past two years has examined how children’s voices are heard in justice processes, and what legal and mental health professionals — the adults involved — have to say about it; the meta-analyses Birnbaum and Saini have conducted take an important, and very refreshing, look at the issue from children’s perspectives. These two articles are well worth reading for judges and lawyers whose work includes an emphasis on parenting arrangements after separation.

John-Paul E. Boyd is a family law arbitrator and mediator, working in Alberta and British Columbia and the former executive of the Canadian Research Institute for Law and the Family.

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