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# Interviewing children in family law disputes: a methodology for non-evaluative views of the child reports

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I've been preparing views of the child reports for use in family law disputes for more than a decade. The key difference between my views of the child reports and those prepared by mental health professionals is simple: I'm not an expert. As a lawyer, I'm not qualified to offer an opinion about a child's experience of the conflict between his or her parents, the healthfulness of the child's home environment or whether the child's reluctance to spend time with a parent is the product of alienation, estrangement or an age-appropriate preference for the other parent. What I provide is basic reportage; I give children a neutral and confidential space to talk about their home life, their parenting arrangements and their satisfaction with those arrangements, and I produce a summary of our conversation when we're done.

Despite their obvious shortcomings, my reports usually seem to have value for everyone involved, including the children. They provide a quick and inexpensive way to hear the child's wishes and preferences in disputes affecting their interests, and thus a quick and inexpensive means of complying with the UN Convention on the Rights of the Child. This note summarizes the approach I take to preparing these reports.

My process begins when I am contacted by counsel, the court or a parent. The calls I get from lawyers usually come in the context of a pending hearing or following the making of an order that a report be prepared. The calls I get from the court are usually made during a break in a case conference or hearing. Parents usually call after receiving a judge's strongly-worded suggestion that a report would assist in the resolution of their dispute.

At this point, I warn the caller about the limitations of my reports, specifically that I won't be offering diagnoses, opinions or recommendations in my report and that I won't be probing for any underlying psychological issues. Assuming the caller isn't dissuaded from my services, we then talk about cost, the imminence of the next hearing and the date when my report will be due.

I normally complete my reports within one or two weeks of meeting the child. In urgent circumstances, I have completed reports requested by the court at the morning recess in time for the afternoon recess.

Within the next few days, I will have a brief, five- to ten-minute telephone conversation with each of the parents. I use these discussions to collect a basic family history, get a rough sense of each parent's perspective on the dispute and the purpose of the upcoming hearing, and answer any questions I might have about the child. I also try to make arrangements for the delivery of the children to my office, by an agreed third-party if possible, and the timing of the interview, especially if I am to be meeting with more than one child.

My interviews are fairly unstructured, except for a few set pieces at the beginning and end. I begin by explaining that the child's parents are in court – the child is invariably aware of this fact – and the judge would like to know what the child thinks, and that this is why the child is meeting with me. I say that we will be having a conversation, if the child agrees to talk to me, that I will be taking notes, and that I will be writing to the judge to pass on the things the child agrees I can pass on. I explain that anything the child doesn't want me to say are private and will stay just between us. I emphasize that although the judge wants to know what the child thinks, the judge won't make any decisions just because of the child's statements to me and the child isn't being made responsible for how things turn out; this, after all, is the job of the judge and the child's parents. Finally, I ask the child if he or she wants to talk to me, and I try to make it as easy for the child to refuse as possible. "Do you want to talk to me? You don't have to if you don't want to, it's totally okay not to talk to me."

After this introduction, I ask some general questions about the child's name and age, school and grade level, and extracurricular activities. I know the answers to these questions from having spoken to the parents; I ask them to break the ice and ease the child into our discussion, and I never test the child's statements against the parents' information. Regardless of any discrepancies, it is the child's statements that go into my report.

Asking about the child's daily life leads easily into a discussion about where and with whom the child lives. This in turn leads into a discussion about the time the child spends with each parent and to more important questions about the child's satisfaction with his or her living arrangements and parenting schedule. This is usually the focus of my report and I try to spend as much time as the child will give me getting additional detail about these subjects using open-ended questions. Some children are happy to talk and talk; others either can't recall many details or get uncomfortable lingering on the topic and want to move on.

When I've exhausted either the subject matter or the child's patience, I ask the most critical questions of all. "If you had a magic wand and could change anything, anything at all, what would you change? What would things look like for you?" Sometimes the child's answers are about a computer game, a pet or a best friend, but most children know exactly why they're talking to me and tell me about how their home life or parenting schedule could change to make things better for them. Other children of course say that things are fine exactly how they are and that they wouldn't change a thing.

I then review with the child everything he or she has told me. "I'm going to go through my notes and read back to you what you've told me. If there's anything you don't want me to say or anything you want me to change, anything at all, let me know and we'll make it exactly how want it to be." I then read through my notes point by point, and strike out, change or clarify my notes as the child wishes.

Finally, I ask the child a few general closing questions ("Is there anything else you'd like to tell me or the judge? Is there anything you'd like to say to your parents?") and a few other questions to clumsily test for attempts to influence our discussion ("Was there anything your mom or dad wanted you to tell me in particular?" "Are you

and your parent doing anything special after we're done?"). I then thank the child, and walk him or her back to the lobby where the person who brought the child to my office is waiting.

I try to write my report within the next few days so that the interview is as fresh in my mind as possible. The more time which passes, the more detail I lose and the more I must rely on my notes. My reports consist of a short introduction of the parties and the children, my understanding of the purpose of my report, and a summary of the facts as given to me by the child. I provide the child's description of the parenting schedule and the child's comments about the schedule, both good and bad, using as much of the child's phrasing (is it "mum," "mom," "momma" or something else?) and linguistic idiosyncrasies as possible; ideally, I want the parents to hear their child speaking when they read my report. I conclude with the child's answer to the magic wand question and a reminder to the parents not to harass, hector or harangue the child in respect of his or her comments to me. I do not provide any information that the child has asked me to exclude from my report or intimate that such information exists.

There are a few other things I don't do when I'm interviewing a child. I don't put the parents' positions to the child, I don't ask the child to express a preference for a parent, I don't correct factual errors and I don't challenge falsehoods. I don't pressure the child into giving me answers or into being more precise and particular than the child wishes to be. I don't challenge, trivialize or dismiss the child's views or comments, and I don't express any criticism of the child or his or her parents.

It usually takes me three to four hours to prepare the report. Interviews usually require 30 to 60 minutes to complete and drafting my report can require anywhere from two to three hours. I charge litigants in the Provincial Court, the trial court populated by litigants without counsel, at a specially discounted rate of \$250 per hour. Absent exigent circumstances, I charge superior courts my usual hourly rate.

Preparing these reports has given me an invaluable additional perspective on my family law practice and insight into the astonishing perspicacity of children, and is an altogether most enjoyable experience. I have been surprised by the near universal willingness of children to talk to me about their situations; only two children have ever flatly refused to speak to me, and only one has used our review of my notes to eviscerate the content of our discussion. By and large, the children I've spoken to have relished the opportunity to talk about what's going on in their lives and have engaged in the process with enthusiasm.

My reports provide nowhere near the value of the evaluative assessments of mental health professionals, and yet they do have their place in the family justice system. They are inexpensive, they can be completed quickly, sometimes the same day, they help parents remember that it is their children's interests rather than their own that matter, and they give the court a means to hear the voice of the child when it is obliged to do so. They are not a substitute for a custody assessment, but they are a reasonable alternative when the circumstances of a case suggest that a Pinto will do in place of a Porsche.

(As a brief postscript, I should mention that there is a debate in some jurisdictions about the name to be given to these reports, particularly in light of the differences between these reports and the more complete assessments provided by mental health professionals. From my perspective, it matters not whether they are called "hear the child reports," "views of the child reports," "voice of the child reports" or something else altogether. The critical distinction is that the reports I have described are *non-evaluative* while the assessments of mental health professionals are *evaluative*; rather than getting caught up in discussion about

nomenclature that risks confusing the public, not to mention the bench and bar, I propose we focus on this instead. Let's just call them what they are, either "non-evaluative views of the child reports" or "evaluative views of the child assessments." Easy enough.)

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