

Views of the Child Reports: The Ontario Pilot Project

Rachel Birnbaum* and Nicholas Bala**

*Childhood Studies (Interdisciplinary Programs) & Social Work, King's University College, University of Western Ontario, Ontario, London, Canada. Email: rbirnbaum@uwo.ca

**Faculty of Law, Queen's University, Kingston, Canada. Email: bala@queensu.ca

ABSTRACT

There is increasing use of Views of the Child Reports as a means of involving children in the resolution of parenting disputes in Canada, but there are significant differences in how these Reports are prepared. This article reports on a study of an Ontario pilot project which provided non-evaluative reports for parenting disputes prepared by social workers based on two interviews with each child about the child's perspectives and preferences; children were offered confidentiality and the opportunity to review and edit the Report. The majority of professionals and parents found these Reports were helpful for the resolution of the cases, and almost half of the cases settled shortly after preparation of the Report. Most significantly, the children all stated that they appreciated the opportunity to share their views. However, some parents and their lawyers raised concerns that these Reports may not be appropriate for certain cases. We conclude that these Reports are a valuable addition to the 'family justice toolbox'. We make suggestions for good practices and policy reforms to encourage their appropriate use.

I. INTRODUCTION: THE IMPORTANCE OF CHILDREN'S PARTICIPATION

The movement towards child inclusion in decision-making in various areas of the law,¹ including separation and divorce (Birnbaum et al, 2011), has grown over the last decade. Studies have explored children's perspectives on family relationships and what is a family (Punch, 2005, 2008), and children's attitudes about parental separation and participation in the decision-making process about post-separation parenting (Birnbaum and Saini, 2012a; Birnbaum and Saini, 2012b; Birnbaum et al, 2011; Holt, 2016). Research clearly suggests that children's inclusion in the post-separation decision-making process is important to the promotion of their well-being (Cashmore and Parkinson, 2008; Smith et al, 2003). Nevertheless, professionals and courts have been slow to involve children in family cases. In part, the lack of involvement of children in the decision-making process has been a result of the perceptions and assumptions of professionals and parents about childhood, but there are also

significant concerns about how to engage children in a cost-effective, child-focused manner.

The recognition of the rights of children has been supported by the adoption of the United Nations Convention on the Rights of the Child that guarantees children the right to express views on matters that affect them.² Despite the Convention, children have often remained absent from the decision-making process following parental separation. In Canada, while Views of the Child Reports (VCRs) are being increasingly used as a means of obtaining evidence about the child's perspectives and preferences, there is only limited research about their utility and impact, the benefits and limitations of the approach, and less about what factors need to be considered in establishing good practices and protocols to appropriately advance children's views during parental disputes.³ Especially significant, there has been little research that has directly studied the experiences of children, their parents, parents' lawyers, social workers, and judges involved in parental disputes about these Reports.

Building on the case law review and online survey by [Birnbaum et al \(2016\)](#), reported in this journal last year, in this article we report on a recent pilot project to expand the use of VCRs in Ontario. First, we briefly review the context of VCRs in Canada. Secondly, we describe the VCR Pilot Project that was completed at selected Ontario court locations, and thirdly, we report on the results of a mixed-method research study evaluating the pilot project that includes the views and experiences of judges, lawyers, social workers, parents and children involved in the project. We conclude by offering suggestions for good practice approaches⁴ for social workers who may undertake this work, as well as for judges and lawyers who may be requesting and using these reports. We also offer policy recommendations for professional groups and governments about legislative and regulatory changes that will facilitate appropriate use of these Reports, and allow for more efficient use of publicly funded resources.

While these recommendations are focused on Ontario, they could be of interest beyond that jurisdiction. Our intent is not only to add to the nascent literature of this type of Report, but also to facilitate the further development of approaches for ensuring that children can meaningfully participate in decisions that will profoundly affect their lives, and promoting more efficient and effective means of family dispute resolution.

II. VCRs IN CANADA

The use of focused non-evaluative reports to ascertain and report on the views of children involved in disputes between parents began about 15 years ago in British Columbia.⁵ As explained in the earlier article ([Birnbaum et al, 2016](#)), while there is significant variation in Canada about such issues as which professionals prepare these reports, how interviews are conducted, who pays for the reports, whether parental consent or a court order is required, and whether the child is to be given confidentiality, the use of these reports is increasingly a part of the family justice process in Canada. The names used to describe the reports include Hear the Child Reports, Voice of the Child Reports, and Views of the Child Reports. These reports are now a legally recognized part of the family justice process in Alberta,⁶ Saskatchewan,⁷

Manitoba,⁸ Nova Scotia,⁹ New Brunswick,¹⁰ and Prince Edward Island,¹¹ though there is variation in these jurisdictions in the extent to which governments pay mental health clinicians to prepare these reports, or expect parents to pay. In Ontario, there was very limited use of these reports starting in 2010 in individual cases,¹² as arranged by counsel or the judge without formal government recognition or support, or much discussion about their use among family justice professionals.

VCRs provide information about children's perspectives on their lives and their preferences, if any, on the matters at issue in the parenting dispute, based on one or more interviews with a lawyer or mental health professional, retained solely for the purpose of preparing this Report. The Reports can be evaluative, and include the interviewer's opinion on the strength and consistency of the child's views, but more commonly they are non-evaluative, providing no evaluation or commentary on the child's remarks. They provide less information than would be found in a typical custody and access assessment, and offer less opportunity for children to directly influence outcomes than if they were represented by counsel. While these Reports clearly provide children with an opportunity to participate in the justice process, from the child's perspective the nature of the participation provided may not be as empowering as meeting directly with the judge or a mediator.

VCRs are intended to report on a child's views, perspectives and preferences for consideration in negotiation, mediation, litigation and other dispute resolution processes between parents and/or caregivers. A significant feature of the process of preparation of these Reports in Canada has been that most, but not all, interviewers offer the child the opportunity to exclude matters discussed from the final report; such assurances of confidentiality may encourage children to be more comfortable and candid, and permit some discussion between the interviewer and child about what will be reported and how it will be phrased.

VCRs are usually non-evaluative and provide only a summary of the child's statements (often including quotations), without offering a conclusion or opinion from the interviewer about the reliability or significance of the statements made or providing a recommendation as to the appropriate resolution of the dispute. Reports that are evaluative in nature are only prepared by mental health professionals, and will also include the interviewer's opinion of the reliability or significance of the child's statements, and perhaps suggestions about the weight to be given the child's views, but are not full assessments of the parties, the children and the circumstances.

III. THE ONTARIO PILOT PROJECT: VCRs STUDY

1. Context of the Pilot Project and Study

The planning for the Pilot Project began in 2014 with discussions involving representatives from the courts and the Ontario Office of the Children's Lawyer (OCL), as well as independent professionals and researchers. The Pilot Project began in May 2016 and ended on 31 March 2017. VCRs were completed in 11 court sites; these sites had different levels of courts¹³ and diverse populations, including major metropolitan centres and smaller urban court sites, as well as two more remote court sites in northern Ontario. The VCRs in this project were based on interviews by social workers, who had experience in undertaking clinical investigations for the OCL.¹⁴

The reports that the social workers prepared for this project were non-evaluative and generally based on two interviews, with the child being brought once by each parent. The child¹⁵ was given the opportunity to decide about the contents of the report (ie confidentiality was provided). The social workers were not to provide any parenting recommendations, though they were asked to include observations about the child's non-verbal communication, demeanour during the interview, cognitive functioning, and any significant physical characteristics or behaviour.

2. Criteria for Inclusion

The case had to involve a child who is 7 years of age or older, and the parents and child had to understand and speak English.¹⁶ In addition, there were exclusion criteria for any disputes with:

- criminal charges against a parent and where the child might have to testify in criminal court;
- criminal charges against a parent and bail conditions prohibited contact with the child; or
- a recently completed private child custody and access assessment under the Children's Law Reform Act section 30 or a clinical investigation prepared by the OCL under the Courts of Justice Act section 112.

A Report was only prepared if both parties consented and the court agreed to make an order requiring it. The factors that the court was to consider in making an order for a Report included, but were not limited to, the following:

- that the parents lacked the financial means of obtaining an independent child custody and access assessment of their child's views or wishes;
- that unreasonable delay could be created by obtaining a full child custody assessment; and
- that an independent report of the children's perspectives and preferences was needed but not otherwise available concerning a dispute over parenting issues, relocation, education, extra-curricular activities, or other issues related to custody and access decision-making.

After a Report was prepared and submitted to the court and parties, the lead researcher (first author) contacted the participants (eg social workers, children (Birnbaum, 2017), parents/guardians, parents' lawyers, and judges) to request their voluntary participation in the research study. Participants were advised in the consent forms that no identifying information would be released.

3. The Study

Courts made orders for the preparation of VCRs for a total of 91 children. However, in four cases involving one child and in another case involving two children, the parents later declined to have their children interviewed and no reports were filed. This left a total of 86 children (48 females and 38 males) who attended for interviews

with the clinician. There were follow-up research interviews with a total of 34 children (40 per cent)¹⁷ (22 females and 12 males). The average age of the children interviewed was 12 years; ages ranged from 5 to 16 years. There were 41 parents/guardians (21 mothers, 18 fathers and 2 maternal grandmothers), 35 parents' lawyers¹⁸ (25 females and 10 males, average of 14 years in family practice), 29 social workers (26 females and 3 males; average of 9 years as a social worker in private practice¹⁹), and 28 judges (20 females and 8 males), who shared their views and experiences regarding the VCRs.

All the participants interviewed had an interest in providing their feedback (both positive and negative) about the process. However, those participants (eg parents, lawyers, and judges) who declined to be interviewed did not state the reasons for declining, and some may have declined because of dissatisfaction with the Report. It is not known how many cases in Ontario have a VCR completed privately, with or without a court order. Although none of these private reports have had any follow-up for research purposes, it is likely that until now there have been few such reports.

All research interviews were conducted by telephone, and, except for the judges' interviews, all were audio-recorded and transcribed (Charmaz, 2006). The parents of 24 children did not sign the voluntary research consents on behalf of their children or did not return telephone calls, and eight parents could not be located at the telephone numbers provided. Of the children whose parents agreed that they could be interviewed for the research study, one child declined to be interviewed for the research follow-up, three children did not sign the research consent forms²⁰ and one parent later declined to have their child interviewed even though the child signed the consent. Five lawyers declined to be interviewed, ten lawyers did not return telephone calls and another three lawyers were unavailable at the pre-arranged interview time and did not return telephone calls to reschedule.

Below we highlight the different perspectives from each participant and explore three disputed cases from multiple perspectives to provide a closer examination of the different types of disputes referred and their outcomes. What is apparent is that from the children's perspective, the interviews with the social worker were helpful to them as the children felt heard. While a number of parents commented that they did not always like to learn what their child had to say, and many were apparently unaware of the exact views of the children, almost all of the parents accepted that it was in their child's best interests to have their views shared. A major theme from the responses of the parents was that they appreciated that the Report was about what their child had to say, and not about the strengths and limitations of each parent, as would be typically found in a child custody and access assessment.

Parents' lawyers appreciated the quick preparation time for these Reports; several lawyers expressed the opinion that they should be able to present their clients' perspective to the interviewer, despite the fact this process is solely focused on the views and experiences of children. Judges unanimously appreciated the short preparation time and focus of the VCR to assist them in their decision-making. The judges believed that receiving a report by a qualified, neutral professional about what the children had to say was more helpful than hearing testimony from each parent about their version of their child views and preferences.

A. Case Outcomes

Of the 86 children²¹ who had a VCR completed, 44 per cent of the cases settled as a direct result of the Report, as reported to the researcher by the party, the party's lawyer or the judge. While this settlement rate is good, it must also be noted that the remainder of the cases were still before the courts, and the Report may still assist in settlement after the research study before trial. At the time of preparation of this research report (between 2 and 14 months after completion of the VCR), only one case went to trial²²; the social worker who prepared the VCR did not testify in that case, but the court noted that the report was in evidence and helpful.

B. Perspectives of Children

Of the 34 children interviewed for the research study, the majority were very pleased to be able to provide their views and preferences to the court and their parents. One 12-year-old boy wrote on his research consent form, 'rocks on', as indicative of his appreciation for even being asked his views about the clinician's interview and about follow-up events. The children's comments mainly highlighted both positive responses with their comfort level and their ability to speak freely. One 12-year-old male reported that when the social worker went over his comments,

'It was my words exactly without any interpretation. . . . I was comfortable and not pressured [to talk]'.

Another 7-year-old boy stated: 'the report was accurate'. A 13-year-old male commented: 'I actually thought she did a pretty good job, cuz . . . [the social worker] pretty much got everything into the report'. A 15-year-old girl observed: 'Wow, I was impressed that I was asked about what I said before it went out'. It was also important to hear from the children, when they reflected many weeks later about their interview with the social worker that most stated that they did not have anything to add. One 10-year-old boy commented: 'I said everything I wanted to'. A 10-year-old girl reported: 'I said what I wanted to'. A 16-year-old boy stated: 'No, I answered what I thought, and that's what I stuck with'. Two children expressed themselves more obliquely, a 12-year-old girl who said: 'I didn't know if I wanted to say more or not', and a 14-year-old boy who stated: 'I did have something I wanted to add a few days after the interview, but did say mostly what I wanted to'.

In contrast, four children did raise some concerns about what they remembered saying compared to what was in the Report (Birnbaum, 2017). In one case, a 13-year-old girl said that the social worker did not go over the Report with her 'as she [social worker] did not have time'.²³ As a result, the Report went to her parents and the court without the girl knowing what the social worker wrote, though the girl later saw the Report. The girl commented: 'Things [that I was reported to have] said were not how I put it'. Another 12-year-old girl said that the social worker 'got a lot of things wrong, like how many times I wanted to see my dad. . . . how I have everything at my dad's place and nothing at my mom's, when it's actually vice versa'. Her 10-year-old brother said, 'It looked like she [social worker] made some mistakes after we were done, cuz I said that I wanted to live with my mom, but it said on the paper that I want to live with my dad'.

C. Perspectives of Parents

The majority of the parents/guardians appreciated that they could obtain a VCR within 30 days²⁴ and that it focused only on the statements of their children. One maternal grandmother who had custody of her three grandchildren said: 'Well I'm glad that the process is a lot shorter. I understand the older process [full OCL clinical investigation] took several months to do. . .and I'm glad that the children will have a voice. . .that the judge will see what their views are'.

A central theme reported by both mothers and fathers was that they did not feel the Report was biased against them, even if the children said things that they did not expect; it was only about what their children said, and not about the strengths and challenges of the parent-child relationship or personal limitations of the parent as would be in a full custody and access assessment. One mother was concerned about whether the Report would reflect what her child said or what the clinician believed: 'I worried initially, but was pleasantly surprised that it [Report] was accurate'. One father stated: 'It was not biased as it was only about my child and not about me or my ex.' Another father commented: 'It was not easy [for me] to hear what my kids said, but this was about my kids only and not about either of us as parents. . .I accepted what she [daughter] had to say about the visits.' And another father observed: 'It is a good way to hear and see from children's eyes about what they say and not from either parent'. Another father expressed initial doubt about the process as he wanted the allegations about him confirmed as untrue, but concluded:

' . . . maybe if [the social worker] did bring up those allegations she [daughter] would have probably gone into defense mode. . .so it's a good process to talk about it because they didn't get on the exact topic that it was supposed to be on [the allegation about him]. So it's a good way for a kid to feel comfortable; so it's a smart way [of obtaining child's views on issue without directly asking about the allegation] of going about it'.

The majority of the parents reported that their children were comfortable with the social worker and would recommend to other parents and children that this is a good way of obtaining children's preferences and perspectives. There were also cautionary comments made by parents about this process. For example, one mother thought it was a 'great process' in general, but expressed concern as her son who has ADHD did not say much the particular day that she brought him to the interview:

'So basically the one day that he went he just closed up . . . he didn't speak at all my little guy'.

Two mothers expressed concern as they believed their children were alienated from them, and were concerned that this process only supported their children's views against them as parents. One of these mothers stated:

'It . . . completely and utterly counterproductive to our particular situation, because in a situation of parental alienation, the children are going to say exactly what they are told to say and what they have been trained to say. So I don't

think the program is effective in this context. . . well you know because they are 12 and 15, we're going to listen to what they say. . . '.

D. Perspectives of Professionals

(i) *Social Workers* It was encouraging to note that the social workers who participated in this study also were positive about the process and the utility of these Reports. Six of the 29 social workers had prior experience with this type of reports in their private practice, and one social worker had previously testified in court on a privately ordered VCR. As noted, they were experienced social workers, having completed both clinical investigations pursuant to the Courts of Justice Act (section 112 report for the OCL) and privately paid child custody and access assessments pursuant to section 30 of the Children's Law Reform Act as well as having worked in child welfare. One might have expected that these experienced social workers would express concerns about the lack of information from collateral sources, as before the Pilot Project began some Ontario mental health professionals made comments at education conferences questioning the value of reports prepared with only two interviews and without collateral information or discussions with parents and their lawyers. However, the social workers who participated in the research project were overall very positive about VCRs, with comments including:

'I thought one of the really nice things doing this project was empowering children to give them voice. . . I was only the medium. . . kids felt that had a part to play'; 'I see value to it [VCR]. . . one caveat is that the judge is astute. . . putting [the child's] views into context'; 'Very good project. . . it changed my mind about process as I saw with this child who was 12 and thoughtful young man'; 'It is short; it is child focused . . . it is good'; 'With a [full assessment], the child gets lost in report; this is focused on child'; 'Professionally . . . way less burdensome than OCL reports'; 'Really enjoyed doing it. . . child was very insightful. . . there is value to their voice'; 'I appreciate that this being properly researched'.

While efforts were made to provide all professionals and parents involved with written materials about the Pilot Project and expectations for the Reports,²⁵ one social worker who completed several Reports for this project stated that some parents and lawyers did not always understand the scope and purpose of the Reports:

' . . . just not understanding the product. People in general confuse the VCR with a [full] investigation through the OCL. They are trying to send me authorizations for Children's Aid Society, Police, etc. When I tell them that I am not contacting any collaterals, they get excited that I *need* to understand the issues'.

Another social worker commented:

'Some folks require a lot of chasing and rescheduling, and there could be time spent with counsel and reviewing more court documents'.

Some of the social workers also made other cautionary comments about children with learning challenges and developmental delays, such as:

‘As the child did not speak a lot, it would have helped with more intake information’.

‘[It is unfortunate] not being able to tell the court if the child is being influenced as she is not consenting to provide that information to the court. . . .how information is being used by court then?’

‘I’m still pondering the use of the VCR for a 5 and 6-year old - with developmental delays and ADHD challenges. I trust that the court is not relying solely on that information’.²⁶

A number of social workers commented on the relatively low cost of these Reports as being one of their valuable features for family cases.

‘I think it could be a financially accessible private tool for families that aren’t accepted by the OCL. From my perspective of OCL work, VCRs are easy to incorporate’.

‘As much as I prefer to see folks in my office [as generally expected for the Pilot Project], home visits provide a rich context and with little kids, they seem more relaxed at home than in my office’.

(ii) *Parents’ Lawyers* The majority of the parents’ lawyers appreciated that the VCRs were completed within 30 days, much faster than for other reports. While they expressed differing opinions about whether there should be three instead of two interviews, and whether collaterals should also be interviewed, they all saw the utility to these Reports in cases where there were no serious concerns being raised about parenting capacity. The lawyers’ comments were generally very positive and included: ‘Phenomenal and helpful to my client [even though his client did not get what he wanted]’; ‘All actions should start with VCR and then if they need more . . .’; ‘Excellent program and puts the child in the centre’; ‘Fundamental in settling case’.

One lawyer expressed a cautionary note: ‘Alienation cases can be problematic [for this type of Report]’.

(iii) *Judges* The vast majority of judges were also generally positive about these reports with comments such as:

‘It [Report] settled all 3 or 4 of the cases where ordered, cases that were outstanding for years and complex’; ‘It [Report] helped settle the case. I asked the parties about its influence on them. They [parents] were both very positive about its effect in settling the case. The mother said that the child reported feeling gratified that her [child] voice has been heard’; ‘Speed of getting feedback is great’; ‘Can see this better for early resolution, narrow issues, focused’; ‘Lots of times do not need collaterals and full story’; ‘I like it . . . impressed the way they were written’; ‘An effective way of hearing from children’.

One judge sounded a note of caution: 'I am concerned if resources are diluted and these reports are ordered instead of s.112 [full OCL investigation].' Another judge expressed a positive comment, but noted that there was 'not a lot of knowledge of process initially.'

(iv) Summary of the Different Perspectives While the majority of participants (eg children, parents/guardians, social workers, parents' lawyers, and judges) expressed positive views of the utility of these Reports, there were important cautionary issues that were raised. For example, whether, and if so, how should these reports be used in cases: (i) where a child refuses to visit with their other parent; (ii) where children have special needs that affect communication, such as learning problems or developmental delays; and (iii) where one parent has not had any contact for a long period of time and the child is unfamiliar with that parent. These issues will be discussed more fully in the final section below.

E. Three Cases: Multiple Perspectives

In order to give some context for the comments above, in this section we discuss three cases involving VCRs where we were able to obtain a range of perspectives from different participants. The primary issue in dispute in most of these cases was parenting time and visitation, with each litigant claiming to know what the children wanted. It is, of course, understandable that children caught in a dispute between parents may not be expressing their true feelings to each parent, and some parents may tend to 'hear what they want to hear' from their children. It is important to appreciate that without a VCR, many of these children would have had little effective input into the decision-making process of their parents or the court. Notably, two of the three cases settled based directly on the Report.

In one case, all the parties were represented (eg mother, father, aunt/uncle). The central issue in dispute was what type of schooling the girl would have, as she was primarily residing with her aunt and uncle. There were religious issues in the background to this dispute. The girl was clear with the social worker that she wished to continue her education through religiously based home schooling that her aunt and uncle would provide, rather than in a traditional school setting. She reported: 'This [Report] was a good idea' to allow her to 'speak for herself.' Her father reported that he had not had a good experience with a prior full OCL Clinical Investigation Report, and that he was 'happy to hear the child speak for herself' through the VCR. The mother's lawyer felt that she would have wanted a 'more in-depth [report and was]...concerned about the lack of detail,' noting that the Report did not support her client's position. The lawyer for the aunt and uncle, who was more satisfied with the actual content and noted that the case settled based on the Report, commented that the Report was 'good as only views of the child...very [helpful] certainly for settlement. It was made very clear...all counsel knew what the question was and that was what the judge wrote in endorsement, so it helped in this case...it settled the case'.

In a second case, the mother was represented and the father was self-represented. The case began when the mother, with whom the 15-year-old daughter resided,

sought increased child support, and the father responded with a claim for increased time with their daughter. The mother believed that the views of the daughter should be heard, but was concerned that the daughter was under the influence of her father and would say that she wanted to spend more time with him. The mother commented that: 'Kids need a voice. . . though it did not work' for her as she felt that her daughter's views were unduly influenced by her father. The father denied any influence on the daughter, and stated that the VCR, 'was a good way to hear and see from children's eyes'. The mother's lawyer observed that this is a much better and faster way to ascertain the child's view for this type of case than the usual OCL clinical investigation as parties 'usually have to wait to see if the [OCL] accepts it, and then if not,' decide what will happen. The 15-year-old girl stated she was comfortable with the worker and that she had said: 'Everything and did have not much more to say.' She also commented that it was 'cool to go over the report, and cool that I [researcher doing follow up] am doing this.' She also stated, 'it [use of VCRs] should continue'.

In the third case, the mother was represented and the father was self-represented. Each parent was seeking sole custody of their 13-year-old daughter, who for years since separation had been living on and off with each of them. At the time of the application, she was primarily living with her father. The mother was alleging that the father was abusing alcohol, and the child should move from the father to her. After the preparation of the VCR, the parents settled the case, with the child residing primarily with her mother and having visits to her father. The parents were both generally satisfied, commenting:

'The judge requested it [report]; it was quick; it was actually good, but disagreed with report as [my daughter's] words were changed'. [Mother]

'My daughter was comfortable with [social worker]; allegations not really dealt with, but a good report; would recommend it to others'. [Father]

The mother's lawyer was also satisfied, noting due to the girl's stated wishes she 'went from not seeing her mother to living with her now. . . [The Report] really validated issues and was quick.' The social worker who prepared the Report also commented positively: 'I really liked it; they read [children] report and commented on it. . . maybe a better way to get views and preferences.'

The girl who was the subject of the Report commented that: 'It felt good, certain things [that I] said not really there.'²⁷ For me it was a good feeling.'

4. When to Have a VCR

Interviews with the parents, parents' lawyers, social workers and judges in this study suggest that VCRs can be most useful when a dispute between parents is relatively focused and there are no complex 'clinical' or parenting issues involved (eg concerns of abuse of the child; alcohol or drug problems, neglectful parenting, mental health concerns, etc.) where a more in-depth child custody and access assessment may be more appropriate. Further, many of the parents' lawyers, in particular, suggested that this type of Report should be used at an early stage of a proceeding where parents disagree about the child's preferences and perspectives, and can allow all involved to gain a better understanding of the child's views, and may serve a useful settlement or

triage function at this stage of the proceedings. The majority of parents' lawyers and judges believed these Reports can be valuable to help settle a case, especially if the child is older and the parents have different understandings of the child's views. The Reports can also be useful if there is a lack of reliable information about the child's perspectives and preferences, or there has been a lengthy time since a child custody assessment was conducted.

Parents' lawyers and judges had differing views about whether this type of Report is useful where a child refuses to visit the other parent and there are concerns that child might simply 'parrot' the preferred parent's views. However, the majority of both parents' lawyers and judges believe that this type of Report is useful even in these cases where alienation could be a factor, to learn what the child says that could support or refute the concerns raised by each parent.

IV. GOOD PRACTICES GOING FORWARD

1. Identifying Qualified Mental Health Professionals

There are different practices in Canada about whether this type of Report is prepared by a lawyer or mental health professional. Undoubtedly, what is most important is that the professional has appropriate training, skills, and experience for interviewing children, and understands the purpose of the VCR. Lawyers with experience in child representation may do a very good job with this type of Report. However, we found that having experienced social workers prepare these Reports allowed for a cost-effective and relatively consistent approach to their preparation. Social workers with experience in undertaking child custody and access assessments should have the training to identify children who may exhibit hesitation in talking about their situation and may facilitate more openness with the child. There is a concern that lawyers without specific training may be more concerned with getting at 'the truth' rather than allowing the child to express their own perceptions.

Social workers are also trained in identifying demeanour and body posture that may signal a concern that further investigation into the case is warranted; while the social worker should offer the child confidentiality, social workers are legally obliged to report suspected child abuse or neglect to the child welfare authorities; not all lawyers may appreciate the signs of abuse and their duty to report reasonably suspected cases of abuse or neglect concerning children who are not 'clients'. We recommend that in any jurisdiction where these Reports are prepared, a panel or roster should be established for this type of Report, whose members have both initial training in the purpose and scope of this type of Report, as well as on-going supervision and support.

2. Initial Contact with each Parent

Many social workers involved in this study reported that while the focus is solely on the child's views and perspectives, they would have appreciated more contextual information before interviewing the child. Although the court was expected to provide information when ordering the VCR, and each parent was required to complete a short Intake Form, in many cases the information supplied was very limited. We, therefore, recommend that the social worker have a telephone conversation with

each parent based on their Intake Form to inquire what the parent hopes will be learned in the interview process with their child (likely 20–30 minutes with each parent). This conversation will provide the social worker with some context for the interviews with the child, and may make settlement based on the Report more likely as parents may feel that they have ‘been heard.’

In addition, the social worker should make clear to the parents the purpose and limited scope of the VCR. The information obtained from the interview with each parent/guardian should be part of the written Report. Consistent with the comments of most of the social workers and parents’ lawyers involved in this study, we recommend that there should not be a review of court documents, contact with collaterals or discussion with parent’s lawyers as part of the process of preparation of a VCR. That type of inquiry is needed for a full assessment, but would add to the expense and time for completion of these Reports, and lead to uncertainty about their scope and purpose.

3. Location and Circumstances of Interviews

As required by the Pilot Project protocol, most of the social workers had two separate office interviews with each child having been brought by each parent once. However, there were situations where one parent did not have any contact with the child during the period when the interviews occurred or distances precluded a face-to-face interview, or one parent bringing in a child. While having each parent bring the child to one interview promotes collection of more information and makes the process seem ‘fair’ to the parents, there also needs to be some flexibility when distance, expense for parent, and comfort level for the children should be taken into account to allow interviews to be conducted over the phone, by skype, in the child’s home, or a setting like the child’s school. While there will be situations where the child will not be brought to one interview by each parent/guardian, the social worker must always be aware of the need for fairness and neutrality, and note in the Report the locale and circumstances of each interview.

4. Obtaining Consent from Each Child about Confidentiality

While many mental health professionals who conduct child custody and access assessments do not typically ask children’s permission to be interviewed or review the content of their interview, this was a vital aspect of the protocol for VCRs in this project. This tends to increase the willingness of children to be candid, and ensures that the child is, at the end of the process, comfortable with the information that parents will be provided. While there may be some children who refuse to have their preferences shared with their parents (and the court) in a Report, they may nevertheless provide some valuable information about their perspectives. In most cases, the social worker reviewing the draft Report with the child can negotiate appropriate wording that the child is comfortable with while still conveying the child’s views.

5. Report Content

There were inconsistencies in how the Reports were written, despite the fact that a Report Template was provided to the social workers as part of the training. More

consistency in the content and format of these Reports would provide better access and context to the information provided. While each case and the children may present with different issues, it would be valuable for these Reports to have a standard format. We recommend the following at the start of the Report:

1. Court file number, level of court and location; date of request and completion of report;
2. Names of all parties and their relationship to the children;
3. Child's complete names and date of birth;
4. Name of each counsel or whether the party is self-represented;
5. Name of the Report writer, including their professional designations;
6. Reason the Report was requested by each party and, if stated by the judge;
7. Summary of current parenting situation, and any particular issue of the case (eg a parent has declined to bring the child in, has not seen child for some time, etc.);
8. Confirmation that the child consented to the preparation of the Report and reviewed its contents; and
9. An acknowledgment that the Report concerns only the child's perspectives and does not constitute any type of child custody and access assessment or provide any parenting recommendations.

We also recommend the following should also be included in each Report:

- a. Date and location of each interview with child and information about who accompanied the child to each interview;
- b. Clarification whether siblings are interviewed separately or together (should normally be separate); if there are siblings, whether interviewed jointly or separately, it should be clear what views were expressed at which interview and by which child.
- c. Background information: telephone calls with parents and/or counsel to arrange interviews and any issues making these arrangements if present that impacted on the completion of the VCR report.
- d. Observations of the child: the Report should not include recommendations, but should provide observations about the child's behaviour and demeanour during the interviews.
- e. Summary: there should be a summary of each child's views of issues, as related to the reason for the report; any statement about consistency or inconsistency of the child's views over time.
- f. A statement about any recommendations for further services, such as a full assessment by the OCL, and whether a report was made to the Children's Aid Society.

V. PRACTICE AND POLICY RECOMMENDATIONS

The results of this study contribute to the limited empirical knowledge about VCRs; it is apparent that, *for the right cases*, these Reports can be a useful, expeditious, and cost-efficient way of engaging children in the justice process and allowing their

perspectives to be shared with their parents and ultimately to the decision maker. In too many cases at present, children's views are not being reliably shared with parents, their lawyers, or judges (Saini et al, 2016). This study suggests that the preparation of these Reports and the sharing of children's views promote settlement, saving money for the parties and the government, and promoting the interests of children.

It is clear that VCRs have a place in the continuum of services provided to children and families, and that they can be an effective means of ensuring that children's voices are heard in family justice disputes, including in mediation and arbitration. If undertaken early in the process, a VCR can serve a triage function, to help ascertain how the child is experiencing parental separation, and help identify whether or not further clinical investigation is necessary to assist the court in decision-making. As one lawyer interviewed for this project thoughtfully stated: 'All actions should start with VCR and then if they need more . . .'.

Notably, close to half the cases where a Report was prepared resulted in a settlement based on the Report; three were referred to a child welfare agency because they were indications of parental maltreatment during the interviews, two cases were referred for a more thorough and detailed investigation and report by the OCL as the social workers expressed concern about the child's situation. For many cases, VCRs may be a cost-effective, sensitive way to involve children in the dispute resolution process and ensure that their voices are heard. They are much less expensive to obtain than custody and access assessments, and can be prepared quickly, usually without delaying the course of the proceedings and can sometimes be prepared on the same day they are requested. They may also be less intrusive for the child and parents than either a full custody and access assessment report, a judicial interview or the appointment of counsel for the child. VCRs, however, are only one means of providing children with access to justice. They are *not* meant to replace child legal representation, child-inclusive mediation, child custody and access assessments or a judicial interview with a child, all of which are also valuable ways of engaging children. Rather these Reports provide another way that allow for children's views and preferences to be directly heard and shared with their parents and the decision maker, a tool that may be best in *some* cases.

Similar to other approaches used to obtain perspectives and preferences from children for family dispute resolution purposes, there are cautions that need to be considered about VCRs, and limitations to this research study. It is important to recognize that all the cases in this Pilot Project were ones where both the parents agreed to the preparation of a Report, and a judge was willing to make a referral. In addition, VCRs may not reveal the true views and preferences of children who are subject to parental pressure or manipulation, or whose views may be changing. Although all the children involved in research project were articulate and thoughtful in sharing their views, some children have emotional or cognitive limitations that may negatively impact their ability to express themselves. This can be a concern given that these Reports are based on just two interviews with the child, and there is no effort to collect background information about the families (eg speaking to parents, parents' lawyers, or reviewing court documents) or contact with collateral sources (eg teachers, doctors) to provide more context.

Further, there needs to be caution about the use of these Reports where there is concern about domestic violence or where a child does not wish to have contact with one parent. There were a number of professionals and parents who participated in this study who raised this note of caution. While these cases can be challenging for any professional involved, we argue that even where there is domestic violence or 'alienation' concerns, efforts must still be made to allow children the opportunity to share their perspectives and preferences. It is, however, clear that not all children want to be involved or express their views and this must be respected, and there are cases in which children's stated views may be discounted due to undue parental influence.

More longitudinal follow-up on outcomes and process is needed to assist in identifying the potential harm and benefit to children who are invited to speak to different professionals about their views and preferences. Further research also needs to explore the differences in views and preferences of siblings, if any, and how that might impact on children's views and preferences. While this research focused solely on child custody and access disputes, expanding the research to include children who are subject to child welfare proceedings is equally important.

As a First Principle, *all children* should have the opportunity to be heard in a manner that they are comfortable with. In some jurisdictions, including Ontario, legislation and government policies should be amended to encourage the use of VCRs as one way to expand opportunities for participation of children, including through government funding. It is notable that in this province, since the Pilot Project was undertaken and awareness of these Reports has spread, lawyers have begun to agree to consent orders for their preparation, with parents paying for them.

Although we are advocating action in Ontario now, clearly there needs to be much more discussion and research involving the legal community, mental health professionals, judges, the government, professional regulatory bodies, and most importantly, children and youth themselves, so that children's participation can be truly meaningful to them, to their parents and to the courts during times of family breakdown.

NOTES

1. Williams et al (2007) have promoted the participation of children in decision-making in legal and administrative contexts in Canada by developing the *Child's Rights Toolkit* available on the Canadian Bar Association website at: <http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit> (last accessed 23 August 2017).
2. Can. T.S. 1992, No. 3, Article 12.
3. Experiences in British Columbia with these reports was studied by Williams (2006), Williams and Helland (2007) and Focus Consultants (2008). These studies had a small sample size and did not include all the different stakeholders and participants in the process.
4. In this article, we purposely distinguished between 'good practice' approaches and 'best practice' approaches. While many lawyers and mental health professionals (eg social workers, psychologists) across Canada prepare both evaluative and non-evaluative Reports, there remains a paucity of research, particularly on outcomes to guide practitioners about 'best practices' on how the Reports should or should not be prepared, and even whether any one professional discipline (eg lawyers or mental health professionals) is more suited to these brief interviews with children for court purposes.

5. In 2009, a group of British Columbia lawyers and mental health professionals, following up on the pilot project of the International Institute for Child Rights and Development, established the British Columbia Hear the Child Society (BCHCS) to promote children's participation in justice processes. Mental health professionals and lawyers interview children and prepare non-evaluative reports, evaluative reports, and a full assessment by mental health professionals as provided by legislation in BC at s. 211 of Family Law Act and Hear the Child Reports at s. 37 of Family Law Act. In 2016, the BCHCS developed practice guidelines and protocols based on a survey of their membership who conduct these interviews. Parents generally pay for these reports. See their website at: <http://hearthechild.ca> (last accessed 23 August 2017).
6. In Alberta, Family Law Practice Note 7 of the Alberta Court of Queen's Bench allows for a court to order preparation of a focused VCR, with the parents to pay.
7. In Saskatchewan, a Child's Voices Report can be ordered by the court, with the government paying for the report; see website link: <http://www.justice.gc.ca/eng/fl-df/fjs-sjf/view-affic.asp?uid=219> (last accessed 23 August 2017).
8. In Manitoba, the Brief Consultation Service allows for courts to order reports paid by the government to help address the wishes and concerns of children ages 11–16 years: https://www.gov.mb.ca/fs/childfam/family_conciliation.html (last accessed 23 August 2017).
9. In Nova Scotia the government has introduced Guidelines for the preparation of VCR: <http://www.nsfamilylaw.ca/other/assessments-VCR/VCR/VCRGuidelines> (last accessed 23 August 2017).
10. In New Brunswick, a court may order Voice of the Child report, paid for by the government: http://www.legal-info-legale.nb.ca/en/court_ordered_evaluations_support (last accessed 23 August 2017).
11. Referred to a Focused or Brief Assessment such as a views and preferences interview of a child 12+ years old. See website: <http://www.gov.pe.ca/jps/index.php3?number=20159&lang=E> (last accessed 23 August 2017).
12. See eg *Walton v. Sommerville*, 2010 ONSC 2765 where a judge is specifically requesting a VCR; *B.T.O. v A.A.*, 2013 ONCJ 708, per Sherr J; and *Violo v Munro*, 2015 ONCJ 640, per Jones, P.J.; *Svirsky v Svirsky*, 2013 ONSC 5564, per Kiteley J.
13. As in many other jurisdictions, in Ontario there have historically been two levels of court that deal with parenting disputes. One the more formal, Superior Court of Justice, deals with property issues as well as support and parenting. The other, 'lower' level of court, the Ontario Court of Justice, typically deals with parenting and support cases for less affluent parents, and also deals with child welfare cases. In some locales, there are now Unified Family Courts, for all types of family cases. All three courts were included in the pilot sites.
14. The social workers were all fee-for-service agents of the OCL who conduct clinical investigations and reports pursuant to s. 112 of the Courts of Justice Act. They were purposely selected for this pilot as they all had already been vetted for their clinical experience and educational qualifications. More significantly the family law lawyers and the courts were already familiar with the work of these clinical agents at the OCL.
15. In four cases, the same parent brought the child to both interviews as the other parent had no access to the child for many years or did not understand the process. In one case, a telephone interview with a child was done as the geographic distance precluded an in-person interview with the child.
16. Translation services were only available to the children for both the interviews with the social worker and research follow-up. No translation services were required.
17. Unlike quantitative methods, qualitative interviews have no fixed sample size. Rather, what is important is that saturation in the interviews be reached; i.e. the themes begin to repeat themselves. See *Baker, and Edwards (2012)* for a review on sampling in qualitative research.

18. A total of 12 mothers and 15 fathers were self-represented. One father retained a lawyer on a limited scope retainer for this process. Several lawyers reported on more than one VCR.
19. Six of the social workers had prepared these types of Reports privately and one social worker had testified in court about a Report she completed privately. The average number of Reports completed by the social workers for this pilot was two.
20. In four cases, the social workers did not believe the child understood the meaning of consent for research purposes and the child did not sign the consent form. In one case, a child wrote 'rocks on' on their consent form. It is interesting to note that many children who are interviewed for clinical purposes are rarely asked to consent to the interview.
21. The majority of the cases that were referred were a result of each parent disputing what the child had to say about their views about where they were living, visits with a parent, school issues, or extra-curricular activities. There were six cases where a parent alleged that their child refused to visit the other parent; three children were referred to a child welfare agency because they were indications of parental maltreatment during the interviews with the social worker: one lawyer filed an 'objection' to the Report as his client (the father) did not bring the child to the interview (though the case settled with access to father), and there were two cases where the social workers expressed concern about the child's situation and suggested a referral for a more thorough child custody and access investigation by the OCL, which occurred.
22. *Smith v Finn*, [2017] O.J. 3281 (OCJ), per E.B. Murray. In that case there was a parenting dispute about two children. The judge observed:
The report said that:
 - A [aged 16] had a good relationship with both parents, but did not wish to change her living arrangements. S [aged 11] 'wished his preferred residential arrangement to remain private because he has concern about the feelings of his parents'. The assessor said that
 - S. likes living with his mother and likes the time he spends with his father.
23. In this case, during the mother's follow-up research interview she reported that the social worker did try and telephone to review the report with her daughter, but her [parent] telephone was disconnected at the time.
24. It should be noted that the OCL has the discretion to refuse a case due to financial and lack of available resources. Moreover, it can take up to four weeks before a decision is made whether to accept the case, and then perhaps only to have it rejected. Completion of a clinical investigation by the OCL is normally 3 to 6 months.
25. Information Sheets were provided for parents, lawyers, and judges, and can be obtained from the first author.
26. The protocol for the project had a minimum age of seven years for inclusion, though one case involved a six-year-old as her older sibling was being interviewed.
27. The mother reported that the social worker did telephone to go over to the child's information, but her [the mother] telephone number was disconnected at the time.

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