

28 Can. J. Fam. L. 225

Canadian Journal of Family Law
2012-2013

Allan Falconer Memorial Student Essay Contest Winner

A Voice for "The Small": Judicial "Meetings" in Custody and Access Disputes

Carolyn Savoury

Copyright © 2013 by Canadian Journal of Family Law; Carolyn Savoury

INTRODUCTION

In the children's book, *Horton Hears a Who!*, Dr. Seuss wrote, "A person's a person no matter how small."¹ For many of us, Dr. Seuss's line may not seem all that prophetic. However, some areas of Canadian law have only recently begun to treat children as people, "no matter how small." For example, the law governing custody and access disputes relies on the "best interests of the child" test, in which the "only relevant issue" is the child's interests.² Conversely, the procedures used to resolve those disputes actually protect *adult* interests. In turn, despite the law's focus on the best interests of the child, the child is typically "silent and invisible" throughout the process.³ However, it is increasingly becoming recognized that treating children as parties who must be protected from the decision-making process may not be in their best interests.⁴ Recognition of a child's *right* to participate in decisions that directly impact *226 them, such as custody and access decisions, and allowing the child to participate in those decisions, is becoming more popular in Canadian family law.⁵

Recognizing the child's right to a voice in custody and access litigation may be a relatively new concept, but the notion that judges must take on a more active role in custody and access decisions, compared with other types of decisions, is well established.⁶ The difference between divorced parents arguing over keeping the car *versus* keeping the children is that children have interests, but cars do not.⁷ Therefore, because the object of the litigation is a person, "no matter how small", with rights and interests, custody and access disputes are distinct from other forms of litigation. In turn, judges take on a unique role. For example, in Canadian custody and access cases, judges have the discretion to "privately" interview a child, usually in chambers.⁸ In a tort or criminal case, a judge would never interview an individual connected to the case privately in chambers. However, in custody and access decisions, providing the child with a voice adds a human element to the decision, which may help judges realize that the subject of the litigation is a person and not a piece of property.⁹

*227 Fortunately, the question of whether children *should* be given a voice in custody and access disputes has been answered by most in the affirmative. However, the question has now transformed to *how* that participation should take place.¹⁰ There are several options available for the court to involve the voice of the child in the decision-making process. One of the more controversial of these options is the subject of this paper: judicial interviews.¹¹ A judicial interview involves a judge speaking directly with the children of the parents involved in the litigation, usually in the judge's chambers. In *BJG v DLG*,¹² Justice Martinson stated that the three broad purposes of judicial interviews are: (i) obtaining the wishes of children; (ii) making sure children have a say in decisions that affect their lives; and (iii) providing the judge with information about the child.¹³

Part I of this paper describes Ontario's legislation and the province's current practice with respect to judicial interviews. Part II explores the debate over judicial interviews. Part III is a review of the research regarding recommended stipulations if judicial interviews are to be conducted. Finally, the author's recommendations for reform, based on the research, are presented in Part IV. It is argued that judicial interviews of children who are the subject of high conflict custody and access disputes should be conducted more often *228 than they currently are in Canada.¹⁴ However, the interview should be more akin to a "meeting" with the child, aimed at gaining a greater understanding of the child's experience and providing context for the judge. To boost the number of judicial "meetings", legislation should be amended and guidelines should continue to be developed, which will reduce judicial discretion and increase judicial comfort.

ONTARIO

Legislation

Ontario legislation suggests children ought to be given a voice in custody and access decisions. Section 24(2)(b) of the *CLRA* reads as follows:

The court shall consider all the child's needs and circumstances, including [...] (b) the child's *229 views and preferences, if they can be reasonably ascertained.

The *CLRA* also explicitly provides judges with the opportunity to interview children in custody and access applications. Section 64 reads as follows:

64. (1) In considering an application under this Part, a court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them.

(2) *The court may interview the child to determine the views and preferences of the child.*

(3) The interview shall be recorded.

(4) The child is entitled to be advised by and to have his or her counsel, if any, present during the interview.

[Emphasis added]

By stating that the court *may* interview the child, the legislation allows for significant judicial discretion as to whether a judge *will* interview a child.¹⁵ Moreover, the legislation allows for discretion in terms of the processes used in conducting the interview.

Support for judicial interviews in Ontario can also be found in the *United Nations Convention on the Rights of the Child* (the "Convention").¹⁶ Article 12 of the *Convention* allows a child who is capable of forming his or her own views *230 to express those views in matters affecting the child, which custody and access disputes clearly do. The *Convention* reflects Canadian values and informs statutory interpretation.¹⁷ For example, Justice Martinson, in *BJG*, relied on the *Convention* as a tool to interpret the *Divorce Act*.¹⁸ She held that, although the *Divorce Act* does not expressly mention the child's legal right to be heard, it is in the best interests of the child to be given the right to participate in the decision-making process.¹⁹ Therefore, the *CLRA* expressly allows for judicial interviews, and the *Convention* provides additional support for their use.

Current Practice

The Ontario Court of Appeal, in *Uldrian v Uldrian*,²⁰ held that section 64(2) of the *CLRA* does not impose a *duty* upon a trial judge to interview the child, but rather provides a judge with the *opportunity* to interview the child.²¹ However, Ontario case law and research both suggest that, despite being granted this opportunity, judges rarely act upon it.²² Professor Noel Semple performed a nationwide study in which he analyzed a sample of 181 reported custody and access judgments.²³ There were no judgments found in which a judge performed a judicial *231 interview.²⁴ However, more recent research suggests judges are slowly beginning to meet with children more often.²⁵

THE DEBATE ON JUDICIAL INTERVIEWS

The debate on judicial interviews has been contentious. In fact, while Canadian jurists rarely state their opinions publicly, numerous jurists have spoken out against the use of judicial interviews.²⁶ The main arguments of the debate are explored below.

Unreliable Information

Opponents of judicial interviews argue that information provided by a child is unreliable. Moreover, it is argued that because the judge, him or herself, actually obtained the "evidence", he or she is more likely to, mistakenly, believe it is reliable.²⁷

Some of the reasons why the information is arguably unreliable are outlined below.

Lack of Training

To communicate with children - and interpret those communications - skill, expertise, and training are required. Judges often lack these requirements. Professor Rosemary Hunter argues that judges do not know what kinds of questions to ask and not ask, nor do they know how to deal with *232 children's "fantasies" that their parents will reunite. Judges may also not know whether children mean what they are saying or are merely exercising a coping strategy.²⁸ Therefore, interviewing children requires some degree of training to be able to address these concerns.

Both opponents and proponents of judicial interviews accept that judges may lack this requisite training. Justice Martinson, who may be classified as a "child liberationist", even recognizes limitations of judicial interviews because of the lack of judicial training. In *LEG*, Justice Martinson stated that judges are not trained to interview children in a manner that allows them to assess a child's wishes, as they lack knowledge of childhood development.²⁹ Moreover, Professors Nicholas Bala and Rachel Birnbaum, both well-known supporters of judicial interviews, have noted time and again that judges would benefit from training before meeting with children.³⁰

However, proponents of judicial interviews contend that training is an issue that can be overcome. As Alfred Mamo and Danielle Gauvreau put it, "this [lack of training] need not act as an absolute deterrent."³¹ They suggest that guidelines or best practices would be sufficient to help assist judges in meeting with children, and they would not be cumbersome to develop.³² In fact, since then, development of guidelines has *233 not only begun, but has also made significant progress.³³ Further, in *BJG*, Justice Martinson pointed to programs developed by Canada's National Judicial Institute to train judges.³⁴ Therefore, training programs and/or guidelines are currently being developed to overcome this barrier.

Time Constraints

Opponents of judicial interviews argue the information is unreliable because judges typically only have time to conduct *one* meeting. Arguably, in one meeting, the judge cannot build a relationship with the child, whereby the child feels comfortable enough to provide his or her true views.³⁵ Moreover, in one meeting, the judge cannot test the consistency of a child's views. Professor Hunter believes very little can be gained from obtaining a firmly held, but fluctuating, preference from a child, "which depends upon whether the child is asked [on] Monday or Wednesday."³⁶ A consistent view is more valuable but requires numerous meetings.

*234 Opponents argue that in one meeting, a child will not have the rapport to speak honestly with the judge. However, children should never be *forced* to speak to a judge.³⁷ Therefore, it follows that if the judge is speaking to a child it is because that child wants to, and presumably has something to say.³⁸ If the child has something to say (whether the opinion is honest, influenced, or fluctuating), he or she should be heard. Moreover, advocates for judicial interviews of children recognize the inherent weakness with one single meeting. Yet, they argue judicial interviews are not meant to replace other forms of gaining reliable information from children, such as custody assessments performed by mental health professionals; judicial interviews of children are meant to complement other sources of information.³⁹ Even one single interview can provide valuable insight *on top of* information from other sources.⁴⁰ It also has benefits for the parents (in terms of settlement) and the children, both of which will be subsequently discussed.

Location

Typically, judicial interviews are held in the judge's chambers. The unfamiliarity of this location adds to the appearance of unreliability.⁴¹ Moreover, because a judge usually cannot come to the child's world, for example by coming to the child's home, someone has to drop the child off at the court. Professor Hunter points to a US commentator who has noted the following with respect to this practice:

*235 A father who brings the child to a Monday interview after a long, fun filled weekend might be favoured by the child; [...] a mother who brings the child to the interview after a stressful night of fighting over homework might not be as favoured by the child.⁴²

Advocates for judicial interviews suggest ways for overcoming this location issue. Child-friendly rooms could be developed, and a neutral party could take the child to the interview. For example, Justice McColley, an Ohio judge who has conducted many judicial interviews, conducts the interviews in specially prepared playrooms for younger children. During the interviews, Justice McColley may read with the child, play games, colour, or draw pictures.⁴³ In Canada, some judges have even accompanied children to a fast food restaurant for this "chat."⁴⁴ Moreover, the alternative to obtaining direct views from

the child is in open court. Compared to testifying in court, judicial interviews provide a more relaxed method for obtaining children's views.⁴⁵

Confidentiality

Section 64(3) of the *CLRA* requires the recording of judicial interviews by a court reporter, but does not address confidentiality. On the one hand, if judicial interviews are confidential, the child is likely to feel more comfortable. As a result, the child may be honest and open with the judge, which *236 results in the information being considered more reliable. On the other hand, if the interview is fully confidential, the interview may not be perceived as fair and just to the parties, as the parties are not able to controvert the evidence upon which a decision will be made.⁴⁶ Therefore, arguments have been made that where the judge sees the child in private, upon the consent of the parties, that information should be disclosed to the parties in some format.⁴⁷

Perceptions of Fairness

Opponents of judicial interviews also argue that society's perception of fairness in the judicial process is affected when judges, as impartial triers of fact, conduct interviews of children themselves. As the judge is an active participant in gathering evidence, parties may no longer perceive the judge as an impartial adjudicator.⁴⁸ Also, critics of judicial interviews contend that the judge may be prejudicial as a result of the interview with the child, particularly if the interview is conducted in private.⁴⁹ In *Ali v Williams*,⁵⁰ Justice Van Rensburg declined to interview 12 and 13-year-old children. She stated the following:

A 'behind closed doors' consultation with the judge alone, about such an important matter, is inconsistent with the appearance of justice.⁵¹

*237 The fear is judges may engage in "results-based reasoning", whereby they rely on the "evidence" obtained in the interview to make their decision, yet cloak their reasons with other factors.

Psychological Damage vs. Therapeutic Benefits

For years, opponents of judicial interviews have contended that involving the child in the decision-making process places stress on the child from being "placed in the middle", causing him or her psychological harm. However, proponents of judicial interviews rebut this argument. The traditional paternalistic approach of excluding the child ignores the fact that children are likely *already* harmed by the turmoil in their home in addition to the stress the litigation brings upon all parties.⁵² Thus, the goal is actually one of "damage control", as a child of a high-conflict custody battle actually described it himself.⁵³ Professors Bala and Birnbaum have stated that there is no research to support the view that meeting with the judge will *exacerbate* the harm to children caught between "warring parents."⁵⁴ Further, proponents of judicial interviews argue the notion that participating in a court-based decision-making process psychologically damages children is unsupported by empirical evidence.⁵⁵ Moreover, the research even refutes that view.

*238 There is an extensive amount of research suggesting more harm is caused to children by *excluding* their views than by including them.⁵⁶ For example, some of the negative impacts of excluding children are: (i) children's self-esteem is lowered; (ii) children's psychological functioning and development of competencies is impeded; (iii) children feel ignored and experience fear, sadness, depression, withdrawal, confusion, and/or anger from being left out; (iv) children have trouble coping with stress; (v) children are less satisfied with parenting plans and comply less often (more often "voting with their feet"); and (vi) parent-child relationships deteriorate.⁵⁷ With respect to children's satisfaction with the solution, Professor Bren Neale stated, "Legal solutions that downplay or ignore children's own perceptions of the problem might be perceived as no solution at all by the children themselves."⁵⁸ Further, Professor Neale has suggested that being excluded from the decision-making process is particularly harmful where children cannot rely on parental support, for example, at the point of divorce when parents have a "diminished capacity" to parent properly.⁵⁹ All of the scenarios in this paper involve high-conflict divorces, where the presumption that parents are not properly providing support for their child is arguably even greater.

In addition, when children are included in the decision-making process, the discussion can be somewhat cathartic and/or therapeutic, resulting in some of the following positive effects: (i) children feel respected and their self-esteem will be raised, improving resiliency; (ii) the intensity and duration of *239 the family conflict can be reduced (the hope being that once the child is heard, the parents may adjust their behaviour to stop focusing on their failed relationship and instead on what the child is saying); (iii) children feel empowered, which improves parent-child relationships and results in better quality

arrangements; (iv) children more easily adapt to a newly reconfigured family; and (v) children feel in control, which helps them cope in this tough time.⁶⁰ Therefore, the growing body of research in this area is recognizing the value of actively involving children in the decision-making process for all of the parties involved when children are actively involved in the decision making process.⁶¹

Children Want to be Heard

Until recently, there was a relatively large gap in the research: there was no evidence of what *children* had to say about their involvement in custody and access proceedings. However, Professors Birnbaum, Bala, and Francine Cyr spoke to 32 children who either met with a judge, had a children's lawyer, or spoke to a mental health professional in a custody evaluation. The authors wrote the following:

While there are no definitive conclusions about whether one professional group or the other is better suited to interviewing children, one common theme is that, regardless of which professional is involved with the child, children want to be consulted when decisions are being made about their future and want to be part of the decision-making process.⁶²

*240 In fact, in the Birnbaum, Bala, and Cyr study, one child even stated, "In *every* case, a judge should give a kid a chance to talk to them."⁶³ This is consistent with other research as well. For example, Australian research suggests that children, who were interviewed about being able to talk to a judge during their parents' dispute, were generally in favour of doing so.⁶⁴

A common argument put forward by opponents of judicial interviews is that children who ask to speak to judges have often been "coached" by a parent to do so.⁶⁵ In response, however, proponents argue that getting a glimpse into a child's reality, whether the child was coached to request the meeting or not, is still beneficial to the child and to the court in making a decision in the child's interests.⁶⁶ Further, where a child has been coached, alienation (or a degree of it) may also be a factor. Despite being a reason to discount the child's stated views in coming to a decision, this is not a reason for a judge not to meet with the child at all. If a judge does not meet with a child in an alienation case, that may actually make it more challenging to achieve compliance with the final order.⁶⁷ Finally, in connection with the earlier discussion regarding training, judges could be trained on how to identify coaching and alienation. If a judge can determine that a child was coached or that it may be an alienation case, that information alone may be useful for the judge in coming to his or her decision.

*241 E. Better Methods for Obtaining Children's Views

Despite provisions of the Ontario *Evidence Act*⁶⁸ allowing the *viva voce* testimony of children in custody and access proceedings, case law has developed to suggest that, in those proceedings, the court can (and should) protect a child from testifying.⁶⁹ Some of the aspects that make testifying in open court undesirable for children are: (i) the intimidating atmosphere of most courtrooms; (ii) the cross-examination (no matter how "gentle" counsel is); and (iii) the physical separation of children from their parents. Even with aids, such as screens and televisions, testimony is seen as too traumatic and best avoided in custody and access disputes.⁷⁰ Professor Barbara Atwood performed a study in which 48 Arizona judges, who preside over custody and access disputes, responded to a questionnaire about their practices.⁷¹ Her research revealed that a strong majority of the judges (81%) *never* allow testimony by a child in open court.⁷² Therefore, the child's voice typically gets to the court through a third party, as an exception to hearsay.⁷³ For example, a social worker might take the stand and say, "The child said her dad intimidates her." While this hearsay evidence has value, the judge is not obtaining first-hand views from the child. Family lawyer Murray Maltz states that through third-party assessors, the *242 "truth is ferreted out."⁷⁴ Therefore, proponents of judicial interviews argue that judicial interviews are the best way to get a child's *direct* views, without exposing the child to the testimonial process.

It has been suggested that all other methods of obtaining information from the child should be explored *before* a judicial interview.⁷⁵ Some alternative methods are: (i) an assessor's report; (ii) a therapist's evidence; (iii) a parent's statement; and (iv) evidence of a clinical investigator/social worker assisting the child's counsel.⁷⁶ While it is beyond the scope of this paper to consider all the arguments for and against each method of obtaining evidence, it is relevant to point out why some of the methods are criticized. For example, Professor Hunter argues a parent's statements about his or her child's views are unreliable, because the parent's own interests motivate him or her. Moreover, the child is unlikely to express his or her true feelings to the parent.⁷⁷ Likewise, Professor Hunter makes the argument that child assessors do not provide the judge with the child's true views.⁷⁸ Assessors often alter the child's views because they are worried about being cross-examined and are more concerned with protecting the child than presenting his or her unaltered opinion.⁷⁹ Ontario's Office of the Children's Lawyer (the "OCL") has also been criticized for its policy of having the child's counsel act in the best *243 interests of the child, as opposed to merely acting as the child's advocate and putting forward the child's unaltered views.⁸⁰

Another advantage of judicial interviews is that the judge has the ability to explore options he or she may be contemplating with the child, together.⁸¹ For example, a judge considering a nesting arrangement could actually ask the child's perspective on this arrangement. Or the judge may ask the child's opinion on Wednesdays and Thursdays at "Dad's'DD'. The child might respond, "I have ballet on those nights, and I like Mom to take me." That is information the judge may not obtain through another method. For example, a child assessor does not know the options a judge is considering.

Like judicial interviews, no method of obtaining the child's voice is insulated from criticism. The costs and benefits of each method should be weighed in determining the approach that will be relied on to bring the child's voice into the decision.

Efficient Use of Judicial Resources

The fact that judicial interviews can be considered an efficient use of judicial resources is one advantage that cannot be overlooked. The costs of independent legal representation and assessments are usually prohibitively high, which results in them not being used. In turn, the child is not heard.⁸² The OCL sometimes, but rarely, provides independent legal representation for children. However, only 3% of children are independently represented, and only a portion of those children is represented by the OCL.⁸³ Further, in family law, parties are *244 often unrepresented, themselves, so they cannot justify paying for a child's lawyer.⁸⁴ The OCL can provide assessment reports at no charge to the parties (but at a cost to the government). Again, it is very rare that the OCL does this.⁸⁵ Moreover, assessment reports are time-consuming and can delay the court process even further.⁸⁶ Typically, judicial interviews are not time-consuming or expensive.

Finally, the use of judicial interviews has the benefit of increasing settlements reached. Research indicates settlement is more likely if parents understand how children see the situation and have a good idea of what their children want.⁸⁷ As noted earlier, children are unlikely to express their true feelings to their parents.⁸⁸ Family lawyer Alfred Mamo was provided a letter written by a teenage boy whose parents were involved in a high-conflict custody battle. The boy stated that, "[e]ven if the child has picked a side, they will most likely not want to discuss it with either parent, least of all on the parent's terms."⁸⁹ Therefore, parents hearing a summary of the child's honest feelings from the judge may encourage settlement. Where settlement is reached, judicial resources are spared.

CONDUCTING JUDICIAL INTERVIEWS: STIPULATIONS

The following section discusses recommendations from existing secondary sources on judicial interviews. The *245 majority of the authors recommend that judicial interviews be conducted, as the benefits outweigh the concerns.⁹⁰ However, they do stipulate details, particularly with regard to the purpose and process of the interview. Those stipulations are discussed below.

Purpose of the "Interview"

Most of the authors agree that judicial interviews should be used, but only for certain purposes. The general consensus seems to be that the "interview", whereby the judge asks the child formal questions, should be replaced with an "informal conversation."⁹¹ The goal of the "conversation" would be for the judge to merely try to understand the child's experiences and to reassure the child that he or she has been heard and understood. Further, the judge would gain some context for the evidence relating to the child, which is put forward through other methods.⁹² The terminologies used to refer to this type of judicial interview are: a "conversation", an "informal discussion", a "get-acquainted interaction", and a "meeting."⁹³ The "conversation" would serve as a means for the judge to learn, for example, what activities the child enjoys, his or her likes and dislikes, and the child's perspective on the current living situation. As a result, the judge may then be able to more accurately determine which of the parenting arrangements is in the best interests of the child.⁹⁴ The judge should always make it clear to the child that his or her views *246 are not determinative of the outcome.⁹⁵ Most children understand the difference between being heard *versus* making the decision, commonly described by the phrase that children "have a voice but not a choice."⁹⁶ Moreover, the research of Professor Bren Neale indicates that with respect to participation in family decisions, generally (i.e. not just about divorce and custody), all children want is "*participation* in a democratic process of decision-making rather than the right to make autonomous decisions."⁹⁷ Finally, children should never be expected to choose one parent over another and should be made aware that this is not the goal of the meeting.⁹⁸

When this purpose of getting to know the child and understanding his or her experiences is kept in mind, many of the arguments *against* judicial interviews become moot. For example, the argument that a judicial interview is psychologically damaging is much less convincing if the child is informed that the purpose of the meeting is not to have him or her choose one parent over the other and that his or her views are not determinative. If the purpose of the meeting is to have an easy-going, informal discussion, the child is less likely to feel stressed. The child will feel as if he or she has been given a

voice and listened to, but he or she is not burdened with greater responsibilities, such as resolving his or her parent's disputes.⁹⁹ Also, if the purpose is an informal discussion to learn more about the child, less training for judges would be required, or training could be replaced with guidelines or best practices.¹⁰⁰

*247 Timing

There are two main concerns when it comes to timing: (i) the time at which the decision to have a judicial interview should be made; and (ii) if a judicial interview is decided upon, at what time during the proceedings should the interview take place? Most of the sources seem to be in agreement that as soon as parenting is identified as an issue in the dispute, counsel and judges should consider how the child's voice would be brought into the process.¹⁰¹ Ideally, this discussion would take place at a case conference, settlement conference, or pre-trial proceeding. The cost, benefit, and time of each method for providing the child with a voice in the process should be considered in making this decision.¹⁰²

Assuming it is decided that a judicial interview will be held, there are two opposing perspectives on when in the proceedings the interview should take place. This determination is crucial because the time at which the interview is performed relates to the other evidence in the case. One approach is to have the meeting after the other evidence has been presented, or at least near the end. The benefit of this approach is, after hearing all the other evidence, the court is in a better position to determine if an interview is still necessary and, also, if the information provided in the interview is reliable and relevant.¹⁰³ It has been argued that it is only after all the parties' evidence has been heard that the court can determine whether an interview is in the best interests of the child.¹⁰⁴ The alternative approach is to conduct the interview near the beginning of the proceedings. The benefit of this *248 approach is that the information obtained from the child can help provide context for the subsequent evidence.¹⁰⁵ While it is ultimately the judge's decision on when to meet with the child or children (and that timing may differ from case to case), the judge may give the parties an opportunity to be heard on when the meeting(s) should take place.¹⁰⁶

A judge also may want to meet with the child before the proceedings begin, not for the purpose of getting to know the child or to interview him or her, but to explain what may happen as the case progresses. For example, the judge may let a child know that an assessment was ordered and he or she will be meeting with psychologists and social workers.¹⁰⁷ This practice may help the child cope with the litigation, as he or she is less likely to be stressed about the uncertainty of the upcoming process. Professor Carol Smart suggests there are other factors not arising from the divorce itself that contribute to the pain and confusion generally faced by children going through the process of divorce (i.e. not just high conflict divorce). One common finding amongst contemporary studies is that children find change very difficult when they are not informed about what is going on. So it may not be divorce *per se* causing all the damage, but the way in which adults (parents, lawyers, judges, etc.) handle the divorce may be a significant contributor. "Keeping children in the dark" is likely not the best strategy.¹⁰⁸ Therefore, a judge meeting with the child early on in the process may be critical in managing the child's pain associated with the change, as he or she is provided an explanation of what can be expected to go on.

*249 It has been suggested that, at the very least, a "postdecision interview" should be conducted.¹⁰⁹ This interview would take place after a judge has made a decision, so the purpose of the interview is entirely different. The judge would explain the decision and his or her reasoning to the child, as well as encourage the child to comply with the court's order.¹¹⁰ Traditionally, parents are left to explain the outcome to the children. They are often biased in their presentation to the child. Alternatively, the judge would present the decision in a neutral, unbiased way.¹¹¹ Further, post-decision interviews are beneficial in that they remind the child that the result was the decision of the judge, and the child was not responsible for the outcome (this is obviously more relevant if the child is also interviewed or involved in an assessment earlier).¹¹² The post-decision interview also serves another very important purpose: to remind the child that his or her voice was heard, whether or not it had a significant impact.¹¹³ When treated in this manner, children are more likely to comply with the final order, as opposed to "voting with their feet."¹¹⁴

The post-decision interview may also have some benefit in orders associated with severe alienation cases. For example, in *Reeves v Reeves*,¹¹⁵ Justice Mossip was dealing with a severe alienation case and transferred custody of two boys from their father to their mother. She relied on the post-decision interview to let the children know what the order was *250 and her expectation that it be followed. It may benefit the new custodial parent to have the judge explain the outcome and assume responsibility for the decision, in the hopes that the children will not blame one parent.¹¹⁶

Confidentiality

Confidentiality is a concern addressed in the research as well. In Ohio, where judicial interviews are more common, full confidentiality is provided. The interview is transcribed by a court reporter, but is sealed by the trial judge. The transcript is only made available to the appellate court if the decision is appealed.¹¹⁷ One counter argument to this approach is that appeals

would increase. However, Professors Birnbaum and Bala found that in Ohio, no judgment had been reversed on appeal because of an element of the judicial interview, such as the subject matter of the questioning.¹¹⁸

However, an alternative option to full confidentiality would be to keep the interviews partially confidential. The judge would ask children what information could be shared with the parents and what could not. Mamo and Gauvreau made the following remarks with respect to partial confidentiality, suggesting that a *summary* of what the child said could be provided:

The parents need not know every detail of the interview but would be given a summary of what was said.

Because the child would consent to the information being provided to the parents, the privacy interests of the child would be *251 maintained and open dialogue would be encouraged.¹¹⁹

This "summary of the meeting" approach was also put forward by Professors Bala, Birnbaum, and Cyr in their "Suggested Guidelines for Judges Meeting Children." However, they also noted that if a judge relies on any information or impressions from a judicial meeting with a child, that reliance should be explained in the judge's reasons for judgment.¹²⁰ Sealing the record for use in a possible appeal and only providing the parties with a summary of the meeting appears to be the most common approach taken by judges who have met with children.¹²¹

Proponents of the judicial interview also stress that the purpose of the interview should not be to corroborate or contradict evidence with respect to facts in dispute, but to get a glimpse into the child's world as perceived by him or her.¹²² In the former case, a party would want the opportunity to controvert the child's evidence. However, in the latter case, there would be no need.

Invitation Approach

Mamo and Gauvreau suggest a standard form invitation, inviting the child to meet with the judge, should be sent to every child over the age of 12.¹²³ With this "invitation approach", the child's lawyer would discuss the invitation with the child. However, children rarely have lawyers. Therefore, *252 the OCL would need to provide counsel to every child just for this short purpose. The lawyer would report the child's decision with respect to the interview to the court, the parents and the parent's counsel. If the child accepted the invitation, the OCL lawyer would be present at the interview. Mamo and Gauvreau also propose a presumption that children over the age of 12 get an invitation, but in circumstances where children younger than 12 have expressed a desire to be involved in the process, they could be invited as well.¹²⁴ This invitation approach is used in the Netherlands. It is also being piloted in Israel, but with children 8 years and older.¹²⁵

Professors Birnbaum, Bala, and Cyr elaborate on research performed regarding the Israeli pilot project.¹²⁶ In Israel, a "child participation unit" has been established within the family courts. The unit consists of social workers and psychologists. The child is invited to either meet directly with the judge or to meet with a social worker or psychologist, who will then pass on the child's views to the court. Interestingly, just under half of the children exercised their right to participate.¹²⁷ Of those children, 26% met with the judge directly and 74% chose to meet with a social worker or psychologist. 62% of the children in the pilot project stated the process helped them. 92% of the children stated they would advise a friend to speak to a judge, psychologist, or social worker.¹²⁸ Therefore, Mamo and Gauvreau's suggestion of an "invitation approach" being adopted in Canada is supported through the fact this approach has been successful internationally.

*253 RECOMMENDATIONS

It is recommended that judicial interviews be conducted, at least more often than they currently are, in Canada. However, as Professor Semple suggests, the fact that Canadian judges rarely conduct judicial interviews may merely be because of those judges' *unfamiliarity*, as opposed to their *unwillingness* to conduct them.¹²⁹ Therefore, to increase the incidence of judicial interviews being used, methods that make judges familiar, and more comfortable, are suggested. The recommendations are: (i) the legislation should be amended so that the word "interview" is replaced with a less formal word, such as "meeting" or "conversation"; (ii) the legislation should be amended such that discretion is reduced; (iii) guidelines and best practices should continue to be developed so judges have a document they can trust and rely on when conducting the interview, in turn increasing their level of comfort; and (iv) a pilot project of Mamo and Gauvreau's "invitation approach" should be undertaken.

Legislative Amendments

The word "interview" is associated with formal questioning, whereby one party is in power and asks questions of another, such as in a job interview. A "meeting" or a "conversation", on the other hand, is mutual, where both parties will merely

speak with one another. If the word "interview" in the *CLRA* is replaced with one of these more informal words, judges may feel more comfortable speaking with children.

Another recommended amendment is that the word "preferences" be removed from the statute. The dictionary definition of "preference" is, "A special liking for one thing over another." The synonyms provided are "choice" and *254 "selection."¹³⁰ Therefore, by using this word in the legislation, the connotation is that the "interview's'DD' purpose is to determine which parent the child "has a special liking for", and to determine the child's "choice" of parent. Because nearly all the research is adamant about the "interview's'DD' purpose *not* being to determine the child's *choice* of one parent over the other, the word "preference" should be removed. Children want to collaborate with adults in developing a post-separation plan, but few want to actually make that decision themselves.¹³¹

The *CLRA* should also be amended to reduce discretion. Ohio's statute, which forces judges to interview a child if any party requests it, but allows for discretion otherwise, should be adopted in Ontario. If this approach is adopted, judicial "meetings" will become more common. As a result, judges will grow to be more comfortable with judicial "meetings" and become better at conducting them. The approach taken in Quebec provides a working example of how legislation with less discretion will increase the occurrence of judicial interviews. In Quebec, there is a statutory presumption of the child's right to be heard in the legislation. In a recent survey undertaken by Professors Bala and Birnbaum, they found that judges in Quebec had more experience meeting with children than other Canadian judges.¹³²

The recommended amendments to the statute would read as follows:

64. (1) In considering an application under this Part, a court where possible shall take into *255 consideration the *views of the child* to the extent that the child is able to express them.

(2) The court may *meet with* the child to determine *the views of the child*.

(3) *If any party requests a meeting, the court shall meet with the child.*

(3) The interview shall be recorded.

(4) The child is entitled to be advised by and to have his or her counsel, if any, present during the interview.

[Emphasis added]

Discussions are still ongoing regarding whether the *CLRA* actually needs reform.¹³³ However, to encourage judicial comfort and, in turn, increase their use, these legislative amendments are recommended.

Guidelines and Best Practices

The low number of judicial interviews in Ontario right now may be attributed to the lack of guidance, resulting in judges being unsure about how to conduct the interview and, in turn, avoiding them. For example, in *CAS for the County of Prince Edward v SH and BH and EF*,¹³⁴ Justice Kirkland declined to interview a child because, among other reasons, he did not know what criteria to use to determine what questions should be asked.¹³⁵ Guidelines provide a place that judges can turn to for advice on how confidentiality should be dealt with, whether parents and/or parents' counsel should be present, and what guidelines to use when weighing "evidence" from an interview. Therefore, guidelines and best practices should continue to be developed. If there are reference materials for the judiciary to *256 rely on, providing judges with guidelines to conduct the "meeting", they will be more comfortable conducting these "meetings."

Guidelines will not be difficult to develop. Judges, family lawyers, and researchers have already begun writing suggestions. In April 2012, Professors Bala, Birnbaum, and Francine Cyr released a discussion document, including suggested guidelines for judges meeting with children. The document was put forward to encourage and facilitate discussions about possible official guidelines for judicial interviews with children.¹³⁶ The Ontario Court of Justice has also provided a document to assist judges considering whether and how to exercise their discretion to interview children. The document provides recommendations based on a compilation of research papers and suggestions from judges with experience interviewing children. There is an extensive list of issues addressed in these guidelines, such as what to wear, where to conduct the meeting, who should be present, and how to phrase questions.¹³⁷ Also, Justice McColley provides a list of possible questions to ask a child, such as, "What sort of rules does each parent have?" and "What does he or she like or dislike about school?"¹³⁸ These are just examples of the progress being made towards an official set of guidelines and best practices, which are a step

in the right direction.

Pilot Project and Further Research

Mamo and Gauvreau's suggestion that Canada adopt an "invitation approach" should be seriously considered through undertaking a pilot project. Concerns raised by the "invitation approach" could be addressed in the pilot. For example, would *257 the OCL, renowned for having sparse resources, have time to meet with every child receiving an invitation, let alone attend the "interview" if the child accepts? Throughout the pilot project, it may become evident that involvement of the OCL is not feasible. In that case, perhaps an "invitation approach" more like the Israeli project should be piloted. A "child participation unit", staffed with social workers and psychologists, might be more effective in Canada. Another concern that should be researched is how such a program might work in rural communities, where there are fewer, if any, children's lawyers, social workers, and psychologists.

Another suggestion is that it may be preferable to undertake the pilot project in a location where there is a unified family court. Unified family courts permit all aspects of family law to be dealt with in one single court. They are staffed with judges specializing in family law matters.¹³⁹ The hope would be that these judges would be more comfortable meeting with children. Moreover, unified family courts commonly rely on constructive techniques to resolve issues.¹⁴⁰ They might be more open to accepting this type of project, helping ensure its success. However, a caveat with this recommendation is that it may be misleading. The pilot project may be very successful in a unified family court, but if adopted in other jurisdictions without a unified family court, it may not be so successful, perhaps as a result of more generalist judges and a lower level of comfort with the entire concept.

A final suggestion is that further research should be conducted on whether some children are better positioned than others to participate in judicial meetings. What is "good" and "right" for children will undoubtedly differ because of the *258 significant variances between individual children.¹⁴¹ For example, older children may be better positioned, merely because of their mental maturity (however, that should not be read to suggest younger children are not appropriate candidates for judicial meetings). Research does indicate that the occurrence and frequency of judicial interviews of children increases with the age of the child.¹⁴² So judges, themselves, tend to be of the opinion that meetings with older children are more effective and valuable. Further, research from Professor Neale suggests judicial interviews may be more appropriate for children experiencing disrespect from their parents. A study she performed indicated that children who had experienced neglect and disrespect from a parent were persistent in insisting that children themselves be able to choose their residence and contact arrangements. On the other hand, children in Neale's study who had secured parental trust and respect were not similarly forceful in insisting their rights to individual choice or autonomy.¹⁴³ Therefore, in a situation of neglect and disrespect, a judicial meeting may be more valuable. However, more research is required to determine if particular children are better suited for judicial meetings than others. It is suggested that the following non-exhaustive list of factors be researched (or further researched) to determine if they have any correlation with the effectiveness of judicial meetings: age, gender, cultural context, and family dynamics (e.g. whether there are siblings, the parents' relationship with each other, the parents' relationship with the child, whether the parents are heterosexual or homosexual, whether the parents are married or "common law", etc.).

*259 CONCLUSION

Children can provide a unique perspective on any problem.¹⁴⁴ As Dr. Seuss wrote, "Think left and think right and think low and think high. Oh, the things you can think up if only you try."¹⁴⁵ Children are "experts in their own lives", who should be involved in the decisions affecting them.¹⁴⁶ Their perspective and expertise, voluntarily offered, can only result in a better quality decision. As family lawyer Martha McCarthy stated:

There are [...] situations in which [...] an entire dispute can be resolved by a judge speaking to a child, with great efficiency and savings for all.¹⁴⁷

The many benefits of judges meeting with children in custody and access cases far outweigh the concerns. Through small amendments to the legislation and the development of guidelines and best practices, judges will become more comfortable meeting with children in custody and access cases. Further, undertaking the invitation approach pilot project would be a step towards developing a process that actively encourages children's direct involvement through meeting with a judge. Facing some initial discomfort is a small price to pay in light of all the benefits that judicial meetings with children have to offer.

Footnotes

- 1 Dr. Seuss, *Horton Hears a Who!* (New York: Random House, 1954) at 6.
- 2 *Gordon v Goertz*, [1996] 2 SCR 27 at para 19, 134 DLR (4th) 321, [emphasis added].
- 3 Noel Semple, "Whose Best Interests? Custody and Access Law and Procedure" (2010) 48 Osgoode Hall LJ 287 at 287 [Semple, "Whose Best Interests?"].
- 4 Rachel Birnbaum, Nicholas Bala & Francine Cyr, "Children's Experiences with Family Justice Professionals in Ontario and Ohio" (2011) 25:3 Int'l J. Pol'y & Fam 398 at 400 [Birnbaum, Bala & Cyr, "Children's Experiences"].
- 5 Alfred A Mamo & Danielle Gauvreau, "Judicial Interviews of Children in Custody/Access Disputes" (2011) [unpublished, archived at County of Carleton Law Association] at 1.
- 6 *Gordon v Gordon*, [1980] OJ No 1469 at para 11, 23 RFL (2d) 266, (ONCA).
- 7 Alfred Mamo (Lecture delivered at the Faculty of Law, University of Western Ontario, 13 March 2012).
- 8 See Ontario's *Children's Law Reform Act*, RSO 1990 c C-12, s 64 ("CLRA").
- 9 Dan L. Goldberg, "Judicial Interviews of Children in Custody and Access Cases: Time to Pause and Reflect" in *Family Law: The Voice of the Child*, 10 March 2010 (Toronto: Law Society of Upper Canada, 2010) at 25.
- 10 Birnbaum, Bala & Cyr, "Children's Experiences", *supra* note 4 at 398.
- 11 This paper focuses on custody and access proceedings, where parents cannot privately reach an agreement with respect to parenting their children so they turn to the courts. It does not focus on adoption or child protection proceedings.
- 12 2010 YKSC 44, 324 DLR (4th) 367, [BJG].
- 13 *Ibid* at para 55.
- 14 The author defines "children" as any child under the age of 18 years, who is at a level of maturity such that he or she can comprehend the situation (e.g. that his or her parents are divorcing, that the judge will be making a decision as to his or her living arrangements, etc.). It is difficult to specify a minimum age, as age is not always indicative of a child's developmental stage. However, Dr. Joan Kelly suggests the child should be between the age of 8 and 18; see Ontario Court of Justice, "Hearing Children: Should You Interview a Child? And, if so, How?" (August 2012) [unpublished]. Therefore, the author suggests 8 years is an appropriate minimum age, but it may be proper to interview children slightly younger, depending on their maturity level. In a recent survey of Canadian judges, a few judges stated they were prepared to meet with children in the 6 to 9 years age range: see Nicholas Bala & Rachel Birnbaum, "Hearing the Voice of Children in the Family Justice Process: The Role of Judicial Interviews", *The Family Way* (April 2013) [Bala & Birnbaum, "Hearing the Voice of Children"].

- 15 Rachel Birnbaum & Nicholas Bala, "Judicial Interviews with Children in Custody and Access Cases: Comparing Experiences in Ontario and Ohio" (2010) 24:3 Int'l JL Pol'y & Fam 300 at 302 [Birnbaum & Bala, "Judicial Interviews"].
- 16 20 November 1989, 1577 UNTS 3.
- 17 *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 70, 174 DLR (4th) 193.
- 18 RSC 1985, c 3 (2d Supp).
- 19 *BJG*, *supra* note 12 at para 42.
- 20 (1988), 14 RFL (3d) 26.
- 21 Goldberg, *supra* note 9 at 14.
- 22 Birnbaum & Bala, "Judicial Interviews", *supra* note 15 at 307.
- 23 Noel Semple, "The Silent Child: A Quantitative Analysis of Children's Evidence in Canadian Custody and Access Cases" (2010) 29:1 Can Fam LQ 1 at 10.
- 24 *Ibid* at 15.
- 25 Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 3.
- 26 Ronda Bessner, *The Voice of the Child in Divorce, Custody, and Access Proceedings (Background Paper)* (2002), online: Department of Justice Canada <http://www.justice.gc.ca/eng/pi/fcy-fea/libbib/rep-rap/2002/2002_1/2002_1.html> at para 3.5.
- 27 *LEG v AG*, 2002 BCSC 1455 at para 26 [*LEG*].
- 28 Rosemary Hunter, "Close Encounters of a Judicial Kind: 'Hearing' Children's 'Voices' in Family Law Proceedings" (2007) 19 Child & Family Law Quarterly 283 at 294.
- 29 *LEG*, *supra* note 27 at para 25.
- 30 For example, see Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 5.
- 31 Mamo & Gauvreau, *supra* note 5 at 11.

32 *Ibid* at 11-12.

33 For example, see Nicholas Bala, Rachel Birnbaum & Francine Cyr, "A Discussion Document: Suggested Guidelines for Judges Meeting Children" (Paper delivered at the 49th AFCC Conference, Chicago, 7 June 2012 and the National Law Program, Halifax, 18 July 2012), [unpublished] [Bala, Birnbaum & Cyr, "Suggested Guidelines"]. Also, the Ontario Court of Justice provided a document in summer 2012, which included factors judges may consider in deciding whether and how to interview children: see Ontario Court of Justice, *supra* note 14. Further, the Ontario Chapter of the Association of Family Conciliation Courts (AFCC-O) and the Advocates Society of Ontario have stated suggested guidelines for judicial interviews of children will soon be released: Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 5.

34 *BJG*, *supra* note 12 at para 61.

35 Goldberg, *supra* note 9 at 28.

36 Hunter, *supra* note 28 at 291-92.

37 Ontario Court of Justice, *supra* note 14 at 5.

38 Mamo & Gauvreau, *supra* note 5 at 15.

39 Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 2.

40 *Ibid* at 5.

41 Goldberg, *supra* note 9 at 28.

42 Hunter, *supra* note 28 at 291.

43 Justice DJ McColley, "Receiving Evidence From Children: Interviewing Children" (Paper delivered at the Family Law - The Voice of the Child Conference, 5 March 2009) [McColley].

44 Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 4.

45 Bessner, *supra* note 26 at para 3.5.

46 *Ibid*.

47 Jeffery Wilson, *The Law's Treatment of Youth and Children* (Markham, ON: LexisNexis, 2011) at 221.

48 Goldberg, *supra* note 9 at 20.

49 *Ibid* at 14.

50 [2008] OJ No 1207, 166 ACWS (3d) 511, (SCJ).

51 *Ibid* at para 52.

52 Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 2. See also, letter from Anonymous in Alf Mamo, "The Child's Voice: The Child's Context".

53 Anonymous, *supra* note 52 at 2.

54 Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 2.

55 Cristin Schmitz, "Why judges need to talk to kids", *The Lawyers Weekly* (27 May 2011) 9. online: <<http://www.lawyersweekly.ca/>>.

56 Bessner, *supra* note 26 at "introduction."

57 Mamo & Gauvreau, *supra* note 5 at 9-10.

58 Bren Neale, "Dialogues with Children: Children, Divorce and Citizenship" (2002) 9:4 *Childhood* 455 at 466.

59 *Ibid* at 468.

60 Mamo & Gauvreau, *supra* note 5 at 10-11.

61 Birnbaum & Bala, "Judicial Interviews", *supra* note 15 at 300.

62 Birnbaum, Bala & Cyr, "Children's Experiences", *supra* note 4 at 406-07.

63 *Ibid* at 413 [emphasis added].

64 Rachel Birnbaum & Nicholas Bala, "The Child's Perspective on Representation: Young Adults Report on Their Experiences with Child Lawyers" (2009) 25:1 *Can J Fam L* 11 at 18 [Birnbaum & Bala, "Child's Perspective"].

65 Goldberg, *supra* note 9 at 6.

66 Mamo & Gauvreau, *supra* note 5 at 17.

67 Bala, Birnbaum & Cyr, "Suggested Guidelines", *supra* note 33.

68 RSO 1990, c E-23, s 18.

69 Goldberg, *supra* note 9 at 6.

70 Mamo & Gauvreau, *supra* note 5 at 21.

71 Barbara A Atwood, "The Child's Voice in Custody Litigation: An Empirical Survey and Suggestions for Reform" (2003) 45 Ariz L Rev 629 at 634.

72 *Ibid* at 636.

73 Goldberg, *supra* note 9 at 4.

74 Gretchen Drummie, "Listening to children's voices" *Canadian Lawyer* (March 2012), online: <<http://www.canadianlawyermag.com>>.

75 Wilson, *supra* note 47 at 219.

76 Goldberg, *supra* note 9 at 2.

77 Hunter, *supra* note 28 at 284-85.

78 *Ibid*.

79 *Ibid*.

80 Birnbaum & Bala, "Child's Perspective", *supra* note 62 at 69.

81 Mamo & Gauvreau, *supra* note 5 at 17.

82 *Ibid* at 20.

83 *Ibid.*

84 *Ibid* at 19

85 *Ibid* at 20.

86 *Ibid.*

87 Ontario Court of Justice, *supra* note 14 at 3; Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 2.

88 Hunter, *supra* note 28 at 284-285.

89 Anonymous, *supra* note 52 at 2.

90 For example, see Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14.

91 Mamo & Gauvreau, *supra* note 5 at 7.

92 Bala, Birnbaum & Cyr, "Suggested Guidelines", *supra* note 33 at 3.

93 Goldberg, *supra* note 9 at 8.

94 Mamo & Gauvreau, *supra* note 5 at 7.

95 Ontario Court of Justice, *supra* note 14 at 6.

96 *Ibid* at 3.

97 Neale, *supra* note 58 at 462 [emphasis added].

98 Mamo & Gauvreau, *supra* note 5 at 8.

99 Goldberg, *supra* note 9 at 24-25.

100 Mamo & Gauvreau, *supra* note 5 at 11.

101 *Ibid* at 22.

102 *Ibid*.

103 *Ibid* at 23-24.

104 *Ibid*.

105 *Ibid*.

106 Ontario Court of Justice, *supra* note 14 at 4.

107 Goldberg, *supra* note 9 at 25.

108 Carol Smart, "Introduction: New Perspectives on Childhood and Divorce" (2003) 10:2 *Childhood* 123 at 125.

109 Mamo & Gauvreau, *supra* note 5 at 8.

110 Bala, Birnbaum & Cyr, "Suggested Guidelines", *supra* note 33 at 5.

111 Mamo & Gauvreau, *supra* note 5 at 8.

112 *Ibid*.

113 *Ibid*.

114 *Ibid*.

115 [2001] OJ No 308, 102 ACWS (3d) 1116, (ONSC).

116 Goldberg, *supra* note 9 at 25.

117 Birnbaum & Bala, "Judicial Interviews", *supra* note 15 at 314-15.

118 *Ibid*.

- 119 Mamo & Gauvreau, *supra* note 5 at 17.
- 120 Bala, Birnbaum & Cyr, "Suggested Guidelines", *supra* note 33 at 5.
- 121 Ontario Court of Justice, *supra* note 14 at 6.
- 122 Goldberg, *supra* note 9 at 23-24.
- 123 Mamo & Gauvreau, *supra* note 5 at 14.
- 124 *Ibid.*
- 125 *Ibid* at 6.
- 126 Birnbaum, Bala & Cyr, "Children's Experiences", *supra* note 4 at 406.
- 127 *Ibid.*
- 128 *Ibid.*
- 129 Semple, "Whose Best Interests?", *supra* note 3 at 334.
- 130 *The Merriam-Webster Dictionary, sub verbo "preferencce"*.
- 131 Birnbaum, Bala & Cyr, "Children's Experiences", *supra* note 4 at 399.
- 132 Bala & Birnbaum, "Hearing the Voice of Children", *supra* note 14 at 3.
- 133 *Supra* note 5.
- 134 Goldberg, *supra* note 9 at 15.
- 135 *Ibid.*
- 136 Bala, Birnbaum & Cyr, "Suggested Guidelines", *supra* note 33.

¹³⁷ Ontario Court of Justice, *supra* note 14.

¹³⁸ McColley, *supra* note 43.

¹³⁹ Department of Justice Canada, *Canada's Court System*, online: < <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>>.

¹⁴⁰ *Ibid.*

¹⁴¹ Neale, *supra* note 58 at 469.

¹⁴² Bala & Birbaum, "Hearing the Voice of Children", *supra* note 14 at 4.

¹⁴³ Neale, *supra* note 58 at 469.

¹⁴⁴ Birbaum, Bala & Cyr, "Children's Experiences", *supra* note 4 at 399.

¹⁴⁵ Dr. Seuss, *Oh, the Things You Can Think!* (New York: Random House, 1975) at 5.

¹⁴⁶ Hunter, *supra* note 28 at 283-284.

¹⁴⁷ Drummie, *supra* note 74.

