

**Family**

# Hearing the child's voice as mediator and parenting co-ordinator | Hilary Linton

By **Hilary Linton**

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(January 5, 2023, 11:26 AM EST) -- "Child-inclusive" dispute resolution is a term readers may have heard, but what exactly does it mean?

For those of us providing family mediation and parenting co-ordination services, it means interviewing the children where there is no other neutral way to ascertain the child's views and preferences.

Luckily, this can be done efficiently, affordably, quickly and usefully in most cases.

For many years my colleagues and I have worked with parents as their mediator, arbitrator and parenting co-ordinator. Sometimes there was a s. 30 assessment, or a lengthy Voice of the Child report prepared by a skilled clinician. Sometimes, when the matter has been in court, there is a report from the Office of the Children's Lawyer.

But these are all too costly or not available for many private dispute resolution clients. So, for many years, we often worked with the parents without any formal way of hearing the child's voice.

That has changed, and not only because of *Divorce Act* changes making the duty to hear the child's voice clearer than ever. We now either interview children ourselves or have a colleague interview them and provide us with a report because it leads to a better, more satisfying and more successful parenting co-ordination or mediation experience.

Rachel Birnbaum, professor at Western University, has studied this issue extensively, producing many articles demonstrating the growing use of Hear the Child reports in courts across the country. Her most recent study of Ontario family mediators found that only one-third of mediators did not include hearing from children in their mediation process. (I suspect this number might be higher among lawyers acting as mediators or parenting co-ordinators.)

Long-time advocates of child-inclusive processes — including Birnbaum; Nick Bala, law professor at Queen's University; Caterina Tempesta, senior counsel at the Office of the Children's Lawyer; Michael Saini, University of Toronto professor and former justice Donna Martinson — have for years demonstrated how empowering and respectful it is for children to have their voices heard in parenting disputes. And how having a Hear the Child Report appears to lead to higher settlement rates of parenting disputes.

The United Nations Convention on the Rights of the Child makes it clear that the child has a right to have their voice heard in decisions affecting them.

What holds some mediators and parenting co-ordinators back from interviewing children? According to Birnbaum's most recent research, it is a lack of training or the limitations of the process options they offer their clients.

As a mediator and particularly as a parenting co-ordinator, I interview the children as a matter of routine. The law is clear that where decisions are being made, the child's voice should be heard, and the decision-maker should not deprive the child of that right just because of the nature of the

allegations being made by the parents.

Interviewing all children, routinely, allows us to normalize the process and explain to the parents that we will always receive their submissions on the weight to be given to the child's views.

As a member of the long-established British Columbia Hear the Child Society, I use a non-evaluative form of report, one that simply restates what the child has said to me, verbatim. This form of report is extremely helpful to me as a mediator, and even more so as the decision-making parenting co-ordinator. It is also helpful to the parents because of its relatively benign and non-threatening nature.

The child is asked non-leading questions and controls what is included in and excluded from the report. The report is devoid of judgment, reflection, comment, opinion or recommendations.

The process is simple, with intake forms, the agreement and payment all done on a website. There are two interviews with the child, the first lasting about an hour and the second often shorter. Most interviews are done via Zoom, but some are in person. The Hear the Child Reports that I prepare as a mediator and PC run between three and six pages long, depending on the circumstances, and cost \$750.

In my next article, I will examine case law on the child's voice in high conflict parenting cases.

*Hilary Linton is a Toronto family lawyer, mediator, arbitrator, parenting coordinator and Hear the Child interviewer at Riverdale Mediation Ltd. For more information on Hear the Child Reports, visit [www.riverdalemediation.com](http://www.riverdalemediation.com).*

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