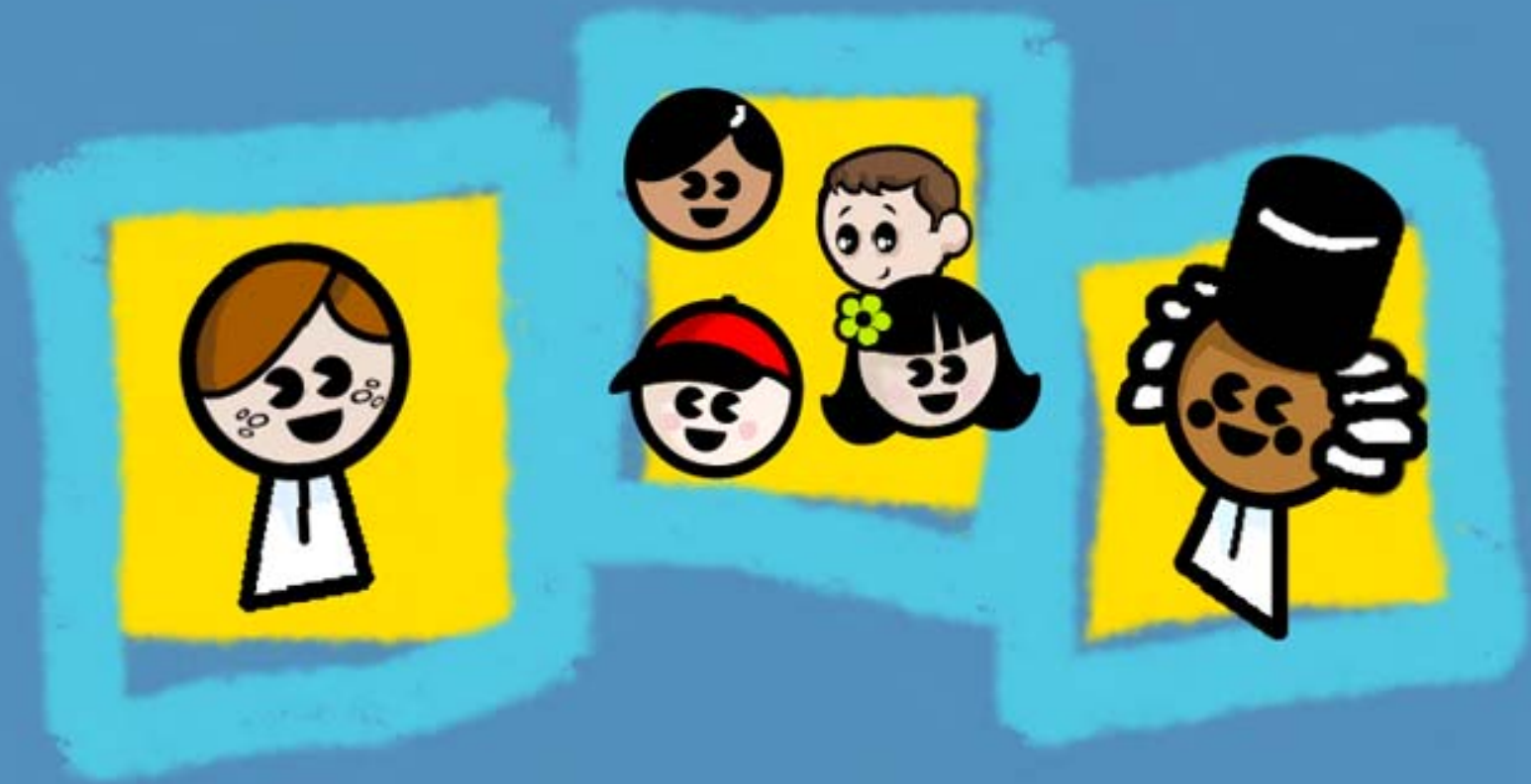


Hear the Child Interviews Kelowna Pilot Evaluation: May 2007

Meaningful Child Participation in Family Justice Processes



The International Institute for Child Rights
and Development (IICRD)



The Law Foundation
of British Columbia



International Institute

For Child Rights and Development (IICRD)

Centre for Global Studies

University of Victoria

PO Box 1700, Stn CSC, Victoria, British Columbia, Canada V8W 2Y2

email: iicrd@uvic.ca

web: www.iicrd.org

phone: 250.472.4762

fax: 250.472.4830

Since 1994 the International Institute for Child Rights and Development (IICRD) has been advancing the quality of life and development of vulnerable children through innovative education, research, and technical assistance that draw on the strengths of children, their families, communities and cultures. As a non-profit organization based at the Centre for Global Studies at the University of Victoria, IICRD establishes partnerships to bridge the gaps in vulnerable children's healthy development. Through the lens of the UN Convention on the Rights of the Child, IICRD:

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3. Draws on the Strengths of Cultural Teachings to Support Vulnerable Children
4. Introduces Tools for Change to Create a Culture of Children's Rights

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Authors:	Suzanne Williams (IICRD) and Jocelyn Helland (IICRD)
Contributor:	Tarryl McNamara
Editing:	Jennifer Wheeler (IICRD)
Content Advisors:	Chief Judge Hugh Stansfield, Debra M. Van Ginkel, Q.C.

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Executive Summary

All Canadian children have the right to share their views and have them considered when decisions about their best interests are being determined (Article 12, *UN Convention on the Rights of the Child*). As a result, when a child's family is separating and their custody/access is being determined the child must be given an opportunity to be heard and have his or her views considered in the decision. BC legislation, child development research and child rights provide a foundation for this to occur. However, unlike other Canadian jurisdictions, there are few options to assist BC family justice stakeholders to hear from children when families break down, and those that do exist are often expensive, slow and inadequate.

Against this backdrop the International Institute for Child Rights and Development (IICRD), based at the University of Victoria, worked with members of the Kelowna legal community to launch in 2005 a Hear the Child Interview pilot practice. It enabled children to share their views and have them considered by decision-makers in separation and divorce cases involving custody/access of children. This is the evaluation of the Kelowna pilot over a 1.5 year period.

Through the pilot a roster of interviewers was established, and a process employed where parties, their counsel or a judge could call upon a neutral interviewer to conduct a one hour non-therapeutic interview to hear the views of the child, and report the child's *verbatim* views back to the parties, counsel and court. Some highlights of the evaluation include:

- 100% of people interviewed for this evaluation found the interview tool helpful and expressed a desire to continue using it;
- Approximately 59 sibling groups were interviewed;
- Children interviewed were 9 - 16 years of age;
- 100% of those interviewed indicated the process led to early settlement or a shorter trial in at least one or more of their cases;
- 100% of judiciary interviewed found the interviews made their job easier;
- Cost-effective, timely, relatively simple tool with reports turned around in as short as a 24 hour period.

Some challenges in the practice were that: (a) the interviews happened at the last minute and late in the process; (b) a one time meeting with the child was not optimal; (c) children were only heard in 10% or less of the cases; (d) there was inadequate follow up such as not telling the children what happened with their views; and (e) both older and younger children's participation was excluded at times.

Recommendations based on the evaluation are:

1. Parents/Caregivers and Children must receive information about Hear the Child Interviews as early as possible in the family justice process;
2. There must be a requirement (e.g. rule, court directive, legislative requirement) that Hear the Child Interviews be held prior to the first Judicial Case Conference or forum where the child's best interests may be decided; and
3. Hear the Child Interviews must involve three stages: (1) interview with child; (2) interview follow up with child; and (3) report back to child.

I. Introduction

All Canadian children have a right to share their views and have these views considered in legal decisions determining their best interest pursuant to the *UN Convention on the Rights of the Child*, ratified by Canada in 1991. Yet unlike other Canadian jurisdictions such as Ontario, there are virtually no British Columbia (BC) processes or resources dedicated to support BC children affected by their parents divorce or separation where decisions about their best interests are being determined. How do BC lawyers, judges and other family justice stakeholders uphold the rights of children under these circumstances? The International Institute for Child Rights and Development (IICRD), based at the University of Victoria, aimed to assist stakeholders to address this challenge through the Hear the Child Interview Pilot. The Pilot occurred in Kelowna BC in 2005-2006 and is the subject of this Evaluation.

A. Overview of the Law and Research in BC

The following law supports hearing from a BC child in family separation and divorce custody/access cases when the child's best interests are being determined:

- s. 24(1)(b) *Family Relations Act*, R.S.B.C. 1996, c. 128;
- s. 16(8) *Divorce Act* 1985, c. 3 (2nd Supp.) pursuant to *E.G. (L) v. G.(A.)*, 2002 BCSC 1455 (Can LII) (April 24, 2002); and
- Article 12 *UN Convention on the Rights of the Child*, ratified by Canada 2001.

In BC more than 15,000 children were subject to a divorce custody order between 2000 and 2003, and in 2001 approximately 1 in 5 children birth to age 19 lived in homes affected by marital transition, with the highest percentage of the children affected being 10-14 years of age (Stats Canada, 2001; BC Attorney General, 2006).

The research is clear that:

- **the psychological and social well being of children is profoundly impacted by separation/divorce** (Amato, 2000; Kelly, 2003; BC Ministry of Attorney General, 2006);
- **children want an opportunity to be heard**, and hearing children's views in family justice matters can be **beneficial to both children themselves and their families** (Morrow, 1998; Smith, Taylor & Tapp, 2003; Parkinson, Cashmore and Single, 2006);
- **a lack of time, resources, training and procedural issues are some obstacles to hearing from children in BC** (Williams, 2006);
- **focusing on the needs of children early in family disputes can reduce both the intensity and duration of a family conflict** (Garon & Whitfill, 2003; McIntosh, 2003); and
- **BC children are not heard as a matter of course in family justice processes** (Williams, 2006; Henry, 2005).

II. Hear the Child Interview Practice: Origin and Structure

In its initial work on meaningful child participation in 2003-2006 IICRD learned from those involved in BC family justice processes that there were few, if any, mechanisms by which children's views could be shared in family justice decision-making (see *Through the Eyes of Young People* www.iicrd.org/familycourt). Some people used s. 15 *Family Relations Act* reports where parties could afford them, but often these involved an assessment component and not necessarily the views of the child. In a few cases, judges were being asked to speak to children directly but several lawyers and judges expressed reservations about this practice.

A. Origin of Hear the Child Interviews

IICRD learned in 2005 about an *ad hoc* practice in Kelowna and surrounding area (including Penticton and Vernon) where an independent lawyer would be asked by a judge or master to meet with a child, hear the child's views, and report the views back to the court. This practice was modified and broadened by IICRD based on research and other practices in cooperation with the Kelowna legal community for separation or divorce matters involving custody/access issues. It was launched as a pilot in October 2005, and is now known as *Hear the Child Interviews*.

The original *ad hoc* practice was modified for the pilot by:

1. establishing a process for participants to follow that involved preparation, interview and reporting;
2. establishing a seven-stage interview structure that drew on the work of Dr. Joan Kelly (California) in the mediation/collaborative law context;
3. conducting a brief training with interviewers;
4. drafting intake forms, consent forms and other documentation; and
5. working with court house staff to enable the views to be filed through the registry.

The original *ad hoc* practice was broadened for the pilot by:

1. encouraging interviews with children from 8 years of age and up (12 years was found to often be the norm);
2. establishing a roster of 15 interviewers derived from lawyers and clinical counsellors sourced through the Canadian Bar Association ADR and Family Law sections;
3. obtaining Legal Services Society (LSS) financial support for families who could not otherwise afford the interviews (first three months of the pilot only); and
4. bringing the practice to parties' attention via the court registry, family duty counsel, local LSS, Courts Education Society, and library staff.

B. Hear the Child Interview Process and Structure

Hear the Child Interviews (non-therapeutic tool to hear the child)

1. Preparation:

- The judge (or master), party or counsel can initiate the process at any point in a proceeding (from time of filing initial court documents to trial) with the parties' consent;
- The parties (including counsel) together select an interviewer from a roster (composed of lawyers and clinical counsellors who completed a brief mandatory training);
- The parties complete a background intake form about their child for the interviewer;
- The interviewer sets up the interview with the parents who are each encouraged to participate in either picking up or dropping off the child, and the interviewer then has an opportunity to explain the purpose of the interview to each parent and answer questions.

2. The Interview:

- The interviewer follows a seven-stage interview structure: (introduction; establish rapport; separation of specific information; explore; review (periodically and/or at end of interview); debrief; and closure);
- The interviewer explains to the child the reasons for the interview, gives the child an opportunity to ask questions, and asks the child if he or she wishes to be interviewed;
- If the child wishes to be interviewed, the interviewer takes approximately one hour (generally at the interviewer's office) to interview the child, with an emphasis on listening to and writing down the child's views;
- The interviewer captures the child's views verbatim in writing and the notes are reviewed with the child so they are accurate from the child's perspective.

3. Reporting:

- The interviewer provides the written views of the child to the parties and to the judge for consideration in the decision that affects the child;
- The parties and judge are encouraged to provide the child with information, appropriate to the child's maturity level, about any final decisions that are made with an opportunity for the child to ask questions about the decision.

** Relevant pilot documents can be found at the end of this Evaluation.*

Interviewers were to be paid \$250 per interview. The three month pilot was extended initially to six months and then one year ending October, 2006 at the urging of the Kelowna participants, and with some funding support from the BC Attorney General.

III. Evaluation of the Pilot

A. Evaluation Process

While the Hear the Child Interview Pilot technically ran from October 2005 - October 2006, the Kelowna legal community has continued with the practice. As a result, during this evaluation, conducted between January and April 2006, IICRD reviewed what happened over 1.5 years of Hear the Child Interviews in Kelowna primarily through narrative information. In particular, we:

- Contacted the 15 roster members to determine whether they were involved in interviews during the pilot;
- Interviewed 9 roster members who participated as an interviewer or counsel for a party whose child was interviewed, or both, during the pilot;
- Interviewed 7 members of the judiciary based in Kelowna (combination of Provincial Court and Supreme Court);
- Contacted parties in 7 cases involving 13 children to request interviews;
- Reviewed a sample of 10 Hear the Child interview reports capturing the views of 14 children;
- Interviewed 3 parties;
- Interviewed 1 child;
- Interviewed 2 staff who work within the Kelowna Court House;
- Conducted two focus groups of participants involved in the pilot;
- Reviewed other information gathered from various sources during the course of the pilot.

It is important to note that the full impact of the tool is difficult to measure due to the lengthy nature of court processes, and the fact that the length of the pilot evolved far beyond the original three month period without an ongoing evaluation piece effectively integrated. Nevertheless, we hope the findings will be useful to those interested in continuing to use the Hear the Child Interviews, or a similar practice.

Another challenging aspect of the evaluation was reaching children for their feedback. We encountered four layers or challenges in gaining access to children: (1) interviewers who completed interviews rarely had contact information for the parents/caregivers or children and did not always have complete contact information for counsel for both parties; (2) counsel for the parties who we could reach were reluctant to divulge their clients' contact information, even where clients had signed consent forms to participate in the evaluation, and were slow to pass along our request for their clients to contact us; (3) parents had to grant consent for their children to participate; and (4) the children themselves had to agree to speak with us. For future evaluations we recommend: (A) asking the children how they thought the interview process went two to four weeks after their initial interviews; and (B) ensuring the party contact information, including email address and telephone number, is provided on the consent forms and a box is checked granting permission for a researcher to contact parties and their children directly regarding their views on the pilot process.

B. Overview of Evaluation Findings

Overview of Hear the Child Interview Pilot Evaluation

- 100% of people interviewed for the evaluation found the Hear the Child tool helpful and expressed a desire to continue using it
- Approximately 59 sibling groups were interviewed
- Children interviewed were 9 - 16 years of age (average age just under 12 years)
- 7 of 15 roster members conducted Hear the Child interviews
- Counsel most often initiated child interview process (77% of the time)
- A party's failure to consent was the most cited reason for the process not occurring when it was suggested (42%)
- Almost all those interviewed (children and parties not included) indicated an increase in Hear the Child Interviews over the past 18 months
- Many participants indicated that greater awareness must be raised about Hear the Child Interviews so they happen with greater frequency

C. The Good News Highlights:

Summary of the Good News Highlights of Hear the Child Interviews

- 100% of the lawyers and judges interviewed indicated the process led to early settlement or a shorter trial in at least one or more of their cases
- 100% of judiciary interviewed found the interviews made their job easier (e.g. information from the child means greater confidence in making decisions: clarified issues, contextualized evidence, brought forward new information and corroborated existing information)
- Cost-effective, timely, relatively simple tool with reports turned around in as short as a 24 hour period
- Where obtained, child's views being considered in 100% of cases

1. Hear the Child Tool Resulted in Better Decisions and a more Efficient Process

"better and more just decisions that the family was happier with and was reached so efficiently" -that the process actually "builds the public's confidence in the justice system." (member of judiciary)

Decision-makers overwhelmingly affirmed that hearing the child's views made their job easier: it gave them more confidence that they were making good decisions for the family and the child. They repeatedly cited the benefit of having more information, and that the child's information helped to clarify the issues and contextualize the evidence. Children brought forth information that may otherwise not have been included, as well as corroborating information provided by others involved in the case.

The most frequently cited immediate impact the child's views had on the family justice process was **early settlement/resolution (100%)** or a shorter trial (28% of cases involving views proceeded to trial). This coincides with numerous stories participants and other project evaluators shared.

2. Hear the Child Tool Cost-Effective, Timely, Helpful and Upholds a Child's Rights

"It avoids the affidavit wars, gets better results, more pieces of the puzzle, more satisfaction in terms of better result, and more child focused." (counsel)

"felt - got some stuff off her chest." (parent on child's experience)

The 'Hear the Child' tool is based on a practice that was developed in Kelowna to hear the child's views, requiring very minimal resources for parties or the justice system. It is not intended to be a full assessment like a s. 15 report prepared by a psychologist, or to be a substitute for such a report where an assessment is required.

The cost of the Hear the Child process remains very low, and the infrastructure required is minimal. **The early resolution of disputes through use of Hear the Child interviews, indicated by pilot participants, likely leads to cost savings for the justice system and the parties involved.**

The tool is also very timely and, once again, meets a need that is not currently met using another process. In a matter of a few days, the Hear the Child Interview makes it possible to capture a snap shot of the views and perspective of the child, and refocus the parties' on the reason why they are there. Both interviewers and judges would like to have more lead time to conduct interviews and review the results, and have them happen earlier in the justice process, such as prior to a Judicial Case Conference or mediation.

This tool is helpful in numerous ways:

1. It upholds the right of a child to be heard and have their views considered when their best interests are determined in accordance with the UN Convention on the Rights of the Child that Canada ratified in 2001;
2. Children and all concerned are assured of a caring, skilled, neutral interviewer to hear from the child in a more relaxed atmosphere; and
3. Parents involved in difficult custody disputes seem to be more receptive to hearing their children's views as ascertained by a neutral party.

Participants were simultaneously surprised and appreciative of the simplicity and format of the questions. One judge felt that this process would become used more once judges understand its simplicity and effectiveness and he cautioned against being tempted to add more complexity to the process, "a section 15 is not required in most cases - this is short and can happen quickly...One of the big impediments to these kinds of reports is the mindset, and I think it's shared by others, that this takes a long time and is very expensive because it's been the case for so long. So they don't even think of an alternative process - so it's a matter of keeping it at the forefront of the judges' minds because it's very useful."

News of the Hear the Child tool is spreading through the media and word of mouth: IICRD and pilot participants have received numerous inquiries about the interview practice. In addition, there is strong, unsolicited interest from bar, bench and other stakeholder leaders to roll out the Hear the Child interviews in their own jurisdictions such as Vancouver, Victoria, Surrey, White Rock, Langley, and Fort Langley.

3. Hear the Child Process Ensured the Child was Heard and their Views Considered by the Decision-Maker

"I find the expressed views very helpful, particularly in alienation and high conflict." (member of judiciary)

It is clear that decision-makers are finding the "Hear the Child" reports valuable - **100% of those who answered say that the child's views, where obtained, were considered in their cases**, and 83% of judges/justices who answered, say they gave significant weight to the views of the child (one said it was 'a factor'). Participants interviewed indicated that in their view the top three factors that affected the weight given to the child's views were: (1) best interest factors other than the child's views; (2) the questions asked of the child; and (3) the child's responses. Interestingly, all of the judges/justices who were asked reported that they have never, or rarely, decided against the wishes of the child.

Decision-makers spoke of the importance of not having a 'filter' on the child's views; while they appreciated the summary format of the interview reports they received, they valued reading the *verbatim* responses of children and the questions asked of the children. Judicial decision-makers favoured children being interviewed by those who understood the importance of relaying these 'verbatim' responses.

4. Hear the Child Tool Improved Relationships and Understanding of Value of including Children in the Process

"I can tell them from the bench that the parties need to address the interests of their children but it's just not the same as hearing it from their own children." (member of judiciary)

Hearing from the child through a neutral party seems to decrease some of the frustration the children feel regarding the separation process and increases the communication between the child and the parents, as well as, to a more limited degree, increases communication and understanding between the parties themselves.

When parties hear the views of their child, it often (to the surprise of one judge) 'softens the position' of adversarial parties. Some seem to be reminded of their children's best interests by the reports while others seem to come to the realization that their child's voice has weight that cannot be ignored; "The common sense that comes from children helps parents focus on what's important".

The tool supports a child's right to be heard in decisions that affect the child. It gives children an opportunity to express themselves in a safe environment and to understand what is happening. Interviewers took steps to clarify children's misconceptions about the process. One interviewer had to strongly clarify for the child in advance that the child was not the one making the decision and that the interview process was one in which the child would be interviewed with respect and understanding.

People within the family justice system also report that they are starting to speak the language of children's views and participation. Many comments were made that hearing from children was 'enlightening' and even 'the best part of my practice'.

D. The Challenges in Further Detail:

1. Hear the Child Interviews a Last Minute, One Time Effort that Could be Used Inappropriately

It is clear from the evaluation that hearing from the child currently is a 'last minute' practice. People who decide to employ the tool demand interviewers to be immediately available and that the interviews happen 'as close in proximity to the decision as possible'. Some pilot participants expressed a concern about the possibility that the interview tool could be used as another weapon by adversarial adults. As a result, **Hear the Child Interviews that are done as a 'one-time' only, 'last minute' practice present some challenges:**

- there may be barriers to securing an interviewer and arranging an appropriate interview time;
- the child will likely not be guaranteed a time to return to the interviewer should they have more to add or would like to see their views report and clarify what they said (the same may be the case for the interviewer);
- it is not possible to guarantee that parents and children receive advance information about the Hear the Child Interviews (including its neutral nature), complete the interview in-take form providing relevant advance information to the interviewer, or have a facilitator available (e.g. counsel or a family justice counsellor) to answer questions from parties and children about the practice or the child's views produced by the process etc;
- it generally will not provide an early enough opportunity for the child to be heard and have the child's views brought forward to processes such as Judicial Case Conferences where the child's perspective may be helpful to earlier dispute resolution. Anecdotally, we are hearing that Hear the Child Interviews are starting to be requested earlier in the process.

Because of the 'one time', 'last minute' nature of the practice to date, the "Hear the Child" pilot process seems to be primarily relying on a few core interviewers from the roster who make themselves readily available, who have a good reputation for conducting interviews (especially amongst judges), and who are flexible with the fee they will charge.

2. Children Only Being Heard in Approximately 10% or Less of Cases

Despite the relative success of the pilot, participants estimate that children are still only being heard in 10% or less of their custody/access cases. In cases where a participant wanted to hear from the child but this didn't happen, 42% indicated that lack of consent from the parent was the main issue. Several participants suggest that consent wouldn't be an issue if the interview was routinely ordered by the judge. This would also be consistent with upholding a child's right to have the opportunity to share his or her views where the child's best interests are being determined.

3. Lack of follow-through: no reporting back to child what happened with their views, and views reports not always filed with court registry

The Hear the Child Interview reports are routinely submitted to the individual who requested them. In many cases, this is one or both parties to the case. There is some concern, particularly amongst judges, that the reports have the potential to get 'lost' and it is vital that they are submitted to the court file. It is vital that a process be established whereby the views reports are held centrally and then, as per above, shared with parents in a facilitated way.

Additionally, there is no practice to follow-up with children to let them know if or how their views were considered in the decisions affecting them. This can leave children who have shared their views wondering how their views were used in the decision-making process. This potential detrimental impact is why upholding the right of children to receive information in a way that they understand (Article 13, UN Convention on the Rights of the Child) is so important.

4. All children not given an opportunity to be heard or considered, and cultural context is important

Interestingly some pilot evaluators indicated that they do not need to hear from older children because they "vote with their feet". While this may be the case, this denies the child his or right to be heard, and misses a valuable opportunity to learn about and have the child's views and information available to inform the decisions being made that impact him or her.

Pilot interviewers generally expressed a concern that they are not equipped to interview younger children. Some interviewers spoke of getting 'to their max' of the age range they feel comfortable interviewing. Many recommended having interviewers specially trained in child development to conduct interviews with younger children.

In addition, Hear the Child Interviews may not be able to fully meet the needs of children from diverse cultural backgrounds in expressing themselves unless cultural considerations are captured on the intake forms and handled adequately by the interviewers. This challenge requires attention in order to adequately uphold each child's cultural rights (Article 30, UN Convention on the Rights of the Child) and ensure the child's family context is respected.

IV. Hear the Child Interview Reports Review

A sampling of 10 Hear the Child Interview reports involving views collected during the pilot from 14 children, aged 7 - 16 years, were reviewed for this evaluation. A few excerpts from these reports are available in the Evaluation Appendices.

The reports review revealed the vital importance of ongoing monitoring and evaluation of the interviewing practice. For example, interviewers must take care to ensure that children are agreeable to sharing their views from the outset of the interview, and that children are aware of what will be done with their views and with whom they will be shared.

Although each report reflected the unique perspective of each child, there were some similarities across reports. These similarities are consistent with those observed by adult pilot participants.

1. Children Had Strong Opinions, Unique Ideas & Wanted to Share Them

“It’s pretty good. It’s only fair cause it’s what I want [to say]”.
Female 11 yrs

All of the children whose reports were reviewed said that they felt good about being there and sharing their views. They were generally asked whether it was okay that their views were shared with their parents and the judge, and almost every child said it was. In the one case where a child did not want her parents to see the report, additional discussion by the interviewer with the child about what could be shared would likely have been helpful.

A few of the children were very well prepared to share their views and had a great deal to say. It was very clear that they had given a lot of thought about what they wanted to convey. Most of the children presented alternative solutions to problems such as visitations or access that the adults had not thought about. One young person proposed using web cameras as an easy way to facilitate seeing the other parent during extended times apart. Several children suggested alternate visitation schedules that would work better for everyone involved, and other children simply voiced an opinion over what days they did and did not like seeing a parent.

2. Common Theme: Sharing Ideas on Their Living Situation

“It’s kinda tiring cause I just want to live in one house”. *Male 9 yrs*

“It gets confused sometimes. I don’t know where I am going”.
Male 11 yrs

All of the children interviewed stated that it is very difficult traveling back and forth between more than one home. They all seemed to have a common goal of finding an end to the discord and instability they were experiencing.

When it came to asking “the big question” some children were very clear about where they wanted to live, whereas others were not sure. Those who were not sure definitely had strong opinions about each possibility. One of the children had clearly thought a lot

about how she would feel about living with her father verses her mother as she listed pros and cons to each situation. She was very adamant that she did not want to have to make the decision but clearly wanted her opinion heard.

“It’s good that the judge is deciding and not just me”. Female 11 yrs

And, again, the children often suggested alternate solutions to the problems at hand: e.g. living in one city but going to visit the other every two months, or using web cams.

3. A Chance to Get Information, Clarification, and Express ‘Being in the Middle’

“My mom tells me about court but my dad does not. My dad asked me yesterday who I want to live with and when. I didn’t answer because I didn’t want to hurt his feelings”. Female 9 yrs

In addition to being a forum for sharing views, another benefit to this process is providing the child with a certain level of clarification or understanding during a confusing time. The child has the opportunity to ask the interviewer questions while voicing concerns. Some of the children are under the misconception that this interview is designed to simply determine where they want to live. Some children do not want this responsibility while others are craving the opportunity to convey this wish. In either instance, the child is given the opportunity to speak about it as little or as much as they choose.

V. The Way Forward

Without exception, every participant of this evaluation experienced some value in using the Hear the Child Interview tool to hear from a child in matters where the child’s best interests are decided. While perhaps not used in every case, the Hear the Child Interviews are a concrete tool to ensure children are given an opportunity to be heard and their views considered as a matter of course in proceedings that profoundly impact their lives. While there are some challenges identified with respect to the Hear the Child Interviews, these challenges are not insurmountable and not surprising in piloting a new initiative. These challenges need to be addressed, but should not be the reason to deny the right of a child to share his or her views where they wish to do so.

Several recommendations were made by those who participated in this evaluation with respect to the Hear the Child Interviews. It is our view that if the following three recommendations are supported, including financially by relevant government sources (a Legal Aid tariff item or fund has been suggested), and effectively implemented, many of the recommendations suggested by evaluation participants will be satisfied. In addition, we believe that children’s rights will be upheld and better and earlier resolutions of family disputes will be achieved for all. We therefore call for:

1. **Parents/Caregivers and Children to receive information about Hear the Child Interviews as early as possible: always at Parenting After Separation courses and at a parallel session for children**

We strongly support mandatory Parenting After Separation Courses as well as a parallel session for children early in the process. Information should also be available to parties at or in:

- Court registries;

- Nanaimo Information Hub and all similar hubs established for families;
 - Family Justice Centres and Family Justice Counsellors;
 - Judges/justices family law desk books;
 - Professional Legal Training and Continuing Legal Education Family Law materials;
 - Legal Services Society offices;
 - Any other point where parties have contact with the family justice system.
2. **A requirement (e.g. rule, court directive, legislative requirement) that Hear the Child Interviews be held prior to the first Judicial Case Conference or forum where the child's best interests may be decided**

Interviews must be done early in the process and ideally before any forum decides a child's best interests. If the child does not want to participate, then adults must respect this request. If there is some reason why the child should not be given the opportunity to participate, then this reason should be presented at the first case conference or decision-making forum and challenged if appropriate.

3. **Hear the Child Interviews to involve three stages: (1) interview with child; (2) interview follow up with child; and (3) report back to child.**

The first two stages should be carried out by the interviewer. The third stage could be carried out by the interviewer or one or more other persons (e.g. a judge who writes a portion of his or her decision to the child in a way that the child can understand; a family justice counsellor who can explain to the child how the views were considered and answer questions). These three stages serve to improve the comfort level of the child by offering more opportunities for rapport building, asking questions, clarifying views, and meet the child's need for information in a way that the child understands.

These recommendations should be phased in across the Province, allowing for adequate set up, training, launch and evaluation time.

The Kelowna legal community has continued the Hear the Child interview practice, and IICRD also plans to continue the work. The first step is to take the lessons learned from the Kelowna pilot forward, and support family justice stakeholders in Kelowna and other interested BC jurisdictions to effectively implement the Hear the Child interviews across the Province.

Appendix "A" - Excerpts from "Hear the Child" Reports

The following are excerpts from a sampling of Hear the Child reports. These excerpts the slightly different styles of interviewing and the diversity of responses.

Excerpt from Report: Female – 11 years old

Interviewer: What would be the good parts about moving with your mom?

Girl: I could stay with my brothers and sisters, it would be a change...I could stay with my brother and sister in school...I can still see dad; I'd have a happy life both ways

Interviewer: What would be the bad parts?

Girl: I'd have to leave my dad.

Interviewer: What would be the good parts about staying with your dad?

Girl: I'd get to stay with my dad, I'd be close to my friend, I'd know people here. I'd have a happy life

Interviewer: What would be the bad parts?

Girl: I'd have to leave my other family.

Excerpt from Report: Male – 9 years old

How do you feel about this going back and forth?

It's kind of tiring cause I just want to live in one house. We sometimes don't have enough clothes at Grandpa's.

If you live in one house would you not want to visit the other?

I still want to visit the other, like about once every 2 months, something like that.

Do you have any ideas of how things might work better for you moving back and forth between Grampy & Grammy's house and Grandma's house?

Not as often would be better. It might be better. Maybe if we had board games to play in the car.

Do you have any ideas of how things could work better when you're living at Grampy & Grammy's house?

Maybe we can make more friends if we lived there. We're having fun with Grammy and Grampy.

Do you have any ideas of how things could work better when you're living at Grandma's house?

Maybe more friends for me. I only have 2 friends at Grandma's. Maybe less fighting.

Is there anything particular you want me to tell your grandparents and the judge about these things?

I like living in both places. I'd rather live in [northern community] cause there's more stuff to do. [Here] there's not much to do – we have to drive an hour to go to a hockey game.

Excerpt from Report: Female – 16 years old

I asked how life was in Kelowna and she said, "I live in a trailer. We're never really home. We're at the shop. Dad [works at the shop]." I asked her what she did at the shop and she said, "I clean or take my dog for a walk or do homework. I live with dad and [brother]. It's kind of odd not having a girl around or mom."

At this point, started to cry and I had to hand her some tissue. She said, "I have my grandma living in [another town]. It's dad's mom. She is active...The important people around me are friends." There was another pause and she continued, "With mom, it's fun. We do stuff together. When I lived with her, we went hiking, we did crafts, we did bike rides, we went to the beach."

I asked [her] if she could explain her mother to me and she said, [the mother] is kind and spontaneous. She is native [First Nation]. I wish I could live closer so I could see her. Now, maybe, I see her once or twice a year. My dad said we are not allowed to talk to her because of the court thing." At this point, [she] became quite emotional again and I asked her how she was feeling. She said, "I miss her. I would like to have more contact, to talk to her. If I could, I would see her every day. I kind of wish my mom could live closer cause I like it here but I also liked it there too [northern community]."

I asked how her parents got along. She said, "Mom and dad used to fight. Now they don't talk. I'd like to be able to like live with both of my parents and not have to choose. I got to visit mom when my grandpa was dying in [northern community]. It was last November, beginning of December. We were down visiting cause he was not doing so well. The day after we left, he died. We came back for the memorial. He'd just gotten [an award]. My brother and I and my dad, we saw mom, it was good. I got to see my mom in August. I got to stay down there for a month. In [the northern community], I looked after my cousin, who is a girl age 5. The visit went good. I like to know about my background and my whole family on my mom's side."

At this point, I asked what she would do if she had a magic wand that could change things. She said, "Well, I would want my mom and dad back together but that won't happen. I would like to be able to see them both equally. That's what I would settle for."

I asked if she had any questions and she said, "My dad has custody of my brother and my mom wants to get custody of us. I wish there wasn't a parent who had custody."

Throughout the interview, I read my notes back to [the child]. I had the impression that perhaps she had said a bit more to me than she had originally intended to. When I read the materials back to her I said the material would be shared with her parents and the Judge and asked her if she had any concerns about this and she did. She said, "I don't really want to hurt anybody's feelings. I would be okay with the Judge seeing it but not mom or dad".

Appendix “B”: Select Forms and Documents from the Hear the Child Interview Pilot

MEANINGFUL CHILD PARTICIPATION IN BC FAMILY COURT PROCESSES GENERAL INFORMATION DOCUMENT – KELOWNA PILOT

I. The Project

The International Institute for Child Rights and Development (IICRD) based at the University of Victoria is working on, *Meaningful Child Participation in BC Family Court Processes*, a project funded by the Law Foundation of BC. The project team includes representatives from IICRD as well as the bench and bar in British Columbia. The project is focused on examining the current state of child participation and identifying strengths within the existing legal framework to support meaningful child participation. Project activities include a literature review, surveys and interviews of young people, lawyers and judges, focus groups with young people and piloting a practice supportive of meaningful child participation.

Legal Underpinnings

The project’s legal underpinnings of the project are:

1. Article 12 of the UN Convention on the Rights of the Child, ratified by Canada and BC (children who are capable of forming their own views should have an opportunity to do so in judicial and administrative hearings, with the weight of these views being dependent upon the child’s age and maturity); and
2. relevant provincial legislation such as section 24 of the *Family Relations Act* (if appropriate, the views of the child are taken into account to determine the best interest of the child).

Meaningful Child Participation

Meaningful Child participation in this project is generally about:

- creating enabling environments that give children an opportunity to share their views on matters that affect them;
- having someone listen carefully to children’s views and providing these views to decision-makers;
- having the child’s views considered, along with other relevant factors, when adults make decisions about their best interests; and
- providing information to children, in a form that they understand, about what is going on in matters that affect them.

II. Kelowna Pilot

A component of this project is a pilot scheduled to begin in Kelowna in October 2005. The pilot will run to December 9, 2005 and is intended to test a streamlined practice of providing young people with an opportunity to share their views in custody/access matters and have them put before the court to assist adults make decisions about the children. This builds on an existing ad hoc practice within BC courts as well as a practice used in collaborative law processes.

Who Can Participate?

Parties whose cases are in the Kelowna family court system (BC Provincial or Supreme Court) and involve custody/access matters. We recommend that children from 8 -18 years of age be given an opportunity to share their views through this process. We recognize however, that this is only a guide, as some children younger than 8 years are capable of expressing their views, while others older than 8 may have difficulty doing so. We make special note of encouraging parties to permit children with disabilities to share their views wherever possible.

The Pilot Process

The following process will form the basis of the pilot:

1. Parties, lawyers or Judge ask to have the child's views considered, and to be part of this pilot. This can happen at any stage of a family custody/access case.
2. Parties, lawyers, and judge/master (as applicable) and children agree to be part of the pilot
3. Parties agree on interviewer from roster and contact interviewer: address interviewer fee, and interview process
4. Information about the child, agreed to by the parties, sent to the Interviewer
5. Interviewer contacts parties to arrange interview with child/children
6. Child/children attend interview
7. Interviewer provides children's views to the judge, parties, & IICRD

It is hoped that the child's views will then be considered by the parties and court in making custody/access decisions about the child, and that parents will provide each child with information about the final decision made by them through settlement or by the court.

IICRD will contact some of the pilot participants for a follow-up interview in early 2006 for feedback on their experience with the process.

The views expressed by children, and the experiences of interviewers, young people, lawyers and judges will be captured and form part of IICRD's final report on Meaningful Child Participation in Family Court Processes that will be released in 2006.

More Information

To fill out a survey visit: www.iicrd.org/childparticipation

For a Pilot consent form or interviewer roster visit: www.iicrd.org/childparticipation

If you wish to be interviewed contact: iicrd@uvic.ca

If you have any questions or require additional information contact: swiicrd@uvic.ca or 250.472.4762.

MEANINGFUL CHILD PARTICIPATION IN BC FAMILY COURT PROCESSES KELOWN PILOT

Interviewer Roster

The following people have agreed to interview children for their views in family law (custody/access) cases. Please contact one of these people to arrange an interview for the child(ren) in your case.

The interviewer will provide you with further information.

NAME	Phone / Email	Address
Barbara Young (L)	Tel: (250) 762-4222 byoung@bergehorn.com	215 Lawrence Avenue Kelowna, BC Fax: 762 - 8616
Eric Watson (L)	Tel: (250) 860.2922 ericwatson@shaw.ca	473 West Avenue Kelowna, BC, V1Y 4Z3 Fax: 860-2352
Lisa Holmes Wyatt (L)	Tel: (250) 869-1180 Wyatt@pushormitchell.com	Pushor Mitchell, 3 rd Floor, 1665 Ellis Street Kelowna, BC V1Y 2B3 Fax: 762-5219
Ron Smith (L)	Tel: (250) 860.7868 rsmith@silk.net	Smith Peacock, 1615 Bertram Street Kelowna, BC V1Y 2G5 Fax: 860.7527
Jeff Petterson (L)	Tel: (250) 861-4022 jeffreyp@shaw.ca	Bishop & Company 206-347 Leon Avenue Kelowna, BC
Cori McGuire (L)	Tel: (250) 717-0926 kelownalawyer@shaw.ca	1007 Skeena Drive Kelowna, BC
Nancy Johnson (L)	Tel: (250) 763-4323 njohnson@doakshirreff.com	Doak Shirreff LLP 200 – 537 Leon Avenue Kelowna, BC V1Y 2A9
Roberta Jordan (L)	Tel: (250) 764.0888	16 – 4524 Eldorado Court Kelowna, BC V1W 1G3 Fax: 764.0680
Paul Henry (L)	Tel: (250) 763-4555 pshenry@shawbiz.ca	201 – 1302 St. Paul Ave Kelowna, BC V1Y 2E1
Cathy Heinrichs (L)	Tel: (250) 868-9454 familylaw@heinrichs.ca	210 – 347 Leon Avenue Kelowna, BC V1Y 8C7 Fax: 868-9484
Virginia Hallonquist (C)	Tel: (250) 861.5704 ginnyron@shaw.ca	1444 Alta Vista Rd Kelowna, BC V1Y 6L1 Fax: 860-7527
Brenda Forster (C)	Tel: (250) 250.860.0197 blforster@shaw.ca	3 – 757 KLO Rd Kelowna, BC V1Y 9L8 Fax: 860-0195
Terry Dunn (C)	Tel: (250) 317-7484 ternor@cablelan.net	14325 Moberly Rd Lake Country, BC V4V 1A6 Fax: 763-4379
Bev Churchill (L)	Tel: (250) 763.7333 b.churchill@shawlink.ca	1573 Ellis Street Kelowna, BC V1Y 2A7 Fax: 765-5507
Valerie Bonga (L)	Penticton Only Tel: (250) 492-2244 Zaseybida-bonga@telus.net	Zaseybida, Bonga #101 - 100 Nanaimo Ave E Penticton, BC V2A 1M4

Consent Agreement to Hear the Views of the Child(ren)

This must be completed and sent to the Interviewer before the Interview date.

Between:

(the "parent")

And:

(the "parent")

And:

(the "interviewer")

And:

And:

A. The parties wish to have the views of the child(ren) heard in their case:

NAME(S): (last, first, middle; e.g., Brown, Jonathan Gordon) BIRTH DATE: (year, month, day)

1)

2)

B. The interviewer is a neutral and impartial person who will listen to the views of the child(dren) and report them back to the parties and the court to assist them in making decisions about the child(ren).

THEREFORE THE PARTIES AGREE THAT

1. Without taking sides, the interviewer will listen to the views of the child(ren) to assist the parties and the court to make good decisions about the child(ren).

2. Hearing the views of the child is voluntary, unless a court orders otherwise.

3. The children must agree to share their views. They will not be forced to share them.

4. The views of the child(ren) will be put into writing.

5. Each party acknowledges that if the child discloses information during the interview that indicates the child is in need of protection as set out in section 13 of the *Child, Family and Community Services Act* (attached as Schedule "A") then the interviewer must immediately report this to the Superintendent of Family and Child Services.

6. The interviewer is free to share the child(ren)'s views with:

- * a lawyer for any party;
- * the Court;
- * a lawyer for a child (if applicable);
- * the International Institute for Child Rights and Development (IICRD) for research

and evaluation purposes.

But the parties agree that the information will only be shared if the party receiving it keeps the information confidential.

7. All parties agree to keep the child(ren)'s views confidential as between themselves, unless the child(ren) consent otherwise.

9. The interviewer will meet with the child together with a neutral party who will act as an observer. The neutral party can be selected with the agreement of the parties, or the interviewer will arrange for the neutral party.

The neutral party who will attend the interview, and keep the interview discussions confidential, will be (if left blank, the interviewer will arrange for a neutral):

Name of Neutral Party Occupation

Telephone number for neutral party

10. The parties agree that they will tell the child about the interview beforehand, but not tell the child(ren) what to say, or press the child(ren) for details after the interview.

11. The parents agree to participate in the transportation of the child to or from the interview.

Dated: _____ at _____, British Columbia.

The following consent to the child(ren) being interviewed. Signed by:

party

witness

party

witness

party

witness

party

witness

party

witness

Schedule "A"

When protection is needed

13 (1) A child needs protection in the following circumstances:

- (a) if the child has been, or is likely to be, physically harmed by the child's parent;
- (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
- (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
- (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
- (e) if the child is emotionally harmed by the parent's conduct;
- (f) if the child is deprived of necessary health care;
- (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
- (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
- (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
- (j) if the child's parent is dead and adequate provision has not been made for the child's care;
- (k) if the child has been abandoned and adequate provision has not been made for the child's care;
- (l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

Neutral Party Consent re: Interview to Hear the Views of the Child(ren)

This must be completed prior to the interview

I, _____, (the “Neutral Party”) of
_____ (address) for and in consideration of the
sum of \$10.00 (receipt and adequacy of which is hereby acknowledged by the parties)

DO AGREE AS FOLLOWS:

1. I will be the Neutral Party and attend an interview with _____
(the “Interviewer”) on _____ (date), at
_____ (time)o’clock at _____ (address) for
the following child: _____(name of child).

2. I agree to keep all information discussed during the interview confidential as between
myself, the interviewer and the child.

Dated: _____ at _____, British
Columbia.

Signed by:

Neutral Party

Witness

name of neutral party (please print)

occupation

contact details

Interviewer

Witness

INTERVIEW INTAKE FORM – THE VIEWS OF THE CHILD

(One form per child)

- 1. Child's name:**
- 2. Child's age:**
- 3. Court Case Name and Number**
- 4. Child's School, Grade, Teacher's name**
- 5. Family pet(s), and name(s) (e.g. dog, Rover)**
- 6. Names of close relatives other than Mom and Dad**
- 7. Names of family friends who are close to child**
- 8. Names of child's close friends**
- 9. Child's extracurricular activities (e.g. soccer, dance)**
- 10. Does the child have a disability the interviewer should know about (e.g. dyslexia)? If so, please specify:**
- 11. Are there any cultural considerations that need to be addressed for the child to be interviewed? If so, please specify:**
- 12. Are there any particular issues you want the interviewer to raise with the child (please keep issues as generic as possible e.g. Christmas)?**

Information for Interviewers on Questioning Children

(from Schuman, Bala & Lee, "Developmentally Appropriate Questions for Child Witnesses"
(1999), 25 Queen's L.J. 251-302)

Children of all ages have troubles with use of negatives.

Ages 7 – 10 years (middle childhood)

- Sometimes their use of language and understanding appear to be similar to adults
- Have difficulty with use of negatives and passive voice
- Difficulty with use of more than one verb tense in a question
- Difficulty with less common words, jargon, legal terms
- Often misinterpret abstract or vague terms
- Can carry out logical reasoning but only at concrete levels
- Memory is susceptible to suggestion
- Difficulty understanding time and space in unfamiliar/complex situations
- Difficulty establishing causal relationships

Linguistic Development

- Have difficulty with the conditional and passive voices which may lead to misunderstanding questions
- During this period a child's vocabulary grows by 5000 words, indicating that they do not yet have the vocabulary of adults
- Adults must be careful to ensure children understand the words they're using
- If the word is not common, have the child use the word in a sentence
- Avoid legal or jargon terms
- Frequently misinterpret questions involving negatives
 - until 9 years a child may apply a negative to the wrong part of a sentence (e.g. "Could you see that he was not home" may be interpreted as "You could not see that he was home")
 - may not understand that the negative is different from its usual form (e.g. "unresponsive" may be interpreted as "responsive")
- Complex sentences pose problems
 - May lack ability to put all the parts of the sentence together correctly
 - Short term memory may not be developed enough to allow them to remember the beginning of a long question, once the end is reached
- Keep sentences simple and to the point
- Phrase sentences in the subject-verb-object order.
- Likely can't interpret pronouns that precede the referring noun.
- Frequently misunderstand complex sentences that contain "Do you remember?"
- Understand generalizations and can give more than one meaning to a word
- Understand that a person's house can be an apartment, or you can "touch" something with a part of their body other than their hand
- Become aware of different perspectives so they can consider more ideas
- Develop logic: able to predict events and foresee some consequences; however they cannot apply logical processes to abstract ideas – this means child can reason about the consequences of crossing the street but cannot theorize about the importance of traffic laws
- When asking questions that require logical thinking to predict events or consequences, giving examples is important: "What if you told a lie?" is better than "What happens when people tell lies?"
- Can say whether something was "like" something else

- Can say a person was “taller” or “shorter” than someone else
- Know the seasons and the differences between them
- Cannot accurately estimate distances or sizes
- Have troubles comparing time periods – may relate events out of chronological order

Age 11 – 18 years (Adolescence)

- May misunderstand legal phrases and jargon but best not to use them
- May still struggle with complex forms of negation – multiple negatives or phrases where a negative must be applied to a different clause in the sentence
- Probably not understand the passive voice until the end of this stage
- Questions should be stated so every verb has a clearly expressed subject

General Suggestions:

- Keep sentences in subject-verb-object order
- Do not use the passive voice
- Avoid using “do you remember . . .?”
- Avoid using negatives (e.g. “did you go to the store?” rather than “didn’t you go to the store?”)
- Do not use “tag” questions – e.g. “didn’t you . . . “
- Do not use the negative form of words (e.g. incorrect)
- Avoid pronouns – repeating the noun is always better
- When using a word that has a critical meaning, ensure that both the child and questioner share the same meaning (ask the child to use the word in a sentence)
- Use simple everyday terms (e.g. “go to” rather than “proceed”)
- Use concrete terms (e.g. “knife” rather than “weapon”)
- Do not ask school age children to answer questions involving abstract ideas like “justice” or “love”. Until adolescence, it is generally difficult for children to think in the abstract.
- Avoid asking children to speculate
- Young children cannot determine another person’s motives, no matter how obvious they may seem
- Do not use sarcasm
- Children’s understanding of time, space and size is dependent on their level of development
- Let the child know he or she should tell the questioner when he or she does not understand a word or question
- Children should never be told that they cannot have a break or go to the bathroom until all questions have been asked
- Avoid asking exactly the same question more than once
- Refrain from praising particular answers
- Speak slowly and clearly

MEANINGFUL CHILD PARTICIPATION IN FAMILY COURT PROCESSES

NOTE: Never ask the same question twice!!! Give the child lots of time to respond.

Interview Stages/ Purpose	Sample Questions	Considerations
<p>1.INTRODUCTION</p> <p>Review names, reason child is there, child's participation, interviewer's role, observer role</p> <p>Go over consent form with child and ensure they want to participate.</p>	<p>Do you know why you're here?</p> <p>What have your mom and dad/anyone else told you about coming here?</p> <p>I am here to listen to what you want to tell the judge, and your parents.</p> <p>I want to go over why you are here. <Go over consent form and have child sign>.</p> <p>What you say is very important. I don't want to forget anything so I'm going to try to write it all down.</p> <p>Do you have any questions before we begin?</p>	<p>Assure the child that they are NOT making the decision. Helping adults to make decision. Assure the child:</p> <ul style="list-style-type: none"> - interview is private - only share information they want shared - can ask questions at any time - can take a break
<p>2.ESTABLISH RAPPORT</p>	<p>How are you feeling now that Mom and Dad are living apart?</p>	<p>Be empathetic (lots of kids feel sad when Mom and Dad decide to live apart) / ask general questions</p>
<p>3. SEPARATION SPECIFIC INFO</p>	<p>What's happened since Mom and Dad stopped living together?</p> <p>How are things at school?</p> <p>How are things with your friends?</p>	
<p>4. EXPLORE</p> <ul style="list-style-type: none"> - Living arrangements - child's thoughts, reactions, suggestions 	<p>Are you living sometimes at Mom's house and sometimes at Dad's house? How is that going?</p> <p>What do you do at Mom/Dad's house?</p> <p>How do you feel when you're at Dad's/ Mom's house?</p> <p>What do you like to do at Mom's/ Dad's house?</p> <p>What things don't you like at Mom's/Dad's house?</p> <p>Is anyone at Mom/Dad's house when you're there?</p> <p>What is it like doing homework at Mom/Dad's house?</p> <p>What do you do with your friends at Mom/Dad's house?</p> <p>What clothes/toys do you keep at Mom/Dad's house? How do you decide what to keep at Mom/Dad's house?</p> <p>Do you have any suggestions of how things could work for you living between Mom and Dad's house?</p>	<p>The brief from counsel may indicate a specific issue to address.</p> <ul style="list-style-type: none"> - consider any changes in living - views of each parent & communication - advice or specific requests for parents <p>-raise issues of what might help child (e.g. less conflict, stop demeaning other parent, be flexible)</p>
<p>5. REVIEW (this can be done periodically or at the end of the interview)</p>	<p>I've written down what you said. Can I read back to you what you have said to me? Is there anything that needs to be changed?</p>	<p>Ensure the child's views are written down word for word – this has a much greater impact</p>

	<p>Is it okay if I share this with Mom, Dad, and the Judge? (if yes – okay, if no – clarify what parts okay)</p>	<p>on the receiver of the information.</p> <p>Ensure the child knows he/she is not making the decision. Info will help adults make decisions about child</p>
<p>6. DEBRIEF QUESTIONS</p> <p>Please ensure you ask these precise questions.</p>	<p>PLEASE ASK THE CHILD THESE QUESTIONS:</p> <ol style="list-style-type: none"> 1. Who do you talk to when you want to talk or have questions about what's going on with Mom or Dad? 2. We have spent the last (1/2 hour 1 hour) talking about your feelings, about what is going on with where you have been living, how much time you want to spend with Mom and Dad. <ol style="list-style-type: none"> A. How has this talk been for you? B. Is there anything you want to add to what you have already said? 3. What do you think the adults will do with what you have said today? 4. Do you have any concerns or worries? 	<p>These are mandatory debrief questions for all interviews.</p> <p>Please ensure that they are asked.</p>
<p>7. CLOSURE</p> <p>Ensure child knows what happens next.</p> <p>Give child an opportunity to ask any final questions.</p> <p>Give child your phone number.</p> <p>Thank child for coming.</p>	<p>We are just about finished:</p> <p>What are you doing when you leave here?</p> <p>Would it be useful if I send you what I wrote down for you to review before I send it off to your mom and dad and judge?</p> <p>If that would be a useful thing, where would you like me to send it: your school, your home, or to some other person that you could review it with?</p> <p>Once you have reviewed it, it would be important for you to get back to me if there are any mistakes.</p> <p>Here is my telephone number. If you forgot to tell me something today you can call and tell me.</p> <p>Do you have any questions?</p> <p>Thank you for coming today.</p>	<p>Tell child what will happen next. Don't end abruptly.</p> <p>Provide the child with your phone number if they want to tell you something they forgot to say</p>

INTERVIEW TIPS

- Create a child-friendly space for the interview (e.g. comfortable chairs, non-structure toys (e.g. slinky), drawing materials, low table)
- Be direct and open
- Be emotionally supportive
- Be aware of your own influences as an interviewer on questions, demeanor etc:
 - Your own “stuff”
 - Personal values and life experiences
 - Culture
 - Old child development research
 - Alliance with one parent or lawyer
- Listen, listen, listen
- Tolerate pauses, tears and anger
- Use simple language – avoid jargon and legal terms
- Keep questions simple and direct – use noun-verb-object structure
- Avoid using negatives, complex or conditional sentences
- Concentrate – ensure you are available to the child
- Be patient in words and body language – children often take time to find words, or formulate ideas
- Be respectful and polite
- Match your conversation with the child
- Never press the child to tell things he or she does not want to tell
- Never leave a child with a sense of failure because he or she cannot/have not answered the question
- Record the children’s views in writing word for word.
- Clarify – don’t interrupt
- Let the child know he or she should tell the questioner when he or she does not understand a word or question.

Appendix "C": Evaluation Questions

Evaluation: Kelowna "Hear the Child" Interview Pilot

Background:

The following questions are intended to capture information with respect to the "Hear the Child" interview pilot that took place in Kelowna, BC between October 1, 2005 and October 31, 2006. The responses you provide will be kept confidential and your name will not be attributed to the responses you provide if shared publicly. The information collected from completed surveys will be collated and shared publicly to inform and if necessary improve the "hear the child" interview process in Kelowna and other interested jurisdictions across BC.

*(please send this document to Jocelyn Helland at IICRD via email, mail or fax :
jhiicrd@uvic.ca, address and fax noted above)*

Instructions:

Below is a list of all of the questions we are asking adults who participated in the Kelowna pilot. Each heading indicates (in brackets) who needs to fill out that section (depending on your role the case: i.e. interviewer; counsel for a parent/caregiver; counsel for child; provincial court judge; supreme court justice; parent; other).

- I. INTRO (all participants complete this section)
 1. Name (*will be kept confidential if provided*)
 2. In what capacity did you participate in the Pilot (please circle those that apply)?

a. interviewer(lawyer)	b. interviewer (clinical counselor)	c. counsel:
parent/caregiver	d. counsel for child	e. Provincial Court Judge
Supreme Court Justice	g. parent/caregiver	f. child/young person
i. other _____		
 3. If you were NOT an interviewer, how did you hear about the *Hear the Child* pilot?

- II. CASES IN WHICH CHILDREN WERE HEARD (for completion by counsel and justices/judges/masters)
 1. Between October 1, 2005 and October 31, 2006, how many verbatim KELOWNA PILOT Hear the Child interviews occurred during your family custody/access proceedings (please circle one)?

a. 1-2 b. 3-5 c. 6-10 d. 10-15 e. > 15
 2. Between October 1, 2005 and October 31, 2006, how many verbatim hear the child interviews occurred during your family custody/access proceedings that were NOT a part of the Kelowna Pilot (please circle one)?

a. 1-2 b. 3-5 c. 6-10 d. 10-15 e. > 15

Please describe the process you used to do the interview in these cases and how it was similar or different from the Kelowna Pilot process. (***** Please note: if the interview process you used was identical in every way to the Kelowna Pilot except for the consent of the parties to participate in the pilot, please aggregate this information into your answers for the remainder of this evaluation*)

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3. What percentage of your custody/access case load involving children would all of the interviews represent?
 - a. <10% b. 10 - 25% c. 25 - 50% d. 50 - 75% e. >75%
4. Of the cases where the child(ren) was interviewed and their verbatim views shared:
 - a. what percentage of these proceeded to trial?
 - b. what percentage of these were court ordered?
 - c. what percentage of these were done with the consent of all parties?

III. INITIATING HEARING FROM CHILDREN (all participants complete this section)

1. Who initiated hearing from the child(ren) in your case(s) (circle all that apply)?
 - a. you b. judge/justice/master c. Counsel for one parent d. duty counsel
 - e. no one f. other _____ Who among those listed above who most often initiated hearing from children in your cases?
2. If someone wanted to hear from the child(ren) in a case you were involved in but this did not take place, what were the reasons for this (please explain, e.g., a parent did not consent to an interview)?
3. Please provide any additional comments you wish to share with respect to improving how hearing from children is initiated in custody/access cases.

IV. SELECTING INTERVIEWERS (all participants complete this section)

ROSTER:

1. Were you involved in selecting one or more interviewers from the Roster list during the pilot?
2. If yes, what were your reasons for choosing the interviewer(s) you did? (please circle all responses that apply)?
 - a. personal knowledge of interviewer
 - b. interviewer's counseling background
 - c. interviewer's legal background
 - d. where their name appeared on the roster list
 - e. referred by someone (please specify who referred you: e.g. counsel, colleague):

 - f. other _____
3. a. Was there information you would like to have had about the interviewers to assist you in selecting them?
 - b. If yes, what kind of information?
4. If you did not know, or had not known, anyone on the Interviewer Roster and had to select an interviewer, is there anything that would raise your comfort level in making a selection and if so what?

DUTY COUNSEL:

5. a. Did you use family Duty Counsel to conduct interviews?
 - b. If yes, how often did this happen and how did you get their assistance?
 - c. Would you use Duty Counsel again for child interviews and if so, why or why not?
6. Please provide any additional comments you wish to share with respect to selecting interviewers to hear from children.

V. SETTING UP INTERVIEWS/INTAKE FORMS (to be completed by all participants if applicable)

1. a. Did you participate in setting up the interviews?
 - b. If so, how difficult/easy was it to set up the interviews?
2. a. Were the questions on the intake forms sufficient to provide background for the interviews?
 - b. If not, what would you recommend be changed?
3. a. Were both parents/caregivers involved in picking up or dropping off the child to the interview?
 - b. If so, what worked and what were the challenges with this process?
4. a. Did you involve an observer to be present at the interview in addition to the interviewer?
 - b. If so, who did you use as the observer?
 - c. Who selected this person?
 - d. How do you think the presence of this observer affected the interview?
5. If you did NOT have an observer at an interview, why not?
6. What do you think of the child being involved in the selection of an observer to attend the interview with him or her?
7. What recommendations do you have for others who may be involved in setting up interviews in the future?
8. Please provide any additional comments you wish to share with respect to setting up interviews to hear from children.

VI. CHILD INTERVIEWS - (to be completed by interviewers)

1. How many sibling groups (i.e. children from the same families) did you interview during the course of the pilot?
2. What was the age range of the children you interviewed?
3. What was the average age of the children you interviewed?

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4. What was the gender split of the children you interviewed?
5. In your experience, how were parents prepared for the child's interview?
6. In your experience, how was the child prepared for the child's interview?
7. Did the Court request anything specifically from the interview, and if so what?
8. Did the parties request anything specifically from the interview, and if so what?
9. How did you find the structure of the interview and its stages referred to below? (a) introduction? (b) Establish Rapport? (c) Separation Specific Information? (d) Explore? (e) Review (ongoing or at end)? (f) Debrief? (g) Closure?
10. What interview questions were most effective?
11. What challenges did you encounter in the interviews?
12. Was there any prevalent issue, positive or otherwise, that the child(ren) stressed?
13. Was there anything that surprised you in an interview?
14. If you had to provide advice to other interviewers about conducting an interview with a child, what would it be?
15. Did you feel that you were adequately prepared with the skills, knowledge and experience to conduct verbatim interviews with children? If not, why not?
16. What skills, knowledge and experience do you feel an interviewer would need to do this work?
17. Please provide any additional comments you wish to share with respect to the child interviews to hear from children.

VII. CHILD INTERVIEWS - (to be completed by parents)

1. How did you feel about your child being interviewed?
2. How did you feel the actual interview went (please explain)?
3. In your opinion, how did the child/children feel the interview went?
4. Did you feel that you had enough information about the interview and interview process? If not, what would you like to have known?
5. What impact do you feel the interview had/has had on:
 - a. Your perception of your child/children's point of view?
 - b. Your relationship with your child/children?
 - c. The other party's perception of your child/children's point of view?
 - d. The outcome of the decision?
6. Please provide any additional comments you wish to share about your child being interviewed.

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VIII. REPORTING OF CHILD'S VIEWS (to be completed by all)

1. How did you find the process of providing the child's views to the court registry?
2. Did the judge/justice/master go over the child's views with parties and counsel?
3. If not, how did the parties receive the child's views?

IX. CONSIDERATION OF CHILD'S VIEWS (to be completed by all)

1. a. In your case(s) where the child was interviewed, were the child's views considered in the final decision?
 - b. If so, in your opinion what weight was given to those views by the decision-maker?
 - c. What considerations in your opinion affected the weight given to the child's views (circle all that apply AND please briefly explain responses where possible)?
 - i. Other Best Interest Factors
 - ii. Attitude of judge
 - iii. Attitude of counsel
 - iv. Cost of the report
 - v. Questions asked of the child
 - vi. Child's responses to questions
 - vii. Credentials of the interviewer
 - viii. Reputation of the interviewer
 - ix. Perceived influence of the parent/caregiver over child
 - x. Other _____
2. What kind of impact did the child's views have on the separation/custody & access process (circle all that apply AND please briefly explain responses where possible)
 - i. None
 - ii. Not sure
 - iii. Clarified the issues
 - iv. Helped contextualize the evidence
 - v. Led to early settlement
 - vi. Improved relations or communication between parents and children
 - vii. Improved relations between parents
 - viii. Was detrimental to the process

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ix. Other _____

3. In your opinion, what kind of impact did the interview have on the child?
4. In your opinion, what kind of impact did the interview have on you?
5. Please provide any additional comments you wish to share about the consideration of the child(ren)'s views in your cases.

X. IMPACT ON PRACTICE (for counsel and interviewers)

1. Were the time and resources you invested in the interview process adequate?
2. Were you adequately compensated for the time and resources invested in the interview process?
3. What kind of impact did the interview have on your practice? Did it make your job easier? Please explain.
4. Please provide any additional comments you wish to share about how the "hear the child" interviews impact your practice, and if necessary how things might be improved.

XI. IMPACT ON PRACTICE (for Justices, Judges and Masters)

1. Did you find the "hear the child" interview practice helpful to carrying out your decision-making role? If so, how?
2. Is there anything you would have liked the "hear the child" interview to have addressed that it did not? If so, what?
3. Did you have any procedural concerns regarding the "hear the child" interview process? How did you/might you overcome these concerns?
4. What advice do you have for other Justices, Judges or Masters who are interested in using the "hear the child" interview process as a tool to obtain a child's views?
5. Please provide any additional comments you wish to share about your experience with the "hear the child" interviews.

XII. OTHER COMMENTS (for all)

1. Do you plan to continue using the "Hear the Child" interviews in future cases?
2. Would you recommend that others use "Hear the Child" interviews in the future?
3. If you do intend to use "Hear the Child" interviews in the future, is there anything you would like to see done, and if so what?
4. Is there anything else you would like to add?

THANK YOU FOR COMPLETING THIS QUESTIONNAIRE!

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