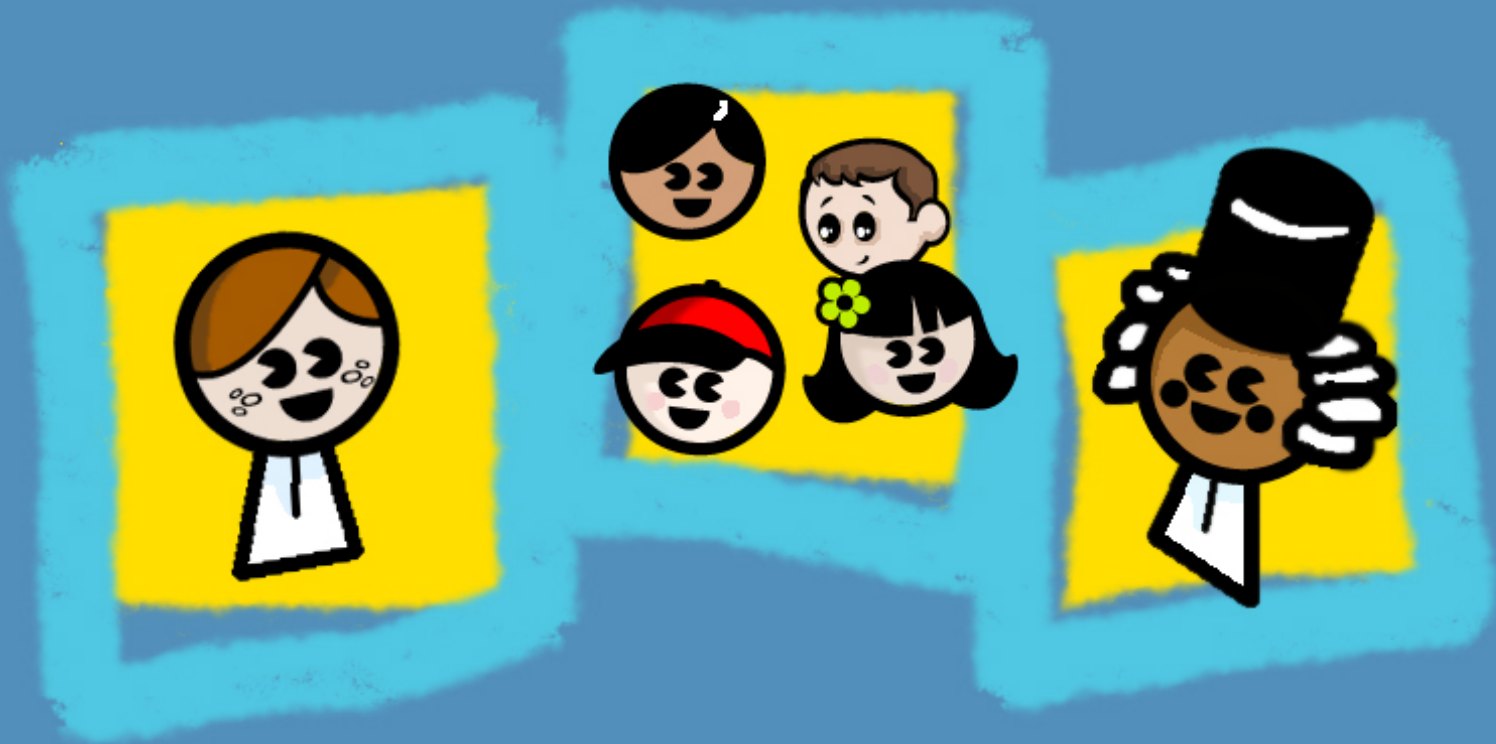


Through the Eyes of Young People:
**Meaningful Child Participation
in BC Family Court Processes**





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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 works in four key areas:

1. Children at Risk - Fostering Resilience to Protect Vulnerable Children
2. Children as Partners - Supporting Children's Participation and Children as Agents of Positive Change
3. Children Reconnecting to Culture - Drawing on the Strengths of Traditional Teachings to Support Vulnerable Children
4. Tools for Change - Creating a Culture of Children's Rights

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Youth Summary

This Youth Summary talks about work done by the International Institute for Child Rights and Development (IICRD), based at the University of Victoria, during a project called *Meaningful Child Participation in BC Family Court Processes (Phase I)*.

All children and youth have rights that are written down in the UN Convention on the Rights of the Child (“CRC”) that almost every country in the world has agreed to follow. Canada and BC have agreed to follow the rights in the CRC, and one of the things the CRC says is that young people have a right to have their views heard and considered when decisions are made by adults that affect them - including decisions that are made in court. Also, BC has some laws that require judges to hear the views of young people. IICRD wanted to see if and how this was happening in BC during custody decisions about young people - for example, when parents were separating or when the government took a young person into government care.

In order to determine if and how young people’s views were being heard in these family court matters in BC, we interviewed over 150 young people, lawyers, judges and service providers who have experience in BC family court processes. We also looked at good things that are happening in different areas of BC to help young people be heard in family court decisions. Finally, we made suggestions based on the research, including what people had said, to make things better for young people in BC family courts.

IICRD sincerely thanks the Federation of BC Youth in Care Network for their help in connecting us with some of the young people who were interviewed, as well as all the young people who shared their views during this Project. Here is a summary of what we found.

Summary of what we found

Tarryl’s Story

I spent a lot of time wishing I was 12 so someone would listen to me.

For most of my childhood, ages 2-9, I was in the middle of a long and difficult child custody dispute in my family. I always knew I wanted to live with my dad and I told everyone who would listen but felt no one heard me or considered what I had to say.



At one point, I felt I had to just agree to anything adults said to me to stop the fighting and went to visit my mother despite not wanting to. I spent a lot of time wishing I was 12 so someone would listen to me.

I was 'assessed' numerous times by various professionals, and yet I did not feel listened to by any of them. My Mom also made false allegations that my Dad was sexually abusing me so I underwent invasive physical exams and I couldn't see my Dad like I wanted. Finally, a Family Advocate (from the Attorney General's discontinued Family Advocate program) was appointed to listen to me. I really felt things got better when my advocate brought my voice forward.

My Family Advocate had an attitude that led me to believe that finally someone was listening to me. She approached me somewhat as an equal, and I realized how important it was that there was someone there for me. The Advocate met with me by myself and also met with my parents.

Although, for the most part, the custody dispute is over, I still find it very frustrating to hear about what innovations are going on around the world and then think about BC and how far we have to go. It shouldn't be a privilege to be heard because of lack of funding or because it is a custody matter. How hard is it really to just speak to the child involved? What would have happened if I hadn't had a Family Advocate?

A family is about the children and so it is frustrating to not put them in the centre of things - especially if professionals making these decisions have their career in *family* law. To bypass court and not even have to involve a judge or lawyer, that is great if children can be heard in that process too. But if they have to go to court, they should have an absolute right to be heard. The people that matter should hear what they (children) have to say.

1. What the Young People said:

a. We Need Information about What is Going On

More than 60 young people who have some experience with the BC Family Court process shared their views with us. According to these young people, they rarely get information about what is going on in a way that they understand. Often, if they get information, it is different messages from different people and they are rarely invited to ask questions.

We know what's going on. When we don't have information we fill in the blanks and often end up blaming ourselves. (young person, male)

Some youth told us about times where they used defensive tactics to protect themselves because of the confusion or uncertainty they felt. For example, when asked questions, some young people said they lied about what was going on, or were unresponsive to questions, or even signed papers they did



not/could not read or could not understand, or said 'yes' to things when they did not understand what they were saying 'yes' to. Young people want to be able to ask questions of those they trust about what was going on and their place in the process.

b. We Want Someone to Listen to Us, Even From a Young Age

As already mentioned, many young people told us about feeling (or being told) that they were too young to understand anything, which led to them feeling pretty powerless about what was going on. Yet, those same young people, and others, spoke of wanting to have their voice heard, even when they were very young. Young people spoke about knowing 'what is really going on' and that this information should be valuable to decision-makers. Some, like Tarryl, recall being told that '12' was the magic age that their voice would be heard in the process. Yet, it is pretty clear that adults (including many judges) do not always listen to them, especially if they are younger than 12 years old.

c. We want a Safe Environment to Share Our Views, and Have Them Taken Seriously

Being a part of the process in this meaningful way involves more than simply asking a young person what they want - it involves informing them about what is going on and having an ongoing 'dialogue' that allows them to paint a full picture from their point of view. Some young people said they were asked directly what they wanted, but it was done in such a way that they "didn't know" or they felt they didn't have the information needed to say anything. Some also identified feeling cornered or pressured into answering. To be part of the process in a safe environment involves *not* being placed in a situation where young people have to 'confront' their parents or caregivers. Young people recall their horrific experiences of 'testifying' in front of those they are accusing or in front of the parent they don't want to live with anymore. In one focus-group conversation, young people spoke about how difficult it was to say what they wanted in a courtroom and in front of the person "I might be going home with."

The judge may decide that this person is okay and they're fit, even though I know that they're not right. Maybe they won't believe me, and then am I going to stand there and really point my finger at that person when I know I could be possibly going home with them and getting crap-kicked when I get home because of all the things I said? (young person, female)

Young people freely admitted that family court processes are frightening and overwhelming - but they are not always good at admitting it while it is happening or reaching out for help.

"One thing that's really important is that...when I was in that situation, at 14, I was really intimidated. But even if you had asked me, 'How do you feel about this?' I would have just been like, 'Yeah, okay, whatever.'" (young person, Female)



d. One Caring Adult Who Listens to Me Can Make a Big Difference

A trend that emerged from the young people's experiences is the difference that one caring adult, who listens to them, can make. Parents are often dealing with their own emotional needs and sometimes not able to really support their children when their family breaks down.

I had a good foster parent. I was crying in the car on they way in [to court] saying that I didn't know what to do. My foster parent said that it was ok, everything would be ok, and to just look at her in the crowd if I got scared. She told me to just say what I needed to say and that would be ok. I really appreciated her support and without her, I would have felt even more scared and uncomfortable. (young person, male)

It also explains why many young people advised us that, in order to improve things for other young people, it is necessary to provide advocacy support services: when young people can't find a 'natural' advocate to support them (for example, an aunt, family friend, etc) to help them speak up and understand what is going on.

A surprising number of young people mentioned a few examples where a judge had asked them what they thought, or had, after some outburst, finally listened to them - and they expressed how fortunate they were to have an experience like that when many of their friends did not get the same chance.

At first, I definitely had no say in anything. The judge I went before in Ontario was not great and treated me and my lawyer like finger puppets. When I went before the judge in BC, I was lucky and I know I was lucky, because I had made up my mind to have my voice heard and the judge was willing to hear it. (young person, male)

Concern has been expressed by many adults (lawyers especially) that judges should never speak to a young person [see the section called *What Lawyers Said*], yet young people told us of situations where they spoke directly to the judge and they were ok with it. Virtually all of these young people report feeling heard and many told us the decisions were ones they were happy with or, at least, could live with.

The judge actually met with me and my brother in the judge's chambers and asked questions about what we wanted. It was just the three of us. The judge was very intense looking into my eyes all the time. Yet, it wasn't scary at all - no way! I was so happy that someone was willing to listen to me finally. You know, of all the people involved [social workers, foster parents, etc.], he treated me as if I was an intelligent young man which was very different than my other experiences where people in the system were treating me as a young child. (young person, male)

When children are involved...I mean, we're so young and we get all this build up of anxiety and all this...no wonder people are attempting suicide - no wonder! Just open up your ears. We know what we want. (young person, female)



e. Culture and Disability should not be Barriers to Young People's Participation

Some young people felt they had cultural or other differences that created more challenges during separation and custody processes. For example, one young man spoke about the challenges he faced because of his disability and the assumptions people made about his capacity to have a voice in the process - especially when he was less than 12 years of age:

My mom was trying to prove me incompetent and so asked that the judge order an IQ test. It was the best thing they could have done because it came back normal and so they realized that they could ask me questions and value my opinion. After that test at the age of 12, they didn't really treat me any worse than other young people the same age... (young person, male)

One young woman emphasized the challenges aboriginal families face in these processes due to 'cultural misconceptions.'

I believe there are cultural misconceptions about aboriginal families: that they are limited in their abilities and their capacities to care for their own children. In my case, my mother herself had learning and developmental challenges, a long stemming result of generational alcoholism and subsequent abuse and neglect. I believe this to be a result of my grandmother's negative experiences which in Catholic Residential school. In my family this was the case; however, without mental illness, I believe our family would have been able to stabilize. (young person, female)

2. What the Lawyers said:

Most lawyers have had direct experience with young people's involvement in family court proceedings and see themselves as playing an important role in young people's participation. However, they are unsure about how to support young people's participation. For example, some lawyers feel that the court rules would be broken or young people would be harmed if the judge spoke directly to young people. There is currently one way to have a young person's views before the court that doesn't involve a young person speaking to a judge but it has problems: it is a report that takes too long to do and includes the young person's voice amongst many other things the report covers.

3. What the Judges said

Judges have a very important role to play in BC family courts, and have a huge responsibility for making decisions based on young people's best interests. When they think of a young person's 'best interests', they are supposed to include a young person's views depending on their age, maturity, the potential emotional harm to the young person, and the ability of the young person to express his or her own views. But, many judges hesitate to speak to young people directly - they are worried about breaking court rules, worried about their own lack of training to speak to young people, worried about having



enough time to speak to young people, etc. The judges we interviewed generally felt that other people should be speaking to young people and then bringing that information to them - for example, bringing back the family advocate, or getting duty counsel or family justice counsellors to do this work.

4. What Service Providers said

Several service providers expressed their frustrations in the patchwork approach to young people's participation in BC family court processes. They wanted some fairly big changes so that there could be more advocacy support to young people, education to young people and their family and friends about the process, and better ways that professional in the system do their work.

5. Ways people have made it work in BC:

We spoke to some lawyers and judges in Kelowna who were finding creative ways to bring a young person's views before the court in custody and access matters. They are finding ways to get a separate lawyer to interview the young person involved in the matter and then record their exact words to pass along to the judge to consider when the judge makes decisions about the young person.

We were interested in seeing if this 'interview' way of bringing a young person's views before the court was something we should encourage - so we have helped support an expansion of this project in Kelowna and at the end of the project, we will ask participants whether they thought it was a good process.

6. Recommendations to Improve Young People's Participation in BC Courts

In the full report, IICRD offered some suggestions for improving BC family court processes - including support for young people's meaningful participation in decisions affecting them. The suggestions are based on the interviews of BC family court users and stakeholders (including young people who have gone through the process), good practices, and research. Here is a summary of the suggestions:

1. Changes in Attitudes and Approaches So Adults in the Family Justice System Can Better Support Young People and Their Participation. This includes:

a. Approaching Young People with Trust, Respect and Understanding;



b. Building a Common Framework for Professionals who work in the system so they can work together better to support young people;

c. Education & Training for Decision-Makers and Those Supporting Young People so they are better informed about young people's rights and what works best for young people;

d. Practice Standards, Screening and Certification to ensure that those people who work with young people are doing a good job at supporting them and their families;

e. Monitoring and Evaluation of the System to ensure that it is doing a good job in supporting young people and their families.

2. Improved Supports to Young People Directly, Including:

a. Information for Young people in a Way They Understand;

b. One Caring Adult to Support Each Young Person and Their Participation in the family court system.

3. Improvements in the System Support Young People and Their Participation, Including:

a. Legislative and Procedural Rule Changes: a presumption that all young people will participate in decisions affecting them;

b. A Dedicated, Integrated, Less Adversarial Family Justice Process that focuses on the young people affected by decisions, and helps family disputes end more quickly;

c. An Array of Options to Support the Meaningful Participation of Young People;

d. An Advocacy Role for the BC Representative for Children and Youth.

Have a glance at the full report at www.iicrd.org/familycourt. Give IICRD a call if you have any questions at 250-472-4762 and ask for Jocelyn Helland (or email Jocelyn at jhiicrd@uvic.ca).

