CHILDREN'S PARTICIPATION IN JUSTICE PROCESSES:

SURVEY OF JUSTICES OF ALBERTA'S COURT OF QUEEN'S BENCH

Joanne J. Paetsch, B.A.,

Lorne D. Bertrand, Ph.D.,

and

John-Paul E. Boyd, M.A., LL.B.

June 2018

Canadian Research Institute for Law and the Family

Conducting meaningful research since 1987

308.301 14th Street NW, Calgary, AB T2N 2A1
+1.403.216.0340 • crilf@ucalgary.ca
www.crilf.ca

The Canadian Research Institute for Law and the Family is a non-profit, independent charitable institute affiliated with the University of Calgary. The major goals of the Institute are to undertake and promote interdisciplinary research, education, and publication on issues related to law and the family. The Institute's mission and vision statement is:

> *The Canadian Research Institute for Law and the Family, established in 1987, is the national leader in high-quality, multidisciplinary research on law, the family and children.*
>
> *The Institute seeks to achieve better outcomes for families and children by:*
>
> - *promoting the development and use of evidence-based research;*
> - *informing courts, government, professionals, academics, service providers and the public; and,*
> - *advising on the development of law, policy, processes and practices.*

TABLE OF CONTENTS

LIST OF TABLES AND FIGURES

ACKNOWLEDGEMENTS

We are very grateful to the Alberta Law Foundation for supporting this project, as well as for providing a generous grant to hold the symposium, *Children's Participation in Justice Processes: Finding the Best Ways Forward*, in 2017. The Alberta Law Foundation has provided the Institute with operating funds since 1987 in support of its mission to conduct high-quality, multi-disciplinary research on law, the family and children.

Thank you to Ms Corinne Jamieson, Alberta Court of Queen's Bench, for sending the survey link to judges. Thanks are also due to all the judges who completed the survey. Your willingness to share your opinions and experiences is very much appreciated.

1.0 INTRODUCTION

1.1 Background

In September 2017, the Canadian Research Institute for Law and the Family and Alberta's Office of the Child and Youth Advocate hosted a two-day national symposium to discuss the impact of the legal system on Canadian families, with the goal of generating innovative ideas, new research priorities and best practices around the ways that children participate in legal processes.

One component of that project involved the Institute conducting a survey of participants prior to the symposium. The survey collected data on participants' attitudes on the importance of soliciting children's views in family law proceedings that affect them, the best ways to determine those views, and the extent to which they have had experience with soliciting children's views in their work. The resulting report was published in December 2017 (Paetsch, Bertrand & Boyd, 2017). The substantial majority of survey respondents were lawyers; only four judges completed the survey.

It was decided that, in addition to the information collected from lawyers, it would be very useful to also solicit the views from the bench on this important topic. The Institute requested and received permission from Associate Chief Justice Rooke of Alberta's Court of Queen's Bench to conduct a survey of Queen's Bench justices on the subjects addressed in the survey of symposium participants. A questionnaire was developed based on the content of the earlier survey to maximize comparability of the two instruments.

1.2 Purpose of the Project

The purpose of this project was to survey judges of the Alberta Court of Queen's Bench to obtain their opinions and experiences regarding children's participation in justice processes. Judges were asked questions about:

- their attitudes on the importance of soliciting children's views in family law proceedings that affect them;

- the best ways to determine those views; and

- the extent to which they have had experience with soliciting children's views in their cases.

1.3 Methodology

1.3.1 Survey

Judges were asked to complete an electronic survey that included basic demographic questions, such as: their gender; how long they have been a judge in Alberta; what percentage of their cases involves family law; and whether they had any experience representing children as counsel before their appointment to the bench. A copy of the survey is contained in Appendix A.

Judges were then asked a series of questions regarding their opinions about various issues regarding hearing from children, including: the best mechanisms for hearing the voice of the child; which factors are important when deciding what weight should be given to the child's views; whether the information the child provides should be shared with others; and which type of child legal representation they consider most appropriate, assuming the child's wishes or views are sought.

Judges who have interviewed children in custody and access or child welfare matters were asked additional questions regarding their experiences, such as: how often they have interviewed children by specific age categories; at what stage in the case their interview usually occurs; where it occurs; who is present; whether the interview is recorded; and what their objectives are in interviewing children.

The Institute prepared a cover email to Queen's Bench justices describing the survey and soliciting their participation, and provided a link to the survey on SurveyMonkey. The email was distributed to all judges by Associate Chief Justice Rooke's office on 30 April 2018.

1.3.2 Data Analysis Strategy

Information collected from the survey was analyzed both quantitatively and qualitatively. The Statistical Package for the Social Sciences, a software program produced by IBM, was used to analyze quantitative data, and qualitative data were coded and analyzed thematically to identify points of consensus among the respondents.

The survey was drafted based on the content of the survey distributed to participants at the September 2017 national symposium, *Children's Participation in Justice Processes: Finding the Best Ways Forward*, to maximize comparability of the two instruments. Therefore, in addition to presenting the results of the judges' survey, the findings are compared to the results from the survey of symposium participants, of which the substantial majority were lawyers. Points of convergence and divergence are highlighted, and recommendations are made for moving forward.

1.3.3 Response Rate

The survey was sent to a total of 97 Queen's Bench Justices and Masters, 20 of whom completed the survey, resulting in a response rate of 20.6%.

1.4 Limitations

The individuals who completed the survey do not necessarily represent a random sample of Court of Queen's Bench justices in Alberta, and therefore caution should be exercised in generalizing the findings to all justices in Alberta or, even more so, to all justices in Canada.

2.0 SURVEY FINDINGS

This chapter presents the results from *Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench*. In addition to asking respondents demographic questions, such as: their gender; how long they have been a judge in Alberta; what percentage of their cases involves family law; and whether they had any experience representing children as counsel before their appointment to the bench, respondents were asked a series of questions regarding their opinions about various issues regarding hearing from children.

2.1 Demographic Information

Judges were asked what their gender was; 70% of the respondents were women and 30% were men. The sample has a much higher proportion of women than the population surveyed. At the time the survey was distributed, 41% of the Alberta Court of Queen's Bench justices and Masters were women, and 59% were men.

On average, respondents reported that they have served as a judge of the Alberta courts for 11.8 years, including any time they may have spent as a judge of the Provincial Court. According to respondents, approximately 43.3% of their work, on average, involves family law cases, defined in the survey as including child welfare matters. None of the judges reported that they had represented children in their practices before being appointed to the bench.

2.2 Judges' Opinions Regarding Hearing from Children

Judges were asked to what extent they agree that children at specified ages should have the right to voice their views in family law proceedings that affect them. As shown in Table 2.1, the older the child, the more judges agreed that the child has a right to voice their views, as would be expected. None of the judges agreed that children under the age of 6 have the right to voice their views, and only 30% of judges *strongly agreed* or *agreed* that children aged 6 to 9 have the right to voice their views. The proportion of judges *strongly agreeing* or *agreeing* with this statement increased to 70% for children aged 10 to 13 years, and to 100% for children 14 years of age and older. Moreover, 75% of judges *strongly agreed* and 25% *agreed* that children 16 years of age or older have the right to voice their views in family law proceedings that affect them.

Table 2.1
Extent to Which Judges Agree that Children at Specified Ages Should Have the Right to Voice Their Views in Family Law Proceedings that Affect Them

	Strongly Agree		Agree		Neither		Disagree		Strongly Disagree	
	n	%	n	%	n	%	n	%	n	%
Under 6 years of age	0	0.0	0	0.0	8	**40.0**	6	30.0	6	30.0
6 to 9 years of age	1	5.0	5	25.0	6	**30.0**	6	**30.0**	2	10.0
10 to 13 years of age	4	20.0	10	**50.0**	6	30.0	0	0.0	0	0.0
14 to 15 years of age	13	**65.0**	7	35.0	0	0.0	0	0.0	0	0.0
16 years of age or older	15	**75.0**	5	25.0	0	0.0	0	0.0	0	0.0

N=20

When asked whether children's participation in family law proceedings that affect them should be mandatory, 52.6% said *no*, 47.4% said *yes, but only in some cases*, and nobody said *yes, in all cases affecting them*; one respondent did not answer the question.

Judges were asked their opinion as to which are the best mechanisms for enabling children to voice their views; see Table 2.2. The majority of respondents (85%) rated *evaluative Views of the Child report by a mental health professional* as the best mechanism, followed by an *assessment report by a mental health professional* (70%). *Legal representation for child* (65%) and a *non-evaluative Views of the Child report by a mental health or legal professional* (60%) were also considered best mechanisms by the majority of judges. Only one-fifth of respondents (20%) rated *judicial interview with child* as a best mechanism, and only one judge (5%) thought *non-legal representation for the child* was a best mechanism. None of the judges thought a *legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation* was a best way to enable children to voice their views.

Judges were also asked what mechanisms, if any, are used by the court to enable children to voice their views; see Table 2.3. The majority of respondents reported that mechanisms used in their court included: *legal representation for the child* (100%); *Views of the Child report* (95%); *assessment or evaluation report* (90%); and *testimony by a mental health professional or social worker who has interviewed the child* (80%). Just over one-half of judges also reported that *judicial interview with the child* (55%) and *testimony by other adults who know the child (such as parents or teachers) regarding the child's wishes* (55%) were mechanisms used in their court.

Table 2.2
Judges' Views on What the Best Mechanisms Are
to Enable Children to Voice Their Views

Mechanism	n	%
Evaluative Views of the Child report by a mental health professional	17	85.0
Assessment report by a mental health professional	14	70.0
Legal representation for child	13	65.0
Non-evaluative Views of the Child report by a mental health or legal professional	12	60.0
Judicial interview with child	4	20.0
Non-legal representation for child	1	5.0
Testimony by child	0	0.0
Legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation	0	0.0

N=20; Multiple response data

Table 2.3
Judges' Views on What Mechanisms Are Used by the Court
to Enable Children to Voice Their Views

Mechanism	n	%
Legal representation for child	20	100.0
Views of the Child report	19	95.0
Assessment or evaluation report	18	90.0
Testimony by mental health professional/social worker who has interviewed the child	16	80.0
Testimony by other adults who know the child (e.g., parent(s), teachers) regarding the child's wishes	11	55.0
Judicial interview with child	11	55.0
Submission by child (e.g., letter, email, standardized form/kit, videotape)	8	40.0
Testimony in court	3	15.0
Voluntary mediation involving the child and parents	3	15.0
Mandatory mediation involving the child and parents	1	5.0
Non-legal representation for child	1	5.0
Legislative provision that children's views must be considered	1	5.0

N=20; Multiple response data

Relatively few respondents said that *testimony by the child in court* (15%) or *voluntary mediation involving the child and parents* (15%) are used by the court, and only one judge each reported that *mandatory mediation involving the child and parents* (5%), *non-legal representation for the child* (5%), and a *legislative provision that children's views must be considered* (5%) are mechanisms that are used in their court.

2.3 Factors Affecting Weight Given to Children's Views

Judges were asked which factors are important when deciding what weight should be given to the child's views. As shown in Table 2.4, 95% of respondents viewed the *ability of the child to understand the situation* and *an indication of parental coaching or manipulation* as important factors. The *age of the child* (90%), the *ability of the child to communicate* (85%), and the *child's reasons for their views* (85%) were also important factors to be considered.

Respondents were given the opportunity to write in additional factors, and three individuals mentioned other factors: the maturity of the child; the surrounding circumstances including sibling pressures; and whether the child has expressed a wish to be heard.

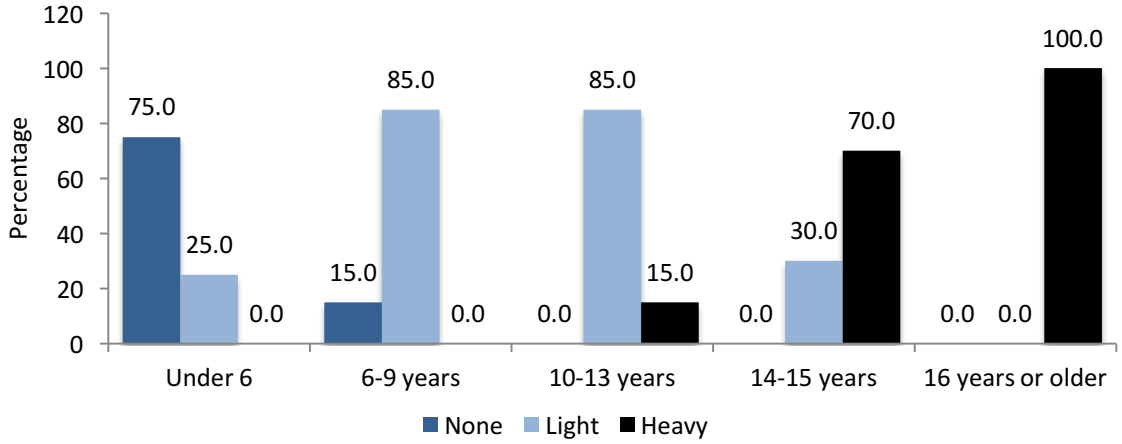
Table 2.4
Judges' Views on Which Factors Are Important When Deciding
What Weight Should be Given to the Child's Views

Factor	n	%
Ability of child to understand the situation	19	95.0
Indication of parental coaching/manipulation	19	95.0
Age of child	18	90.0
Ability of child to communicate	17	85.0
Child's reasons for views	17	85.0
Child's emotional state	15	75.0
Other*	3	15.0

N=20; Multiple response data
* Other includes: maturity of child; surrounding circumstances including sibling pressures; and whether the child has expressed a wish to be heard.

Judges were then asked how much weight should be given to the preferences of a child regarding custody decisions at specified age categories, and the results are presented in Figure 2.1. As would be expected, the older the child, the more likely judges were to report that their preferences should be weighed heavily. For example, all judges said that the preferences of children 16 years of age or older should receive *heavy weight*, compared to 70% of children aged 14 to 15, 15% of children aged 10 to 13, and 0% for children under the age of 10. Judges were more likely to report that the preferences of children aged 6 to 9 or 10 to 13 be given *light weight* (85% each) than other weights. Three-quarters of the judges (75%) thought the preferences of children under the age of 6 should be given *no weight*.

Figure 2.1
Judges' Views on How Much Weight Should be Given to the Preferences of a Child Regarding Custody Decisions, by Age Category



N=20

2.4 Sharing Information

When asked if the information that children provide regarding their wishes should be made available to their parents, over one-half of the judges (52.6%) said they *don't know*; 31.6% said *yes*, 15.8% said *no*, and one individual did not answer the question. Judges were then asked if that information should be shared in the courtroom and, again, a large proportion (42.1%) said they *don't know*; 36.8% said *yes*, 21.1% said *no*, and one individual did not answer the question.

Judges were asked whose responsibility it should be to inform children of the court's decisions in matters affecting them. As indicated in Table 2.5, over one-third of the respondents (35%) said it is the responsibility of the *child's lawyer, if there is one*, and 15% responded that the *child's parents* should be responsible for informing the child. One-tenth of judges thought a *social worker* (10%) or *court officer* (10%) should have responsibility, and only one judge (5%) said *the judge* should have responsibility. No respondents thought the *parents' lawyers* should have responsibility for informing the child of the court's decision.

Respondents were given the opportunity to specify other responses, and a few judges did so. One judge thought the child's lawyer or the parents together should inform the child, and another said, "*Preferably an independent party, whether a social worker or court officer would be ideal – but subject to the cost of doing so.*" One judge commented, "*As with many of these questions, the answer depends on the circumstances.*" Another judge suggested that

guidelines on whether, how and by whom judicial decisions are communicated to children would be useful.

Table 2.5
Judges' Views on Whose Responsibility It Should Be to Inform Children of the Court's Decisions in Matters Affecting Them

	n	%
The child's lawyer, if there is one	7	35.0
Their parents	3	15.0
A social worker	2	10.0
A court officer	2	10.0
The judge	1	5.0
The parents' lawyers	0	0.0
Don't know	2	10.0
Other*	3	15.0

N=20

* Other includes: children's lawyer or the parents together; preferably an independent party, whether a social worker or court officer would be ideal—but subject to cost of doing so; as with many of these questions, the answer depends of the circumstances.

2.5 Approaches to Representing Children

According to the literature (Bala, 2006; Bala, Talwar, & Harris, 2005; McHale, 1980), there are three different types of child legal representation:

(1) a lawyer acting as amicus curiae, or friend of the court, who ensures that all relevant evidence is before the court but does not advocate any position;

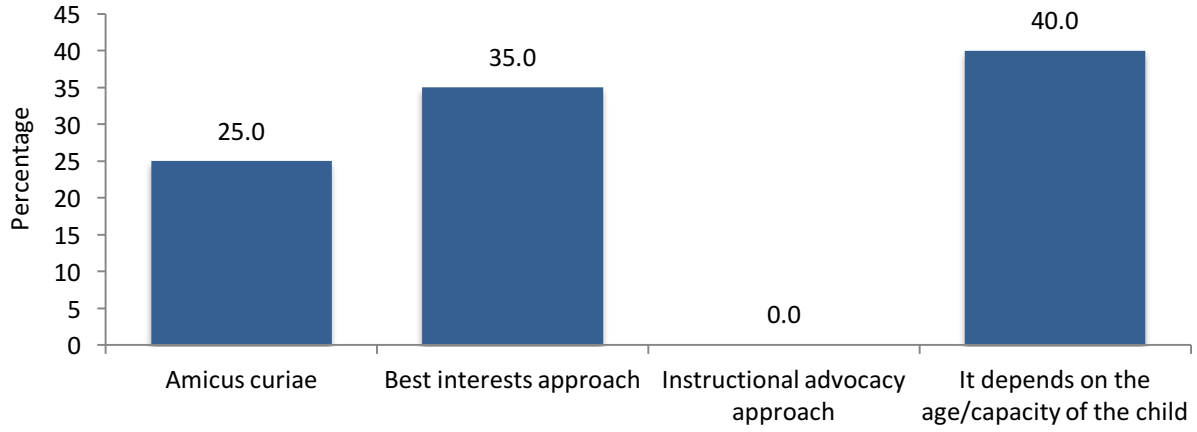
(2) a best interests or guardian approach, in which a lawyer ensures that the child's views are before the court but advocates a position based on the lawyer's assessment of the evidence of the child's interests, taking account of the child's views as one factor in that assessment; and

(3) an instructional advocacy approach, in which a lawyer advocates a specific position based on the child's stated wishes or views, as the lawyer would for an adult client.

Judges were asked which approach they consider to be most appropriate, assuming that the child is expressing wishes or views. The results are presented in Figure 2.2.

Interestingly, given that the Law Society of Alberta and the Office of the Child and Youth Advocate Alberta both adopted policies in 2010 requiring lawyers for children to take an instructional advocacy approach whenever possible, no judges considered the *instructional advocacy approach* as the most appropriate approach to be taken by lawyers. The most common response was that *it depends on the age and capacity of the child* (40%), followed by the *best interests approach* (35%). Judges rated the *amicus curiae approach* as less appropriate (25%).

Figure 2.2
Judges' Views on Which Child Legal Representation Approach is Most Appropriate



N=20

A follow-up question asked judges under what circumstances they thought children's lawyers should not adopt an instructional advocacy approach, and the results are presented in Table 2.6. The circumstance that the largest proportion of judges agreed with was *if they believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views* (95%). The vast majority of judges also reported that an instructional advocacy approach should not be adopted *if it is believed the child wants an outcome that may expose him or her to serious harm* (90%) or *risk* (85%). Respondents were given the opportunity to write in other circumstances, and over one-third of judges (35%) said lawyers should not adopt an instructional advocacy approach if there are concerns about parental alienation.

Table 2.6
Judges' Views as to Circumstances Under Which
Children's Lawyers Should Not Adopt an Instructional Advocacy Approach

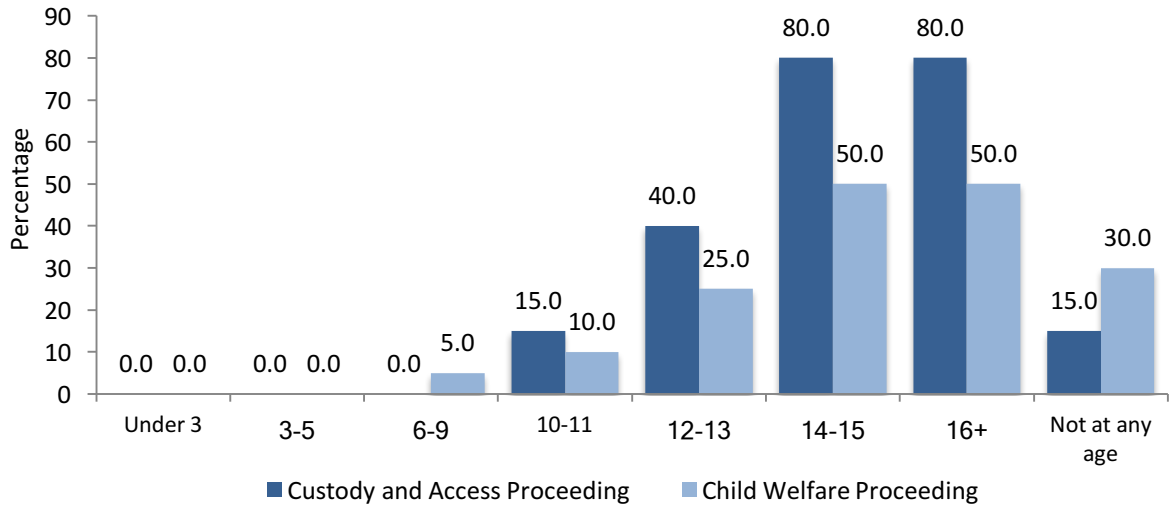
Circumstance	n	%
If they believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views	19	95.0
If they believe that the child wants an outcome that may expose the child to harm	18	90.0
If they believe that the child wants an outcome that may expose the child to serious risk	17	85.0
Other—If they believe there is parental alienation	7	35.0

N=20; Multiple response question

2.6 Judicial Interviews

All judges were asked at what age they think it is appropriate for judges to interview children in both custody and access proceedings and child welfare proceedings; see Figure 2.3. Overall, judges were more likely to think it is appropriate for judges to interview children in custody and access proceedings than in child welfare proceedings, and the proportions of respondents who think it is appropriate for judges to interview children increase as the child's age increases.

Figure 2.3
Judges' Views on What Age They Think it is Appropriate for Judges
to Interview Children, by Type of Proceeding



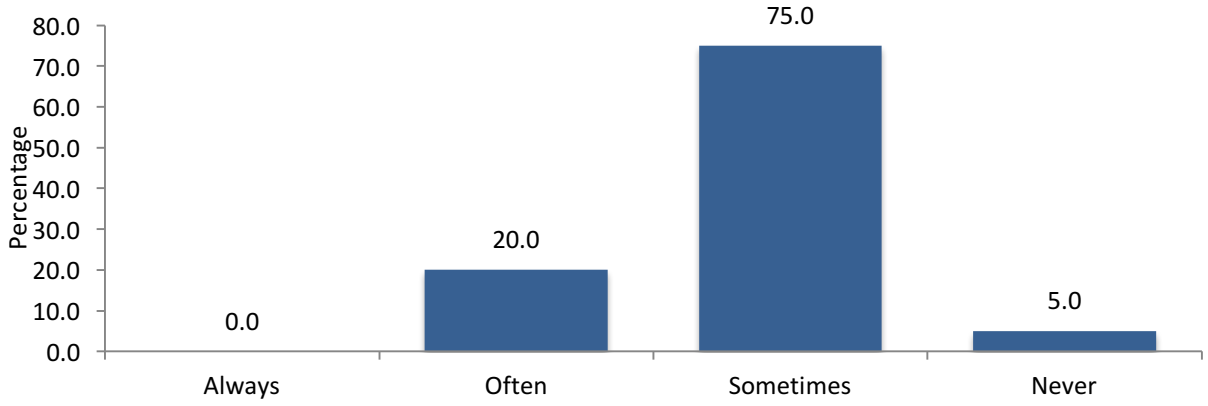
N=20; Multiple response data

For example, while 80% of judges think it is appropriate for judges to interview children aged 14 and older in custody and access proceedings, only 50% think it is appropriate to interview them in child welfare proceedings. Likewise, 40% of judges think it is appropriate to interview children aged 12 to 13 years in custody and access proceedings, compared to only 25% of judges who think it is appropriate in child welfare proceedings. A larger proportion of judges do not think it is appropriate for judges to interview children at any age in child welfare proceedings (30%) than in custody and access proceedings (15%), and no judges think it is appropriate to interview children aged 5 and under in any type of proceeding.

2.6.1 Judges' Experiences with Hearing from Children

Judges were asked how often they seek the child's views in their family law cases involving children; see Figure 2.4. Three-quarters of respondents (75%) said they *sometimes* seek the child's views, and 20% said they *often* do. One judge (5%) said they *never* seek the child's views in their family law cases involving children, and nobody said they *always* do.

Figure 2.4
Frequency with Which Judges Seek the Child's Views in Their Family Law Cases Involving Children



N=20

When asked if they have received any training on interviewing children since they were appointed to the bench, most judges (80%; n=16) said no. Judges who said they had not received any training on interviewing children were then asked if they thought such training would be useful, and 75% said yes. One respondent commented that, within the first five years after their appointment to the bench, all judges should receive training from the National Judicial Institute on interviewing children of different ages.

All judges were asked if they have ever interviewed a child as a judge, and 65% (n=13) said yes. Judges who said they had interviewed a child were then asked how often they had interviewed children at specified age categories in the past year. As shown in Table 2.7, judges interviewed children infrequently. No judges reported interviewing children *always* or *often* at any age. Almost two-fifths of judges (38.5%) reported *sometimes* interviewing children aged 14 to 15, and 15.4% reported *sometimes* interviewing children aged 10 to 13 and 16 years of age or older.

Table 2.7
Frequency with Which Judges Have Interviewed Children
at Specified Age Categories

	Always		Often		Sometimes		Never	
	n	%	n	%	n	%	n	%
Under 6 years of age	0	0.0	0	0.0	0	0.0	13	**100.0**
6 to 9 years of age	0	0.0	0	0.0	0	0.0	13	**100.0**
10 to 13 years of age	0	0.0	0	0.0	2	15.4	11	**84.6**
14 to 15 years of age	0	0.0	0	0.0	5	38.5	8	**61.5**
16 years of age or older	0	0.0	0	0.0	2	15.4	11	**84.6**

Only asked of respondents who reported having interviewed a child as a judge, N=13.

Judges who had interviewed children were asked what their objectives are in interviewing children, and how often these interviews occur; see Table 2.8. While the results varied considerably, the objectives that the largest proportion of judges reported *always* occurring were *to obtain facts* (36.4%) and *to allow the child to ask you questions* (30%). Equal proportions of judges reported that the objective *to meet the child and get a sense of his or her personality* occurred *often* (30%) or *sometimes* (30%). One-half of the judges (50%) said the objective *to give the child confidence in the process* occurred *sometimes*, and almost one-half (44.4%) said they *sometimes* interviewed children *to obtain the wishes of the child*.

Judges who had interviewed children were also asked where they meet with the children, and how often that occurs; see Table 2.9. The largest proportions of judges reported *sometimes* interviewing children *in their chambers* (60%), or *in a conference room outside of court* (55.6%). Almost one-quarter of judges (22.2%) said they *always* interview children *in a conference room outside of court*, and 10% said they *always* interview children *in their chambers*. No judges reported meeting children *outside in public with a court officer*, and only one judge (16.7%) reported *sometimes* meeting with children *in open court with parties and counsel present*. One judge specified another place, "*a child friendly room beside the court room*."

Table 2.8
Frequency with Which Judges Report Their Objectives
in Interviewing Children

	Always		Often		Sometimes		Never	
	n	%	n	%	n	%	n	%
To obtain wishes of the child (n=9)	2	22.2	2	22.2	4	**44.4**	1	11.1
To obtain facts (n=11)	4	**36.4**	3	27.3	2	18.2	2	18.2
To meet the child and get a sense of his or her personality (n=10)	2	20.0	3	**30.0**	3	**30.0**	2	20.0
To give the child confidence in the process (n=10)	2	20.0	2	20.0	5	**50.0**	1	10.0
To allow the child to ask you questions (n=10)	3	30.0	2	20.0	4	**40.0**	1	10.0

Only asked of respondents who reported having interviewed a child as a judge, N=13.

Table 2.9
Frequency with Which Judges Report Where They Meet
When They Interview Children

	Always		Often		Sometimes		Never	
	n	%	n	%	n	%	n	%
In your chambers (n=10)	1	10.0	0	0.0	6	**60.0**	3	30.0
In open court with parties and counsel present (n=6)	0	0.0	0	0.0	1	16.7	5	**83.3**
In court with counsel present but with parties excluded (n=5)	0	0.0	1	20.0	1	20.0	3	**60.0**
In a conference room outside of court (n=9)	2	22.2	1	11.1	5	**55.6**	1	11.1
Outside in public with a court officer (n=3)	0	0.0	0	0.0	0	0.0	3	**100.0**

Only asked of respondents who reported having interviewed a child as a judge, N=13.

Judges who reported they have interviewed children were asked if they have ever interviewed a child in a custody and access matter, and all 13 said yes. These judges were then asked what factors in a custody and access case help them decide to interview a child and how often they occur, and the results are presented in Table 2.10. Factors that the majority of judges reported *always* help them decide to interview a child in a custody and access case include the *age of the child* (70%), the *urgency of the decision* (50%) and the *absence of a children's lawyer* (50%). Other factors that judges reported *always* help with the

decision to interview a child include the *absence of an assessment* (44.4%) and the *child expressing a wish to speak to them* (37.5%).

Factors that judges reported *often* influence their decision to interview a child in a custody and access case include the *absence of a children's lawyer* (37.5%), the *child expressing a wish to speak to them* (37.5%) and the *absence of an assessment* (33.3%). Over one-half of the judges (57.1%) said that the *request of a parent* is *sometimes* a deciding factor, and 83.3% of judges said the *consent of the parties* is *sometimes* a deciding factor.

Judges had the opportunity to write-in additional factors, and one judge specified another reason that helped them decide to interview a child: "*request by the child's lawyer*." Another judge commented that the presence of sibling pressure is also a very relevant factor in deciding to interview a child.

Table 2.10
Frequency with Which Judges Report Factors in a Custody and Access Case That Helped Them Decide to Interview a Child

	Always		Often		Sometimes		Never	
	n	%	n	%	n	%	n	%
Age of child (n=10)	7	**70.0**	3	30.0	0	0.0	0	0.0
Child expressing a wish to speak to you (n=8)	3	**37.5**	3	**37.5**	2	25.0	0	0.0
Urgency of decision (n=8)	4	**50.0**	2	25.0	1	12.5	1	12.5
Absence of a children's lawyer (n=8)	4	**50.0**	3	37.5	1	12.5	0	0.0
Absence of an assessment (n=9)	4	**44.4**	3	33.3	1	11.1	1	11.1
Request of a parent (n=7)	2	28.6	0	0.0	4	**57.1**	1	14.3
Consent of parties (n=6)	1	16.7	0	0.0	3	**83.3**	0	0.0

Only asked of respondents who reported having interviewed a child in a custody and access matter, N=13.

Judges were asked to indicate how often other people were present when they interviewed children; see Table 2.11. The vast majority of judges (83.3%) said that *someone else* was *always* present, 63.6% said a *court clerk or reporter* was *always* present, and 36.4% said the *child's counsel* was *always* present. The majority of judges (80%) said *a parent (or both parents)* was *never* present, and 72.7% said the *parents' counsel* was *never* present. One judge commented that someone should be present to give witness that no harm was done to the child through the interview process, but that the views of the child should not be recorded so that the child will not have to take on responsibility for the ultimate decision.

Table 2.11
Frequency with Which Judges Report Other People are Present
When They Interview a Child

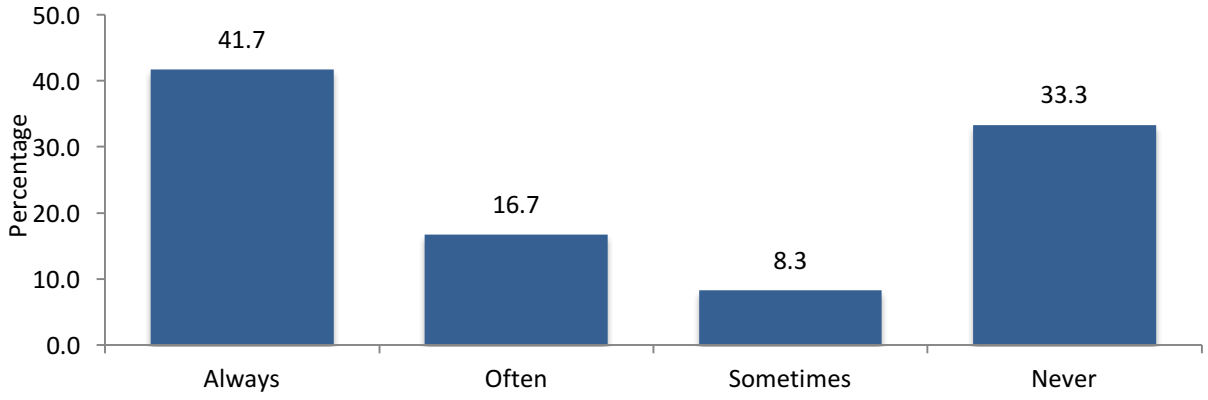
	Always		Often		Sometimes		Never	
	n	%	n	%	n	%	n	%
Was anyone else present? (n=12)	10	**83.3**	0	0.0	0	0.0	2	16.7
Was the child's counsel present? (n=11)	4	36.4	1	9.1	1	9.1	5	**45.5**
Was a court clerk or reporter present? (n=11)	7	**63.6**	1	9.1	1	9.1	2	18.2
Was a parent (or both parents) present? (n=10)	0	0.0	0	0.0	2	20.0	8	**80.0**
Were the parents' counsel present? (n=11)	1	9.1	0	0.0	2	18.2	8	**72.7**

Only asked of respondents who reported having interviewed a child in a custody and access matter, N=13.

Judges were also asked if the interviews were recorded in any way when they interviewed children in custody and access disputes. As shown in Figure 2.5, 41.7% of judges said that the interviews were *always* recorded, and a further 16.7% said they were *often* recorded. One-third of respondents said that the interviews were *never* recorded.

Judges who reported that they had interviewed children were asked if they had ever interviewed a child in a child welfare matter, and all 12 judges who responded said no. This is not surprising, since the Court of Queen's Bench in Alberta does not hear child welfare cases in the first instance.

Figure 2.5
Frequency with Which Judges Report That Interviews Were Recorded
When They Interviewed Children in Custody and Access Disputes



Only asked of respondents who reported having interviewed a child in a custody and access matter, N=13; Missing cases=1.

The survey concluded with two open-ended questions. The first open-ended question asked judges if they had any concerns regarding judges interviewing children, and 18 of the 20 judges provided 21 comments. The most common comment, made by 50% of the judges, was that interviewing children was best left to the mental health professionals. Examples of these comments include:

> *We are not psychologists or mental health professionals. Many of us have little experience with children and those of us who do, usually have only our own children as references. We have our own biases and ought not to inflict those on the children whose futures we must decide. Interviews of children should be left to professionals.*
>
> *I have little by which to measure when this is appropriate. Would prefer a children's counsel to build a rapport and worry about the outcome of a limited "interview."*
>
> *Judges' skillset lacking – best left to a professional.*

Almost one-quarter of judges (22.2%) commented that if judges are going to interview children, it is essential that they be trained. For example:

> *I am not convinced it is a good idea. For sure, we need way better training and some real guidelines on what we are trying to achieve.*
>
> *We need to ensure we have the skill set to do it.*
>
> *Training should be mandatory prior to.*

Three judges responded with a "*yes*" or "*many*" when asked if they had concerns about judges interviewing children, but did not elaborate on what the concerns were. Two judges had concerns about "*how this gets communicated back to the parents*," and another judge had concerns about "*who is in the room with the justice*." Other concerns mentioned by one respondent each were that "*the litigants are not present*," and "*the potential for complaint due to the private nature of the interview is very high*."

The second open-ended question asked judges if there was anything else they would like to add regarding children's participation in justice processes, and 6 of the 20 judges commented. One judge said they wished it was unnecessary, and another commented on the significant gap in terms of how judges' decisions are communicated to children.

One judge praised the Parenting After Separation course:

> *In Alberta, there is a rule that parents may not divorce until they have both taken a "parenting after separation course." There is likely some benefit that they must take that course within a short time of starting any litigation about their children, and the course content must include information about the negative impact of prolonged court battles on the family as it restructures.*

Another judge commented on the potential benefit of children's participation in justice processes:

> *I think this could be a valuable tool to get insight on how the parents parent – not to get the child's preferences, but to get a better view of what is really going on in each home. We may need to consider how to do this differently, including to understand why a child prefers one parent over the other (is it because one makes them do homework while the other is better at playing?).*

Two judges offered negative views of involving children in proceedings:

> *Direct participation should be avoided in all cases, no matter the age, other than with counsel or an appropriate mental health professional.*

> *I have never had a child give evidence orally in a proceeding involving their custody or access. Nor will I accept any letter or other written material provided by the child. Children should never have to bear the responsibility for the decisions made in court that concern them.*

3.0 SUMMARY, DISCUSSION AND RECOMMENDATIONS

In September 2017, the Canadian Research Institute for Law and the Family and the Office of the Child and Youth Advocate held a two-day national symposium on *Children's Participation in Justice Processes: Finding the Best Ways Forward*. This meeting of leading experts and stakeholders provided the Institute with the opportunity to survey a pool of experienced, knowledgeable participants regarding their perceptions and experiences with children's participation in justice processes. The substantial majority of respondents were lawyers, so it was decided that it would be very useful to also solicit the views from the bench on this important topic. This report examines the results of the survey of justices and compares them to the findings from the symposium participants.

3.1 Summary

3.1.1 Demographic Information

- The survey was sent to a total of 97 Queen's Bench Justices and Masters, 20 of whom completed the survey, resulting in a response rate of 20.6%.

- The majority of respondents were women (70%); 30% were men.

- On average, respondents reported that they have served as a judge of the Alberta courts for 11.8 years, and approximately 43.3% of their work involves family law cases.

3.1.2 Judges' Opinions Regarding Hearing from Children

- Judges were asked to what extent they agree that children at specified ages should have the right to voice their views in family law proceedings that affect them. As would be expected, the older the children, the more judges agreed that they have a right to voice their views. None of the judges agreed that children under the age of 6 have the right to voice their views, and all of the judges agreed that children 14 years of age and older have the right to be heard.

- Over one-half of the judges (52.6%) did not agree that children's participation in family law proceedings that affect them should be mandatory, while 47.4% said it should be mandatory, but only in some cases.

- Judges viewed *evaluative Views of the Child report by a mental health professional* as the best mechanism to enable children to voice their views, followed by an *assessment report by a mental health professional*.

- Mechanisms that over 80% of the judges said were used in their court to hear the voice of the child were: *legal representation for the child*; *Views of the Child report*; *assessment or evaluation report*; and *testimony by a mental health professional or social worker who has interviewed the child*.

3.1.3 Factors Affecting Weight Given to Children's Views

- Over 90% of the judges thought the following factors were important when deciding what weight should be given to the child's views: *ability of the child to understand the situation*; *indication of parental coaching or manipulation*; and *age of the child*.

- Over 80% of the judges thought the following factors were important when deciding what weight should be given to the child's views: *ability of child to communicate;* and the *child's reasons for the views*.

- The older the child, the more likely judges were to report that their preferences regarding custody decisions should be *weighed heavily* in making those decisions.

- The majority of judges thought the preferences of children aged 14 and over should be *weighed heavily* in making decisions about custody, and the preferences of children under the age of 13 should be *weighed lightly*. Three-quarters of the judges thought the preferences of childen under the age of 6 should be given *no weight*.

3.1.4 Sharing Information

- Less than one-third of the judges thought that the information that children provided regarding their wishes should be made available to their parents; over one-half said they don't know.

- Just over one-third thought the information should be shared in the courtroom, while 42.1% said they don't know.

- When asked whose responsibility it should be to inform children of the court's decisions in matters affecting them, 35% of the judges said it is the responsibility of the *child's lawyer, if there is one*, and 15% said it should be the *child's parents*.

3.1.5 Approaches to Representing Children

- When asked which child legal representation approach is most appropriate, judges were most likely to say it depends on the age and capacity of the child, followed by the *best interests approach*. No judges considered the *instructional advocacy approach* as the most appropriate approach to be taken by lawyers.

- Over 80% of judges agreed that an instructional advocacy approach should not be adopted *if it is believed that the child is too young to have the capacity to make a sound decision*, or *if the child wants an outcome that may expose him or her to serious harm or risk*.

3.1.6 Judicial Interviews

- Overall, judges were more likely to think it is appropriate for judges to interview children in custody and access proceedings than in child welfare proceedings, and the proportions of respondents who think it is appropriate for judges to interview children increase as the child's age increases.

- While 80% of judges think it is appropriate for judges to interview children aged 14 and older in custody and access proceedings, only 50% think it is appropriate to interview them in child welfare proceedings.

- A larger proportion of judges do not think it is appropriate for judges to interview children at any age in child welfare proceedings (30%) than in custody and access proceedings (15%), and no judges think it is appropriate to interview children aged 5 and under in any type of proceeding.

- Three-quarters of respondents said they *sometimes* seek the child's views in their family law cases involving children, and 20% said they *often* do.

- Most judges (80%) said they have not received any training on interviewing children following their appointment to the bench. Three-quarters of the judges who had not received any such training thought it would be useful.

- Almost two-thirds of the judges (65%) said they have interviewed a child as a judge, although it is not a frequent occurrence.

- The most frequent objectives reported by judges in interviewing children were *to obtain facts* and *to allow the child to ask questions*.

- Judges reported that the most common locations for interviewing children were *in a conference room outside of court* and *in their chambers*.

- Factors that over 50% of judges reported *always* help them decide to interview a child in a custody and access case include the *age of the child*, the *urgency of the decision* and the *absence of a children's lawyer*.

- The vast majority of judges said that *someone else* was *always* present when they interviewed children. Almost two-thirds said a *court clerk or reporter* was *always* present, and over one-third said the *child's counsel* was *always* present.

- The majority of judges (80%) said that *a parent*, or *both parents*, was *never* present, and 72.7% said the *parents' counsel* was *never* present.

- When asked if the interviews were recorded in any way when they interviewed children in custody and access disputes, 41.7% of judges said that the interviews were *always* recorded, and a further 16.7% said they were *often* recorded. One-third of respondents said that the interviews were *never* recorded.

- None of the judges in the sample had ever interviewed a child in a child welfare matter.

3.2 Discussion

Similar to the *Survey of Symposium Participants* (Paetsch, Bertrand & Boyd, 2017), the *Survey of Justices of Alberta Court of Queen's Bench* had a disproportionate number of female respondents compared to male respondents. It is recognized in the research literature, however, that women are more likely respond to surveys than men, and that this does

not necessarily introduce a gender bias to the results obtained (Smith, 2008; Underwood, Kim & Matier, 2000). Respondents to both surveys were very experienced, with symposium participants, of whom 64% were lawyers, working in their primary occupation an average of 19.1 years, and judges having served on Alberta courts an average of 11.8 years.

It was clear from the results of the survey of symposium participants that family justice professionals believe that children have the right to voice their views in family law proceedings that affect them; over 93% agreed with this statement. For judges, however, the extent to which they agreed depended on the age of the child. The older the children, the more judges agreed that they have a right to voice their views. None of the judges agreed that children under 6 years of age have the right to voice their views, 30% agreed that children aged 6 to 9 have the right, 70% agreed that children aged 10 to 13 have the right, and all judges agreed that children 14 years and older have the right to voice their views. Over half of the responding symposium participants and judges did not think children's participation should be mandatory.

According to the judges, the best mechanisms for enabling children to voice their views are an *evaluative Views of the Child report by mental health professional* and an *assessment report by mental health professional*. Symposium participants rated *legal representation for the child* as the best mechanism, followed by an *assessment report.* Only 20% of the judges thought a *judicial interview with child* was a best mechanism, compared to 40.2% of the symposium participants. None of the judges thought *testimony by child* was a best mechanism, compared to almost one-fifth (18.6%) of symposium participants.

When asked what mechanisms are used in their jurisdictions for hearing the voice of the child, both judges and symposium participants were most likely to respond *legal representation for child* and *assessment or evaluation reports*. However, large proportions of judges (55%) and symposium participants (58.8%) said that *judicial interview with child* is also a mechanism used in their jurisdictions to enable children to voice their views.

Both surveys asked respondents which type of child legal representation they thought was most appropriate, assuming that the child is expressing wishes or views. Interestingly, especially given that the Law Society of Alberta and Alberta's Legal Representation for Children and Youth program have adopted policies directing lawyers for children to take an *instructional advocacy approach* whenever possible, none of the judges considered the *instructional advocacy approach* the most appropriate approach to be taken by lawyers. This finding is perhaps not surprising, since this approach allows for less judicial discretion. Almost one-half (40%) of judges said that the type of legal

representation *depends on the age and capacity of the child*, and 35% said the *best interests approach* is more appropriate. Of the symposium participants, lawyers were more likely to say the *instructional advocacy approach* is the most appropriate, while the other participants (mental health professionals, academics, government workers and others) were more likely to say the *best interests approach* is most appropriate.

When asked under what circumstances a children's lawyer should not adopt an instructional advocacy approach, 95% of the judges, 77.4% of the lawyers, and 67.7% of the respondents in other occupations agreed that an instructional advocacy approach should not be adopted *if it believed that the child is too young to have the capacity to make a sound decision*. Further, a larger proportion of judges compared to lawyers thought a children's lawyer should not adopt an instructional advocacy approach if *it was believed that the child wants an outcome that may expose the child to harm* (90% compared to 60.4%) or *serious risk* (85% compared to 69.8%).

Respondents to both surveys were asked which factors are important when deciding what weight should be given to the child's views, and the results were comparable. Over 90% of judges and symposium participants viewed the *age of the child* and the *ability of the child to understand the situation* as important factors to be considered. A slightly higher proportion of judges (95%) viewed an *indication of parental coaching or manipulation* as an important factor than symposium participants (87.3%); and a slightly higher proportion of symposium participants (92.2%) viewed the *ability of the child to communicate* as an important factor than judges (85%).

As would be expected, both surveys found that the older the child, the more likely respondents were to report that their preferences regarding custody decisions should be weighed heavily. However, judges (15%) were much less likely to assign heavy weight to children aged 10 to 13 than were symposium participants (61.9%), and judges were more much likely to report that the views of younger children should be given no weight than were symposium participants. For example, 75% of judges said the preferences of children under the age of 6 should receive no weight compared to 32% of symposium participants.

Respondents to both surveys also differed on their opinions regarding the sharing of information. When asked if the information that children provide regarding their wishes should be made available to their parents, only 31.6% of judges said *yes*, compared to 66.3% of symposium participants. The majority of judges (52.6%) said they *don't know*, compared to 21.4% of symposium participants. Likewise, only 36.8% of judges thought the information should be shared in the courtroom, compared to 54% of symposium

participants. Respondents to both surveys, however, were most likely to say that the responsibility for informing children of the court's decisions in matters affecting them lies with the child's lawyer, if there is one, as well as the child's parents.

Both surveys asked respondents at what age they think it is appropriate for judges to interview children in custody and access proceedings and in child welfare proceedings. In general, the proportions of all respondents who think it is appropriate for judges to interview children increase as the child's age increases. However, while the results did not differ substantially for symposium participants by type of proceeding, judges were much more likely to think it was appropriate for judges to interview children in custody and access proceedings than in child welfare proceedings. Further, judges were much less likely than symposium participants to think that it is appropriate for judges to interview children at younger ages. For example, for children aged 12 to 13, only 40% of judges think it is appropriate to interview them in custody and access proceedings compared to 63.7% of symposium participants, and only 25% of judges think it is appropriate in child welfare proceedings, compared to 66.7% of symposium participants. Further, almost no judges think it is appropriate for judges to interview children under the age of 10, while approximately one-third of symposium participants think it is appropriate for children aged 6 to 9, approximately 10% think it is appropriate for children 3 to 5 years, and approximately 5% agree with judges interviewing children under the age of 3.

The *Survey of Justices of Alberta Court of Queen's Bench* asked judges additional questions regarding their experiences with hearing from children. Only 20% of judges said they often seek the child's views in their family law cases involving children, and 75% said they sometimes do. Most of the judges (80%) said that they had not received any training on interviewing children since they were appointed to the bench, although three-quarters of those who hadn't received training thought training would be useful.

Approximately two-thirds of the judges had interviewed a child as a judge, but it is an infrequent occurrence; 38.5% reported *sometimes* interviewing children aged 14 to 15, and 15.4% reported *sometimes* interviewing children aged 10 to 13 and 16 years or older. The main objectives for judges to interview children were *to obtain facts* and *to allow the child to ask questions*. Meetings most often occurred *in a conference room outside of court*, or *in judges' chambers*.

All of the judges who said they had interviewed a child as a judge had done so in a custody and access matter; none of the judges had interviewed a child in a child welfare matter. Factors that the majority of judges reported always helped them to decide to

interview a child were the *age of the child*, the *urgency of the decision*, and the *absence of a children's lawyer*. In almost all cases, someone else was present, most often a court clerk or reporter.

The frequency with which interviews were recorded varied substantially, with 41.7% reporting they were *always* recorded, 16.7% said they were *often* recorded, and 8.3% said they were *sometimes* recorded. One-third of judges said interviews were *never* recorded.

Judges were asked if they had any additional comments regarding judges interviewing children, and almost one-half of the judges commented that they thought interviewing children was best left to the mental health professionals. Almost one-quarter commented that if judges are going to interview children, then they need to be trained to do so.

3.3 Conclusions and Recommendations

It is evident from the results of both the *Survey of Justices of Alberta Court of Queen's Bench* and the *Survey of Symposium Participants* that professionals working with children involved in family breakdown support and promote children having a say in proceedings that affect them. However, it is also clear from the judges' survey that judges do not prefer to interview children. Only 20% of the judges surveyed thought that a judicial interview with the child was a "best" mechanism to enable children's voices to be heard, although 55% of the judges said they are used in their court.

It was interesting that even though the Law Society of Alberta and Alberta's Legal Representation for Children and Youth program have adopted policies directing lawyers for children to take an *instructional advocacy approach* whenever possible, none of the judges considered this the most appropriate approach to be taken by lawyers, compared to over two-thirds of the lawyers from the *Survey of Symposium Participants*. Given this discrepancy, the Law Society of Alberta and the Legal Representation for Children and Youth program may wish to review their policies.

Judges also did not support interviewing younger children, and even when older children were interviewed, interviewing was not a frequent occurrence. Judges were also less supportive of interviewing children in child welfare proceedings than in custody and access proceedings and, in fact, none of the judges in our sample had interviewed a child in a child welfare proceeding. The mechanisms that judges viewed as the "best" to hear the voice of the child were evaluation and assessment reports prepared by mental health professionals, and it is likely that these types of reports are more readily available in child

welfare proceedings, negating the necessity to interview children themselves in this type of proceeding.

The findings from the judges' survey suggest that judges do not support interviewing children because they are not trained to do so. Most of the judges had not received any training on interviewing children since they were appointed to the bench, although three-quarters of those thought it would be useful. This lack of training may also explain why judges do not support interviewing younger children, since interviewing younger children would require additional skills. The Court of Queen's Bench may wish to consider offering training on interviewing children to judges, perhaps through the National Judicial Institute, so that if a judicial interview is requested, they are more comfortable and better prepared to do so.

There was a wide variation of judges' opinions on whether the information that children provide regarding their wishes should be made available to their parents, and whether it should be shared in the courtroom, with a large proportion of judges saying they don't know. Judges also offered varying opinions on whose responsibility it should be to inform children of the court's decisions in matters affecting them. These findings suggest that guidelines would be useful for judges in cases where children are interviewed.

Guidelines would also be useful to provide more consistency in procedural practices, such as where interviews should take place, who should be present, and whether or not the interview should be recorded.

While the information obtained from this survey is very useful, the small sample size limits the generalizability of the findings to all Court of Queen's Bench justices. It would be desirable to conduct a national survey of judges, as well as of lawyers and mental health professionals to obtain a more robust, representative sample on which to base further recommendations.

REFERENCES

Bala, N. (2006). Child Representation in Alberta: Role and Responsibilities of Counsel for the Child in Family Proceedings. *Alberta Law Review*, *43*, 845-870.

Bala, N., Talwar, V., & Harris, J. (2005). The Voice of Children in Canadian Family Law Cases. *Canadian Family Law Quarterly*, *24*, 221-279.

McHale, M.J. (1980). The Proper Role of the Lawyer as Legal Representative of the Child. *Alberta Law Review*, *18*, 216-236.

Paetsch, J.J., Bertrand, L.D., & Boyd, J.-P. (2017). *Children's Participation in Justice Processes: Finding the Best Ways Forward. Results from the Survey of Participant*s. Calgary, AB: Canadian Research Institute for Law and the Family.

Smith, W.G. (2008). *Does Gender Influence Online Survey Participation?: A Record-linkage Analysis of University Faculty Online Survey Response Behavior*. San Jose State University. Available at: https://files.eric.ed.gov/fulltext/ED501717.pdf.

Underwood, D., Kim, H., & Matier, M. (2000). *To Mail or To Web: Comparisons of Survey Response Rates and Respondent Characteristics*. Paper presented at the Annual Forum of the Association for Institutional Research.

GLOSSARY

Missing Cases: The number of responses on individual questions that are not available. The most common reason for missing cases in survey data is that the respondent chose not to answer a particular question.

Multiple response data: Multiple response data refers to questions in which respondents are allowed to choose more than one answer. In tables where multiple response data are presented, the percentages presented for individual items will total more than 100.

N and n: N refers to the total number of responses received to a survey while n refers to a subset of the total responses that may be selected for specific data analyses. For example, if 100 men and women respond to a survey, then N = 100. If 30 of those respondents identify as women, then n = 30 women and n = 70 men.

Qualitative data: Refers to data that are descriptive rather than numeric in nature. Asking survey respondents to provide their opinion in their own words is an example of a qualitative question. Qualitative data can frequently be coded into quantitative data by identifying common themes across respondents' answers, and assigning numbers to each of the themes.

Quantitative data: Refers to data that can be quantified using numbers that can then be manipulated mathematically or statistically. Asking survey respondents the extent to which they agree with a statement on a scale with the potential responses being *strongly agree*, *agree*, *neither agree nor disagree*, *disagree*, and *strongly disagree* is an example of a quantitative question. The responses can be assigned numbers ranging from 1 through 5 which can then be averaged across respondents to provide a mean score for the question.

Representativeness: The extent to which the responses to a survey are likely to reflect the responses that would be given if every potential respondent could be surveyed.

Response rate: The percentage of completed surveys returned out of the total number distributed to potential respondents.

APPENDIX A:

CHILDREN'S PARTICIPATION IN JUSTICE PROCESSES: SURVEY OF JUSTICES OF ALBERTA'S COURT OF QUEEN'S BENCH

CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

We would like to ask you a few questions about your views on children's participation in justice processes. The questions in this survey are intended to build on research previously conducted by the Institute, enrich the data already obtained, and examine changes in opinion and practice over time.

Your participation in the survey is entirely voluntary, and you don't have to answer any questions that you would prefer not to answer. Your responses to this survey are anonymous and data will only be presented in aggregate form. The final report on the survey will be available on the Institute's website at www.crilf.ca.

If you have any questions or concerns about this survey, please contact John-Paul Boyd at 403-216-0340 or jpboyd@ucalgary.ca.

Demographics

What is your gender?

◯ Male ◯ Female

How many years have you served as a judge of the Alberta courts, including any time you may have spent as a judge of the Provincial Court?

Approximately what percentage of your work involves family law cases (including child protection matters)?

Did you do any child representation work before being appointed to the bench?

◯ Yes ◯ No

CANADIAN RESEARCH INSTITUTE FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

Hearing from children

To what extent do you agree that children of the following ages should have the right to voice their views in family law proceedings that affect them?

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Under 6 years of age	◯	◯	◯	◯	◯
6 to 9 years of age	◯	◯	◯	◯	◯
10 to 13 years of age	◯	◯	◯	◯	◯
14 to 15 years of age	◯	◯	◯	◯	◯
16 years of age or older	◯	◯	◯	◯	◯

Should children's participation in family law proceedings that affect them be mandatory?

◯ Yes, in all cases affecting them ◯ Yes, but only in some cases ◯ No

What are the best mechanisms to enable children to voice their views? (Please check all that apply)

- ☐ Judicial interview with child
- ☐ Testimony by child
- ☐ Assessment report by a mental health professional
- ☐ Evaluative Views of the Child report by a mental health professional
- ☐ Non-evaluative Views of the Child report by a mental health or legal professional
- ☐ Other (please specify)

- ☐ Legal representation for child
- ☐ Non-legal representation for child
- ☐ Legislative provision that parents should consult their children respectfully when making parenting arrangements upon separation
- ☐ Don't know

What mechanisms, if any, are used by the Court to enable children to voice their views? (Please check all that apply)

- [ ] Testimony in court
- [ ] Submission by child (e.g., letter, email, standardized form/kit, videotape)
- [ ] Testimony by mental health professional/social worker who has interviewed the child
- [ ] Testimony by other adults who know the child (e.g., parent(s), teachers) regarding the child's wishes
- [ ] Assessment or evaluation report
- [ ] Views of the Child report
- [ ] Mandatory mediation involving the child and parents
- [ ] Other (please specify)
- [ ] Voluntary mediation involving the child and parents
- [ ] Legal representation for child
- [ ] Non-legal representation for child
- [ ] Judicial interview with child
- [ ] Legislative provision that children's views must be considered
- [ ] Don't know

Which of the following factors are important when deciding what weight should be given to the child's views? (Please check all that apply)

- [ ] Age of child
- [ ] Ability of child to communicate
- [ ] Ability of child to understand the situation
- [ ] Other (please specify)
- [ ] Child's emotional state
- [ ] Child's reasons for views
- [ ] Indication of parental coaching/manipulation

How much weight should be given to the preferences of a child regarding custody decisions at the following ages?

	None	Light	Heavy
Under 6 years of age	◯	◯	◯
6 - 9 years of age	◯	◯	◯
10 - 13 years of age	◯	◯	◯
14 - 15 years of age	◯	◯	◯
16 years of age or older	◯	◯	◯

Should the information that children provide regarding their wishes be made available to their parents?

◯ Yes ◯ No ◯ Don't know

Should the information that children provide regarding their wishes be shared in the court room?

- ◯ Yes
- ◯ No
- ◯ Don't know

At what age do you think it is appropriate for judges to interview children in *custody and access* proceedings? (Please check all that apply)

- ☐ Under 3 years
- ☐ 3 - 5 years
- ☐ 6 - 9 years
- ☐ 10 - 11 years
- ☐ 12 - 13 years
- ☐ 14 - 15 years
- ☐ 16 years and older
- ☐ Not at any age

At what age do you think it is appropriate for judges to interview children in *child welfare* proceedings? (Please check all that apply)

- ☐ Under 3 years
- ☐ 3 - 5 years
- ☐ 6 - 9 years
- ☐ 10 - 11 years
- ☐ 12 - 13 years
- ☐ 14 - 15 years
- ☐ 16 years and older
- ☐ Not at any age

Whose responsibility should it be to inform children of the court's decisions in matters affecting them?

- ◯ Their parents
- ◯ The parents' lawyers
- ◯ The child's lawyer, if there is one
- ◯ A social worker
- ◯ Other (please specify)
- ◯ A court officer
- ◯ The judge
- ◯ Don't know

The literature identifies three different types of child legal representation:

(i) an amicus curiae who ensures that all relevant evidence is before the court but does not advocate any position.

(ii) a best interests approach where the lawyer ensures that the child's views are before the court but advocates a position based on the lawyer's assessment of the evidence about the child's interests (taking account of the child's views as one factor in that assessment).

(iii) an instructional advocacy approach, where the lawyer advocates a position based on the child's stated wishes or views.

Which approach do you consider most appropriate, assuming that the child is expressing wishes or views?

- ◯ Amicus curiae
- ◯ Best interests approach
- ◯ Instructional advocacy approach
- ◯ It depends on the age/capacity of the child

Under what circumstances do you think children's lawyers should NOT adopt an instructional advocacy approach?

- ☐ If they believe that the child is too young to have the capacity to make a sound decision, despite having stated wishes or views.
- ☐ If they believe that the child wants an outcome that may expose the child to harm.
- ☐ If they believe that the child wants an outcome that may expose the child to serious risk.
- ☐ Other circumstances (please specify)

CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

Your experiences with hearing from children

How often do you seek the child's views in your family law cases involving children?

◯ Always ◯ Often ◯ Sometimes ◯ Never

Have you received any training on interviewing children since you were appointed to the bench?

◯ Yes ◯ No

If you have not received any training on interviewing children, do you think that such training would be useful?

◯ Yes ◯ No

Have you ever interviewed a child as a judge?

◯ Yes ◯ No

CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

How often have you interviewed children of the following ages in the past year?

	Always	Often	Sometimes	Never
Under 6 years of age	○	○	○	○
6 to 9 years of age	○	○	○	○
10 to 13 years of age	○	○	○	○
14 to 15 years of age	○	○	○	○
16 years of age or older	○	○	○	○

When you interview children, at what stage in the case does this occur?

	Always	Often	Sometimes	Never
Motion stage	○	○	○	○
Case conference stage	○	○	○	○
Pre-trial stage	○	○	○	○
Trial stage	○	○	○	○
Post-trial to explain your decision	○	○	○	○

What are your objectives in interviewing children?

	Always	Often	Sometimes	Never
To obtain wishes of the child	◯	◯	◯	◯
To obtain facts	◯	◯	◯	◯
To meet the child and get a sense of his or her personality	◯	◯	◯	◯
To give the child confidence in the process	◯	◯	◯	◯
To allow the child to ask you questions	◯	◯	◯	◯

When you interview children, where do you meet with them?

	Always	Often	Sometimes	Never
In your chambers	◯	◯	◯	◯
In open court with parties and counsel present	◯	◯	◯	◯
In court with counsel present but with parties excluded	◯	◯	◯	◯
In a conference room outside of court	◯	◯	◯	◯
Outside in public with a court officer	◯	◯	◯	◯

Other places (please specify)

Have you ever interviewed a child in a custody and access matter?

◯ Yes ◯ No

CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

What factors in a custody and access case help you decide to interview a child?

	Always	Often	Sometimes	Never
Age of child	○	○	○	○
Child expressing a wish to speak to you	○	○	○	○
Urgency of decision	○	○	○	○
Absence of a children's lawyer	○	○	○	○
Absence of an assessment	○	○	○	○
Request of a parent	○	○	○	○
Consent of parties	○	○	○	○

Other reasons (please specify)

When you have interviewed children in custody and access disputes:

	Always	Often	Sometimes	Never
Was anyone else present?	○	○	○	○
Was the child's counsel present?	○	○	○	○
Was a court clerk or reporter present?	○	○	○	○
Was a parent (or both parents) present?	○	○	○	○
Were the parents' counsel present?	○	○	○	○

When you have interviewed children in custody and access disputes, were the interviews recorded in any way?

◯ Always ◯ Often ◯ Sometimes ◯ Never

CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

Have you ever interviewed a child in a child welfare matter?

◯ Yes ◯ No

CANADIAN RESEARCH INSTITUTE FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

What factors in a child welfare matter help you decide to interview a child?

	Always	Often	Sometimes	Never
Age of child	○	○	○	○
Child expressing a wish to speak to you	○	○	○	○
Urgency of decision	○	○	○	○
Absence of a children's lawyer	○	○	○	○
Absence of an assessment	○	○	○	○
Request of a parent	○	○	○	○
Consent of parties	○	○	○	○

Other reasons (please specify)

When you have interviewed children in child welfare matters:

	Always	Often	Sometimes	Never
Was anyone else present?	○	○	○	○
Was the child's counsel present?	○	○	○	○
Was a court clerk or reporter present?	○	○	○	○
Was a parent (or both parents) present?	○	○	○	○
Were the parents' counsel present?	○	○	○	○

When you have interviewed children in child welfare matters, were the interviews recorded in any way?

◯ Always ◯ Often ◯ Sometimes ◯ Never

CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Children's Participation in Justice Processes: Survey of Justices of Alberta's Court of Queen's Bench

Do you have any concerns regarding judges interviewing children?

Is there anything else you would like to add regarding children's participation in justice processes?

Thank you very much for your time!