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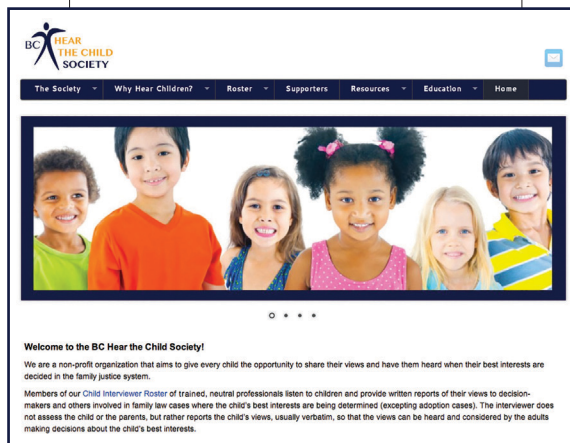
## Children's Voices in Family Law Disputes

*B.C. Hear the Child Society*

The new *Family Law Act*, at section 37(2)(b), requires the parties to a family law dispute and the court to “consider the child’s views, unless it would be inappropriate to consider them,” as does the *United Nations Conventions on the Rights of the Child*. This duty is mandatory, unless rebutted, and family law lawyers, mediators, arbitrators, parenting coordinators and judges must ask themselves whether they are meeting their duty to ensure that children’s views have been considered in resolving each family law dispute.

Section 211 of the *Family Law Act* provides for the appointment of a person to “assess” the needs of the child, the views of the child and/or the ability and willingness of a party to satisfy the needs of the child. Views of the Child reports made under Section 211(1)(b) are typically prepared by a psychologist, psychiatrist, clinical counsellor or family justice counselor. These reports address not only the child’s views but also those of the parents and often those of other persons and professionals involved in the child’s life. The author of the report analyzes the information gathered, offers an opinion regarding the same and provides recommendations.

By contrast, a Hear the Child (HTC) report, also called a Voice of the Child report, is a direct, often verbatim, record of the child’s expressed views. It does



not offer an assessment or an opinion, and typically includes only information received from the child.

The purpose of these non-evaluative reports is to listen to the child, so that the child can express his or her views, and have those views considered in making decisions about his or her best interests.

The interviewer’s task is to simply obtain and relay the child’s views to adult decision-makers, without interpretation or analysis. The interviewer does not offer an assessment of the child or what may be in his or her best interests.

HTC reports can be initiated by the request of both parents, by court orders under sections 202(b) or 224(1)(b) of the *Family Law Act*, or in some circumstances by the request of one parent alone. HTC reports are less costly than section 211 assessments and are completed more quickly. They are also a far less intrusive means of obtaining the child’s evidence than affidavits or oral testimony.

If an HTC report has been prepared without a court order, a parent may rely on section 202(a) to have the report admitted as hearsay evidence. Arguably, these reports are not actually hearsay as they do not affirm the truth of what was said but merely report what was said.

The B.C. Hear the Child Society is a non-profit society formed to support opportunities for children to share their views and be heard when their best interests are being determined in family justice decision-making forums. The Society manages a roster of non-evaluative child inter-

viewers trained in interviewing children, provides ongoing training opportunities and may be contacted for more information about HTC reports.

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[hearthechild.ca](http://hearthechild.ca)