

Children's Views

Why they matter in court and in mediations

In June of 2014, we wrote a feature for *BarTalk* called "[Children's Voices in Family Law Disputes](#)." That article spoke to the legislative requirement that parents, the courts and others "consider the child's views, unless it would be inappropriate to consider them" (section 37(2)(b) of the *Family Law Act* ["FLA"]).

There has been a steady increase in the number of Hear the Child ("HTC") reports being requested province-wide. These reports are effective tools for parents, mediators, lawyers and judges to use when making decisions on parenting plans for children.

Counsel, mindful of their responsibilities under sections 8(3), 37(1) and 37(2)(b) of the *FLA*, should ensure that evidence as to the child's views is always before the courts.

Absent calling a child as a witness or presenting a child's evidence by way of affidavit, there are three ways evidence of a child's views can be put before a court under the *FLA*:

- Section 37(2)(b) – the child's views;
- Section 211(1)(b) – the court may appoint a person to assess the child's views;
- Section 202 – the court may allow hearsay or give directions on how a child's evidence is to be received; and,
- Section 224(1)(b) – the court may order that a child meet

with a non-evaluative interviewer and a Report prepared as a "specialized service."

The court's authority to order a HTC report is found in section 37(2)(b), section 202 and section 224(1)(b) of the *FLA*.

Master Bouck in *E.A.B. v. K.J.B.* 2016 BCSC 1167 succinctly captures the difference between a non-evaluative HTC report and an assessment under section 211 report:

[26] As now enshrined in the *FLA*, a child at the centre of a parenting dispute has a legal right to be heard by the court: *B.J.G. v. D.L.G.*, 2010 YKSC 44. The child's views with respect to parenting issues may be expressed to the court indirectly or directly. One method of receiving those views indirectly is through a Hear the Child report. This type of report does not provide an analysis of the child's views as they might impact parenting arrangements or responsibilities. Nor does the author of the report make any recommendations with respect to parenting of the child.

[27] In contrast, a report ordered under s. 211 is intended to be a more comprehensive investigation of parenting issues and may include recommendations on the parenting arrangements that

will meet and promote the best interests of the child. A s. 211 report is not ordered in every family law proceeding involving children....

If parents are unsure of or disagree about the child's views or wish to provide the child with an opportunity to speak privately with someone about their views, a HTC report is appropriate.

Members of the Hear the Child roster have specific training in interviewing children and are guided by practice guidelines, which were issued by the Hear the Child Society Board in 2016.



These guidelines are being adopted across Canada and are designed to ensure that judges, lawyers and others anywhere in the province commissioning a HTC Report can expect a standard, high quality product.

Children are often on the front line of their parents' separation. Their sense of loss, confusion and lack of control can be eased and addressed if decision makers have the means and opportunity to hear what the children are saying.

For more information on Hear the Child and children's voices generally, please visit hearthechild.ca.

Arlene H. Henry, QC and Mary E. Mouat, QC.

 hearthechild.ca