

Including the Voices of Children of Separation and Divorce in the Legal System

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INCLUDING THE VOICES OF CHILDREN OF SEPARATION AND DIVORCE IN THE LEGAL SYSTEM



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ABSTRACT

Children and youth (18 years and younger) of separation and divorce have historically been excluded as participants in legal decision-making that will ultimately affect the rest of their lives. Including children in the context of family law is referred to as promoting “the voice of the child.” More emphasis has been placed on including children’s voices in separation and divorce since Canada ratified the United Nations Convention of the Rights of the Child in 1991. This was the first legal step taken to view children as rights-bearing individuals internationally. Since this time there has been greater emphasis on children having more input related to legal decisions that affect their lives. This study sought to understand how and in what ways children’s lawyers and children’s therapists gather and promote children’s voices to the court. A total of 22 participants (11 lawyers and 11 therapists) engaged in open-ended conversations/interviews both individually and in groups. Using a grounded theory research approach, theoretical categories were created and were presented, describing the stories told by both groups. Dialogues with participants highlighted the complexity of presenting the voice of the child to the court due to legal process barriers and late timing of inclusion of children. Although applicable to the broader Canadian legal system, the study focuses on specific practice traditions and peculiarities from the viewpoints of lawyers and therapists in Calgary. This study proposes changes to the current legal process as a way to decrease the adversarial approach to divorce and include children earlier in the process. It includes a presentation of factors lawyers and therapists consider when meeting with children to gain their

input for inclusion in court.