

# COLLABORATIVE PRACTICE Toronto

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## Previously Featured Article

## WHAT ROLE, IF ANY, SHOULD CHILDREN HAVE IN COLLABORATIVE LAW?

Collaborative Family Law in virtually all jurisdictions is recognizing the benefits of interdisciplinary cooperation. One of the most beneficial avenues of cooperation is ensuring children's voices are heard in the Collaborative process. I can anticipate several questions that are likely to be asked:

### 1. Are children's voices needed?

There are a number of arguments that suggest children should NOT be involved; namely

- Aren't parents the most effective and relevant voice?
- If the goal of CFL is to empower parents, why undermine their authority and expertise about their own children by involving children directly?
- If conflict is so harmful to children, isn't it unfair to invite them into the middle of disputing parents?
- Wouldn't it create tremendous guilt in children if they were put on the spot to select one parent over another?
- Wouldn't it induce parents to bribe or threaten their children if they know children would have a voice?
- Since children try to avoid rules and limits wouldn't they just select the parent who had the fewest expectations – which would not be in their best interests in the long run.

### 2. Why should children have a voice?

Arguably separation affects children the most. Children feel the most out of control about a decision over which they have no choice. One child told me that "separation feels like being on a roller coaster without a steering wheel". The vast majority of

children, if given a vote in their parent's divorce would opt for the family remaining together and working things out. Since this option is not available to them, giving them a voice restores some feeling of control.

Children often have unique perspectives on their situation and what they need to assist their adjustment. Their issues are usually very different from those of their parent's, who are often caught up in their own emotional pain and in a win/lose struggle for control over the children.

- Children have opinions, and not asking for their input means their views and preferences are often overlooked. As with adults, when our views and preferences are ignored we often resist even reasonable solutions. To achieve better by-in and to ensure the children's concerns are addressed, their voices need to be heard.
- Siblings who are different ages, different genders, who have different personalities or temperaments, different interests or significant needs will have very different perspectives, which are often overlooked when children are not interviewed individually.
- Younger children (as young as 4 years of age) often are able to articulate questions, concerns, fears and constructive suggestions. Not to invite their input means that that these issues are left unaddressed or continue to cause unnecessary stress, and creative options are overlooked.
- As children get older (eg over 12 years) they may "vote with their feet" and refuse to follow a plan that is imposed on them. In these cases parents often blame each other for "inducing" a child to take sides
- Having a voice does NOT mean DECIDING and this must be clarified up front. Parents decide unless a child is 14 or older, in which case it is hard to impose an unpopular outcome. Also, children should NOT be asked to 'pick a parent' as this does put children in a very difficult conflict of loyalties. Most preadolescent or adolescent children want to be assured they will not be asked to take sides.
- Meeting with children also allows an opportunity to discover issues of abuse, neglect or special learning needs that parents may not be aware of or willing to reveal.

### **3. How can children's voices be heard in a Collaborative Family Law process?**

Collaboratively trained lawyers are not trained in child development and usually do not have the training or skills to interview children. They should NOT directly involve children themselves as the potential damage would outweigh the benefits. It would be like bringing back the outdated practice of Judges interviewing children in

chambers; an experience that was frightening, not in keeping with the child's developmental stage, often disrespectful of appropriate boundaries, and methods of framing questions. Also, collecting affidavits from relatives, friends and neighbours is a divisive practice and of very little use as the basis for a problem solving conversation.

The goal should be to provide the parents and Collaborative Lawyers with the information needed to have a constructive problem solving conversation with the parents about significant issues that will impact the child's development or contribute to or prevent the successful completion of a Parenting Plan.

There are a number of resources available to include the child's perspective:

- Partner with a mediator or child therapist who has mental health training and is experienced in meeting with children. Ensure that this individual is bound by the same Collaborative Participation Agreement as the lawyers.
- Invite impartial comments from the child's therapist, teacher, guidance teacher, day care provider or family doctor with respect to any special considerations with respect to the child's academic, health care, social or emotional status. It is essential that the focus be on holding a problem solving discussion of issues to protect the children's wellbeing – eg "How can we best address the child's need for asthmatic medication?" or "How can we best support the child's learning disabilities by involving a remedial specialist, following up on the specialist's recommendations, and encouraging our child's progress?"

#### **4. What type of contribution would children likely make?**

This brings up the question of the focus of the child's involvement. In my experience giving the child a voice can contribute in a number of ways

- They can indicate the relative importance of factors, such as remaining in the matrimonial home, the same school, attending a private vs. a public school, attitudes towards living in an apartment vs. a detached home, being close to friends, etc. Often divisive issues can be resolved by such input.
- Children can indicate whether they are ready/or not ready to meet new partners.
- Children can indicate their level of comfort with the response of extended family members to the separation and whether these relationships provide helpful sanctuaries from the conflict
- They can reveal abuse by parents, new partners or extended family members.
- They can make suggestions about the degree of structure or lack of structure to visitation patterns that best meets their needs at the time, the priority to be given

to their own activities e.g. one child said that the plan being considered by his parents didn't take his basketball schedule into account, another said she wouldn't be able to participate in Friday night pizza get togethers with her friends.

- Special concerns can be addressed, e.g. "Who will feed the dog or the goldfish?", "How will I get the school bus from my Dad's?", or "I only have one bed, where will I sleep at my Dad's?" Some children worry about whether a divorce means that they will only be allowed to see one parent. What a relief to learn this is not the case!

Clearly the topic of giving children a voice is an important one for interdisciplinary cooperation!

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