



YOUTH INCLUDED!

YOUTH RECOMMENDATIONS FOR CHILDREN AND
YOUTH PARTICIPATION IN BRITISH COLUMBIA'S
FAMILY JUSTICE SYSTEM

A REPORT BY SPARC BC
MAY 2008

BY CRYSTAL REEVES

**YOUTH INCLUDED! YOUTH RECOMMENDATIONS FOR CHILDREN AND YOUTH
PARTICIPATION IN BRITISH COLUMBIA'S FAMILY JUSTICE SYSTEM**

PREPARED BY THE SOCIAL PLANNING AND RESEARCH COUNCIL OF BRITISH
COLUMBIA WITH OUR PROJECT PARTNER, THE MCCREARY CENTRE SOCIETY

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Executive Summary

The *Youth Included!* Project provided an opportunity for urban youth in British Columbia to give their perspectives and recommendations about children and youth participation in the family justice system when parents separate under the *Family Relations Act (FRA)*.

The project is an extension of the *Family Relations Act Reform Project*, which sought the views and recommendations of ‘citizen experts’ in reforming the *FRA*, including adults with lived experience of the family justice system in British Columbia, family law advocates and support workers, and Family Court Youth Justice Committees.

In this executive summary, we highlight the key aspects of the *Youth Included!* consultation process and set out the main conclusions and recommendations that emerged from consultations with youth.

Project Methodology

SPARC BC partnered with the McCreary Centre Society to conduct the consultations with youth. A total of thirty youth between the ages of 13-18 participated in the project, attending focus groups in Vancouver, Victoria, Burnaby and North Vancouver. During the focus groups, four main activities were used to provide information and receive feedback on different aspects of involving children and youth in the family justice system when parents are separating. These activities included:

1. Thermometer Game

In this game, youth stood on a continuum between signs labeled agree and disagree as the facilitator read out the following statements:

- I know my rights or have been told my rights
- I know what is best for me
- Adults listen to me and take me seriously
- I have no interest in getting involved in disputes between my parent
- I think that young people should be involved in the family law process

2. Group Brainstorm Session about Pros and Cons of Participation

After being given information about the family law court process, mediation, and current law and practice around children and youth participation in British Columbia’s family justice system, youth were asked to brainstorm some of the pros and cons of participation of young people.

3. Discussion and Feedback session about options for inclusion

In this activity, youth were given information about different “before court” and “during court” options for involving children and youth in the family justice system from other places in the world, including:

- Australia
- New Zealand
- United States
- Germany
- Scotland
- Ontario
- Kelowna

Youth provided their opinions about the different options and recommended options for British Columbia.

4. Writing Out Suggestions

Youth were provided with postcards and wrote out those things they would like the government and the public to know with respect to children and youth participation in British Columbia’s family justice system.

Key Conclusions

The following conclusions emerged from the various comments of youth who took part in the project:

- Youth were either unsure or undecided about knowing their rights, or stated that they were aware of their rights (at least on a surface level). A few youth also linked having rights with having responsibilities to others.
- Youth felt that at times, adults and especially parents, did not listen to them. However, youth thought it was situational and depended on the adult.
- Most youth were unsure as to whether they wanted to get involved in their parents disputes, but there were some youth, whose parents were divorced, who expressed interest in getting involved if the dispute would affect them.

- Youth generally liked the option of education programs, although some thought the California model was too general or did not offer enough individualized support. One group of youth made the recommendation that an education program about family law be developed for schools, giving students a choice about whether they would like to be part of that program.
- Youth overwhelmingly liked the Australian model of involving children and youth in mediation. They appreciated having a child psychologist and mediator present and liked the fact that it did not have children and youth having a final mediation session with the parents.
- Youth also recommended that children and youth meet with a mediator more than once so that they become comfortable, and suggested that children and youth have the option of bringing a support person of their choosing with them.
- In terms of options for involving children and youth in decision-making by courts, youth liked the idea of having a children's lawyer and were generally positive about both the New Zealand model and the Ontario approach. Youth specifically liked the possibility of having another support person with the youth when meeting with a lawyer. This could include a counselor, family friend, youth worker, etc.
- Youth highlighted a number of concerns or problems with both the Hear the Child Interviews in Kelowna and the Scottish Form model, which suggests they viewed these models negatively and preferred other models.
- Youth were divided on the option of judicial interviews, with some liking the ability of children and youth to speak to a decision-maker while others thought this would be unpleasant and should only be used as a last resort.
- Youth raised several issues around age and maturity of children and youth who should participate, particularly for mediation and processes for when issues go to court. Most recommended that age and maturity be considered together when involving children and youth.
- There was also the general feeling amongst youth that younger children would have trouble being involved in these processes, with some youth recalling their own inability to understand or grasp the impacts of what was going on at a young age.

Three Over-Arching Themes

In addition the conclusions presented above, which are based on comments of youth in relation to each of the focus group activities, three over-arching themes emerged from the feedback provided by youth who participated in the project.

- Children and youth can, and should, participate in the family justice system when decisions are being made that affect them. However, youth also acknowledged that the involvement of children and youth may have some negative aspects to it.
- Children and youth should feel comfortable with who is conducting different processes and there should be mechanisms put in place to increase the level of comfort for children and youth (from having more than one mediation session, to bringing in an adult they trust, to having a counselor or child psychologist be part of the process).
- There should be choice and flexibility in the process. Youth highlighted that: children and youth should not be required to participate, they should have choices about who is in the room with them, what information is shared with decision-makers or parents, and how they can participate.

Recommendations for Reform

Based on the conclusions and themes that emerged from the consultations with youth, the following recommendations are proposed for reforming the *FRA* and for creating and implementing programs that can support the participation of children and youth in British Columbia's family justice system.

1. Expand or change the ways that children and youth views are included in family law decision-making in the *FRA*.
2. State explicitly that children and youth have choices about their participation.
3. Use maturity, as well as age, as a factor for determining the type and level of involvement of children and youth.
4. Create an education program for children and youth experiencing parental separation, but provide more than just general advice. Also, create a family law education program for schools.

5. Implement child inclusive mediation in British Columbia, which includes both a mediator and a child psychologist in the session. Follow the Australian model, with the option of children and youth meeting multiple times with the mediator, and the possibility of bringing in an adult they trust

6. Create a government-funded office of the Children's Lawyer using a similar model to Ontario, which involves both a lawyer and social worker being part of the process. However, unlike the Ontario model, which requires the Judge and the Office of the Children's lawyer to agree that the child or youth needs a lawyer, have the wishes of the child who wants a lawyer be a determining factor in providing one if the child or youth is of the age and maturity to express this desire.

7. Continue to have the option of judicial interviews at the Judge's discretion.

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Chapter One: Introduction

The purpose of the Youth Included! Consultation Project is to provide an opportunity for youth with lived experience of their parents' separation and divorce to give their perspectives and recommendations about children and youth's participation in decision-making when their parents separate under the *Family Relations Act*.¹

The project is an extension of the *Family Relations Act Reform Project*, which sought the views and recommendations of 'citizen experts' in reforming the *FRA*, including adults with lived experience of the family justice system in British Columbia, family law advocates and support workers, and Family Court Youth Justice Committees.

Why Youth Need to be Included in Law Reform

Although professionals (i.e. lawyers, judges, counselors, advocates, etc.) have often been consulted in family justice review and reform initiatives, community members with lived experience of those laws are increasingly being asked to provide their perspectives on reforms.² Despite a more inclusive model of law reform consultation amongst adult stakeholders, there have been fewer initiatives that incorporate the perspectives of children and youth.

However, there are several reasons for including children and youth in law reform initiatives, particularly when those laws are ones that can have significant impact upon their lives. Children and youth can provide adults with insights into how they have been affected by the family justice system and provide recommendations for change based on their own lived experience and knowledge, if given information about the legal system and opportunities to discuss options for reform.

Another reason for engaging youth in law reform initiatives in Canada, particularly when the laws under review have the potential to impact children and youth in the future, is to reflect the rights and principles set out in the United Nations Conventions on the Rights of the Child (also known as UNCROC).³ Article 13 of UNCROC sets out that children and youth should have the right to freedom of expression, part of which includes the right to seek, receive and impart information and ideas of all kinds.⁴

1. *Family Relations Act*, R.S.B.C. 1996. c3128. [hereinafter the *FRA*]. The *FRA* is the law in British Columbia that deals with the separation of spouses, child custody and access when parents separate and other issues relating to family breakup.

2. For example, adults with lived experience were consulted as part of the Alberta Family Law Reform Project in 2002. For the report go to <http://www.justice.gov.ab.ca/initiatives/default.aspx?id=2245>. In 2001, federal, provincial and territorial consultations were held with adults in relation to custody, access and child support reform in Canada. For more information, go to http://www.justice.gc.ca/eng/pi/pad-rpad/rep-rap/cons/fpt_cons/annexd.html.

3. UN, Convention on the Rights of the Child (G.A. 44/25 of 20 Nov. 1989), Arts. 12 and 13. Canada ratified UNCROC in 1991.

4. Article 13 UNCROC: "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."

Based on the view that children and youth have a valuable and unique perspective to bring to family justice reform, and in order to reflect Article 13 of UNCROC, in the Youth Included! Project we have:

- Provided youth with information about the ways children and youth can currently express their views to decision-makers when their parents separate in British Columbia;
- Provided youth with information about how children and youth in other places in the world are able to express their views when parents separate;
- Given youth the opportunity to provide their opinions, both orally and in writing, about options for children and youth participation in family justice systems, and to provide their ideas for reforming the *Family Relations Act* with respect to children and youth participation.

So what's in the Youth Included! report?

In the rest of chapter one, you will find out:

- Some of the reasons for including children and youth in family law decision-making
- What the FRA says now about children and youth participation once parents separate

In chapter two, we'll provide you with all the details about the project, including:

- Where we went
- What happened during Youth Included! focus groups
- How many youth took part in the project
- Other details

In Chapter three, we'll tell you what youth said about:

- Knowing their rights, being included in family law matters, whether adults listen to them and whether youth know what's best for them
- The pros and cons of children and youth participating in family law matters
- The options for including children and youth in family law matters from other places in the world
- What they would like to see happen in British Columbia
- How age and maturity of children affects participation in family law decision-making

In chapter four, we will sum up the recommendations of youth who took part in the project.

Also, at the end of the report there will be two appendices. Appendix one will have nine information sheets used in the focus groups, which briefly set out how children and youth participate in other parts of the world. In appendix two, there will also be a copy of the forms used in the consultations including:

- Recruitment Poster
- Consent forms
- Parental notification forms
- Evaluation forms

Children and Youth Participation in the Family Justice System

One reason for including children and youth in the decision-making process when parents separate in British Columbia can be found in Article 12 of *UNCROC*. Article 12 says that the government must assure that children (anyone under 18 years old) who are able to form their own views have the right to express those views about all matters that affect them, and that their views should be given due weight, depending on the age and maturity of the child.

Since children and youth are affected by their parents separation and divorce, and in particular by decisions made about their future by separating parents and/or by the courts during this time, family law in British Columbia, as well as corresponding programs and policies, should provide opportunities for children and youth to participate during the decision making process in order to adequately reflect Article 12 of *UNCROC*.

Besides the need to implement *UNCROC* in domestic law, other reasons for including children and youth in the decision-making process is to minimize the harm that children and youth experience during their parents separation and divorce. There is a growing body of research that suggests it is harmful for children and youth when they are not given information about what is going on during separation or about the court process. Additionally, research where children and youth have provided their perspectives suggests that there is an increase in stress, a sense of isolation, and frustration when children and youth are excluded during the decision-making process.⁵

5. For examples, Joan B. Kelly, "Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice," *Virginia Journal of Social Policy & the Law*, Vol. 10, No. 1 (2002) 129; Ann O'Quigley, "Listening to Children's Views: The Findings and Recommendations of Recent Research," *Joseph Roundtree Foundation* (2000); Suzanne Williams, "Through the Eyes of Young People: Meaningful Child Participation in Family Court Processes," (Victoria: International Institute for Child Rights and Development, 2006); E. Kay M. Tisdall et al., "Children's Participation in Family Law Proceedings: A Step Too Far or a Step Too Small?" *Journal of Social Welfare and Family Law* 26(1) 2004: 17-33.

How do children and youth currently participate when parents separate in British Columbia?

Out of Court Options for including children and youth in British Columbia

If sorting out matters themselves, separating parents determine the level of their children and youth's involvement in the decision-making process. Parents can have informal discussions with their children when making decisions that affect them. Parents can also provide more structured opportunities for their children to participate in the decision-making process. They might employ a counselor or psychologist who can support the child in sharing their feelings and views with their parents, or include their children in family mediation sessions or in collaborative law processes.⁶

In terms of information available to children and youth in British Columbia when parents are separating, the Ministry of Attorney General for British Columbia has developed web-based guides about parental separation and divorce for children aged 5-12 and for teenagers, as well as an accompanying guide for adults.⁷

However, parents are not required to include their children and youth in decision-making during separation, and there are currently no mandated, government programs that focus on the participation of children and youth in decision-making when parents separate.⁸

Including children and Youth when parents go to court

Currently, the *FRA* specifically provides two ways for children and youth to provide their views to decision-makers when their parents go to court.

1. Section 24 of the *FRA* talks directly about getting the views of the children and youth when judges are making decisions about guardianship, custody and access decisions.
2. Section 15 of the *FRA*, which gives courts the power to ask for a family report, says that the report may include the views of a child.

6. In both cases, parents would have to pay for the private child-inclusive mediation sessions or child inclusive collaborative law, which places limits on the number of families in BC who could afford these options.

7. These are found on the web at www.familieschange.ca.

8. The Family Justice Services Division of the Ministry of Attorney General will begin piloting child-inclusive mediation in the spring of 2007 in several family justice centres across B.C., including at the pilot Family Justice Services Centre in Nanaimo. (A Family Justice Services Centre is referred to as a Family Justice Information Hub in the 2005 report of the Family Justice Reform Working Group).

Section 24 *FRA*: Including the voices of children and youth directly

Section 24(1) of the *FRA* says that when judges are deciding who has custody, access and guardianship, they must take into account what is best for the child (remember, this is anyone under the age of 18).

Judges use six factors to help them decide what is best for the child. One of the factors they need to consider is the child's views. There is no statement about how those views are to be provided to the judge, although it can include an interview by the judge.

However, the judge may decide it is not appropriate to consider the child or youth's views in certain cases, so their views will not be taken into account in those situations.

Currently, there is no section in the *FRA* that says a child's views **must** be taken into consideration when deciding who will get custody, access or guardianship. It is only one of the factors that may be considered by a judge.

Getting Children's Views Indirectly through S. 15 Reports

Currently in British Columbia, children's voices are most often heard indirectly through reports made under s. 15 of the *FRA*.

What are s. 15 reports?

If parents go to court, the judge may ask a family justice counselor, social worker or another person approved by the court to look into family matters and report back to the court.

There are two kinds of reports that can be made:

- a brief report that gets the views of the child on a particular issue, such as who they would like to live with, etc; or
- a full custody and access report, which is a longer report about custody and access but which asks for the child's views

In British Columbia, it is only judges, and no one else, who can decide whether a section 15 report should be made or not.

Other sections in the *FRA*

Section 30 of the *FRA* also states that if the courts are appointing or removing a guardian under the Act, and a child is over 12 years of age, the court should not make the appointment until the child consents in writing. However, the court can override the child's consent if the court believes the appointment of the guardian is in the best interest of the child.

Under section 2 of the *FRA*, there is also the possibility of appointing a family advocate who will act as counsel for the interests and welfare of the child. However, that program is no longer funded by the provincial government so its application is limited.

Chapter Two: The Details of the *Youth Included!* Consultation Project

Who was involved

SPARC BC (Social Planning and Research Council of BC) partnered with the McCreary Centre Society to conduct the consultation with Youth. SPARC BC is a non-profit organization based in Vancouver which conducts community based research and community engagement projects on a wide variety of topics, including those dealing with income security, accessibility and community development. For more information about SPARC BC, go to www.sparc.bc.ca.

The McCreary Centre society is a non-profit organization, working in the area of youth health through research, engagement with youth and youth leadership projects. Their areas of interest include health risk behaviours, health promotion amongst youth and youth leadership and skill development. For more information about McCreary, go to www.mcs.bc.ca.

Who Participated

Four youth focus groups took place in the following urban locations in British Columbia:

- Burnaby
- North Vancouver
- Victoria
- Vancouver

Youth between the ages of 13-18 took part in the groups, with a total of thirty youth participating. The groups were diverse in terms of gender, ethnicity, age and experience with the family justice system. Working with different community organizations that engage with youth or have youth programs helped ensure that we consulted with a diverse set of youth, and that youth who participated had experience with the issues we were addressing.

In order to protect the anonymity of youth, the community organizations involved will not be named, nor did we ask youth for identifying demographic information. Unfortunately, we were not able to consult with youth in rural or northern areas on this project due to the limited budget we were working with, and the costs of travel to rural and northern locations. This is a limitation of the project in terms of diversity of views, in that only youth reflecting an urban experience were consulted.

What was done

Recruitment

Youth in each of the four locations were invited to participate in focus groups through a recruitment poster/invitation. (A copy is found in Appendix 2). The invitations were sent to a variety of community organizations that work with youth, as well as to school counselors in one location, and to community contacts of SPARC BC and McCreary Centre Society. We then worked with local youth workers from a variety of youth programs to set a date and time.

As part of the recruitment, youth were told that the focus of the discussions was “forward looking”; that they were being asked to give us their perspective and recommendations for including children and youth in family justice decision-making in British Columbia in the future, rather than asking them to relay past personal experiences of parental separation and divorce.

The Focus Groups

The first ten minutes of the group consisted of:

- Introductions of the project
- Introduction of the facilitators
- Discussion of what would happen to the information shared at the group and the meaning of anonymity
- A discussion of the need for confidentiality in the group and our need to report any safety issues reported by youth in the group
- Explanation of the youth consent form for participating

We then took a 10-minute food and stretch break so anyone who did not want to participate in the group could leave without notice after receiving their participation gift card.

There were four main activities in each focus group, including:

- Thermometer game
- Group brainstorming session on pros and cons of participation
- Discussion and feedback session on children and youth participation in other places
- Writing out suggestions

The Thermometer Game

The first activity was the thermometer game. On one wall of the room was an Agree sign and on the opposite wall facing it was a Disagree sign. The facilitator read a statement and youth were asked to stand anywhere on the continuum between the Agree and Disagree signs.

Youth were then asked whether they would like to give some reasons why they chose to stand where they did. The statements read out by the facilitator included:

- “Adults listen to me and take me seriously”.
- “I have been told my rights or know my rights”
- “I believe that young people should be involved in the family law process”
- “I know what is best for me”
- “I have no interest in getting involved in disputes between my parents”

Group Brainstorming Session: Pros and Cons of Children and Youth Participation

For the next activity, the Legal Researcher explained the current law and practice around child and youth participation in British Columbia’s family justice system. This included:

- An explanation of the civil law system and family court process using a youth friendly diagram⁹
- Providing information about what the *FRA* currently says about child and youth participation (see Information sheet 1 in Appendix 1 at the back of the report)
- Providing some explanation of family mediation in British Columbia and *Parenting After Separation* courses in British Columbia

9. The Wall diagram was supplied by the Law Courts Education Society and can be ordered at http://www.lces.ca/wall_charts

Given this information, youth then conducted a group brainstorming session about the pros and cons of children and youth participation in decision-making during separation and divorce. In this activity, youth were free to state anything they thought were pros and cons to participation.

Discussion and Feedback on Options from Other Places

The third activity involved learning how children and youth are involved in family justice decision-making in other parts of the world, then discussing the option with youth providing their likes and dislikes of the option and any recommendations for including children and youth in British Columbia.

Information about each option was set out in one-page fact sheets given to youth (provided in Appendix 1 of this report) and written out on a large wall chart, allowing youth to compare and contrast different aspects of each option.

The information was set out according to:

- Where the option was used
- When it took place (before court or during court)
- Who was involved
- How it worked

Information sharing and discussion was broken into two parts: Before Court Options and During Court Options.

Before Court Options

- The Facilitators and Legal Researcher explained the first before court option, then provided time for youth to consider this option and give their opinion and feedback regarding that option. We then moved onto the next option.
- The before court options that were discussed in each group included mediation in Australia, mediation in New Zealand, and Children and Youth education programs in the United States (specifically California).
- In two focus groups, a slightly different process was used due to the size of the group. After an explanation of the different before court options, youth broke into smaller groups to discuss and then reported back to the larger group with their opinions and recommendations. We then ended this part of the focus group with a large group discussion and feedback session.

During Court Options

- The Youth Facilitators and Legal Researcher explained the during court options one at a time, again giving youth time to reflect and provide their feedback for each option.
- The during court options discussed in each group included the Children's Lawyers program in New Zealand, the Scottish form process, the model used in Ontario, the Kelowna pilot project, and Germany's use of judicial interviews.
- Again, in two of the focus groups youth broke into smaller groups to discuss the during court options once they had been explained. The smaller groups then reported back to the larger group, ending with a large group discussion and feedback session.

At the end of the discussion and feedback session regarding before and during court options, youth were asked to recommend the options they would like to see implemented in British Columbia, through reforms made to the *Family Relations Act*.

Putting Our Suggestions in Writing

As a final activity, youth were provided with postcards and encouraged to write one thing they would like to express to the government, the justice system and the public about children and youth participation in British Columbia's family justice system.

Focus Group Wrap Up

The focus group wrapped up with youth filling out a short evaluation sheet and receiving their gift cards as a thank you for sharing their time, knowledge and expertise with us.

Chapter Three: What Youth Had to Say

In this chapter, the opinions and recommendations of youth who participated in the *Youth Included!* Project are provided. The voices of youth are in italics.

It should be noted that throughout the focus group activities, youth were not asked specifically to relay any personal stories or experiences of their parent's separation and divorce. However, some youth chose to discuss this experience when providing their feedback and their discussion of these experiences has been included where it was given.

Adults Listen to Me and Take Me Seriously

Almost all youth who took part in the project either stood in the middle between agree and disagree, or disagreed with the statement, "Adults listen to me and take me seriously".

Of youth who chose to state why they couldn't decide between agree and disagree, or why they disagreed with the statement, several suggested that it was their parents, and in one case teachers, that did not listen to them, but that other adults did listen to them.

Most people listen but some teachers don't really pay attention to me.

Most adults take me pretty seriously, but some don't. Whether they know me or my personality makes a difference in listening to me.

I mostly disagree because my parents don't take me seriously, but other adults do.

I disagree strongly: My mom doesn't listen to me. Other adults listen to me but my mom is more important. Overall I would choose disagree.

I disagree strongly: parents don't listen to kids!

I'm in the middle because it's different depending on the adult.

I Know my Rights or Have Been Told my Rights

A large number of youth who participated in the project either stood next to agree when given the statement, "I know my rights or have been told my rights". Of the few youth who chose to discuss why they felt they could agree with this statement, they discussed their rights in terms of knowing right and wrong, knowing manners and respect, and having their conscience help them discern their rights. It's interesting that these youth interpreted or drew a parallel between having rights and having responsibilities to others, with a right being perceived as how they treated others and not just with how they are treated.

I know right and wrong and my conscience helps me.

Cause its common sense to know your manners and types of respect to have.

Also, one youth who agreed that they knew their rights stated:

I know my rights because my parents told me about my them.

One youth discussed why they couldn't choose between agree and disagree to knowing their rights, even after being told their rights.

I think I know my rights because in health and career class they were talking about rights and responsibilities. They listed the rights but provided no explanation, some [rights] were obvious but others weren't so that's why I'm not totally at agree.

Another youth talked about knowing some of their rights, based on knowing what other kids did not have.

Most things that are common I know, and I know those [rights] that other kids don't have.

Finally, two youth stated why they disagreed with the statement, "I know my rights or have been told my rights."

I've gotten confused about my rights so I don't know them.

I don't even know what rights are.

I know what is best for me

The next statement posed to youth was "I know what is best for me". The majority of youth stood in the middle between agree and disagree, with some youth disagreeing with the statement and a few agreeing with it.

There were two types of responses from youth who chose to discuss why they agreed, disagreed or were unsure or undecided about knowing what is best for themselves. Some participants discussed knowing what is best for themselves in everyday life, while other youth discussed their answers specifically in relation to knowing what was best for themselves during their parents separation.

Three youth who stood in middle between agree and disagree highlighted those things that made it difficult to always know what was best for themselves in everyday life.

I usually know but sometimes get confused about what is best for me so it's hard to make a choice.

I know some of the things that are best for me but not others.

When I was younger and I didn't know what I was doing, my parents were looking after me. You don't have the experience, so I still have to rely on my mom a bit. I haven't experienced a lot even though I've gone through a lot and faced a lot. I still don't know what everything is.

Three youth who agreed that they generally knew what was best for themselves had this to say:

I know what is best for me because I have tried something and know its good.

I know what's best for me because my parents are always telling me what's right and what's wrong.

I know what's right for me. For example, I'm switching schools because its closer and I won't be late so much. I had to speak up for myself about that.

Of the three youth who discussed knowing what is best for themselves in relation to their parents separation, one discussed why they felt they couldn't fully agree or disagree to knowing what is best for themselves. They felt that on the one hand, they could decide that they wanted shared custody even at a young age, but couldn't make the choice between either parent if they were being asked to make a choice. The other two youth discussed why they didn't think they knew what was best for themselves during this time in their lives.

When I was younger, even at that age I could decide who I wanted to see and I wanted to see both of them. I wanted shared custody and still want it—and that's how it is now. But I couldn't decide between the two of them, so I'm in the middle between agree and disagree to knowing what is best for me.

I didn't know what was going on during that time. I was still pretty young so I didn't know what was best for me.

It's complicated. It's too confusing to say to adults if you want to stay with your parents, with mom or dad—it's hard to express to people.

I have no interest in getting involved in the disputes between my parents.

Most youth couldn't fully agree or disagree with wanting to be involved in disputes between their parents. One youth said they couldn't decide whether they wanted to get involved because it would be "kind of scary", while two others stated why they stood in the middle between agree and disagree:

It's hard to know because sometimes you don't want to be a part of it but sometimes you do.

They might think you are making things worse. Even if you want to be involved, it's not necessarily an option to be a part of it.

However, three youth did lean more toward wanting to be involved in their parent's disputes when the outcome of the disputes would affect them. Two youth also highlighted the fact that their involvement mattered because their parents were divorced. Although it was not discussed during the group, it would be interesting to further explore their parent's divorce as a contributing factor in wanting to be involved in their parent's disputes.

If there's going to be a big change to the family then you should be involved.

Yes I would like to get involved. My parents only fight over money and I do get involved because they are arguing over how the money should go toward me. This is important since they are divorced.

I went to the agree side because I like to get involved. If you are not involved then you don't get a say. It's like voting, if you don't vote then you aren't a part of the decision. My parents are divorced and it [being involved] matters to me.

I believe that children and youth should be involved in family law process

The majority of youth stood on the agree side, with a large number of youth also standing in the middle between agree and disagree. Two youth who agreed with the involvement of children and youth in family law processes chose to discuss why they should be involved. However, one youth also suggested some possible constraints to involvement, including age and emotional affects arising from involvement.

I think we should be involved because were supposed to be trusted and we have to deal with the same amount of stuff that adults do.

I agree because it seems like kids are the most hurt and feel it the most—if parents knew this it could help the situation. From my experience, it was best how it worked out at the time. If I had been older I would have voiced my opinion. It could help but it [the breakup] is still tearing the kids apart—you keep going back to images where they are back together.

Three participants chose to explain why they couldn't totally agree or disagree with children and youth being involved, citing age and "the situation" as important factors for determining the level of involvement.

They [youth and children] should be involved but it would depend on what the situation is. It should be an option, but be a place where parents and the child can disagree.

*It depends on the situation, their age, how they are contributing to the decision.
I don't know. It's 50-50 because if it's too serious and if you're young, you might not know enough to be involved.*

One youth disagreed with children and youth being involved in family law processes, suggesting that it would be hard to know whether to stay with your parents, particularly if the child was younger.

I disagree because you don't know whether you should stay with your parents. It's hard to decide when you are young.

The Pros and Cons of Children and Youth Being Involved in Decision-making when parents separate.

Youth were asked to brainstorm some of the pros and cons of children and youth being involved in family law decision-making when parents separate or divorce. It was emphasized that involvement could mean discussing your views with your parents, or it might mean discussing your views with outsiders such as lawyers, judges, counselors and other adults who might be involved in the situation.

The Pros of being involved

Youth mentioned a variety of reasons why it would be positive for children and youth to be involved in family law decision-making when parents separate. The reasons given by participants focused mostly on how involvement in decision-making could benefit children and youth in a variety of ways, with a few participants describing how they thought parents might also benefit in some situations.

Positives for Children and Youth

If you're not involved, this would be a con. Basically it affects your future and what happens, and if you're not involved then you might not like where you end up.

It might be easier to understand what's going on by being involved in the process.

In a way, it opens your eyes a little bit. It's a kind of harsh way of opening your eyes—you see how not everything works out but also see that things go on in life. You're seeing things fall apart, but then other things build onto this. You definitely get a sense of control back by being involved! You learn a few different qualities about decision-making and see both sides of things.

A positive is that it would be a chance for kids to use democracy.

Positives for Parents

Sometimes parents don't know what they are doing is wrong and if a child can have a say they [the parents] can know what they are doing and how it is affecting things. You're in the middle; you love your parents and know them and you can describe what's right and wrong to them.

A positive: you can persuade your parents to get back together and help their relationship and not waste money for a lawyer.

The Cons of being involved

In the discussions around the cons of being involved, youth highlighted how age might be a factor in whether children and youth should be involved. Others noted that a child's views might lead to a worse situation for the child, or a child or youth might be hurt further in the process, or feel responsible for making a bad decision or hurting their parents.

It affects the child's future but what's the age? Age—this could be a con because you can't really ask a five year old questions.

Sometimes a child's views can be in the wrong direction and lead to worse things for the child.

A con: if they [the children and youth] were emotionally hurt and it would hurt them further. They might really want to go with one parent but the parent is mean.

It might be too complicated to be involved so you may want to deal with it on your own

A Negative is that it kind of makes you open your eyes more and if at young age, this can be pretty harsh. When involved in it more, you don't understand completely and you think the break up is your fault and you see your parents unhappy. If you're being involved and making decisions, you don't want to harm them or feel responsible for making a bad decision.

What we think about options from other places in the world

Youth also provided their feedback and opinions on different options for including children and youth in the family justice system, based on examples from other places in the world. Youth raised very interesting insights into the workability of these options, as well as some of the limitations and valuable aspects of each model.

In this section, we provide the opinions and recommendations of youth regarding:

- A. Before Court Options
 - Education Programs in the United States
 - Mediation in Australia and New Zealand
- B. During Court Options
 - Children's Lawyers: New Zealand and Ontario
 - Hear the Child Interviews
 - The Scottish Form
 - Judicial Interviews

A. Options for involving children and youth before issues go to court

Youth discussed and provided their opinions and recommendations on two types of before court options: children and youth education programs, and child and youth inclusive mediation.

Child and Youth Focused Education Program

Youth were told about some child and youth focused education programs that take place in California (For more information about the education program considered by youth in the focus groups, go to information sheet 2 found in Appendix 1 at the back of the report).

Many youth who took part in the project liked an option of having some type of education program for children and youth regarding parental separation, with one youth saying specifically why they liked the California model, and another discussing how they and a sibling participated in a course similar to the one in California.

It's neat. I think it would be good because you're afraid to hurt your parents, but you have the support of other kids. It would be a nice feeling to know you're not going through it alone.

We did a course like this with our parents and it helped. It was a good experience overall. It covered communication. It was good. We went by ages, so there were no teenagers with little kids.

Another youth also stated that they liked the education program described to them, but also thought children and youth should be able to decide whether to participate or not.

I like this system. You have a choice to be part of the program if you like it...but don't make it mandatory.

Despite there being a slightly larger number of youth who liked the option of an education program, there were also quite a few who did not like the California model for a variety of reasons.

I don't like this system. It would be difficult to be with other families to talk about things.

I don't like the education program, its weird and inappropriate to learn how to treat your family right.

I don't like the education program because you might not know what areas you really need help on, and they might give too general of advice.

The mediation is better than an education program because in mediation you get one on one support and no one else will hear about your family because it's confidential.

In one focus group, youth brought up the idea of having an education program about family law in the school system, with a focus on parental separation and divorce. Below is the discussion around this option, with three youth discussing how it might work in the schools.

There should be an education program for kids in school about the family law.

Yes, but some might not want it because they are not going through these issues. For these kids, it would be a waste of time.

It could be a choice for kids if it was through the school.

I think that the kids should make their own decision to what ~~the~~ should happen between themselves and the parents

allow options
put age into consideration

include youth and let them have their say any way they want.

that children should decide what to do in court, with various options for them to choose.

I would tell them their own and sometimes

Maybe you ~~the~~ would like to ~~to~~ hear what the kid wants to say.

It would be to let us talk, let us be part of this and some may not want this so leave them let the ones that want to talk, talk!

QUESTIONS
IF THERE WAS ONE
TELL PEOPLE MAKING DECISIONS
AND YOUTH IN FAMILY LAW

Kids to be able to voice their opinion seriously, with certain amount of supervision or not.

Make ~~the~~ their opinion
of a child out THAR!

I think children should be able to voice their own opinion, because their whole life and future is going to be affected, so they should be able to have a say in it.

I think that our laws regarding family should have kids involved.

right

I think the law in New Zealand is very automatic on very good

The thing I would like to tell you guys is to respect children's ~~the~~ SAY!

kids to be able to voice their opinion seriously, with certain amount of supervision or not.

I think children would be more comfortable talking to someone their close to instead of a mediator or counselor about these personal matters, it's probably awkward for a child to express his/her feelings to an unknown person about personal matters

that sometimes kids need to make decisions on they don't.

TION:

THING YOU WANT TO
DECISIONS ABOUT CHILDREN
PROCESS, WHAT WOULD IT BE?

That some people are truly sincere of their views, but also that some people are just whiners

I don't think using social workers is a good idea, because if social workers knew about a situation in a family from a child accidentally, social workers would want to call home to talk to the parents about it. A child would not necessarily want that because that might make parents think their child is talking bad things about them ^{behind their back}

That it isn't always best to force something on a child. we should have an opinion.

I think there should be more choices for youth and family laws because youths are not good at making choices and thinking so they should make choices. It's easier for us

I don't think ~~the~~ people should make choices for children without hearing their complete & honest opinion of what's going on (ex: making a ~~the~~ choice because it's 'good' for the child) since adult views are different ~~the~~ from youth views. Also, don't immediately judge anyone.

I think kids should be ~~and~~ able to make some of the decision,

Involving Children and Youth in Mediation

Youth were given information about two different models for including children in family mediation: the model used in Australia and the model used in New Zealand (see information sheets 3 and 4 found in Appendix 1 at the back of the report).

In the discussions, most youth preferred the Australian model over the New Zealand model. In several cases, youth simply stated that they liked the Australian model, without providing reasons as to why they liked it. Three youth specifically mentioned the inclusion of a child psychologist in the mediation session as a reason for liking this model, with one wanting the psychologist brought in after, while another was neutral as to the inclusion of a child psychologist.

I like the Australia model better.

I think it's pretty good.

I think having a child psychologist would be a good idea because they can pick up on some of the emotions that aren't obvious, pick up on body language. Maybe the Child Psychologist could sit back and be observing from behind.

The child is not as pressured if there is a child psychologist there.

Maybe if the child saw the mediator a couple of times and became somewhat comfortable with them. Then bring in child psychologist. Not two people all at once.

Picked Australia because you trust mediator to tell your parents. You get to talk for a bit and there is nothing awkward then by meeting with parents after. I'm neutral on the child psychologist.

Other youth chose to focus on why they liked the Australian model as compared to the New Zealand model, with the main reason for the dislike of the New Zealand model being the combined mediation session between parents and children/youth at the end of the mediation process.

It seems like less pressure in the Australia model. The idea of being with your parents with the mediator—I wouldn't want to personally go through that. You have to be careful around your parents so it may not work.

We agreed with Australia because in New Zealand, say you tell the mediator that you don't like the parents, and then have to meet with the parents in another session. After the mediation and decisions are made, you still have to live with you're parents.

We like Australia because we don't like meeting with parents afterwards. You can speak your mind and the mediator can just tell the parents. Parents might stare you down in a final mediation if you're together.

One parent might say that the father is bad in the mediation session [where the parents and children/youth are together]. This might change their [the child's/youth's] views.

I think mediation without the parents in the room is better, because then the child could be more forthcoming.

The one thing youth liked about both the Australian model and the New Zealand model was that children and youth can filter out what the mediator shares with the parents.

I like the idea of being able to say what my parents get to hear.

I think its good that the child or youth can filter out what the mediator reports back to your parents.

You should have opportunity to express things but not be forced to. The parents don't have the right to know what we said because we like our privacy.

B. Options for involving children and youth once issues go to court

Children's Lawyers

One way of involving children and youth in family law decision-making once issues go to court is through the provision of a children's lawyer, who represent the views of the child or youth in court. Youth participants in our project considered two different models of providing legal representation to children. The first was the Children's lawyer program in New Zealand and the second was the model used in Ontario, where both a children's lawyer and a social worker were involved presenting the views of the child and youth to the court. (See information sheets 5 and 6 in Appendix 1 for a brief overview of these options).

Many youth expressed their interest in the option of having a children's lawyer, especially if they had special training about how to deal with children and youth. However, some youth were surprised or found it odd that a child could have a lawyer.

It would just be easier to have legal representation because it would cause too much problems otherwise to bring other people in.

I think it would make a difference having a lawyer.

Having children's lawyers, they know what to do and how to handle children, so they are not too, too shocked by talking with the child.

I think it would be a good idea to have a children's lawyer with special training.

It's definitely different to have a lawyer represent the kid's views.

A few participants raised some issues with the option of a children's lawyer. One youth thought it might be good to assess whether a child could "handle" having a lawyer, while another thought having a lawyer might be a nice option, but seemed to question this as the best way of including children and youth in family law decision-making.

I think it would help to have someone assess whether the child could handle it.

*Its weird. Nice for parent's to know [that their child or youth could have a lawyer].
I don't know if it should be the basis for their [the child or youth's] inclusion.*

New Zealand

In discussing the Children's Lawyer in New Zealand, a number of youth also expressed their opinion about the fact that in New Zealand, the law says that a child and youth's views must be considered by the court in making a decision. (The differences between a Judge being required to consider the child or youth's views, and having discretion about the amount of weight given to those views, were explained to youth).

Two youth stated that they liked the fact that children's views must be considered by the judge, however others expressed concern about how those views might be interpreted by a judge or whether a younger child's views should be given weight.

I like the New Zealand option, where it [the child's views] must be considered. I think that it should be considered.

I like New Zealand because it's paid for and you get to talk and your views are considered rather than just thought about.

I think its good to have someone represent the child and they should be able to voice their opinions. I don't like the fact that it says that child's views must be considered because the judge might see it one way and might not know when it's a bad decision.

For a younger child, it's too much that their views are given weight.

Ontario: Children's Lawyer and Social Worker

In discussing the Ontario model, two youth expressed strong opinions about why children and youth should be able to access both a counselor and a lawyer if they would like. One youth stated that they should be able to choose these options because it is children and youth who are affected by the decisions being made and they believe it is part of their human rights.

I like a having a counselor and a lawyer too, and I like the idea of having the court to know, and repeat, what the child says. The child might give up rights to talk about it but they've had a choice. It's still a decision if they don't want to be involved.

Child should have a choice about seeing a lawyer and counselor because we have human rights. We should be able to choose because it's our business. We are going to be affected more than them and it scars us for life.

Kelowna: "Hear the Child" Interviews

The next option considered by youth for supporting the inclusion of children and youth in family justice decision-making was Hear the Child Interview model being piloted in Kelowna. (See information sheet 7 in Appendix 1 for a brief description of the model).¹⁰

Most youth expressed ambivalence about this model, or stated that they did not like it as an option. Most of the concerns expressed by youth in relation to this model were specific to three areas:

- Parent's needing to agree to the child's participation
- Who should explain the decision at the end of the court process
- Providing a written statement to the court

Parental Agreement to Participation

Several youth thought that a child or youth could decide for themselves whether they should participate, or that another person who has been involved with the child might be in a better position to make the decision.

I think it would be a good idea if the child had stronger say and not leave it up to the parents to agree to their child's participation. A child can decide if they want to participate.

10. For further information, consult the pilot project evaluation report produced by the International Institute for Child Rights and Development at <http://www.iicrd.org/childparticipation/HearTheChildInterviewEvaluation.pdf>

If a child used a mediator first and trusts the mediator, then maybe the mediator could be decide if the child should be involved, because it might be awkward with the parent deciding.

Who should conduct the interview and discuss the Judge's decision

Youth also raised concerns about who would be doing the interview, as well as who would be discussing the judge's decision with the child. Some youth thought the interview, and the explanation of the judge's decision, should be conducted by someone the child knows and trusts. Two youth suggested that this could include the parents.

Most important thing that it's with the person the child trusts.

I think you should be able to choose who you want to explain the decision of the judge. But I think it would be better to have your parent or someone you know explain the decision.

I think its better that the parents do it [conduct the interview] because the child knows them and trusts them.

One youth thought that a judge would be the best person to explain their decision to a child or youth, because it would be too much trouble to have someone else explain it.

It's dumping your problem onto other people if it was a friend or someone who had to explain the decision. Its better to have a judge explain the decision to the child or youth.

Using Written Statements

The final issue raised by youth in discussing the Kelowna pilot was with respect to having the views written down on paper. Youth raised the point that once something is on paper, it might be difficult to change if the child changes their minds. One youth suggested that children and youth should be given the option to speak to the court, even if there is a written statement provided to the court, while another thought it would be better to speak directly to decision-makers rather than having a written statement.

But people's opinions change and what if you write it on a paper and then can't change it. The paper follows you through court.

Talk at the hearing as well as having the written statement. It should be the child's decision to talk to the court.

I would rather not have a written statement and have myself there [in the courtroom or talking to the judge]. I just think I would know how to explain it better than having it written on paper.

One thing which several youth disliked about the Ontario model, as well as the Kelowna model and what is set out in the *FRA* currently, is that it is a judge or lawyer, the parents or a psychologist who decides whether the child or youth needs to share their views.

In the case of the Ontario model, it is up to a Judge to decide whether a child needs a lawyer, before the Office of the Children's Lawyer is approached, who will then decide whether they will represent the child/youth or not. In the Kelowna model it is the parents who must agree and in the s.15 reports under the *FRA*, a child psychologist has discretion about whether they obtain the child's views.

I didn't like the Kelowna option and I disliked the Ontario one—you don't get to choose to take part, the parents or someone else gets to choose whether you participate.

I didn't like the Canadian options because your participation is more of an adult's choice.

I don't like the idea of a judge deciding whether the kids need a lawyer—it should be someone who knows more about the child.

The Scottish F-9 Form

Another option youth considered in the focus groups was the F-9 form filled out by children and youth in Scotland. (For more information about this option, see information sheet 8 in Appendix 1 at the back of the report).¹¹ Most of the comments of youth were about the perceived problems with the model.

Some youth did not like the idea of writing their views down in a form, and expressed skepticism of receiving and filling out the form at home.

Kind of depends on how well you can put your feelings down on paper.

Maybe you get treated better by your parents so you fill out the form in a certain way.

Parents could rig the form. Two pairs of eyes behind you watching you fill out the form.

11. More information about this process may also be found half-way down the information page called "Children Matter" found at <http://www.scotland.gov.uk/Publications/2003/12/18639/30032> or "You Matter" at <http://www.scotland.gov.uk/library/documents/youp15.htm>

In a few focus groups, a discussion emerged about the age of the child or youth who would fill out the form, and the role of the lawyer who would help the child fill out the form out. Some suggested that a survey sheet be given to the lawyer who is helping the child so that they can highlight things such as maturity level of the child or youth, or in the opinion of one youth, include information to help the judge decide what is best.

I think the lawyer should fill out a comment sheet because the judge may be getting a piece of paper without the maturity level.

Seems like a good idea. If you had a form like that, no one knows what the maturity level of the child is or if it's a smart decision or not. If a Lawyer had a sheet themselves, where they ask questions to find out, that would be good. Have a survey sheet to go with the F9 form—find out the maturity level and write something to the judge. Help the judge with a decision—help say that the kid shouldn't see this parent at all.

One youth did think it was good that a lawyer can help a child or youth fill out a form and the parents would not have to pay for the lawyer.

It's good that the parents don't have to pay for the lawyer to help fill out the form, because not everyone can afford it.

Finally, two youth who discussed this option in a small group discussed why they liked the Scottish form and how they thought it should work.

We chose Scotland because with the form you can think about it at your own pace and write it down and you're not pressured to keep going like if you have to talk with a counselor. Maybe you can have someone you trust or feel comfortable with help fill out the form. It should be someone professional but it should be someone that you know and trust.

Judicial Interviews

A judicial interview was the final option discussed by youth in the project. Germany was used as an example (see information sheet 9 in Appendix 1), but there was also a very general discussion of judicial interviews since youth were told that judges in British Columbia can also interview children and youth if the Judge decides it is important.

Many youth liked the idea of a Judge interviewing a child or youth, as long as the child or youth had a choice to be interviewed or not.

We agreed for the most part with the Germany example. The judge should talk to the kid, without the lawyers and its good it's the kid's decision.

It's an interesting option.

The child could sway the Judge's thoughts on the situation.

Judge should be present; the parent's presence should be optional if the kids want them there. A lawyer should be there if the kid says yes.

There was some disagreement amongst youth about whether the parents should be told what the child says to the judge, as is the case in Germany. Some thought that parent's should be told while others thought that this might make the parents "mad". Some also expressed concern about whether parents could be in the room during a judicial interview.

They shouldn't show the parents what the child says. Parents might get really mad. Kids should be able to choose which parent to tell it to and what they tell the parents.

I think it should be just the judge and the child. Parents should be told what the child says.

A lawyer should be present. Parents can have influence and the child might be embarrassed to say something with the parent there. This should be really carefully considered.

Those youth who didn't like the option of judicial interviews thought it would be unpleasant or scary, and there may be other ways to provide the views of children and youth views to a Judge. It was also suggested that judicial interviews should only be used as a last resort.

It wouldn't be a bad idea but judges are strangers and the idea of judges is unpleasant. Seems like a last resort.

This option isn't very good. I think an interview would be hard because you don't know them but you're expected to talk to them about your family.

I think the interview with the Judge would be scary in a way because they can decide on the future of the kid and it's pretty serious.

If the kid doesn't want to talk to a Judge, write a letter or talk on the computer or something.

Some Common Threads

In this final section, we set out some common threads of feedback provided by youth throughout the focus groups. The common threads are:

- Age and maturity as important factors for participation
- Being comfortable with adults in the process
- Being part of decision-making
- Flexibility and Choice

1. Age and Maturity as Important Factors for the involvement of Children and Youth in Family Law Decision-making

In all of the focus groups, interesting discussions emerged about how age and maturity might affect the participation of children and youth in family law decision-making processes.

Three main themes emerge from what youth had to say about age and maturity as a factor for being involved. These are:

- The level of participation or involvement should depend on the age of the child and youth
- What age should children and youth be and why
- Why maturity, as well as age, matters

The level of participation or involvement should depend on the age of the child or youth

There should be differences to how much you're involved, especially when you're older. When you're older, you understand a lot more.

With little kids, it's difficult for them to answer questions and make decisions for the parents.

Not all kids can be involved. The toddler may only fixate on one thing or may not understand what's happening.

What age should children and youth be, and why

Why is the age twelve? It seems that by the age of eight we can start to make decisions on our own. At eight, we still are able to describe what we are feeling.

Define children and youth. Parents might put pressure on younger kids and give them ideas. At least ten and up get to decide, but exclude the ages below that from being involved.

A five year old shouldn't be involved, they could easily get bribed. They are still learning and still young and don't know enough. At age of nine, you could be involved.

Nine and up should be the age.

Twelve would be a good age.

Twelve or Thirteen would be a good age—at least double digits.

Why Maturity, as well as age, matters

Some kids grow faster. You can talk to the child and see where they are along and how they feel, and how they are handling things. It depends on the child's understanding level. Have someone assess the child. They may understand when 7, but then have to wait until 12 so can't have their voice heard—this seems wrong.

Some kids are more mature for their age—you have a six year old thinking like a fourteen year old and a fourteen year old thinking like a six year old. It might be a good thing to have maturity considered.

I think they should put age and maturity together. Take age and maturity and willingness of the kid all into account.

Grade six until you are eighteen years old. About grade six you can make important decisions. Also, think about maturity level.

[In reference to the above statement] but is 13 really an age that they are mature. A lot of people who are 13 can be "idiots".

2. Children and Youth Being Comfortable with Adults in the Process

One issue that was raised in the discussions of both the before court options and during court options was the importance of children and youth feeling comfortable with the person(s) dealing with them or “in the room” with them.

For example, there was some suspicion about mediators, with one participant suggesting that a mediator might be too serious, or might not understand the child or youth.

Participants suggested a range of options for increasing the comfort level of children and youth in the mediation session, including having a counselor rather than a mediator speak with the child or youth, giving children and youth a choice about who is in the room with them, and having more than one session with a mediator.

What about the mediator, do they understand the kid and what they are saying?

A counselor might know me better and be able to talk. Better to have a relaxed talk rather than a too serious talk with a mediator. A counselor sounds friendlier than a mediator or lawyer.

Meet more than once with the mediator because at the first time you might be uncomfortable with the person and need time to get to know them.

It's always good to have a choice about who is in the room with you.

I think if kid says its okay, the parents should be there.

The option of having a parent present and maybe not just parents, but another family member.

Youth also suggested who they would like to see support children and youth in cases where the issues go to court.

You could have both a lawyer and a youth worker with you. Someone who you trust and someone more professional.

Why can't it be another advocate, a counselor, someone who works with youth? That would be my choice rather than another choice. It should be this way in British Columbia—I feel comfortable like that and with someone working with specific problems with youth. Even someone working in a youth centre and who is around daily and works with them on a regular basis—someone who knows the backgrounds of the kids.

In one focus group, a few youth discussed the pros and cons of having a close family friend or relative acting as a support person. Their discussion is provided below:

A friend's mom because you've known them for a long time. Having an adult that you trust to be an advocate with you. You might open up more with them.

I think a friend's mom would have a more biased answer and could change the child's mind. An outreach worker is still a professional.

I guess the kid should decide who they want present and who they want to talk to.

Finally, one youth discussed why they didn't like any of the "before court" or "during court" options that were presented, due to the fact that it would require talking to strangers about your family situation.

I don't like any of the options because you'd be talking to strangers about your family and they might lie about things. Most children are intimidated by adults and so don't know what to say to strangers. Maybe you could meet with someone who is close to you, a relative or something.

3. Being part of decision-making

Throughout the discussions of the various options, youth also raised what they thought about being a part of the decision-making process when parents are separating. The opinions of youth were diverse, with some wanting to be part of the decision-making while others thought it would be enough to express one's views but not be involved in decision-making.

I like being asked about real decision-making.

It definitely makes sense to have the child's point of view and have it held high up with adult's opinions.

I like where it's just talking about background and feelings and not decision-making because you need to know too much about the impact, you need to be educated. They [the child or youth] might just make a decision because they have more fun with the parent or something.

It's a lot less stressful to be involved if they [children and youth] are not making decisions—but they should be involved in some way because it's going to affect them.

I wouldn't want to be asked to make decisions, because if you are asked to make decisions, there's a lot of pressure on you.

I would like a combination that they can be part of the decision-making and clarify their own interest in the situation. Maybe influence some decision-making. A discussion, but not using a form.

If the parents both are suitable to be with, the child or youth should decide where they want to live. If say one of the parents isn't a good parent and not capable of taking care of kid, then the kid shouldn't make the decision.

4. We should have Choice and Flexibility

The final theme that came out during the discussion of different models for including children and youth in the family justice system was the need for flexibility and choice. Many participants thought that children and youth should have a choice to participate or not, and that there should be choice and flexibility about how they are included, although one youth discussed how having choices and options might be more stressful.

As long as you have a choice, this [children and youth participation] would be a great idea.

I think a child's program should be recommended but not mandatory.

I like things to be optional.

Choice is important for these things.

I think it should be flexible and it depends on the case. That way its open because maybe they [a child or youth] do not want to talk to a room of people who they don't know, but this would be better for others. They [the government] shouldn't just set something and just leave it. This is going to be a problem.

Less stressful on the child to have one option rather than different options for getting child's views.

Writing down Suggestions

In the middle of the report is a collage of postcards. A postcard was given to each youth at the end of each focus group and they were encouraged to write down something they wanted the government, the justice system and the public to know about children and youth participation in the family justice system in British Columbia.

Most youth who chose to write something emphasized the importance of involving children and youth in the family justice system and that they be able to voice their opinions to decision-makers in family law processes.

Chapter Four: Conclusions and Recommendations

The *Youth Included!* Project set out to ask youth in four urban centres in British Columbia their opinions and perspectives about including children and youth in British Columbia's family justice system, through reforms to the *Family Relations Act* and through the creation of programs that would support children and youth participation.

Through the various comments and opinions of youth who took part in the project, we can conclude a number of things:

- Youth were either unsure or undecided about knowing their rights, or stated that they were aware of their rights (at least on a surface level). A few youth also linked having rights with having responsibilities to others.
- Youth felt that at times adults, and especially parents, did not listen to them. However, youth thought it was situational and depended on the adult.
- Most youth were unsure as to whether they wanted to get involved in their parents disputes, but there were some youth, whose parents were divorced, who expressed interest in getting involved if the dispute would affect them.
- Youth generally liked the option of education programs, although some thought the California model was too general or did not offer enough individualized support. One group of youth made the recommendation that an education program about family law be developed for schools, giving students a choice about whether they would like to be part of that program.
- Youth overwhelmingly liked the Australian model of involving children and youth in mediation. They appreciated having a child psychologist and mediator present and liked the fact that it did not have children and youth having a final mediation session with the parents.
- Youth also recommended that children and youth meet with a mediator more than once so that they become comfortable, and suggested that children and youth have the option of bringing a support person of their choosing with them.
- In terms of options for involving children and youth in decision-making by courts, youth liked the idea of having a children's lawyer and were generally positive about both the New Zealand model and the Ontario approach. Youth specifically liked the possibility of having another support person with the youth when meeting with a lawyer. This could include a counselor, family friend, youth worker, etc.

- Youth highlighted a number of concerns or problems with both the Hear the Child Interviews in Kelowna and the Scottish Form model, which suggests they viewed these models negatively and preferred other models.
- Youth were divided on the option of judicial interviews, with some liking the ability of children and youth to speak to a decision-maker while others thought this would be unpleasant and should only be used as a last resort.
- Youth raised several issues around age and maturity of children and youth who should participate, particularly in mediation and in processes when issues go to court. Most recommended that age and maturity be considered together when involving children and youth.
- There was also the general feeling amongst youth that younger children would have trouble being involved in these processes, with some youth recalling their own inability to understand or grasp the impacts of what was going on at a young age.

In addition the conclusions presented above, which are based on comments of youth in relation to each of the focus group activities, three over-arching themes emerged from the feedback provided by youth who participated in the project.

- Children and youth can, and should, participate in the family justice system when decisions are being made that affect them. However, youth also acknowledged that the involvement of children and youth may have some negative aspects to it.
- Children and youth should feel comfortable with who is conducting different processes and there should be mechanisms put in place to increase the level of comfort for children and youth (from having more than one mediation session, to bringing in an adult they trust, to having a counselor or child psychologist be part of the process).
- There should be choice and flexibility in the process. Youth highlighted that children and youth should not be required to participate, they should have choices about who is in the room with them, what information is shared with decision-makers or parents, and how they can participate.

Recommendations for Reform

Based on the conclusions and themes emerging from youth feedback, the following recommendations are proposed for reforming the *FRA* and for creating and implementing programs that can support the participation of children and youth in British Columbia's family justice system.

1. Expand or change the ways that children and youth views are included in family law decision-making in the *FRA*.
2. State explicitly in the *FRA* that children and youth have the choice to participate.
3. Use maturity, as well as age, as a factor for determining the type and level of involvement of children and youth.
4. Create an education program for children and youth experiencing parental separation, but provide more than just general advice. Also, create a family law education program for schools.
5. Implement child inclusive mediation in British Columbia, which includes both a mediator and a child psychologist in the session. Follow the Australian model, with the option of children and youth meeting multiple times with the mediator, and the possibility of bringing in an adult they trust
6. Create a government-funded office of the Children's Lawyer using a similar model to Ontario, which involves both a lawyer and social worker being part of the process. However, unlike the Ontario model, which requires the Judge and the Office of the Children's lawyer to agree that the child or youth needs a lawyer, have the wishes of the child who wants a lawyer be a determining factor if the child or youth is of the age and maturity to express this desire.
7. Continue to have the option of judicial interviews at the discretion of Judges.

Appendix 1: Information Sheets



information sheet

So what does the FRA say now about including the voices of children and youth?

Where: In British Columbia

When: When parents are separating and go to court because they can't work things out themselves. It does not apply when parents are making their own arrangements outside the courts.

How does it work?

The FRA includes the voice of the children and youth in two different ways:

1. Section 24 of the FRA talks directly about getting the views of the children and youth when judges are making decisions about guardianship, custody and access decisions.
2. Section 15 of the FRA, which gives courts the power to ask for a family report, says that the report may include the views of a child.

1. Section 24 FRA: Including the voices of children and youth directly

Section 24(1) of the FRA says that when judges are deciding who has custody, access and guardianship, they must take into account what is best for the child (remember, this is anyone under the age of 18).

Judges use six factors to help them decide what is best for the child. One of the factors they need to consider is the child's views.

Remember, the judge may decide it is not appropriate to consider the child's and youth's views in certain cases, so their views will not be taken into account in those situations.

There is no section in the FRA that says a child's opinion should be the most important factor for deciding who will get custody, access or guardianship. It is only one of the factors that may be considered by a judge.

2. Getting Children's Views Indirectly through S.15 Reports

Currently, children's' voices are most often heard indirectly through reports made under s. 15 of the FRA.

What are s.15 reports?

If parents go to court, the judge may ask a family justice counselor, social worker or another person approved by the court to look into family matters and report back to the court.

There are two kinds of reports that can be made:

- a brief report that gets the views of the child on a particular issue, such as who they would like to live with, etc; or
- a full custody and access report, which is a longer report about custody and access but which asks for the child's views

In BC it is only judges, and no one else, who can decide whether a section 15 report should be made or not.

information sheet



Including Children and Youth Voices in the United States

Where: California and Washington

When: Before parents go to court

How does it work?

In many places, parents who are separating take an education course that tells them about:

- how the separation might affect their children;
- their children's needs;
- how to support their children during the separation;
- how to make good decisions;
- their legal options now that they have separated.

The US process links parents programs with children's support programs. These groups encourage the voice of the child or youth in different ways.

Teaching Communication Skills

In some places, children who are part of the linked parent support group are taught communication skills so that they can better express their needs to their parents.

Parents and Children Meet Together and Children Give Feedback

In other places, the parents and children who are in the programs meet together.

The children share feedback with their parents, using a group newsletter, group letters or stories. This feedback is very general and does not include each child's individual needs.

- For example, children as a group might tell the parents such things as: "we wish you would talk about your problems instead of fighting" or "It hurts us when you talk about our other parent because we love them."

information sheet



Including Children and Youth Voice in New Zealand

What: Including children and youth voices before parents go to court using Mediation.

In BC right now, children and young people are not included in mediation done by family justice counselors when parents separate and divorce. In New Zealand, children are being included in mediation when their parents separate and divorce.

What is Mediation?

Mediation is a process in which parents can meet with an independent person to try to resolve disputes. Mediation meetings provide time for the parents to talk and listen to each other's view, with a mediator helping them listen to one another.

How it works in New Zealand

Mediators interview the children separately from parents.

At the beginning of the interview, the child or youth is told that if they talk about things that are making them unsafe, that this information will have to be told to others such as the police, social worker, etc.

At the end of the interview, the mediator repeats back to the child or youth what they have said during the interview.

- At this time, the child and youth can tell the interviewer that they don't want certain things told to others, including their parents.

The mediator then goes over the child's interview with the parents alone. At this time, the parents can try to work things out to the best interests of the child and youth.

The final thing

Two weeks after the child's/youth's interview, the parents and child/youth meet for a final mediation session.

information sheet



Including Children and Youth Voices in Australia

What: Including Child and youth's Voices before going to court using Mediation.

What is Mediation?

Mediation is a process in which parents can meet with an independent person to try to resolve disputes. Mediation meetings provide time for the parents to talk and listen to each other's view, with a mediator helping them listen to one another.

How does it work in Australia?

Part 1: The Parents

During the first meeting, parents are asked about their children and if they have certain concerns about their children and the divorce.

The parents are then given some information about children and youth's responses to separation and conflict, and about including children and youth in mediation. After this, the parents' first mediation session takes place.

Part 2: The children or youth

After the parent's first mediation session, a person with specialized training interviews the children. A child psychologist supervises this interview.

At the beginning of the interview, children are told that things they say in the interview can be kept confidential from their parents.

The interviewer is trying to find out the child's hopes, wishes and fears, and how the child or youth is handling their parents' separation.

The child or youth is also asked if there is anything specific they want their parents to know, BUT...children and youth are not asked to make decisions about what should happen.

In some cases, the interviewer may meet with the child or youth in more than one session.

information sheet



Including Children and Youth Voice in New Zealand

What: Including the voice of Children and Youth in Court using the Children's Lawyer

When does the court appoint an independent lawyer for the child or youth?

If the parents are disagreeing over the day-to-day care of a child and they have tried mediation and counseling, the court in New Zealand appoints an independent lawyer for the child unless it wouldn't be helpful.

There is a list of lawyers who have experience working with children and who have taken special training.

How does it work?

The lawyer will meet with the child. There are four main things the lawyer has to do:

- Explain the court process to the child in a way that is understandable
- Represent the child in court and negotiations that take place about care for the child
- Provide the court with the child's views and any other information that would affect the child's care
- Explain the judge's decision to the child and discuss how the decision will affect the child. The lawyer must also tell the child that they can challenge the decision about parenting arrangements to a higher court if the child doesn't agree.

The lawyer also has to keep things the child says private if the child doesn't want others to know. The lawyer does have to tell others if the child talks about things that are making them unsafe.

Besides meeting with the child, the lawyer may also meet with each of the parents and other people involved in the child's life such as teachers, relatives and friends.

After hearing from the parent's and from the lawyer for the child, the judge has to decide how much weight will be given to the child's views... BUT the law says that the child's views must be taken into account.

information sheet



Including the Voices of Children and Youth in Court in Ontario

What: Including the voices of Children and Youth in Court

How does it work?

If parents in Ontario go to court because they cannot agree on parenting arrangements like custody and access, a judge will decide on the parenting arrangements.

When the parents first go to court, one of them can ask for their child to be provided with a children's lawyer.

The judge will decide whether the child should have a lawyer. Then the Office of the Children's Lawyer, which is part of the Ontario government, must decide within three weeks whether they will represent the child or not.

If the Office of the Children's Lawyer agrees to represent the child, the following things happen :

1. A lawyer is assigned to the case;
2. A social worker is assigned to the case and will provide a report to the court;
3. The lawyer and the social worker will work together, if there are serious issues that need to be looked at.

The lawyer and/or social worker will be asked to talk to the parents, and either the lawyer will report to the court or the social worker will provide a short report about whether the issues relating to the child are being taken care of.

Both the lawyer and the social worker can include the views of the child in their reports to the court.



information sheet

Including Children and Youth Voices in BC

Where: Kelowna, BC

What: Including the voices of Children and Youth in court

This project was introduced to try and include children's voices when their parents have to go to court to decide on custody and access (where the child would live, and how much time the child or youth should spend with each parent).

How it works?

An independent lawyer or counselor (with special training) meets with the child or young person to hear their views. An observer also sits in on the interview.

The parents can choose who will do the interview from a list of the volunteers.

Both the parents and the child or young person must agree to be interviewed.

What Happens at the Interview?

The interviewer will explain at the beginning of the interview the reason they are meeting with the child or young person.

The interviewer asks the child/youth if they agree to be interviewed. If they say yes to being interviewed, the interviewer asks the child/youth a series of questions and writes down exactly what he or she says.

What Happens to the child or youth's written statement?

The interviewer provides the child's views, in a written statement, to the judge and to the parents and their lawyers.

The child or youth's views are considered when the judge decides what is in the child or youth's best interests.

The Final Thing

The parents tell the child about the final decision of the judge and give the child a chance to ask questions.

information sheet



Including Children and Youth Voices in Scotland

What: Including the Voices of Children and Youth in Court

How it works

In Scotland, if parents who are separating go to court over parenting responsibilities, who will take care of the child, or the child's property, the court sends a notice to their children.

This notice is called an F-9 form.

What is the F-9 Form?

This form does two things:

- It tells the child or youth that the court will be making a major decision that affects them; and
- It gives the child or youth a chance to share their views.

In Scotland, the family law says that if a child fills out the F-9 form and wants to express their views, the Judge (called a Sheriff in Scotland) cannot make a decision without giving the child or youth a chance to provide their views. The law also says that the judge has to take the child's views seriously.

How is the form filled out?

If a child or youth needs help filling out the form, they can get a lawyer to help them.

If the child does not know how to find a lawyer, an organization called the Scottish Child Law Centre can help the child find one. The government provides funding to pay for the lawyer.

What happens after the form is filled out?

Once the form is filled out and is read by the judge, the judge may decide to interview the child or that the child needs their own lawyer.

information sheet



Including Children and Youth Voice in Germany

What: Judicial Interviews when parents go to court

In many places, including BC, judges can talk with a child about their parent's dispute regarding parenting arrangements during and after separation.

How does it work?

In Germany, judges have to speak with children face to face because the law believes that children have their own rights to make decisions about which parent should take care of them.

What happens at the interview?

The judge interviews the child without lawyers and without the parents.

The judge writes down what is said and reports back to the parents and the lawyers about the child's views and what the judge thinks about the child.

Judges in Germany receive special training about how to interview children.

Appendix 2: Forms

Recruitment Poster

If you had your way, What would you say?

How should BC's family law support the voice of youth when their parents are separating or getting a divorce?

The provincial government is reviewing the Family Relations Act, which is the law that deals with separation, divorce, custody, access and family law matters. Two not-for-profit organizations, SPARC BC (Social Planning and Research Council of BC) and the McCreary Centre Society are working together to ensure the voices of youth get heard.

Your Say: Participate in youth discussion groups taking place in North Vancouver, Vancouver, Victoria and communities in the Lower Mainland. Share your views and make a difference!

Your Chance: Youth between the ages of 13-18 can participate. You will receive an honorarium, food and bus tickets.

Your Privacy: The ideas you share will be put into a report that will be given to the public and to the provincial government, BUT the ideas you share will be ANONYMOUS. This means no one will be able to trace what you say back to you as a person.

If you would like to take part in a discussion group either in North Vancouver, Vancouver, Victoria & communities in the Lower Mainland, please contact Sally at McCreary: 604-294-1996 ext. 233 or email at sally@mcs.bc.ca

Parental Notification Form



**Social Planning and Research Council
of British Columbia**

201.221 East 10th Avenue
Vancouver, BC Canada V5T 4V3
Tel (604)718.7733 Fax (604)736.8697
info@sparc.bc.ca www.sparc.bc.ca

Dear Parent/Guardian,

Your son/daughter has been invited to participate in a focus group with other youth to discuss how children and youth's voices could be included in decision-making about matters that affect them when their parents are separating.

The focus group is being conducted by the Social Planning and Research Council of B.C., a non-profit organization who conducts social research on a variety of issues affecting individuals and communities in B.C. In addition, the focus group is being facilitated by a Youth Coordinator from the McCreary Centre Society, a non-profit youth health research organization.

The purpose of the focus group is to gather the opinions of youth between the ages of 13-18, whose parents are separated or divorced, about how the voices of children and youth can be included in family law decision-making when their parents are separating. Youth who attend the focus group will be asked to give their opinions about different ways to incorporate children and youth voices in family law matters, based on examples from other parts of the world. This information is being gathered as part of a larger project that SPARC BC has been conducting, which asked adults with lived experience of separation and divorce in BC and family law advocates and support workers about possible ways to reform the Family Relations Act. The Family Relations Act is the law in BC that deals with issues relating to separation, including guardianship, custody and access of children, division of property, spousal support and other issues.

During the focus group, the youth facilitator will not be asking youth specific questions about their family history, but rather focusing the discussion on how the Family Relations Act could be changed to include the voices of children and youth when their parents are separating. Any information shared at the focus group will be put into a report that will be available to the public, given to the provincial government and our funder, the Law Foundation of B.C. All information collected will be anonymous, meaning that no one will be able to trace back any comments in the report to individual youth participants. We will also be discussing with youth who attend the group the importance of keeping what goes on in the group confidential among each other. We expect this to address the small risk of breach of privacy if confidential information is disclosed by a member of the group who does not keep it private. However, if a youth gives a response in the focus group that suggests abuse or risk of harm to self or others, we are required to report this information to the appropriate agencies.

A youth worker will be available to refer youth to supports after the focus group and youth will be given a card with contact information for other health and support services. In addition, youth will be provided with bus tickets and a \$20.00 gift card as a thank-you for taking the time to attend the group.

Only research staff at SPARC BC will have access to this anonymous data, and the data collected will not be used for any other research. SPARC BC adheres to data management policies and procedures which guarantee the appropriate retention and destruction of data. The risks of participating could include a loss of privacy if another youth who attends the focus group shares information with others after the focus group is over. We will be asking youth who attend the group to keep information confidential to offset this risk.

A federally registered charity under the
Canada Income Tax Act 12168 3916 RR
0001. A provincially registered non-profit
organization incorporated in 1966 under
the Societies Act of British Columbia,
#7493, A United Way Member Agency.



Informed Consent Form for Youth

INFORMED CONSENT FORM: Youth Consultation and the Family Relations Act (FRA)

Before you decide to be a part of this consultation, you need to understand the risks and benefits. This consent form provides information about the discussion group. If you agree to participate in this discussion group, you will be asked to sign this consent form before taking part. This process is known as Informed Consent.

Project Description

The Ministry of Attorney General is undertaking a review of the FRA. One aspect of the provinces review of the FRA concerns the issue of children's participation in family law disputes. SPARC BC has now been asked to consult with youth about how the FRA can support children and youth's participation in family law disputes in British Columbia.

The benefits to participating

You will learn about the family justice system in BC, about your rights under the UN Convention on the Rights of the Child, and about different options for including the voices of children and youth in family law from other countries. You will be given an opportunity to share your views with the government and the public in an anonymous way. You will also be able to share ideas about youth participation in family law matters with other youth who attend the focus group.

Your risks in participating

There is the risk that other youth who attend the group may talk about what you said in the group with others outside the group. Discussing the issues of children and youth participation in family law matters may trigger some bad memories or experiences.

The confidentiality of your data

The results of this research will be put into a report but no personal information will be attached to anything you say. These signed consent forms will be stored at the SPARC BC offices in a locked cabinet and will only be seen by the legal researcher for the project and the data manager. All information on paper that could be used to identify individuals will be kept for one year and then destroyed.

Withdrawal:

Your participation is voluntary, and you have the right to withdraw at any time for any reason. If you wish to do withdraw, just tell the facilitator at the discussion group.

By signing below, you are agreeing to participate in this study.

Name _____ (please print)

Signature _____ Date _____

Evaluation Form

Evaluate Us!

Do you think this discussion group was a valuable experience?

☐ Yes ☐ No ☐ I don't know

How would you rate the facilitation of the group?

☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor ☐ Very Poor

Did you feel you were able to voice your opinion?

☐ Yes ☐ No ☐ I don't know

What is one thing you would change about the group?

You have the right
to give your
opinion, and
adults to listen
and take it
seriously.

THE YOUTH INCLUDED! PROJECT PROVIDED AN OPPORTUNITY FOR URBAN
YOUTH IN BRITISH COLUMBIA TO GIVE THEIR PERSPECTIVES AND
RECOMMENDATIONS ABOUT CHILDREN AND YOUTH PARTICIPATION IN THE
FAMILY JUSTICE SYSTEM WHEN PARENTS SEPARATE UNDER
THE FAMILY RELATIONS ACT.

