

HEARING THE VOICES OF LAWYERS REPRESENTING CHILDREN IN CHILD CUSTODY AND ACCESS DISPUTES

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CHILD LEGAL REPRESENTATION IN ONTARIO, CANADA

- INDEPENDENT LAW OFFICE IN THE MINISTRY OF ATTORNEY GENERAL, ONTARIO, CANADA
- PERSONAL RIGHTS FORMALIZED IN 1980 (CUSTODY AND ACCESS)
- MADE UP OF IN-HOUSE LAWYERS AND CLINICAL INVESTIGATORS AS WELL AS PANEL MEMBERS (LAWYERS AND CLINICAL AGENTS) ACROSS ONTARIO

CHILD LEGAL REPRESENTATION IN ONTARIO, CANADA

- ROLE OF CHILD'S COUNSEL IS THE LEGAL REPRESENTATIVE FOR THE CHILD
- CHILD'S COUNSEL ADVOCATES ON BEHALF OF THE CHILD CLIENT SO THAT HIS/HER INTERESTS AND WISHES ARE COMMUNICATED TO THE PARTIES AND COURT
- CHILD'S COUNSEL DOES NOT REPRESENT THE CHILD'S BEST INTERESTS

CHILD LEGAL REPRESENTATION IN ONTARIO, CANADA

- CHALLENGE FOR LAWYERS IS HOW TO ADVOCATE FOR CHILDREN, EMPOWER, AND PROVIDE A VOICE THAT DOES NOT COMPROMISE THEM EMOTIONALLY
- ANOTHER CHALLENGE FOR LAWYERS IS THEY NEED MORE THAN JUST LEGAL SKILLS IN AN ARENA THAT CROSSES MENTAL HEALTH AND LAW

CHILD LEGAL REPRESENTATION IN ONTARIO, CANADA

- QUESTIONS NEED TO BE EXPLORED
- WHAT ARE LAWYER'S SAYING ABOUT THEIR EXPERIENCE?
- HOW DO LAWYER'S PERCEIVE THEIR ROLE?
- WHAT CHANGES, IF ANY, OUGHT TO BE MADE IN REPRESENTING CHILDREN?

METHODOLOGY

- Discovery oriented process using the long interview method (McCracken, 1988).
- Purposive sampling strategy (29 lawyers).
- Interviews audio-taped and transcribed verbatim for coding and categorizing of themes.

RESEARCH QUESTIONS: INTERVIEW GUIDE

- What can you tell me about your role in child custody legal representation?
- Did you find that your role was helpful in the process? What are the strengths and limitations of your role? What would you recommend differently in your role?
- If you use clinical assistance, did you find that it was helpful or not?
- Has your your role as an OCL lawyer in private practice changed since your involvement with the OCL?

RESULTS: SAMPLE CHARACTERISTICS OF LAWYERS

- 29 lawyers (18 females and 11 males).
- Ages ranged from 38-61 with a mean age of 49.
- OCL years of experience ranged from 5 to 24 years with a mean of 14 years.
- All doing general law with a focus on family law

EMERGING THEMES: THREADS OF A STORY

ROLE OF THE LAWYER

"the relationship is based on a solicitor-client privilege"

"...I get the sense that I am there for lawyers as to sort of a box they have to check off and it can be frustrating"

EMERGING THEMES: THREADS OF A STORY

ROLE OF THE LAWYER

"the role used to be standing up in court and advocating the child's wishes to now providing the court with the context in which those wishes are expressed"

"I just get the sense that I am there for lawyers as to be sort of a box that they have to check off and it can be frustrating"

"our role with younger children is less crucial"

EMERGING THEMES: THREADS OF A STORY

Strengths and Challenges

"The OCL expects lawyers to do things they are not trained for, they expect us to take complicated social work information, process it, and develop a position.....I would rather act as child's counsel"

"..what business do I have even thinking this and at what point should I just stick to the advocacy role and mind my business"

"I don't think it is a good idea to have lawyers involved in doing social work stuff"

EMERGING THEMES: THREADS OF A STORY

Working With Clinical Assistance

"I find it to be a valuable adjunct to the work I am doing"

"consideration should be given to appointing a social work assist in all cases"

"we [lawyers] do not know anything about children other than personal experiences"




EMERGING THEMES: THREADS OF A STORY

Changes in Practice Since Being an OCL Lawyer

"doing this type of litigation....has in fact mellowed me out, you do not have to litigate everything"

"I have a much better idea about how decisions and the moves those adults take in their cases impacts upon children"

"being a child's counsel and then being a parent really changed the way I practice"



Lessons Learned.....Where Do We Go From Here

- CHILD LEGAL REPRESENTATION REQUIRES THE MOST EXPERIENCED LAWYERS
- WORKING COLLABORATIVELY WITH MENTAL HEALTH PROFESSIONALS GREATLY ASSISTS IN THE ADVOCACY OF CHILDREN
- INTERDISCIPLINARY TRAINING AND EDUCATION IS VITAL