

## Children's and Parents' Views on Talking to Judges in Parenting Disputes in Australia

Patrick Parkinson  
Judy Cashmore  
Judi Single



## Children's direct involvement in family law matters

- ❖ Different perspectives
  - ❖ UK, Australia and Canada
  - ❖ US
  - ❖ Inquisitorial jurisdictions eg Germany etc
  - ❖ New Zealand



## Opposition to judges talking with children

In Britain, Australia and elsewhere:

Judges are not trained in child interviewing skills, generally lack knowledge about developmental differences in cognitive, language and emotional capacities. Thus, it is hard for even the most experienced judge to place children's responses in an appropriate context and evaluate the weight that should be given to their wishes. (Kelly, 2002 p. 154)



## Study: Parents and children

- ❖ 47 children aged 6-18, median age is 12.
- ❖ 32 parents from same 28 families
- ❖ 58 parents whose children were not interviewed
- ❖ Total 90 parents:
  - ❖ 50 resident parents (39 mothers, 11 fathers)
  - ❖ 35 non-resident parents (3 mothers, 31 fathers)
  - ❖ 5 shared parenting (1 mother, 5 fathers)



## What do children say?

- ❖ Diversity of views – range of options
- ❖ Best to talk with parents
  - Most in non-contested cases (n = 12):
- ❖ Best to talk to the judge or 'the court rather than to family, friends, counsellors etc
  - All in contested cases (n = 10)
- ❖ Counsellors (6); Not sure (6); Family friends etc
- ❖ Int 2: Option of Children's Cases Program: 85%



## Children's reasons for wanting to talk to the judge

- In contested matters – and strong views
- **Speaking confidentially** : without parents knowing
  - **Speaking directly** : to the decision-maker and to be sure the message is not misinterpreted
  - **Acknowledgement** – by decision-maker
  - **Making better decisions**



## Speaking confidentially

"Put me on the stand or me to write a letter or something like that to the judge telling him how I felt and then he could read it - that way I wouldn't feel imbaresed [sic] in saying it in front of my parents or he could have taken me to another room and talked". (Helen, 14)

## Speaking directly and lack of faith in the intermediary

I felt that I could have represented myself better than my child representative did because I had a clearer understanding of what I wanted... I knew what I wanted whereas I don't think my representative had a clue. (Rani, 14)

## Children's reasons for not wanting to talk to the judge

Mostly in uncontested matters –

- **Too formal, intimidating**
- **Not necessary** – prefer speaking with someone they know
- **Prefer to keep it within family** - where decision is made

## What did parents say?

- ❖ Parents of children wanting to talk with judge supported their views
- ❖ 47% preferred children to talk with a counsellor or other independent person
  - ❖ Both resident parent and non-resident parents
  - ❖ No differences – whether contested or not
- ❖ Resident parents cf non-resident parents  
57% cf 30% in favour - judge (alone or with counsellor)

## Parents' reasons for supporting judges talking to children

Resident more than non-resident parents

- Child's need and right to be heard -- and to feel heard
  - Acknowledgment and respect
- Getting the 'real picture'
  - "Children are not stupid"
  - Hearing at first-hand
- Efficiency -- saving time and money

## Parents' reasons for opposing judges talking with children

Resident and non-resident parents

- Too intimidating
- Not appropriate person – prefer counsellor, with more time
- Risk of children being manipulated
- Expression of their own frustrations with the system?

- If you said to me 'Look your children have the opportunity to talk to the judge, would that be good?' I'd say 'It won't do me any good 'cause they spend all their time with their mother, so the mother has got them all tuned out that their life security and safety is with her, and if you want you'll have no life and no security with your father'. (**Non-resident father**)

### **Underlying models of children: Child as 'sage'**

- In my opinion, the judge really has to take 95% of what the kids say. The kids aren't stupid. They know who they need to live with. They're not gonna be conned by a parent who'll say, oh yeah, here we'll give you fifty bucks if you say you want to come and live with dad. They're not stupid. They'll pick the right person. They used to think that I was conning the kids and it's just not true. (**Resident father**) cf Neale 2002

### **Child as manipulable**

- ...it all boils down to how much time you've got with the child to convince them that the other person is a nasty person. I mean, children are very easily manoeuvred in to one section when you've got them all the time, and the other person's not in the scene (**Non-resident father**)

### **Child as manipulators ?**

- I believe it should start with the counsellor or a psychologist or doctor or somebody who's qualified to deal with children, and find out, but by all means, don't take what the kids says, because kids lie, you know in a nutshell, kids lie. (**Non-resident father**)
- ..have to be really, really careful, that children who were in that situation where they'll play a parent off against the other -- as long as that horrible situation doesn't arise, then it would be OK (**Resident mother**)

## **Implications**

- **Value in allowing participation**
  - therapeutic, not evidence gathering
- Importance of children feeling heard
  - Esp when children have asked to do so (Hale 2006)
- Explaining decision to children
- Gauging reactions for other options, esp against child's wishes
- **Presumptions about children's views**
  - "Healthy degree of uncertainty"