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• Voice of the Child Reports •

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Debra Rodrigues



Gail Brochu

In this interview, Debra Rodrigues, social worker, mediator, counsellor, trainer and Director of PCCS Mediators & Counsellors,¹ and Gail Brochu, a mediator for the courts and in private practice with 23 years of experience, discuss Voice of the Child Reports (“VCRs”).

One of the key concerns they wish to share with our readership is that, as important as VCRs can be, there is no standardized training associated with the solicitation and creation of such reports.

In response to this void, Ms. Rodrigues has developed a training programme devoted to the task of giving children a meaningful voice when families are involved in dispute resolution. This programme, entitled, “Voice of the Child in Family Dispute Resolution: 12 Step Voice of the Child Reports”, is geared towards experienced professionals who want to learn how to meet and interview children to lend them a voice in decisions being made for them.

We asked Ms Rodrigues (Debra) and Ms Brochu (Gail) to tell us more about VCRs generally and what professionals should expect to learn in this training program.

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Gail: Tell me about your background as a professional.

Debra: I have worked with children, parents, and families for 34 years, in a variety of professional roles, from child protection services to family mediation, child protection mediation, parenting coordination, section 30 assessments, children's views and preferences reports, family group conferencing, court-based mediation, to elder mediation. I am trained as a therapist and provide individual, couple and family therapy. I also teach at York University in the post-graduate certificate Family Mediation Program and I am a frequent speaker at conferences on Voice of the Child Reports and related topics.

I was trained to provide parenting capacity assessments, capacity assessments and arbitration, although I do not offer those services at this time. I served on the Office of the Children's Lawyer's panel for 14 years and have provided expert witness evidence on numerous occasions. I prefer, these days, to work within family dispute resolution ("FDR") rather than on litigation files, though I received accolades from judges, including one who said he wished he could clone me; a compliment I will never forget.

Gail: Please tell us about the VCR course.

Debra: A lot of care and thought went into the Voice of the Child ("VOC") training course. My co-trainers are Dr. Dan Ashbourne, the Executive Director of the London Family Court Clinic and Dr. Kim Harris, the Assistant Executive Director. Dr. Ashbourne and Dr. Harris are both psychologists from the Clinic. We had Caroline Leach, a lawyer formerly with the Office of the Children's Lawyer work with us last year, and now Martha Héder has joined us, a lawyer/manager from the Office of the Children's Lawyer. It is advanced training for those who work within family law, family dispute resolution, and child protection who wish to offer this service in response to the need to lend children a voice, not a choice.

Dr. Ashbourne and Dr. Harris assisted in the development of the course. They bring to the training, a wealth of information about child development, attachment, trauma and a number of other important child related topics. The training course is continually revised and kept fresh through the involvement of experienced guest speakers, including researchers and practitioners. A judge from the Ontario Court of Justice who can reference the court's perspective has joined us. The training includes a substantial practical component. Together we teach this three-day comprehensive training course a few times per year. The next course will be held on April 2-4, 2020.

Gail: Can you tell me a bit about why you developed this training course?

Debra: Sure. A key barrier to the child's voice in family law, family dispute resolution and child protection cases has been the lack of training for professionals on how best to include children and how to obtain their authentic voice. My background includes teaching interview skills to child protection workers, as well as providing VOC reports. This course was a natural extension for me in my professional career and I saw the need. The participants who have attended the training to date have appreciated the training as comprehensive and helpful. Typically, those who attend are experienced social workers, psychologists, family mediators, child protection mediators, parenting coordinators, OCL lawyers and clinicians, family law lawyers with a combined clinical background, or those who have some experience with the OCL or working with children, family professionals who work within collaborative law cases and Children's Protection workers who need to capture the Voice of the Child.

Gail: I guess it is rather obvious, but I suppose you would say that the purpose of this work is to give children a voice when it is reasonable to do so?

Debra: Yes, exactly. The purpose of a VCR is to allow children to have a choice as to whether they would like their voice heard in relation to the parenting plan or plan of care that impacts them directly. VCRs give children a voice in decisions being made about them in any context including child protection cases. A VCR includes the child's views, wishes, preferences and concerns. Professionals working with families must offer children the choice to share their voice in all decision-making processes that impact them. As we read in article 12 of the *Convention on the Rights of the Child*:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.²

In Ontario, this mandate is connected especially with the *Child, Youth and Family Services Act, 2017* ("CYFSA").³ Amendments to the *Child and Family Services Act*⁴ came into effect on January 2, 2017. The CYFSA was proclaimed on April 30, 2018. The new Act consolidated and strengthened key principles including:

- Putting children/youth at the centre of decision-making about their care grounded in rights which include reference to the UN *Convention on the Rights of the Child*.

And, with particular reference to "Katelynn's Principle":⁵

- The Child/Youth must be at the centre, where they are the subject of, or receiving services through the Child/Youth welfare, justice, and education systems.

- A Child/Youth is an individual with rights who must always be seen, whose voice must be heard, and who must be listened to and respected.
- A Child/Youth's cultural heritage must be taken into consideration and respected.
- Actions must be taken to ensure the Child/Youth who is capable of forming their own views is able to express those views freely and safely about matters affecting them.
- A Child/Youth's view must be given due weight in accordance with the age and maturity of the Child/Youth.
- A Child/Youth should be at the forefront of all service-related decision-making.
- According to their age or maturity, each Child/Youth should be given the opportunity to participate directly or through a support person or representative before any decisions affecting them are made.
- According to their age or maturity, each Child/Youth should be engaged through an honest and respectful dialogue about how/why decisions were or will be made.
- Everyone who provides services to Children/Youth or services that affect Children/Youth are advocates. Advocacy may potentially be a Child/Youth's lifeline. It must occur from the point of first contact and on a continual/continuous basis thereafter.
- To be consulted on and participate in decisions about provision of service.
- To raise concerns or recommend changes with respect to the services provided without interference or fear of coercion, discrimination or reprisal and to receive a response to their concerns or recommended changes.

Furthermore, the changes to the *Divorce Act*⁶ with Bill C-78⁷ will affect the making of Orders and Agreements concerning children and parenting. It includes a provision whereby decision-makers should be considering the views and preferences of children.

Gail: Can you highlight some of the benefits of a VCR?

Debra: There are several benefits to completing a VCR. First of all, the voice of the child can help parents settle their conflict with regard to their children and the parenting plan. A VCR can also obviate the need for a section 112 investigation by the Office of the Children's Lawyer⁸ or a section 30 custody and access assessment,⁹ which can take months to complete, and which can be very costly in the case of a section 30 assessment. VCRs can be done within a few weeks for significantly less cost. We know that children have the right to participate and that it is in the children's best interests to have a choice to participate. Having children participate helps parents or a court better understand what the children are experiencing and insulates the children from having to speak to their parents or a court directly when that can be difficult for the child to do. In child protection matters the child's voice needs to be considered in service plans and permanency planning. Therefore, it is helpful for child protection workers to obtain this training. VCRs can be completed independently, during family dispute resolution services or litigation. Referrals come from parents, lawyers and court orders.

In my view, we need to help children move from witnessing and enduring their parents' conflict, or from being left in the dark, to protected participants who may have their voice heard to affect decisions made about them. Children want their parents to attend to their needs and interests in custody and access matters. It is time to consistently include the child's voice in family dispute resolution and it's time to use a method/process

that works for children, not just the professionals, parents or court. The question is how do we enable children to participate in a manner that encourages the parents and/or the court to hear and consider the voice of the child in decision making without adding to the child's stress? I think we have addressed this concern in the training.

Gail: What are the settings in which you think it can be useful to capture the voice of the child?

Debra: In the context of FDR, VCRs are completed within a family dispute resolution process such as family mediation, child protection mediation, parenting coordination, collaborative law cases, or arbitration. For arbitration and collaborative cases, the trainers recommend that a third-party trained VOC practitioner complete the VCR. Of course, a third-party trained VOC practitioner can be used for any FDR process and if the mediator, for example, cannot complete a VCR without concern for bias or neutrality then the VCR can be completed by a third party and the report entered into the mediation process. For all contexts, it is recommended that anyone completing a VCR has attended the training to ensure that VCR practitioners are using the same method based upon the most common practice modality used in Ontario, Ontario-based research, and what is very similar to the VCR from the Office of the Children's Lawyer. What the trainers do not want is for various methods to be used that may cause confusion within family law and the courts. In my opinion, the courts, too, would appreciate it if practitioners employed a coherent and consistent methodology.

Gail: Can you tell me more about the VCR?

Debra: Typically, the VCR practitioner and parents sort out how the child's voice will be heard, the role the voice will play within the process, the weight to give to the child's voice, and how the parents shall respond. There are atypical occasions when older children want to directly participate in a portion of their parents' mediation for

example, but most children seem to prefer their information is shared via the VCR.

A VCR is not an assessment, investigation, interrogation, nor is it invasive or interpretive. It does not provide opinions and recommendations, and if that is needed, then an assessment may be necessary. The VCR in family dispute resolution is completed at the parents' discretion, and always the child's discretion. VCR's only include what the child wants shared in the child's words and may include concrete observations. A VCR can help to insulate children but may also expose them to retribution if not handled skillfully. To help mitigate harm, the VCR is at the child's discretion. In other words, the child has a choice about whether to participate, as well as what is shared with the parents (lawyers, court, *etc.*).

The premise of the training is "do no harm". The training highlights risks and mitigation techniques. Anyone offering this service should obtain adequate training and develop expertise in technique and skill. A practitioner offering this service must stay within the boundaries of the VCR role and not allow their own bias and interpretation to impact the outcome. The manner in which questions are asked, for example, can direct the answers the child provides or shut the child down. The practitioner must remain neutral and know how to go about the process without complicating it through a lack of skill or know-how.

Gail: Are there situations in which a VCR is not appropriate?

Debra: A VCR is not always appropriate, which is something our training course reviews carefully. For example, it is not considered helpful when an alienating parent who successfully influenced a split in the relationship between the child and the other parent wants to use the VCR for court to prove the child does not want to see the parent. However, having said this, how do we know for sure whether the child may express any independent information if never met via the VCR

process? These cases require careful consideration prior to the VCR process. In cases where a parent exhibits alienation behaviour, the other parent may not consent to a VCR if that parent believes that all that will become of it is a parroting of the alienating parent.

The strength of the child's views, consistency and independence of their views is considered by the parents and, if in court, by the judge. While the training includes learning techniques that serve to yield independent information that is rich in detail and reflective of the child's views, it can be difficult to get this or be sure of it in cases of alienation. In cases where alienation exists, a section 112 or section 30 assessment may be the better choice as they include more than the child's voice, such as independent reports from other professionals involved with the child. Assessments also provide recommendations to aid the court.

Another point to consider is the timing of the VCR. In my opinion, it does not make sense to move forward with a VCR when the information has already been sought from the child within the past year, unless something significant has changed to warrant it. And of course, practitioners need to observe concurrent processes that would capture the VOC, cause repetition, or termination of the VCR.

Finally, it is worth noting that not everyone is ready to jump in to providing VCRs. Not everyone is suitable for this kind of work. You must love working with children; you need to have the ability to quickly establish rapport; and, perhaps most importantly, you must not lose sight of what your professional role is when capturing the voice of the child. The work must be genuine with meaningful interaction and not just seen as a means to an end. Some practitioners may need supervision on their first file or two and the trainers offer that as well. Participants can obtain consultation and/or supervision by one of the trainers.

Gail: Children also sometimes say things that do not represent their own views, right?

Debra: Yes, absolutely. Sometimes children will say what they think a parent wants to hear if they are dependent upon that parent, feel they need to protect the parent, or the parent seems needy and the child feels responsible for helping the parent. They may have an ideal story of the parent they have not seen in some time. They may be concerned about the parent's reaction. The child may also be overwhelmed by feelings of guilt, betrayal and disloyalty. Of course, there are many variations of these themes that must be considered carefully. When children say they want a particular outcome they are reminded that the parents have to consider all family members when making decisions. They know up front that they do not make the decisions. Children do not always understand the short or long-term consequences of their preferences. The reasons children provide for their views and preferences helps to understand their insight and capacity to share an independent voice and their own reality. I have to say that in practice, many children seem to be relieved to have an outlet for their own voice through this process.

Children will say all kinds of things. They may focus on transitions, living arrangements or on how the parents communicate in front of them, that they want their parents to be friends, that they want to continue at the same school or attend soccer practice. They may be worried they will be split up from their sibling or dog. They are not asked directly which parent they want to live with or what schedule they want. The interview is driven by their desire to communicate whatever they want to communicate within the context of the VCR and there are techniques used to assist in obtaining their independent voice.

Gail: I guess the practitioner should be prepared to deal with the contingency that a parent may not be happy with what the child says and retaliate in some way?

Debra: One of the parameters we stress in our course is that the practitioner must mitigate the potential of harm to the child. One important component of this is to ensure the parent is prepared to receive the information. In other words, there is some judgment on the service providers' behalf to determine whether the parents are more or less likely to punish the child in some manner for sharing. Of course, we do not always know with certainty whether there will be retribution, and, in some cases, further preparation of the parent can enable the parent to consider the child's voice without risk of retaliation. In family dispute resolution processes, a parent can say no to the child participating. Parents need to provide consent as does the child.

Gail: What about a child's age?

Debra: Age depends on a few factors. First of all, it depends upon the practitioners' skill, expertise and comfort level. For example, if the practitioner is used to working with teenagers, the practitioner may want to provide VCRs with that population. The younger the child, typically the more skill and expertise is needed. Also, the younger the child the less understanding the child has of the context and what is in their best interests or that what they want must be considered within the context of the entire family. It seems that when the VCR is court-ordered, the focus is on children nine years of age and up. When within a family dispute resolution process, the age can be lower. What has to be kept in mind is the maturity and ability of the child to express themselves. Some young children are quite self-aware and able to express themselves while an older child may struggle. So, it really does depend upon the child. Practitioners must adapt to accommodate the child, the child's communication style, the child's ability to be engaged with the process, to the trauma the child has experienced and any disabilities or difficulties the child has in communicating. This includes issues related to domestic violence or abuse. It is sensitive complex work even if the process itself seems straightforward. There are also the issues of cultural competency, a change in

views from one meeting to the next, and sibling influence, just to mention a few. The training covers ethical issues, process issues, and teaches 12 thorough steps for practitioners to follow, including what we think are “best” practices.

Gail: There are, in other words, a lot of different things a practitioner must consider, guard against and be prepared to deal with.

Debra: Yes. This is one of the chief reasons I—and other practitioners—believe that Ontario needs to develop an accreditation process. It really is critical, in my opinion. In the meantime, we have added trained professionals. I and the trainers I work with hope the courts adopt the title “trained VCR practitioner” when writing court orders for a VCR, a term the trainers use to decipher who has gone through the appropriate training. That way the court knows the person completing the work has completed the training, is not complicating it with other unacceptable methods, understands the parameters, and is in line with methods commonly used here in Ontario. The trainers also want to ensure that people providing this work do no harm when working with children.

For this reason, we keep an up-to-date list of trained VCR practitioners on my website.¹⁰

I have received emails from people as far away as New Zealand, who have inquired about the training we run. I hope Ontario can become (and remain) a leader in this field.

Gail: As you know, I participated in this training course in November 2019. Do you have any questions you’d like to ask of me?

Debra: Definitely. Above all, what is your impression of the course? Has it been useful to your own practice?

Gail: I found the training enlightening and innovative. It was detailed, informative, child, youth- and family-focused. At the same time, the training provided a clear understanding of how to make the process safe, non-judgmental and empathic to reach

young people for the outcome of self-expression. In fact, I wish I had taken it a long time ago. I have been working as a mediator and as a counsellor in the mental health sector for 23 years. This training has enhanced my practice immeasurably.

I also think that the VOC process can help families move through litigation and/or the family dispute resolution process with an enhanced focus on the children. As I went through the training, I was reminded of the impact of separation and divorce on children. I believe that the VCR process provides parents with a useful non-biased option to better understand their children when parents need to make decisions in the children’s best interest.

When it is properly done, I think a VCR can provide professionals and parents with a glimpse into the life of the children as the children see it and experience it. That can be extremely valuable to both the parents and, when litigation is involved, the courts.

Overall, the 12-Step VCR training was very comprehensive. I think it includes all the steps and considerations a practitioner needs to follow. It was also helpful that the trainers provided all the forms needed for completion of the process. The guest speakers—the practitioners, researchers, and judges—were very helpful, too. The training covers the entire process of the VCR and the interviewing skills and techniques. All the trainers provided useful examples, tips and guidelines, including videos of how it should be done.

By the end of the training and given my professional background, I felt confident enough to add VCRs to my own repertoire of services.

Debra: What are some of the takeaways from the training in your opinion?

Gail: Well, of course, the VCR process is not, nor should it be, about interrogating the child to determine if the child is telling the truth. The focus is on the child’s experience, thoughts, feelings and perceptions. The role of the VOC inter-

view is to ask open-ended, age-appropriate, non-biased and balanced questions, and to document the child's exact words and not the interviewer's impressions or their perceptions.

The other thing to remember, I think, is that for a child or youth in the middle of a family crisis, this can be a life changing opportunity for them to share what they are thinking, how they perceive the day to day, how they understand their parent's actions, and what they truly desire. The children are given an opportunity to share their thoughts in confidence with a professional who has the ability to relay the message to the "big people". As you told me once, "Imagine giving children a voice and choice to share with their parents their deepest unspoken, feelings, wishes, fears, and concerns". The VOC process is a gift for the child who is otherwise living the family conflict. If it is done properly, it can be incredibly important for the child.

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Gail Brochu is an Accredited Mediator with the Ontario Association of Family Mediators, and a Qualified Mediator with the ADR Institute of Canada and Institute of Ontario. She is also a Voice of the Child Practitioner and trained in Collaborative Practice. While Gail is part of the Peel Family Mediation Services, York Hills Center for Children, Youth and Families and Mediate393 Inc. Mediator and Information Referral Coordinator rosters, she is also an entrepreneur owning and operating "Accord Mediation Group".]

¹ <<https://www.pccs.ca>>.

² Canada has ratified the *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3. For the United Nations' text, see: <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>. However, Canada has not incorporated it into domestic law. However, as noted in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39, [1999] 2 S.C.R. 817, the provisions of the Convention help guide our interpretation of the Charter and the values enshrined therein.

³ S.O. 2017, c. 14, Sch. 1.

⁴ R.S.O. 1990, c. C.11.

⁵ See Bill 57, *An Act to Enshrine Katelynn's Principle as the Guiding Principle for Decisions Regarding Children*, 2nd Sess., 41st Parl., 2016.

⁶ R.S.C. 1985, c. 3 (2nd Supp).

⁷ *An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act*, adopted by the House on February 6, 2019.

⁸ See *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 112.

⁹ See *Children's Law Reform Act*, R.S.O. 1990, c. C.12, s. 30.

¹⁰ See <<https://www.pccs.ca/family-services/voice-of-child-reports/>>.