

# Dismantling the fictions about safety

Mapping the punitive roots of the criminal legal  
and family policing systems



**West Coast LEAF**

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June 2026

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*Dismantling the fictions about safety: Mapping the punitive roots of the criminal legal and family policing systems* was developed on the traditional, unceded homelands of the xʷməθkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and Səlilwətaʔ (TsleilWaututh) Nations.

West Coast LEAF is grateful to the Law Foundation of BC for its funding of this brief.



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# Introduction

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The punitive dimensions of the criminal legal system are self-evident. On the other hand, the punitive dimensions of the family policing system are cloaked under a guise of child protection or welfare. This Brief explores the intertwining punitive roots of the criminal legal and family policing systems by examining four key sites of overlap between the two systems. Surfacing these sites of overlap, as described below, is important to discourage investments that entrench or obscure harmful and discriminatory laws, policies or procedures.

**This Brief aims to inspire advocates and policy makers to dream bigger and tactically prioritize transformative change over tinkering at the margins of the family policing system.**

Brief concludes with a discussion of non-reformist reform and the potential for transformative changes to family policing in BC. While this Brief is focused on the family policing system in BC, it may be useful for understanding and challenging punitive approaches to family policing in other jurisdictions.

It begins by mapping similarities between the two systems in British Columbia (BC). Followed by identifying shortcomings in the rights available to parents in the family policing system despite the system's broad, adverse impact on families, communities, and Nations. This adverse impact includes the undermining of the self-determination rights of Indigenous Peoples.<sup>1</sup> The

# Overlapping systems

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The criminal legal and family policing systems have much in common. Rules of procedure, investigatory practices, and exercises of discretionary and judicial decision-making are embedded in both systems. Both also share punitive origins serving similar purposes. The criminal legal system is a costly tool marked by a “law-and-order” approach focused largely on punishment.<sup>2</sup> The system operates by “upholding existing power structures” whose origins on these lands date back to settler colonialism and the elimination of Indigenous people.<sup>3</sup> The origins of the family policing system are also based on the colonial aim to eliminate Indigenous people.<sup>4</sup>

The *Child Family and Community Service Act* (CFCSA) governs the family policing system in British Columbia.<sup>5</sup> In 1996, the CFCSA came into force following the release of two significant reports: *Liberating our Children* and the report on the Gove Inquiry.<sup>6</sup> The *Liberating our Children* report specifically called for transformative change of the family policing system.<sup>7</sup> Judge Gove, on the other hand, recommended a pathway underscoring, “that the protection of the child is paramount (i.e., best interest of the child), and should not be overshadowed by a desire to help parents improve their lives and abilities.”<sup>8</sup> This approach, however, constructs the well-being of children and families as necessarily oppositional. The guiding principle of the CFCSA

reflects Justice Gove’s approach.<sup>9</sup>

In the sections below, this Brief explores four key sites of overlap between the family policing and criminal legal systems, explaining the relevant aspects of legislation and legal processes. First, both systems engage investigatory processes (i.e., police officers and their role in law enforcement, and employees of the Ministry of Children and Family Development (MCFD) respectively).<sup>10</sup> Second, both systems involve lawyers acting for the state as prosecutors or in a prosecution-type role. Third, courts hold key decision-making power in both systems, in gate-keeping evidence, managing process and making ultimate findings and judgments. Fourth, people involved in each systems face serious jeopardy, such as the loss of liberty or the removal of a child from their care. In exploring these overlaps across the criminal legal and the family policing systems, the analysis aims to shift a narrative frequently advanced by system actors that the family policing system in BC is a collaborative system.

## INVESTIGATORS

The family policing and criminal legal systems function by building a body of evidence to carry out their stated objectives: protecting the public.<sup>11</sup> The state intends the criminal legal system to protect the general public, and the family policing system is more narrowly intended to protect children. In both systems, one of the

parties – and importantly the party with power – is the state: the state acts against families or individuals.<sup>12</sup> In the criminal legal system, police are empowered by the state to investigate and address crimes or perceived crimes. Similarly, section 13 of the *CFCSA* requires the Director and their delegates (i.e., MCFD employees) to respond to “protection” concerns<sup>13</sup> which includes assessing risk of future harm along with investigating reports of past or ongoing harm.<sup>14</sup> The authority to investigate child “protection” concerns is delegated (i.e., assigned) to MCFD staff by the relevant minister.<sup>15</sup>

Section 13 of the *CFCSA* provides a non-exhaustive list of harms to children that warrant a response by MCFD staff. The list is varied, and includes allegations of physical harm, emotional harm, sexual abuse, and neglect.<sup>16</sup> Once MCFD receives a report about a child protection concern, the Director must investigate or assess whether the child needs protection.<sup>17</sup>

## **The breadth of investigatory scope in the family policing system is staggering as it is not only the Director who surveils families to gather information.**

Section 14 of the *CFCSA*, the duty to report provision, turns everyone into amateur

investigators, acting as the family policing systems’ “deputies.”<sup>18</sup> Section 14 requires “a person who has reason to believe that a child ... needs protection ... must promptly” report their belief to the Ministry.<sup>19</sup> The duty relates not only to past or present perceptions of harm but also includes circumstances where there is a “perceived” future risk of harm.<sup>20</sup> Further, the provision sets out penalties if someone does not comply with their duty to report. This is despite the lack of any evidence that mandatory reporting regimes serve to prevent harm to children.<sup>21</sup> Instead, this strategy leads to overreporting.<sup>22</sup> Overreporting in the family policing system has the potential to make children and families less safe and less likely to access community support.

While surveillance is a known tool of law enforcement used to gather evidence in the criminal legal system, the use of surveillance in the family policing system is far less understood or discussed.<sup>23</sup> MCFD data from 2023/2024, shows that slightly over half of calls reporting protection concerns were further assessed for safety concerns.<sup>24</sup> This illustrates the presence of overreporting in BC’s family policing system. Furthermore, most reports – at 32% – were made by police, but schools came in second at 14.5%.<sup>25</sup> As such, along with MCFD’s exercise of surveillance masquerading as “protection,”<sup>26</sup> other spaces of support and community also become policing agencies (e.g., shelters or anti-violence workers).<sup>27</sup> Surveillance is coded as “protection” and the safety of community undermined because people avoid asking for help due to fear.<sup>28</sup>

## PROSECUTORS

Both the criminal legal system and the family policing system employ lawyers in key decision-making roles. The Crown's role in a criminal proceeding is not to obtain a conviction, but rather to carry out a public duty to present evidence before a judge and/or jury and meet the burden of proof beyond a reasonable doubt.<sup>29</sup>

There is a greater degree of separation between system actors who investigate and those who prosecute or litigate in the criminal legal system. In BC's family policing system, however, the Director's counsel represents the Director in court proceedings under the *CFCSA* and obtains instructions from the Director. This is unlike Crown counsel who do not represent the police in criminal proceedings.<sup>30</sup> While Director's counsel are not referred to as prosecutors, their roles are similar. They are supposed to show that the parent(s) or caregivers MCFD has targeted have caused or will cause harm to their child. Much like the Crown presenting the case against an accused person in criminal proceedings, Director's counsel presents the Director's case for temporary or permanent apprehension of a child from their caregivers.

## COURTS

Courts play an important role in both the family policing and criminal legal systems. The *CFCSA* allows for court hearings at different stages of the protection process,<sup>31</sup> and to obtain various orders, including access to children once they have been taken into government custody.<sup>32</sup>

It is self-evident that criminal proceedings are adversarial in nature, whereas family policing proceedings have been categorized by the courts as "difficult" to classify but possibly less adversarial.<sup>33</sup> However, this distinction is unconvincing considering the sites of overlap identified in this Brief and the nature of Canada's legal system.

Canada's common law system is adversarial.<sup>34</sup> An adversarial system "relies on the parties—who are entitled to disclosure of the case to meet, and to full participation in open proceedings—to produce the relevant evidence."<sup>35</sup> The minimization of the adversarial nature of our legal system in the context of the family policing system can have serious, adverse impacts on child and family well-being, including parents' and caregiver's rights.<sup>36</sup>

Courts not only provide oversight but also legitimize the family policing system. Where the rationale for the apprehension of a child is characterized as "neglect", families are being held responsible for issues that are structural because neglect is typically used to identify harms caused by poverty.<sup>37</sup> For example, the disproportionate rate of apprehension of Indigenous children is due to government policies that have led to poverty (e.g., residential schools) and a classification of symptoms of poverty as neglect.<sup>38</sup> Therefore, courts can be a double-edged sword: providing some oversight on one hand, while serving a role legitimizing the individualization of systemic problems on the other hand.

## JEOPARDY FACED

Both systems come with very high consequences.<sup>39</sup> Individuals caught up in the criminal legal system can end up with a criminal record and lose their liberty (i.e, prison or parole).<sup>40</sup>

Parents caught up in the family policing system can lose custody of their child(ren) temporarily or permanently or have the time they spend with their children supervised and controlled by the state.<sup>41</sup> The impacts of these consequences are grave and the Supreme Court of Canada has recognized that “few state actions can have a more profound effect on the lives of both parent and child.”<sup>42</sup> Periods of separation from family members can create lifelong impacts on both children and their parents because “the longer the separation of parent from child, the less likely it is the parent will ever regain custody.”<sup>43</sup>

The family policing system does not only have long lasting impacts, but like the criminal legal system, it is more likely to target members of society that are least advantaged.<sup>44</sup> For example, private bodies (such as private clinics) that serve wealthier clients are less likely to report child protection concerns to the Ministry, in comparison to public bodies.<sup>45</sup>

MCFD punishes parents for their mental health issues,<sup>46</sup> and for claiming or advocating that MCFD involvement in their lives is wrong and/or unwarranted.<sup>47</sup> Furthermore, parents, usually

mothers, are held to an impossible standard of “good motherhood” and punished when they do not meet this standard.<sup>48</sup> Ostensibly, the *CFCSA* must be “interpreted and administered so that the safety and well-being of children are the paramount considerations.”<sup>49</sup> The result of prevailing (and avowedly “neutral”) approaches to child safety and well-being has led to increasingly greater numbers of Indigenous families being caught up in the family policing system. This is seen in how, as noted above, concepts like “neglect” may be deployed to hold individual families responsible for failures in government policy.<sup>50</sup>

Furthermore, the harmful consequences of both systems overlap and span generations.<sup>51</sup> Children who are in government custody and separated from their families and communities are more likely to be involved with the criminal legal system, and to experience homelessness and other struggles with their well-being.<sup>52</sup> Similarly, parents with a history of criminal legal system involvement have a higher likelihood of engagement with the family policing system.<sup>53</sup> There is also the foster-care-to-prison pipeline, where police are called on youth in government custody who ‘act out.’<sup>54</sup> These systems create cycles of harm that need to be interrupted.

The similarities of the two systems counter the story that the family policing system is protective and not punitive—a story often assumed to be true by legal system actors and the public.



# Legal rights for families

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Notwithstanding the similarities noted above, there are significant differences in the procedural and substantive legal protections provided by the criminal legal and family policing systems. Despite overlapping elements and similar roots and purposes, the legal protections in the family policing system are far more limited than those available to an accused in criminal proceedings. This part of the Brief will review some shortcomings in legal rights of parents in the family policing system in relation to disclosure, privacy, and standard of proof.<sup>55</sup>

## DISCLOSURE

In an adversarial system, parties must have access to the information upon which their rights, responsibilities and circumstances are to be determined. There are different rules and procedures for how information is shared (i.e., disclosure) during the legal proceedings in both systems. Access to information (which may go on to become evidence in a court proceeding) is asymmetrical. Differences in power between parties, particularly when one side is the state, should lead to more onerous obligations on the powerful party. Disclosure of documents was not originally a feature of the adversarial common law process in criminal and civil proceedings.<sup>56</sup> The standardization of disclosure practices and access to a remedy for breaches of these standards are more robust and comprehensive in the criminal

legal context in comparison to family policing.<sup>57</sup>

In criminal law proceedings, the Crown must provide the accused with Stinchcombe disclosure. Stinchcombe set a constitutional standard for what information must be shared with the accused's counsel despite the observance of cooperative practices in place prior to the case.<sup>58</sup> A similar type of obligation is not placed on defence counsel.<sup>59</sup> Criminal legal process recognizes that materials gathered through the investigative process "are not the property of the Crown for use in securing a conviction but the property of the public to ensure that justice is done."<sup>60</sup> When there is a breach, courts have taken the step of staying or stopping criminal proceedings due to inadequate disclosure or abuse of the rules.<sup>61</sup>

Section 64 of the *CFCSA* governs disclosure in BC's family policing system, setting out the disclosure requirements for all parties in family policing proceedings. Unlike in Stinchcombe, there is no requirement on Director's counsel to provide disclosure. It is only "if requested" that a party (including the Director) has an obligation to provide disclosure.<sup>62</sup> In practice, it appears that the Director has broad discretion about what information to disclose, in contrast to the criminal legal context where the Crown is obligated to hand over all documents gathered

in the investigation. If disclosure is not provided in accordance with s. 64, the remedy is the exclusion of evidence.<sup>63</sup> However, in the absence of constitutional guardrails in the family policing system and the risk-averse and “protective” nature of the system, the exclusion of evidence is not, in practice, a real remedy.<sup>64</sup> The remedy in family policing is “hollow” because exclusion of evidence is unlikely.<sup>65</sup>

## PRIVACY

One way the privacy rights of parents are threatened by the family policing system is through section 96 of the *CFCSA*. Section 96 allows the Director access to any information in the “custody and control of a public body” that is “necessary” for the Director to exercise its powers (e.g., health care records).<sup>66</sup>

This power was recently subjected to a constitutional challenge in TL, with the plaintiff (T.L.) arguing that section 96 violated her constitutionally-protected right to be secure from unreasonable search and seizure.<sup>67</sup> In its response to the challenge, the Attorney General of BC argued, among other things, that criminal legal system standards should not be embraced in the administrative realm (i.e., family policing).<sup>68</sup> The court relied on Supreme Court of Canada decisions to distinguish family policing proceedings from criminal proceedings.<sup>69</sup> The court accepted that the purpose of state intervention in this context is protective<sup>70</sup> and that, consequently, a caregiver’s privacy interest does not rise to the level of protection engaged

in the criminal context.<sup>71</sup> Despite this, the court in TL placed only limited restrictions on the state’s far-reaching power to demand private and sensitive information under the *CFCSA*.<sup>72</sup> However, families navigating the family policing system face similarly serious jeopardy to those navigating the criminal legal system and can experience punitive/harmful consequences, even if the state’s purpose is “protective.”<sup>73</sup>

Additionally, the court’s analysis of privacy interests engaged by the family policing system does not take due regard of the nature of information likely to be in the hands of public bodies, or the disproportionate impact that s. 96 has on marginalized families and parents. For instance, s. 96 empowers the state to access information in the hands of a public body, this is likely to include a family or caregiver’s history of access to a wide range of public services and benefits – leaving behind a potentially vast data trail.<sup>74</sup> For families who have no choice but to access government benefits and services, there is more likely to be data in the “custody and control of a public body” that the Director may use against them in family policing proceedings. This stands in contrast with families who have the means to access similar types of services from the private sector, thereby reducing the amount of publicly accessible data available for capture under s. 96.<sup>75</sup>

While acknowledging the sweeping powers granted to the Director under s. 96 of the *CFCSA*, the court’s analysis falls far short of recognizing

the asymmetrical nature of the family policing system, the significance of the privacy interests engaged by the family policing system at large, and by s. 96 specifically, or the seriousness of the stakes for parents navigating the system. In assessing the unreasonableness of the power granted to the Director under s. 96<sup>76</sup>, the court did not go far enough in providing families with some measure of procedural safeguards, such as notice to a parent before seeking access to their personal health information.

## STANDARD OF PROOF

In criminal proceedings, the prosecution must prove all elements of an offence beyond a reasonable doubt. This high standard of proof reflects the jeopardy faced by an accused person who is at risk of losing their liberty. Outside the criminal law context, standards of proof are less stringent. However, a less stringent standard does not make sense in the family policing context because of the similar policing character and jeopardy faced by families targeted by the system.

The *CFCSA* has different evidentiary requirements based on the stage of proceeding. There are three main stages after child has been removed: presentation hearing,<sup>77</sup> protection hearing,<sup>78</sup> and permanency hearing.<sup>79</sup> The presentation hearing is a summary hearing<sup>80</sup> and a screening process, with the purpose being to decide if “the Director should retain custody of the child until the protection hearing or return the child to the

parents, with or without supervision.”<sup>81</sup> At this stage, any conflict on the facts is resolved in the Director’s favour “unless the facts are manifestly wrong or untrue or unlikely to have occurred.”<sup>82</sup>

At a protection hearing, the court determines whether a child needed protection when they were removed.<sup>83</sup> Findings of credibility are made at this stage.<sup>84</sup> The protection hearing must start within 45 days of the end of a presentation hearing, however this is usually a nominal date,<sup>85</sup> and the substantive hearing often takes place many months or years later.<sup>86</sup> At the protection hearing, if the court finds that the child was not in need of protection when they were taken, then they are to be returned to their family.<sup>87</sup> However, if the court finds that the child was in need of protection, the court can decide that the child be returned to their parents with supervision, that the child be placed in the custody of a non-parent with the Director’s supervision, that the child be put in the Director’s custody (i.e., temporarily), or that the child be placed under a Continuing Custody order (CCO).<sup>88</sup> The CCO (permanency hearing)<sup>89</sup> is a decision that permanently severs the child’s relationship with their family, also known as the death penalty of the family policing system.<sup>90</sup>

Considering the jeopardy faced by parents (e.g., permanent loss of custody) and the outcomes for children captured by the family policing system, the standard for family policing proceedings should match that of criminal proceedings. However, at each of the three stages of *CFCSA*

proceedings, the standard of proof is below the criminal standard of beyond a reasonable doubt.

Strengthening the rights of parents in the family policing system (e.g., addressing the informational asymmetries, providing stronger procedural rights protections, holding the Director accountable to meeting disclosure standards, reducing delays, raising the standard of proof, etc.) is only one approach to changing the family policing system. However, as observed many decades ago in the *Liberating Our Children* report, we need more than just marginal tinkering at the edges of the system. We need transformative change that fundamentally shifts the current system of policing families.

# Making a change: Small steps and big leaps

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The current family policing system in BC reflects policy choices made by government – choices that apply a risk and surveillance approach to families and communities in need. This has meant that often parents are punished for the impact that complex societal challenges have on their own and their children’s wellbeing, instead of being supported to thrive. This is despite communities and Nations asking for a different system. For example, as far back as 1992, Indigenous people advocated for transformative changes and told the BC government that reforms to family policing legislation were interim measures, and the goal is self-determination.<sup>91</sup>

The *CFCSA* is intended to “protect” children and “support” families.<sup>92</sup> However, punishment and support do not go together because the threat of punishment pushes people away from seeking help.<sup>93</sup> The family policing system in BC is itself causing harm. It is clear that change to the system is necessary, but it cannot be solely or primarily top-down or incremental because such type of reforms legitimize or rationalize the institutions subject to change.<sup>94</sup> This is in part because incremental change can be touted as an example of the system’s willingness and ability to change.<sup>95</sup>

To rely solely on incremental reform is to acquiesce to the narratives of the status quo and

concede the task of consciousness raising. Reducing the role of incremental change or reformist reform is not to reject all types of reform. Doing so would be unwise because abolition of the family policing system requires creating the social conditions that allow for the creation of a family well-being system. There is no one magic wand solution.

One framework for creating transformative change is to adopt non-reformist reform strategies. The term “non-reformist reform” was coined by André Gorz.<sup>96</sup> Non-reformist reforms are a means to an end: these reforms challenge the system, and each reform is designed to create a transformative or global change to that system.<sup>97</sup> Some examples of non-reformist reform in family policing include ending mandatory reporting<sup>98</sup>, de-linking support and policing<sup>99</sup>, and reducing the list of reasons for intervention by the system. These reforms reduce the power of the family policing system by limiting its reach or raising the bar for engagement. And in doing so, they restrict or unravel the state’s web of social control. Other efforts, such as reforms seeking to improve the Ministry’s disclosure practices are reformist in nature but may serve as a form of harm reduction for those currently engaged by the system.

In the long term, implementation of non-reformist reforms to the family policing system will result in irreconcilable tensions that threaten the existence of the system, whereas reformist reforms ultimately uphold the system being targeted.<sup>100</sup> However, it is difficult to reject harm reduction or immediate measures altogether<sup>101</sup> knowing that the timeline for transformative change might be long. While interim measure (e.g., standardizing disclosure) might seem unpalatable, approaching these reformist reforms as harm reduction measures, might be a way to accept them.

The harm reduction measures are just a way to mitigate the current harm based on an understanding that MCFD cannot be completely dismantled tomorrow. This is because some parents and caregivers are not able to keep their children safe and something must be done.<sup>102</sup> However, it is important to foreground non-reformist reforms for two reasons. First, without a focus on non-reformist reforms we will inadvertently acquiesce to the idea that one can reform the family policing system. Second, without a conscious commitment to non-reformist reforms we surrender our imagination and limit our visions to “what we are told is possible.”<sup>103</sup>

# Conclusion

Drawing out the similarities between the criminal legal and family policing systems can lead to advocating for stronger rights for parents in the family policing system (e.g., higher standard of proof) while rejecting the narrative that the family policing system is collaborative. These similarities also highlight that calls to divest from policing need to include calls to divest from systems that carry out the function of policing, even if they are not conventionally labelled as “police”. Mapping the overlap between the two systems is important to ensure that any increased investment into the family policing system is not made without addressing the punitive features underpinning it.

**Parents, families and Nations deserve support instead of surveillance, self-determination instead of paternalism and robust due process mechanisms to ensure their rights are protected.**

Together, here in BC, we can work to create a family well-being system, learning from the work of prison abolitionists and advocates to co-create a world where families and children are thriving.

- 1 West Coast LEAF, “Pathways in a Forest: Indigenous guidance on prevention-based child welfare” (2019) at 81-82, online: <West-Coast-LEAF-Pathways-in-a-Forest-web-Sept-17-2019-002-Online-Version-2021-compressed4.pdf> [Pathways].
- 2 Don Stuart, *Canadian Criminal Law: A Treatise*, 8th ed (Toronto: Carswell, 2020) at 53, 71 [Stuart]; While punishment is a big aspect of the criminal legal system, the sentencing principles in s. 718 of the Criminal Code include denunciation, deterrence and rehabilitation.
- 3 Lisa Monchalin, *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada*, (Toronto: University of Toronto Press, 2016) at 144.
- 4 Law Commission of Canada. (2000). *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*. Ottawa, Canada at 53-54; Our Children Our Way Society, “The History of Indigenous Child Welfare in BC,” online: The history of Indigenous child welfare in BC - Indigenous Child & Family Services Directors Our Children Our Way Society [Our Children Our Way]; Thomas J. Gove, *Report of the Gove Inquiry into Child Protection in British Columbia* (November 1995), volume 2, at 12-13 [Gove Report].
- 5 RSBC 1996, c 46 s 2 [CFCSA].
- 6 Community Panel, *Child Protection Legislation Review in British Columbia & Aboriginal Committee, Liberating Our Children – Liberating Our Nations*, (Victoria, BC: The Committee, 1992) [Liberating our Children]; Our Children Our Way supra note 4; Gove Report supra note 4.
- 7 Our Children Our Way supra note 4.
- 8 Gove Report supra note 4 at 93.
- 9 CFCSA supra note 5 at s 2.
- 10 Police Act, RSBC 1996 c 367 s 15; British Columbia, “The Structure of Police Services in B.C.” (23 June 2025), online: <gov.bc.ca/gov/content/justice/criminal-justice/policing-in-bc/the-structure-of-police-services-in-bc>; CFCSA supra note 5 s 16.
- 11 R v Friesen, 2020 SCC 9 at para 65; British Columbia, “B.C.’s Criminal Justice System” (3 April 2024), online: <gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system>.
- 12 Winnipeg Child and Family Services v K.L.W., 2000 SCC 48 at para 46; Stuart supra note 2 at 35; Kate Kehoe & David Wiseman, “Reclaiming a Contextualized Approach to the Right to State-Funded Counsel in Child Protection Cases” (2012) 63 UNBLJ 163 at 201.
- 13 CFCSA supra note 5 at s. 13.
- 14 British Columbia, Ministry of Children and Family Development, “Child Protection Response Policies – Chapter 3” (last revised February 2025) at 43 online: <gov.bc.ca/assets/gov/family-and-social-supports/policies/cf\_3\_child\_protection\_reponse.pdf> [MCFD Policy].
- 15 CFCSA supra note 5 section 92.
- 16 Ibid., s. 13.
- 17 Ibid, s. 16.
- 18 Stephanie K. Glaberson, “The Epistemic Injustice of Algorithmic Family Policing” (2024) 14:2 UC Irvine L Rev 404, at 436.
- 19 There does not appear to be any restrictions on who is required to report as “a person” is not a defined term in the legislation.
- 20 MCFD Policy supra note 14 at 43.
- 21 Miriam Itzkowitz & Katie Olsen, “Closing the Front Door of Child Protection: Rethinking Mandated Reporting” (2022) 100:2 Child Welfare at 78 [Itzkowitz & Olsen].
- 22 Ibid at 84.
- 23 Linda Mussell, “Decolonizing Research on the Carceral in Canadian political Science” (2023) 56: Canadian Journal of Political Science at 572, 578.
- 24 British Columbia, Ministry of Children and Family Development, “Child Protection Reports: Case Data and Trends” online: <mcfcd.gov.bc.ca/reporting/services/child-protection/protection-calls/case-data-and-trends>
- 25 Ibid.
- 26 Judith Mosoff et al, “Intersecting Challenges: Mothers and Child Protection Law in BC” (2017) 50:2 UBC L Rev 435, at 11 [Mosoff et al].
- 27 See s. 14 of CFCSA for how everyone including support workers can be made policing agencies.
- 28 Laura Track, *Able Mothers: The intersection of parenting, disability and the law* (Vancouver, British Columbia: West Coast LEAF, 2014) at 34.
- 29 Boucher v The Queen, [1955] SCR 16 at 23-24.
- 30 BC Prosecution Service, *Crown Policy Manual*, (2021) at 2-3 <Charge Assessment Guidelines (CHA 1)>.
- 31 B.B. v British Columbia (Director of Child, Family and Community Services), 2005 BCCA 46 at para 12 (BB).
- 32 CFCSA supra note 5 ss 56.
- 33 New Brunswick (Minister of Health and Community Services) v G. (J.), [1999] 3 SCR 46 [GJ] at 79; L.J. v Dir. of Child, Family and Community Services, 2000 BCCA 446 at para 28.



- 34** Stuart supra note 2 at 45.
- 35** Charkaoui v Canada (Citizenship and Immigration), 2007 SCC 9 at para 50; R. v Swain, [1991] 1 SCR 933 at 971-972.
- 36** T.L. v British Columbia (Attorney General), 2023 BCCA 167 (TL) at para 259.
- 37** Pathways supra note 1 at 18, 21, 23; Itzkowitz & Olsen supra note 22 at 83.
- 38** Romi Laskin, Expanding the Reach of Gladue: Exploring the Use of Gladue Reports in Child Protection, 2021 26 Appeal: Review of Current Law and Law Reform 25, 2021 at 30 [Laskin].
- 39** The consequences noted here are not an exhaustive list of the ramifications of engagement with these systems.
- 40** Stuart supra note 2 pgs. 52-53; Criminal Code, RSC 1985, c C-46 s 718.3.
- 41** CFCSA supra note 5 ss 40; 49-54; 54.01-54.2.
- 42** GJ supra note 32 at 76.
- 43** GJ supra note 32 at para 77.
- 44** GJ supra note 32 at paras 89, 113-114; R v Le, 2019 SCC 34 at para 90; R v Morris, 2021 ONCA 680 at para 1; R v Gladue, [1999] 1 SCR 688 at paras 47-48, 50.
- 45** Dorothy Roberts, Torn Apart: How the Child Welfare System Destroys Black Families and How Abolition Can Build a Safer World, (New York: Basic Books, 2022) at 166.
- 46** TL supra note 35.
- 47** Director v K.C. and R.D., 2016 BCPC 284 at para 57.
- 48** Mosoff et al supra note 26 at 4.
- 49** CFCSA supra note 5 at s 2.
- 50** Laskin, supra note 39 at 28, 30.
- 51** Grand Chief Ed John, "Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions: A report on Indigenous child welfare in British Columbia" (2016) at 32, 34-35, 93.
- 52** Pathways supra note 1 at 28.
- 53** Pathways ibid.
- 54** Lisa Kelly, "Abolition or Reform: Confronting the Symbiotic Relationship between 'Child Welfare' and the Carceral State" (2021) 17:2 Stan J CR & CL 255 at 280.
- 55** While legal protections are more robust in the criminal context, this section should not be taken to suggest that criminal proceedings are a panacea or a model to emulate, nor should it be regarded as advocating for less robust procedural rights in the criminal law context.
- 56** R v Stinchcombe, [1991] 3 SCR 326, at 332.
- 57** Kent Roach, Criminal Law, 8th ed. (Toronto: Irwin Law, 2022) at 53-54.
- 58** Stinchcombe supra note 57 at 332.
- 59** Ibid.
- 60** Stinchcombe supra note 57 at pg. 333.
- 61** Roach supra note 58 at 54; R v Carosella, [1997] 1 SCR 80 paras 56-57.
- 62** CFCSA supra note 5 s. 64(1).
- 63** CFCSA supra note 5 s. 64(3)
- 64** British Columbia (Director of Family and Child Services) v T.L.K., [1996] B.C.J. No. 2554 [TLK].
- 65** TLK ibid at para 10; Meghan Howlett et al, (2012) University of New Brunswick LJ 63 pgs. 188-189.
- 66** CFCSA supra note 5 at s 96.
- 67** TL supra note 35 para 7. The Director sought TL's private health information asking for "all medical history/reports" without giving TL any notice or asking for her consent.
- 68** Ibid at para 238.
- 69** Ibid at paras 152-154.
- 70** Ibid.
- 71** Ibid.
- 72** TL supra note 35 para 270.
- 73** Roberts supra note 44 at 162, 165.
- 74** Glaberson supra note 19 at 438.
- 75** Ibid.
- 76** TL supra note 35.
- 77** CFCSA supra note 5 s. 33.1.
- 78** CFCSA supra note 5 s. 40.
- 79** CFCSA ibid s. 49.
- 80** CFCSA supra note 5 s 33.3.
- 81** B.C. (Child, Family and Community Service) v S.B. and D.M.B, 2022 BCPC 140 at paras 161-162.
- 82** BB supra note 31 at para 14.
- 83** CFCSA supra note 5 s. 40; BB ibid at para 16.
- 84** Quinn v British Columbia, 2018 BCCA 320 at para 36.
- 85** CFCSA supra note 5 s 37.
- 86** BB supra note 31 at para 15.
- 87** CFCSA supra note 5 s. 40.
- 88** CFCSA supra note 5 s. 41.
- 89** CFCSA supra note 5 ss. 49-54.
- 90** Ndjuoh MehChu, "Neither Cops nor Caseworkers: Transforming Family Policing through Participatory Budgeting." (2024) 104:1 BU L Rev 73 at 2; Ashley Albert et al, "Ending the Family Death Penalty and Building a World We Deserve" (2021) 11 COLUM J. Race & L, 867.
- 91** Liberating our Children, supra note 6 at 28, 89.

**92** CFCSA supra note 5 s. 2.

**93** Dorothy E. Roberts, "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy " (1991) 104:7 Harv L Rev 1419 at 1422.

**94** Andre Gorz, "Reform and Revolution" (1968) 5: The Socialist Register, at 111 [Gorz].

**95** Ibid.

**96** Amna A. Akbar, "Non-reformist reforms and struggles over life, death and democracy" (2023) 132 Yale LJ at 2528.

**97** Gorz supra note 95 at 118-119, 124.

**98** Shriver Center on Poverty law, "Alternatives to Calling DCFS: A guide and resource list developed by graduate students at the UIC Jane Addams College of Social Work" online <Before-you-call-DCFS\_FINAL-2.pdf>.

**99** UpEnd Movement, "How We endUP: A future without family policing" (2021) at 18 online <How-We-endUP-6.18.21.pdf>.

**100** Gorz supra note 95 at 118-119; Akbar supra note 97 at 2519.

**101** Emma Peyton Williams, "Dreaming of Abolitionist Futures, Reconceptualizing Child Welfare: Keeping Kids Safe in the Age of Abolition" (2020). Honors Papers. 712 pg. 73-80 [Williams].

**102** Williams supra note 102 pg. 69.

**103** Williams supra note 102 pg. 70.





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