West Coast LEAF

A Guide for Lawyers and Advocates on the Rights of Parents During Child and Family Services (CFS) Investigations

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A Guide for Lawyers and Advocates on the Rights of Parents During Child and Family Services (CFS) Investigations was developed on the traditional, unceded homelands of the xʷməθkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səl̓ílwətaʔ (Tsleil-Waututh) Nations.

Writer
Kate Feeney

Contributors
Alana Prochuk, Humera Jabir, Idaresit Thompson, Iman Baobeid, Sharnelle Jenkins-Thompson, and Kala Bryson

Project Advisors
Linoy Alkalay, Andrea Bryson, Angela Clancy, Lori Damon, Patricia Dawn, Nina Taghaddosi, and the Federation of BC Youth in Care Networks

Legal reviewers
Danielle VanderEnde, Meena Dhillon, and Sarah Runyon

Design
Anita Sekharan

This Guide is for the purposes of education and discussion only, and it is aimed at a lawyer and legal advocate audience. It is not intended to provide legal advice. Lawyers and legal advocates should exercise professional judgment about the correctness and applicability of the Guide's information and references. For readers who are directly involved in CFS investigations, we encourage you to get help from a lawyer or legal advocate as soon as possible. Both Legal Aid BC and the Indigenous Justice Centres provide lawyers to eligible parents from the start of the investigation process.

THE LAW FOUNDATION OF BRITISH COLUMBIA

This Guide has been funded through the Law Foundation of BC.

The goal of this Guide is not to tell parents what to do or assume what is best for them. Rather, the goal is to help parents make informed decisions while accessing legal and advocacy support as soon as possible.

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CHAPTER ONE

Overview

A. ABOUT THIS GUIDE

A Guide for Lawyers and Advocates on the Rights of Parents During Child and Family Services (CFS) Investigations was developed as a project of the Family Well-Being Coalition (FWBC). Hosted by West Coast LEAF, the FWBC is a group of over 40 organizations and individuals who share the goals of advancing systemic advocacy and transforming British Columbia's CFS system. In 2025, FWBC members identified the need for a series of resources on the rights of parents during investigations by the Ministry of Children and Family Development (MCFD) or a delegated Indigenous Child and Family Services Agency (ICFSA).

The Guide is written for lawyers and legal advocates, though it may be helpful to others involved in the CFS system. It aims to create a knowledge base so that lawyers and legal advocates can advocate for fairer investigation processes and support their clients to make informed decisions. It also serves as a foundation for the FWBC's plain language resources aimed at parents and their support people.

A comprehensive discussion of the rights of children during CFS investigations is outside the scope of this Guide. However, the Guide addresses a child's right to be heard and to have their views considered in decisions that affect them.

The Guide was created for education and discussion, and is not intended to provide legal advice. Readers must use their professional judgment in assessing the correctness and applicability of the Guide's information and references. The Guide may not be updated regularly to reflect legal and policy developments.

Our choice of terms

Child and family services (CFS)
We use the term "child and family services" (CFS) in place of terms such as "child welfare" or "child protection." The term "child and family services" is used in *An Act respecting First Nations, Inuit and Métis children, youth and families*, as well as in the Continuing Legal Education Society of BC's *Child and Family Services Law and Practice Manual*.[1]

Parent
We use the term "parent" to describe parents, legal guardians, stepparents, and caregivers standing in the place of a parent.

Director
We use the term "Director" to refer to directors under the *CFCSA* and their delegates. Directors are the individuals with the statutory authority to administer the *CFCSA*. In practical terms, they are high-level managers in the CFS system. Directors delegate their statutory powers—including the power to assess and investigate child safety concerns—to CFS agencies and their employees. To put it more simply, we use the term "Director" to describe the state actor and decision-maker in a CFS case.

Investigation
We use the term "investigation" to refer to both assessments and investigations conducted under s. 16 of the *CFCSA*.

Other terms
For readability, this Guide uses the singular "child," "parent," "caregiver," "Indigenous community," "Indigenous authority," and "Indigenous law" throughout. While we use singular terms, our intention is to be inclusive of cases involving more than one child, parent, caregiver, Indigenous community, Indigenous authority, or Indigenous law.

Learning more about trauma-informed advocacy

Lawyers and legal advocates are increasingly aware of the importance of trauma-informed advocacy in CFS cases. Most clients are dealing with the compounded effects of multiple traumas, resulting in complex legal and relational needs. The intrusion of the colonial state into a child's care is itself traumatic. Further, many clients are affected by other experiences of trauma and harm. Indigenous clients, for example, may be dealing with intergenerational trauma from ongoing colonialism, dispossession, and racism.[2]

Due to space constraints, this Guide does not include a detailed discussion of the impacts of trauma and trauma-informed practices. To learn more about this subject, please see West Coast LEAF's 2025 publication *The Access Toolkit: A parent's counsel's guide to advocating for meaningful access arrangements in child and family services proceedings* (the "Access Toolkit"). Myrna McCallum, a leading expert on trauma-informed legal advocacy, contributed a chapter to the Access Toolkit that specifically addresses trauma-informed advocacy in the CFS context.

B. INTRODUCTION

BC's colonial child and family services ("CFS") system is in a transitional moment. Long governed by the provincial *Child, Family and Community Service Act* ("*CFCSA*"),[3] its services relating to Indigenous children are now subject to the minimum standards established by *An Act respecting First Nations, Inuit and Métis children, youth and families* ("*Federal Act*").[4] Further, Indigenous Nations and communities are increasingly reclaiming CFS jurisdiction and implementing their own CFS laws and systems of care.[5] These shifts hold transformative potential within and outside the colonial system.

Despite this progress, colonial laws and practices remain a source of devastating and intergenerational harms. BC's CFS system continues to intrude on the lives of Indigenous families—and of other families affected by overlapping inequalities—at grossly disproportionate rates. Moreover, it continues to rely on surveillance, regulation, and separation at the expense of meaningful prevention services and supports.[6]

Every year in BC, thousands of children experience a CFS investigation by the Ministry of Children and Family Development (MCFD) or a delegated Indigenous Child and Family Services Agency (ICFSA). During Fiscal Year 2024/2025, MCFD screened and/or investigated child safety concerns involving about 55,000 children.[7] Canada-wide, the most recent First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect (FN/CIS-2019) estimated that nearly 5% of children 0-15 years old experienced a CFS investigation in 2019.[8]

BC's high volume of CFS investigations is tied to its mandatory reporting requirements. Everyone in BC has a legal obligation under s. 14 of the *CFCSA* to report suspected abuse or neglect to MCFD. Most reporters are service providers: about 65% of reports received by MCFD in Fiscal Year 2024/2025 were made by the police, a school, a hospital, a counsellor, or a community or health professional.[9] Advocates have raised concerns about the relationship between mandatory reporting and over-reporting. According to MCFD's own data, only about half of the reports received by MCFD are assessed as substantiated.[10]

CFS investigations are associated with enduring harms. Regardless of their outcome, these investigations are a serious state intrusion into the lives of families. They are invasive, traumatizing, and stigmatizing.[11] While many investigations conclude that the child or children are safe,[12] others open the door to child removal or other harmful interventions. A family's entanglement with the CFS system can last weeks, months, or years, and can include more than one investigation. Some cases eventually lead to the permanent removal of children from their parents or caregivers—an outcome advocates have described as the "death penalty of child welfare."[13]

Indigenous families' disproportionate involvement in the CFS system starts with investigations. During Fiscal Year 2024/2025, Indigenous children made up about 35% of reports received by MCFD and 35% of reports deemed substantiated, despite representing only about 8% of BC's child population.[14] Canada-wide, the FN/CIS-2019 concluded that First Nations children were 3.6 times

more likely to be involved in a CFS investigation than non-Indigenous children.[15] The disparity was more pronounced in neglect investigations, which are considered a primary driver of Indigenous children's involvement in the CFS system.[16]

The disproportionate impacts on Indigenous families increase as investigations become more intrusive. In the FN/CIS-2019's data on investigations, the greatest disparity between First Nations and non-Indigenous children related to whether a child was placed outside of the home during an investigation.[17] For example, First Nations children between the ages of 4 and 7 were nearly 19 times more likely to be involved in an investigation with a placement.[18]

CFS investigations also disproportionately affect other families who are dealing with overlapping inequalities, such as Black families, racialized families, poor families, single-mother families, and families where a parent or child has disabilities. There is limited demographic data on CFS investigations in BC and in other Canadian jurisdictions. However, a recent study revealed that Black children in Ontario were 2.2 times more likely than white children to be involved in a CFS investigation and 2.5 times more likely to be placed outside of the home during an investigation.[19]

Despite their harms and disproportionate impacts, CFS investigations in BC often lack adequate oversight and accountability. There is limited public information about investigation processes and rights in the BC legal context. CFS workers are not required to inform parents of their rights (and may not know what those rights are). While Legal Aid BC and the Indigenous Justice Centres provide legal representation to eligible parents during investigations, many parents do not seek their assistance until after a child has been removed.Judicial oversight of investigations is rare.

These oversight and accountability gaps prompted the FWBC to develop the Guide and related investigations rights resources. The FWBC drew inspiration from advocates in the United States who are increasingly treating CFS investigations as a critical time to reduce harms and narrow the front door to ongoing CFS involvement.[20] A central aspect of this approach is empowering parents to exercise their investigation rights.[21] Advocacy coalitions in the US are lobbying states to require CFS workers to notify parents about their rights at the start of an investigation.[22] There are also a growing number of American publications on investigation rights, including practice resources for lawyers and plain language guides for parents.[23]

The FWBC recognizes that know your rights resources will not, on their own, dismantle the power dynamics that permeate CFS investigations. They will also not remove the threat of child removal that hovers overhead. Given these realities, some parents may conclude that the stakes are simply too high to exercise their rights. Others may want to lean on their rights to take a more assertive approach to the investigation process. The goal of the know your rights resources is not to tell parents what to do or assume what is best for them. Rather, the goal is to help parents make informed decisions while accessing legal and advocacy support as soon as possible. This is an important first step toward ensuring fairer investigation processes, reducing CFS overreach, and narrowing the front door to the CFS system.

C. THE GUIDE AT A GLANCE

2 **CHAPTER 2** provides context for the discussion of CFS investigations. It outlines BC's multi-jurisdictional CFS system and the processes that exist under the *CFCSA* and the *Federal Act* to respond to allegations of child abuse and neglect.

3 **CHAPTER 3** discusses the stages of a CFS investigation, from the time the Director receives a report of suspected child abuse or neglect to the time the Director concludes the investigation and decides whether ongoing services are required.

4 **CHAPTER 4** discusses the court orders and tools that are available under the *CFCSA* to assist the Director in carrying out investigations.

5 **CHAPTER 5** discusses the ways the police may participate in CFS investigations and exchange information with the Director.

6 **CHAPTER 6** discusses the application of the *Charter*, human rights law, and common law fairness principles to CFS investigations.

7 **CHAPTER 7** specifically discusses the application of s. 8 of the *Charter* to home entry powers and search powers during CFS investigations.

8 **CHAPTER 8** provides an overview of MCFD's internal complaints processes.

9 **CHAPTER 9** draws on information from the preceding chapters to summarize the rights of parents during a CFS investigation in an accessible FAQ format.

10 **CHAPTER 10** 10 provides practical tips for lawyers and parents during CFS investigations.

CHAPTER TWO

Introduction to BC's CFS System

A. A MULTI-JURISDICTIONAL LEGAL LANDSCAPE

BC's colonial CFS system involves three spheres of jurisdiction: Indigenous, provincial, and federal.

Since time immemorial, Indigenous Peoples have had inherent jurisdiction over the safety and well-being of their children and families.[24] This jurisdiction survived the assertion of Crown sovereignty and exists outside of the colonial legal system.[25] However, the BC government has long ignored, denied, or obstructed Indigenous jurisdiction, subjecting Indigenous Peoples to colonial legal regimes with devastating and intergenerational effects.[26]

While the imposition of the colonial state suppressed Indigenous systems of care, it did not extinguish them. By reclaiming jurisdiction and self-governance, Indigenous Peoples are empowering their laws, wisdom, and practices to protect and heal their community members.[27]

The 2019 enactment of the *Federal Act* marked a turning point by providing legislative recognition of the inherent jurisdiction of Indigenous Peoples over CFS matters. The *Federal Act* creates a pathway within the colonial legal system for Indigenous Peoples to resume their authority pursuant to an Indigenous law and/or a coordination agreement.[28]

What is a coordination agreement?

In brief, a coordination agreement is a tripartite agreement between an Indigenous Governing Body (IGB), Canada, and the relevant province or territory. It supports the implementation of the IGB's CFS jurisdiction by addressing matters such as the role and responsibilities of each government, funding arrangements, and the coordination of services.

Indigenous Peoples exercising CFS jurisdiction under an Indigenous law or coordination agreement may take on all CFS matters in relation to their children or agree to a shared service delivery model with a colonial authority.

Several Indigenous Nations in BC have now implemented their own CFS laws and systems using the *Federal Act*'s pathway,[29] while others are in the process of doing so. However, many Indigenous Nations in BC have not yet accessed this pathway because of barriers in the process and/or insufficient resources.[30] Thus, while the multi-jurisdictional landscape evolves in BC, many Indigenous children continue to receive some or all services through the colonial CFS system.

The *CFCSA* remains the legislative backbone of the colonial CFS system, and it authorizes state intervention in the care of children in BC who are deemed to need protection. The *CFCSA*'s intent is to protect children from harm while also recognizing that the responsibility to care for children rests primarily with the parents.[31] Of course, this intent reflects an ideal rather than families' real-life experiences of the system.

The *Federal Act* imposes minimum standards on provincial CFS systems in relation to Indigenous children. Thus, in CFS proceedings involving an Indigenous child, the *CFCSA* and the *Federal Act* must be read together.[32] Where there is a conflict or inconsistency between the *CFCSA* and the *Federal Act*, the *Federal Act* prevails.[33] This includes instances where the *Federal Act* addresses issues that are not covered in the *CFCSA*, or where its provisions augment or are more robust than those in the *CFCSA*.[34]

The role of MCFD, ICFSAs, and CFS workers

BC's Ministry of Children and Family Development ("MCFD") administers the *CFCSA*. It designates one or more directors to investigate and act on protection concerns, as well as provide services to remediate those concerns.[35] The directors then delegate their powers, duties, and responsibilities to CFS workers across the province.[36]

As well, MCFD delegates authority to Indigenous Child and Family Service Agencies (ICFSAs) and their CFS workers to undertake administration of all or parts of the *CFCSA*. ICFSAs—which were previously called Delegated Aboriginal Agencies (DAAs)—are agencies that deliver services to specific Indigenous Nations and communities. There are currently 25 ICFSAs with various levels of delegation.[37]

The most significant difference between the *CFCSA* and the *Federal Act* is the latter's requirement that the best interests of an Indigenous child be considered at all stages of CFS decision-making.[38] The *CFCSA*, on the other hand, only requires such consideration when a particular provision expressly says so.[39] The *CFCSA* does not require consideration of the best interests of the child during the investigation process or when deciding whether to remove a child.

Section 92.1 of the *CFCSA* authorizes the Director to enter into agreements with Indigenous Nations that have not yet resumed their CFS jurisdiction under an Indigenous law or coordination agreement.[40] Section 92.1 community agreements can address both the involvement of an Indigenous Nation in services delivered by the Director and the delivery of services by the Nation. In particular, they can address the Nation's involvement in the assessment and investigation of protection reports. There are other laws and policies that apply to decision-making under the *CFCSA* and the *Federal Act*, including during the investigation process. They include MCFD's *Child Safety, Family Support & Children in Care Policies* ("the MCFD Policy Manual"), BC's *Human Rights Code*, the *Canadian Charter of Rights and Freedoms* ("the *Charter*"), the *United Nations Declaration on the Rights of Indigenous Peoples* ("*UNDRIP*"), and the *United Nations Convention on the Rights of the Child* ("*CRC*").

B. WHEN A CHILD IS DEEMED TO NEED PROTECTION UNDER THE *CFCSA*

Section 13(1) of the *CFCSA* sets out a list of circumstances in which a child is deemed to "need protection" and thus state involvement in their care. It includes cases in which a child has been, or is at risk of being, abused, neglected, or harmed.[41]

Determining whether a child needs protection involves multiple policy considerations. While the stated intent of the *CFCSA* is to protect children from harm,[42] the right of parents to care for their children is basic and should not be easily displaced.[43] Courts in other provincial jurisdictions have defined the minimum standard of care as "good enough parenting"[44] and have cautioned against "parent-shopping"[45] or assessing parenting based on a "middle-class yardstick."[46]

Concerns about bias and systemic discrimination

Both the *CFCSA* and the *Federal Act* confirm that a child cannot be removed from their home solely because of their family's socio-economic circumstances.[47] However, poverty is easily misconstrued as "neglect": that is, not meeting a child's basic needs such as food, housing, health care, supervision, and protection against risks.[48] The concept of neglect is also vulnerable to Eurocentric and middle-class biases about children's needs and how families should be meeting them.[49] Allegations of neglect are the reason for about 73% of all child removals and 75% of Indigenous child removals in BC.[50]

C. INTERVENTIONS AFTER A CHILD IS DEEMED TO NEED PROTECTION

Once the Director has reasonable grounds to believe that a child needs protection under s. 13(1), Part 3 of the *CFCSA* sets out a range of options to address the "protection concerns." These options range from "cooperative planning and dispute resolution" processes to child removal (the legal apprehension of a child).

i. "Voluntary agreements"

Where the parties try to address the Director's protection concerns through a collaborative process such as a Family Conference, several "voluntary" agreements may be available as alternatives to legal child removal. These include:

- A **Family Plan** under s. 21 of the *CFCSA*. A Family Plan can result in a parent-child separation where the parties agree that a child or parent will temporarily live outside of the home.[51]
- An **Extended Family Program Agreement** ("EFP Agreement") under s. 8 of the *CFCSA*. Under an EFP Agreement, a relative agrees to temporarily care for a child.[52]
- A **Voluntary Care Agreement** ("VCA") under s. 6 of the *CFCSA*. Under a VCA, the parties agree that a child will temporarily live in foster care.[53]

NOTE

An EFP Agreement or a VCA can also be used in cases where there is no protection concern, but a parent is temporarily unable to care for their child. For example, a single parent who is dealing with a health crisis can request an EFP Agreement or VCA.

The coercive context of voluntary agreements

When parents engage in "collaborative" planning processes or enter into "voluntary" agreements, they make their decisions in a highly coercive context. In some cases, the Director will tell parents that if they do not sign an agreement, their child will be legally removed.

Voluntary agreements can be highly intrusive and disruptive. Further, they can have the same result as a child removal—parent-child separation—but without triggering the protections of a court proceeding and judicial oversight.

ii. Court orders without removal

When the Director believes that a court order is needed to protect a child while the child remains at home with a parent, the Director can apply for a supervision order without removal under ss. 29.1 and 33.1 of the *CFCSA*.[54] The Director will only consider a supervision order without removal when the Director is "confident" that other measures can ensure the child's safety pending the granting of the supervision order.

Another court order that may protect a child while they remain at home with a parent is a protective intervention order under s. 28 of the *CFCSA*.[55] The court may grant a protective intervention order—which prohibits a parent or other person from having contact with a child—when there are "reasonable grounds to believe" that such contact would cause the child to need protection. The Director will only seek a protective intervention order when they consider the "non-offending parent" to be "able and willing" to protect the child.

When the protection concern relates to a parent's refusal to consent to necessary health care for their child, the Director may seek court-ordered health care under s. 29 of the *CFCSA* as an alternative to child removal.[56] An application under s. 29 requires two medical practitioners to confirm that the health care is necessary to protect the child's life or prevent serious or permanent damage to the child's health.

iii. Child removal

Child removal is considered the most serious and disruptive option under the *CFCSA*. It can only take place in two situations. First, under s. 30 of the *CFCSA*, the Director may remove a child when the Director has reasonable grounds to believe that the child needs protection and that:[57]

- The child's health or safety is in immediate danger; or
- No less disruptive measure would adequately protect the child.

Second, under ss. 36 or 42 of the *CFCSA*, the Director may remove a child under a supervision order when the Director has reasonable grounds to believe that:[58]

- The supervision order no longer protects the child; or
- A person has not complied with a term or condition of the supervision order, and the order requires the Director to remove the child if the person does not comply with that term or condition.

When an Indigenous child is involved, the *Federal Act* imposes an additional obligation on the Director to engage in "reasonable efforts" to avoid the child's removal.[59]

iv. After a child's removal

After the Director removes a child, s. 32 of the *CFCSA* authorizes the Director to assume responsibility for the child's care until the court grants an interim supervision or custody order.[60]

A child removal (as well as an application for a supervision order without removal) triggers a legal proceeding in BC Provincial Court. There are up to three stages in a court proceeding arising from a child's removal:

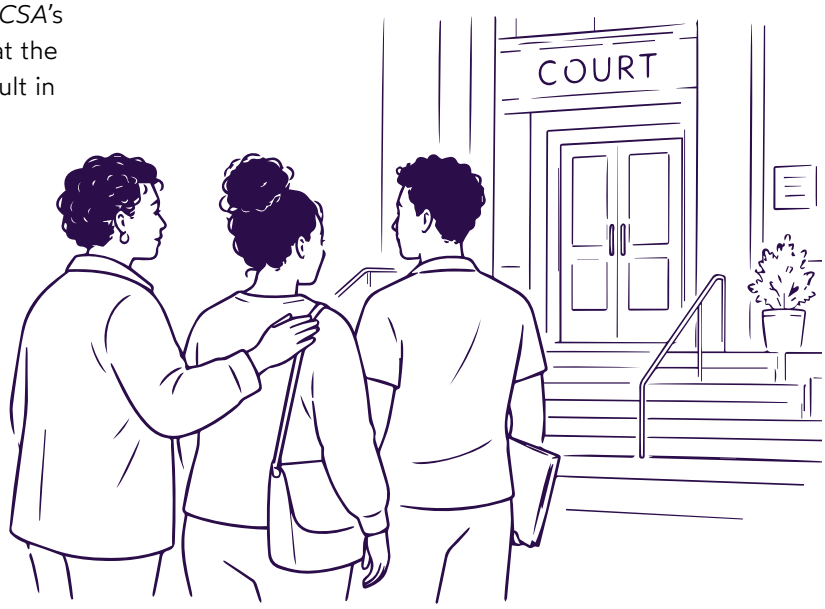
- **The presentation stage** involves a preliminary summary hearing. During this hearing, the court confirms that the child's removal was not arbitrary and makes an interim supervision or custody order pending a substantive protection hearing.
- **The protection stage** involves a hearing where the court determines whether the child needed protection at the time of removal and, if so, makes a temporary supervision or custody order (in exceptional cases, the court can grant a continuing custody order). The court can later grant extensions of the existing temporary order or make a new temporary supervision order.
- **The permanency stage** involves a hearing where the court determines whether there is a significant likelihood that (a) the circumstances that led to the child's removal will improve within a reasonable time, or (b) the parent will be able to meet the child's needs. If not, the court will make a continuing custody order or a permanent transfer of custody order.

The investigation process and outcome are relevant to each stage of the court process because of the *CFCSA*'s analytical focus on the child's need for protection at the time of removal.[61] An unfair investigation could result in a court determining that the Director's decision to remove a child was arbitrary or unjustified.

The role of judicial oversight

The Supreme Court of Canada has confirmed that courts play an essential oversight role in CFS matters, including by supervising the Director's exercise of their powers and duties.[62] However, judicial oversight typically starts after a child's removal triggers a presentation hearing. In other words, pre-removal processes—including the assessment and investigation of protection reports and the negotiation of "voluntary" agreements—are generally outside of the courts' purview.

Even once a court proceeding has started, judicial oversight can be limited because legal issues are commonly resolved outside of the courtroom. While this is partly because of the CFS system's emphasis on collaborative planning processes, it is also because parents confront overlapping access to justice barriers that affect their ability to pursue contested court hearings. These barriers include power imbalances with the Director, limited legal aid resources, and systemic delays in scheduling court times.



CHAPTER THREE

CFS Investigation Process

A. OVERVIEW OF THE INVESTIGATION PROCESS

Below is a chart showing the progression of a CFS investigation from the initial "protection report" to the investigation outcome.

1

Receiving a report

The Director learns about children who might need protection from reports made by community members. Everyone in BC has a legal duty under s. 14 of the *CFCSA* to contact MCFD if they believe a child is at risk of abuse or neglect.

2

The screening assessment

A CFS worker screens and triages the report. They decide whether the report raises safety concerns that require an investigation and whether MCFD has jurisdiction over the report. If MCFD or an ICFSA will be investigating the report, the CFS worker will decide on the applicable investigation stream and how soon the investigation will start. If the CFS worker views the situation as an emergency, they will send someone to check on the child before concluding the screening assessment.

3

Upholding Indigenous jurisdiction

If an Indigenous law or coordination agreement applies, the Director must promptly refer the case to the applicable Indigenous authority with that authority's agreement. The Indigenous authority may ask MCFD or an ICFSA to conduct the investigation.

4

The investigation

There are two investigation streams.

The **"Family Development Response Assessment" ("FDR Pathway")** is used in most cases. It is supposed to be a collaborative and transparent process where the parent will "cooperate" with each stage of the investigation.

The **"Child Protection Investigation" ("CPI Pathway")** is used in cases where there are "severe" safety concerns or where the Director does not believe that collaborating with a parent is possible. It can go ahead without the parent's involvement or cooperation.

Under both investigation streams, a CFS worker will often seek to:

- Talk to each parent and any other adults in the home.
- Interview the child in private.
- Create a safety plan that addresses the child's safety during the investigation.
- Collect information and documents from other sources, such as the police, hospitals, doctors, counsellors, and teachers.
- Visit the child's home to assess their living situation.

5

After the investigation

Most investigations are closed without having substantiated any protection concerns. However, if the investigation concludes that a child needs protection under s. 13 of the *CFCSA*, the Director can take a range of actions, including developing a voluntary agreement, applying for a court order without removal, and removing the child.

B. THE *CFCSA* PROVISIONS AUTHORIZING CFS INVESTIGATIONS

Section 16 of the *CFCSA* authorizes the Director to screen, assess, and/or investigate protection reports over which it has jurisdiction:

- Sections 16(1) to 16(1.3) require the Director, upon receiving a protection report, to assess who has jurisdiction over the child. Where an Indigenous authority has jurisdiction, the Director must refer the report to that authority with the authority's agreement.
- Section 16(1.4) authorizes the Director to screen protection reports.
- Section 16(2)(b.2) authorizes the Director to assess (i.e., investigate) protection reports under the "Family Development Response Assessment" pathway ("FDR Pathway").
- Section 16(2)(c) authorizes the Director to investigate protection reports under the "Child Protection Investigation" pathway ("CPI Pathway").

C. THE MCFD POLICIES GUIDING CFS INVESTIGATIONS

The MCFD Policy Manual sets out standards, policies, and procedures to guide CFS workers in carrying out their delegated powers and duties under the *CFCSA*. It applies to CFS workers employed directly by MCFD as well as CFS workers employed by ICFSAs.

PRACTICE TIP

The MCFD Policy Manual provides important information about the Director's approach to investigations. However, while policies may be used as evidence in a court hearing, they are *not* binding on courts when deciding legal issues in court applications under the *CFCSA* and/or *Federal Act*.[63]

The specific MCFD policies that apply to CFS investigations include:

- Chapter 3 of the MCFD Policy Manual- Child Protection Response Policies. Chapter 3 contains the standards, policies, and procedures that apply to the screening and assessment/investigation of protection reports, including measures taken to protect children during these processes.
- Policy 1.1- Working with Indigenous Children, Youth, Families and Communities under the *CFCSA*. Policy 1.1 addresses the Director's powers and duties when delivering services to Indigenous children in cases where there is no applicable Indigenous law or coordination agreement.
- Policy 1.2- Upholding Indigenous Jurisdiction over Child and Family Services. Policy 1.2 addresses the Director's powers and duties where an Indigenous law and/or coordination agreement applies to a child, including in cases where the Director will deliver services to the child.
- Rights and Responsibilities of Clients Receiving Child or Family Services. This document describes the rights and responsibilities of those who "enter into a relationship or partnership with" MCFD, including parents.

D. PROTECTION REPORTS

The Director primarily becomes aware of "protection concerns" about a child through "protection reports" by community members, service providers, and the police.

Every person in BC has a legal duty under s. 14 of the *CFCSA* to make a protection report when they have a reason to believe that a child needs protection under s. 13 of the *CFCSA*.[64] This duty is often referred to as the "duty to report."

Section 14 generally requires a person to report their concerns to the Director, such as by calling MCFD's Provincial Centralized Screening (PCS) service.[65] The

exception is when a person reports their concerns to an Indigenous authority and the Indigenous authority confirms that it will assess the report.[66]

Failure to make a protection report as required under s. 14 is an offence that carries a maximum penalty of a $10,000 fine, six months' imprisonment, or both.[67] However, this offence has rarely, if ever, been enforced.

Beyond their legislative duty under s. 14 of the *CFCSA*, some service providers (such as health care workers and teachers) have additional professional or employment obligations to report protection concerns.[68]

Problems arising from mandatory reporting

Advocates have long raised concerns about mandatory reporting requirements. In brief, the creation of liability around reporting raises the risk of overreporting and thus needless CFS investigations, with disproportionate impacts on marginalized families. Relatedly, the fear of being reported may prevent marginalized families from accessing health care and other essential services.

The duty to report overrides a service provider's confidentiality obligations to the extent required to make the report (information that is not necessary to make the report remains confidential). There are two exceptions:[69]

- The information is protected by solicitor-client privilege.
- The federal *Youth Criminal Justice Act*'s confidentiality provisions apply.

i. The confidentiality of reporters

The identity of a person who has made a report under s. 14 of the *CFCSA* is generally protected from disclosure, including in records provided under the *Freedom of Information and Protection of Privacy Act* (*FOIPPA*).[70] In practical terms, this means that the Director redacts identifying information about reporters from any records disclosed to parents under *FOIPPA* and during CFS proceedings.

The exception is when an Indigenous law or coordination agreement requires the Director to disclose the reporter's identity to an Indigenous authority.[71]

ii. Birth alerts

Historically, it was common for the Director to notify hospitals when they had safety concerns about an unborn child and ask the hospital to report the child's birth to MCFD. This practice, called a "birth alert," took place without notice to the parent or the parent's consent. It often resulted in the removal of the newborn at the hospital or shortly thereafter.

Birth alerts disproportionately targeted Indigenous families, contributing to their overrepresentation in the CFS system.[72] They created a major barrier to accessing perinatal and hospital care.[73]

In September 2019, the BC government officially ended the practice of birth alerts and recognized their harmful and discriminatory impacts.[74] While this policy change has reduced newborn apprehensions, it has not addressed their root causes (including systemic anti-Indigenous racism in both the CFS and health care systems).[75] Health care providers continue to report safety concerns about newborns to MCFD under s. 14 of the *CFCSA* (the duty to report). Parents with historical birth alerts in their health records may be especially at risk.

E. THE SCREENING OF PROTECTION REPORTS

The Director must conduct a screening assessment of all protection reports as outlined in sections 16(1) to 16(1.4) of the *CFCSA*.

The goal of the screening assessment is to determine the appropriate response to a protection report based on "complete and accurate information."[76] The information gathering process includes:[77]

- Interviewing the reporter.
- Conducting an initial review of the Director's electronic records about the family, if any.
- Confirming whether the child is Indigenous

and, if so, whether an Indigenous law, coordination agreement, and/or s. 92.1 agreement applies.

- Conducting a Protection Order Registry check in cases where there is a domestic violence concern.

i. Indigenous jurisdiction

When the Director determines that an Indigenous authority has jurisdiction over a child, the Director must contact the Indigenous authority before completing the screening assessment to confirm (a) their jurisdiction and (b) their agreement to assess the information in the protection report.[78] With the Indigenous authority's agreement, the Director must promptly refer the protection report to them.[79]

An Indigenous authority with jurisdiction over a child may ask the Director to deliver some or all services to the family, such as by completing the screening assessment and/or investigation.[80] In this case, the Director must deliver these services in a way that is consistent with the applicable Indigenous law or coordination agreement.[81]

ii. Responding to emergency situations

If a protection report suggests that a child is at risk of immediate harm and the Director has jurisdiction over the child, the Director must arrange for a CFS worker to immediately see the child and assess their safety and health (i.e., before completing the screening assessment).[82] If a CFS worker cannot immediately see the child, the Director must ask a police officer, public health nurse, or Indigenous community representative to do so.[83]

In cases where an Indigenous authority has jurisdiction over the child, the Director will deliver emergency services where (a) the Indigenous authority cannot be reached fast enough or (b) the Indigenous authority requests the Director's assistance.[84]

iii. The Director's "take charge" powers

The Director has the statutory authority to "take charge" of an unattended, lost, or runaway child for a period of up to 72 hours.[85] The Director's take charge powers include:

- Remaining in the home with an unattended child.
- Arranging for a person to look after an unattended child in their home.
- Taking a child to a safe place where childcare may be provided.
- Authorizing a health care provider to examine a child.
- Consenting to necessary health care for a child if a health care provider says this care should be provided without delay.

When the Director takes charge of a child, they must make all reasonable efforts to locate and notify the child's parent.[86] The Director must inform the parent if the child was medically examined or received health care while in the Director's charge.[87]

Once the parent has been located or before the 72-hour period has expired, the Director must either return the child to their parent, enter into an agreement with the parent about the child's care, or remove the child. [88]

iv. Completing the screening assessment

At the conclusion of the screening assessment, the Director must decide whether the protection report requires a "protection response" with reference to s. 13 of the *CFCSA*.[89]

When the Director decides a protection response is not needed, the Director's response paths include:[90]

- Taking no additional action.
- Offering voluntary support services.
- Providing a referral to an Indigenous authority or Nation.
- Providing a referral to community-based services.

When the Director decides a protection response is needed, the Director's response paths include:[91]

- Referring the case to the applicable Indigenous authority (with the Indigenous authority's agreement) in accordance with s. 16(2)(b)(ii) of the *CFCSA*.
- Conducting an "assessment" (i.e., investigation) under the FDR Pathway and in accordance with s. 16(2)(b.1) of the *CFCSA*.
- Conducting an investigation under the CPI Pathway and in accordance with s. 16(2)(c) of the *CFCSA*.

Use of investigation language

The term "Family Development Response Assessment" is used to describe what is, in essence, an investigation process. We thus use the terms assessment and investigation interchangeably to describe the Family Development Response Assessment.

The Director will also assign a response priority to the investigation that reflects the urgency of the protection concerns:[92]

- **Within 24 hours**: a CFS worker must make in-person contact with the family immediately or within 24 hours of receiving the report.
- **Within 5 days**: a CFS worker must make in-person contact with the family as soon as possible and within 5 days of receiving the report.

F. THE INVESTIGATION OF PROTECTION REPORTS

i. The FDR pathway v. the CPI pathway

Under the FDR Pathway, parents "collaborate on" and "agree to" each step of the investigation process.[93] The FDR Pathway is used when: [94]

a. the circumstances do not involve severe physical abuse or severe neglect; and

b. the parents are able and willing to participate in a "collaborative assessment and planning process."

The MCFD Policy Manual describes the FDR Pathway as the "primary" pathway to respond to screened-in protection reports. Data cited as evidence in a recent court case confirmed that about 90% of screened-in reports are triaged to the FDR Pathway.[95]

An investigation under the CPI Pathway may proceed without the collaboration or cooperation of the parents. The CPI Pathway is used when:

a. the circumstances involve severe physical abuse or severe neglect;

b. the parents are not able or willing to participate in a collaborative assessment and planning process; and/or

c. there is already an open case and at least one child is already out of the home due to protection reasons.

Limits on investigation powers

Even under the CPI Pathway, the Director's ability to act without the consent of the parent or a court order is limited by factors including the scope of the Director's investigatory powers under the *CFCSA*, procedural fairness, and the *Charter* rights of parents and children. These limits will be discussed in more detail in the sections below.

Regardless of whether an investigation takes place under the FDR Pathway or the CPI Pathway, the parent must engage with the Director in a highly coercive context where the Director holds the ultimate power of child removal. The FDR Pathway is therefore neither collaborative nor consensual in a meaningful sense. If the parent is perceived to be uncooperative or does not agree to an investigation step, the Director can move the investigation process from the FDR Pathway to the CPI Pathway, impose a court order, and/or remove the child.[96]

ii. Parents are not required to cooperate

A parent is not legally required to cooperate with a CFS investigation. Neither the *CFCSA* nor the common law imposes on parents a duty to cooperate (i.e., say or do anything without a court order).[97]

Refusing to cooperate with a CFS investigation is risky.

It can escalate the Director's investigation tactics, prevent the Director from considering less intrusive measures that may require a parent's cooperation, and/or be used as evidence to justify a child's removal.

That said, a parent's cooperation does not have to be all or nothing. The right to withhold cooperation supports a parent's ability to negotiate about the investigation process, slow down the investigation process to access legal advice and support, and decline to say or do specific things (for example, answer an irrelevant question).

SPOTLIGHT ON THE CASE LAW
***Kina Gbezhgomi Child and Family Services v. M.A.*, 2020 ONCJ 414.**[98]

In this Ontario provincial court case, the Director argued that an Indigenous mother's "lack of cooperation" meant that a supervision order was not sufficient to ensure the children's safety. The court disagreed, observing:

> at para. 44. It is trite to say that as a result of a history that requires [the *Federal Act*], Indigenous families sometimes find it difficult to work with child welfare agencies. This is true even when they are partnered with First Nations to provide culturally appropriate approaches to services. It is a strange dynamic to have to put your faith in the people who have taken your children, but even stranger when working with Indigenous families given this history of systematic discrimination. This is the context a court must consider when it is asked to use perceived non-cooperation with a society as a justification to keep Indigenous children on orders that don't allow them to live with their parents.

While this decision is not binding on BC courts, it could be used in a BC court proceeding as a source of context for an Indigenous parent's perceived non-cooperation.

G. INDIGENOUS COMMUNITY INVOLVEMENT IN INVESTIGATIONS

i. Indigenous authority involvement

The Director has an ongoing obligation during the investigation process to assess whether an Indigenous authority has jurisdiction over a child and, if so, promptly refer the case to that authority with the authority's agreement.[99]

ii. Other Indigenous community involvement

If a s. 92.1 community agreement applies to a child, the Director must ensure that the investigation under the FDR Pathway or CPI Pathway is in accordance with that agreement.[100] This will often require involving the Indigenous community from the start of the investigation process. Involving an Indigenous community as part of a s. 92.1 community agreement does not require the consent of the parent.[101]

If a child is Indigenous and there is no applicable Indigenous law, coordination agreement, or s. 92.1 community agreement, the Director must still involve their Indigenous community in accordance with Policy 1.1.[102] The Director can do so without the consent of the parent where this is supported by s. 79(a) or (a.2) of the *CFCSA*.[103] These provisions authorize the Director to share information with an Indigenous community without a parent's consent where the disclosure is:[104]

- Necessary to ensure a child's safety or well-being; or
- Intended to promote an Indigenous child's community and cultural connections.

Designated band representatives

Many Indigenous Nations have representatives (often called designated band representatives) who represent them in CFS processes involving a child who is a community member. Designated band representatives can provide legal and cultural advocacy to parents during CFS investigations, including by accompanying them to meetings with CFS workers.

H. INVESTIGATION STEPS

i. Overview

Investigations under the FDR Pathway and the CPI Pathway share many steps. Both investigation processes will typically include:

- Meetings with the parents to explain the protection concerns and investigation process.[105]
- Interviews with each parent.[106]
- Interviews with each child.[107]
- A safety assessment and safety plan agreement.[108]
- A home visit.[109]
- Gathering and reviewing information from witnesses and collateral contacts (in other words, external sources of information about the family's circumstances). Examples of collateral contacts include the police, a hospital, the child's school, or the family's doctor.[110]

The CPI Pathway may also require a medical examination of the child, such as where there are allegations of physical or sexual abuse.[111]

ii. Meetings and interviews with the parent

Under both the FDR Pathway and the CPI Pathway, a CFS worker is required to meet with the parent at the start of the investigation to explain:[112]

- The protection concerns under investigation.
- The investigation process.

The CFS worker is also required, from the start of the investigation, to give the parent the opportunity to respond to the allegations and share their views.[113]

Under the FDR Pathway, the CFS worker may gather information from the parent by engaging them in informal discussions about the protection concerns and possible solutions.[114] The CPI Pathway, on the other hand, requires the CFS worker to conduct an individual and private interview with each parent and adult who lives in the home.[115] The only exception is when a s. 92.1 community agreement requires a different interview procedure.[116]

PRACTICE TIP

The requirement for an individual and private interview means that the parent must be interviewed separately from the other adults in the home. It does not prevent the parent's lawyer, advocate, or support person from attending the interview.

iii. Safety assessments

A CFS worker must conduct a "safety assessment" during their initial, in-person meeting with the parent and before deciding to leave the child in the home.[117] The safety assessment process uses a structured decision-making tool.[118]

iv. Safety plan agreements

If the safety assessment identifies safety concerns that, in the Director's view, need to be managed while the investigation process is ongoing, the Director may ask the parents to agree to a safety plan agreement under s. 19.1 of the *CFCSA*.[119]

Sections 19.1 to 19.9, which were added to the *CFCSA* in December 2025, authorize the Director's use of safety plan agreements and establish rules about them. Prior to this amendment, safety plan agreements lacked legislative authority and were poorly regulated. While ss. 19.1-19.9 contain procedural safeguards, they also raise new concerns about the rights of parents and children in the context of safety plan agreements.

The coercive context of safety planning

Safety plan agreements are voluntary, meaning that they can only be created by agreement. However, like other so-called voluntary agreements, they are developed in a highly coercive context where the parent is under investigation and there is a threat of child removal. They can include terms that result in parent-child separation, such as when the parties agree that a child or parent will temporarily reside outside of the home. However, unlike child removals, they occur without a court proceeding or judicial oversight.

The situations when a safety plan agreement can be used

A safety plan agreement can only be used in two situations:[120]

- The Director is conducting an assessment or investigation in relation to a child.
- Following an assessment or investigation, there is a pending court application for an order to protect a child.

A safety plan agreement must end once the assessment or investigation is over and there is no pending court application.[121] In cases where the Director will provide ongoing protection services, the safety plan agreement may be replaced by another type of agreement or a court order.

The duration of a safety plan agreement

A safety plan agreement's term cannot exceed **45** days.[122] However, consecutive safety plan agreements are allowed.

In situations where consecutive safety plan agreements have been made, and a total time of **135** days has been reached, any additional safety plan agreements must be approved by MCFD's Director of Operations or equivalent position in an ICFSA.[123]

The necessary parties to a safety plan agreement

A safety plan agreement requires the agreement of all "necessary parties." The necessary parties to a safety plan agreement are:[124]

- The Director
- A parent who, in the Director's opinion, meets all the conditions outlined below:
    - The parent appears to be entitled to custody of the child.
    - The parent has rights and responsibilities as a parent with custody that may be affected by the agreement.
    - The parent is able and willing to exercise their rights and responsibilities as a parent with custody. (MCFD's policies detail scenarios where this condition might not be met.[125])
    - The parent can be located.
- If there are no parents who meet the conditions outlined above, a necessary party is, in order of priority:
    - A parent who appears to be entitled to custody of the child, even if their rights and responsibilities as a parent with custody are not affected by the agreement.
    - A parent with care of the child, including a person the child lives with who stands in the place of a parent or guardian.

Where a parent who is a necessary party does not agree to or withdraws from a safety plan agreement, the Director must consider "less disruptive" measures to protect the child before considering a child removal.[126]

Concerns about excluding parents

Lawyers and advocates have raised concerns about the Director's power to exclude a custodial parent from a safety plan agreement in cases where the parent is perceived to be unable or unwilling to exercise their custodial rights. As discussed above, safety plan agreements can be highly intrusive while also lacking judicial oversight. An excluded parent whose rights are affected by a safety plan agreement may not have a pathway to challenge that agreement.

Optional parties

A safety plan agreement can also include "optional parties" when all the parties agree to include them. The optional parties to a safety plan agreement are:[127]

- The child's Indigenous Nation.
- A parent who does not meet the conditions to become a necessary party.
- A person who has contact or access rights to the child under a court order.

There are two important differences between necessary and optional parties:

- The development of a safety plan agreement only requires the participation and agreement of the necessary parties. An optional party, on the other hand, can be cut out of the safety planning process and/or the safety plan agreement itself.
- If a necessary party withdraws from a safety plan agreement, the agreement is terminated. If an optional party withdraws from a safety plan agreement, the agreement can continue.

The use of verbal safety plan agreements

Section 19.4 of the *CFCSA* authorizes the use of both written and verbal safety plan agreements.

Concerns about verbal safety plan agreements

The use of verbal safety plan agreements carries numerous risks, ranging from miscommunication between the parties to misconduct by the Director.

MCFD's policies suggest that verbal safety plan agreements will only be used in exceptional circumstances with a supervisor's approval.[128] More specifically, they will be used in emergency situations where a safety plan agreement is required before a CFS worker can make in-person contact with a parent.[129] In other words, verbal safety plan agreements will usually be made over the phone. Outside of these emergency situations, a CFS worker should prepare a written safety plan agreement after an in-person safety assessment.

A verbal safety plan agreement has a maximum duration of 5 days.[130] After entering into a verbal safety agreement, a CFS worker must: [131]

- Make a written copy of the agreement as soon as reasonably possible in Form CF0629, and
- Make all reasonable efforts to provide a copy of the agreement to each party and obtain their signature.

Procedural safeguards

The Director has a statutory duty to communicate with each party (and proposed party) to a safety plan agreement "in a manner appropriate to [their] abilities."[132] There is little policy guidance about what this means. However, it appears to support a parent's right to receive clear and accessible communication and to understand the conditions under which services will be provided.[133]

Before entering into a safety plan agreement, a CFS worker must:[134]

- Confirm that each party understands the terms of the agreement.
- Confirm that each party has provided informed and voluntary consent to the agreement.
- Advise the parties of their right to seek independent legal advice about the agreement at any time.[135]

A safety plan agreement must include:[136]

- Reasons for the agreement.
- The duration of the agreement. A written safety plan agreement's duration must not exceed 45 days, while a verbal safety plan agreement's duration must not exceed 5 days.
- The start and end date of the agreement.
- Confirmation that each party may seek independent legal advice about the agreement at any time.
- The notice period for a party (who is not the Director) to withdraw from the agreement.
- The terms and conditions aimed at ensuring the child's safety.

To support these requirements, a written safety plan agreement must be in a specific form called Form CF0629. After a verbal safety plan agreement is made, it must be converted into a written safety plan agreement in Form CF0629 as soon as possible.

Addressing new information or a change of circumstances

The Director may withdraw from a safety plan agreement and/or seek a new safety plan agreement if new information or a change of circumstances indicates that:[137]

- The existing safety plan agreement is no longer adequate to protect the child.
- The existing safety plan agreement is no longer necessary to protect the child.
- A party needs to be added or removed.

The Director may notify the parties before withdrawing from a safety plan agreement unless advance notice would put a child's health or safety at risk.[138] If the Director does not provide advance notice of their withdrawal from a safety plan agreement, the Director must notify the parties as soon as possible afterward.[139]

v. Interviewing the child

Both the FDR Pathway and the CPI Pathway require a CFS worker to conduct an individual, private, and in-person interview with each child who lives in the home.[140] The only exception is where a different approach is required under a s. 92.1 community agreement.[141]

PRACTICE TIP

The requirement for an individual and private interview with the child does not prevent the involvement of a support person. Parents may request that a child have a support person with them during the meeting.[142]

Under both the FDR and CPI Pathways, the Director will generally provide the parent with notice of their need to conduct an individual and private interview with the child.[143] There are no exceptions to this approach under the FDR Pathway, as this Pathway is supposed to be based on collaboration and transparency.[144] Under the CPI Pathway, there is an exception to this approach in cases where meeting with the parent beforehand and/or giving them notice might jeopardize:[145]

a) the child's safety; and/or

b) the integrity of the investigation.

Child interviews without consent

When a CFS worker meets with a child without notice to the parent, this meeting could take place at locations such as the child's school or daycare.

Under the FDR Pathway, the Director will generally accommodate a parent's preferences around the time and place of the child's interview.[146] The Director may also accommodate such preferences under the CPI Pathway.[147] However, under the CPI Pathway, the Director's approach to arranging an interview with a child will ultimately be informed by the nature and urgency of the safety concerns.[148]

vi. Collateral contacts and third-party records

Under both the FDR and CPI Pathways, the Director may interview and collect records from collateral contacts. Examples of collateral contacts include the police, a hospital, the child's school, or the family's doctor.[149]

The FDR Pathway requires the Director to obtain consent from the parent to collect information from collateral contacts.[150] For example, the Director may ask the parent to sign an authorization that permits their family doctor to provide information to the Director. Under the CPI Pathway, on the other hand, the Director may obtain information from collateral contacts without the parent's consent under ss. 14, 65, and/or 96 of the *CFCSA*.[151] Sections 65 and 96 of the *CFCSA* are discussed in Chapter 4.

vii. Home visits

Under both the FDR and CPI Pathways, a CFS worker's initial safety assessment must include a home visit in cases where the protection report and/or the Director's prior records raise safety concerns about the child's living situation.[152]

In cases where the CFS worker does not do a home visit during the safety assessment, they must do one before concluding the investigation.[153]

ix. Medical and psychological examinations of children

Under the CPI Pathway, depending on the nature of the allegations and/or the child's health status, the Director may seek a medical or psychological examination of the child.[154] The examination requires the parent's consent except in these situations:[155]

- When the child has the capacity to consent to the examination.
- When a court orders a medical examination of the child under s. 17 of the *CFCSA* (see the discussion of s. 17 orders in the section below).
- When the Director has legally removed the child and then authorizes the examination.

Examinations of children are often conducted by specialized health care providers. For example, the Director may refer a child to the Child Protection Service Unit at BC Children's Hospital.[156]

viii. Medical and psychological examinations of parents

A medical or psychological examination of a parent during a CFS investigation typically requires the parent's consent. The *CFCSA* does not authorize court-ordered examinations of a parent unless the examination will help *the court* (not the Director) in determining whether a child needs protection or making an order relating to a child.[157] In other words, these orders are primarily available in the context of a court proceeding (such as after a child has been removed).

Drug and alcohol testing

Drug and alcohol testing, like other medical examinations, can generally only be done during an investigation with the parent's consent. However, it has become less common for the Director to use drug and alcohol testing during investigations. Further, such testing, if used, is limited to urine testing. Hair testing has been discredited as a flawed science whose historic use in CFS systems across Canada harmed countless families.[158]

I. CONCLUDING INVESTIGATIONS

i. Timelines

According to MCFD's policy standards, investigations under both the FDR and CPI Pathways should be completed within **30** days unless meeting this deadline would compromise the quality and thoroughness of the investigation.[159] Extensions of the 30-day deadline require a supervisor to approve both the extension and a plan for completing the investigation.[160]

ii. Communicating investigation outcomes

Under both the *CFCSA* and MCFD's policies, the Director is generally required to report the investigation outcome to the parent.[161] In addition, the Director may report the investigation outcome to the child if the child would be able to understand the information.[162] The exceptions to these reporting provisions are in cases where:[163]

> (a) reporting the result of the assessment or investigation would, in the opinion of the director, cause physical or emotional harm to any person or endanger the child's safety, or
>
> (b) a criminal investigation into the matter is underway or being considered.

If the investigation finds that protection services are not needed, the Director must notify the parent that any safety plan agreement is no longer in effect.[164] If the Director shares recommendations with the parent, the Director must ensure that the recommendations are not presented as directives.[165]

If the investigation finds that there are protection concerns under s. 13 of the *CFCSA*, the Director may provide a range of ongoing "protection services." "Family Development Response (FDR) Protection Services" are described as "collaborative" in nature and may include voluntary agreements and court orders without removal. "Ongoing Protection Services," on the other hand, are used in cases where a child has been removed.[166]

CHAPTER FOUR

Statutory Powers and Court Orders in Aid of Investigations

A. SECTION 17 OF THE *CFCSA*: COURT ORDERS IN AID OF INVESTIGATIONS

Section 17 of the *CFCSA* authorizes court orders in situations where the Director has been denied access to a child or cannot locate a child. Subsection 17(2) makes orders available that:

- Authorize the Director to enter a home to search for the child.
- Require a person to disclose information that may help the Director locate the child.
- Require a person to allow the Director to interview and/or visually examine the child.
- Authorize the Director to remove the child from their home for an interview or medical examination.
- Authorize a health care provider to examine the child.

In accordance with s. 17(1), these court orders are only available when all three of these criteria are met:

a) There are reasonable grounds to believe the child needs protection and

b) a person refuses to either:

(i) give the Director access to the child or

(ii) provide information that may help the Director locate the child, and

c) access to the child is necessary to determine if the child needs protection.

The published decisions on applications under s. 17 have interpreted the provision narrowly, partly because of the *Charter* context surrounding s. 17 and the harms of unwarranted state intrusion.[167]

As noted above, a court order under s. 17 is not available unless the Director has reasonable grounds to believe that a child needs protection. To satisfy this evidentiary standard, the Director must believe there is a real possibility of harm to the child.[168] The belief must be objectively reasonable and based on some evidence. In other words, it must rise above the level of "mere conjecture, suspicion, a hunch or intuition."[169] Section 17 cannot be used to enable a fishing expedition.[170]

A court order to obtain entry to a home is not available where the purpose of the entry is to conduct a home visit, inspection, or search. Under s. 17(1), a court order is only available where there has been a denial of access to the child.[171] Further, s. 17(2) only permits court-ordered home entries to locate and gain access to a child.[172]

Finally, a court order is not available where a parent has merely imposed conditions on access to their child, such as by insisting that an interview with the child take place outside of their home or in the presence of a support person.[173]

SPOTLIGHT ON THE CASE LAW
***L.(J.) (Re)*, 2000 BCPC 201.**

In this case, MCFD was investigating the parents of three children after a police raid located marijuana plants at their home. A CFS worker interviewed the two older children at their school (the youngest child was too young to be interviewed). The CFS worker then sought to schedule a home visit to assess the living situation. The parents, through their lawyer, did not consent to the home visit. Instead, they offered to meet with the Director at their lawyer's office.

This prompted the Director to apply for an order to access the home under s. 17 of the *CFCSA*. The court dismissed the Director's application, confirming that s. 17 orders are not available where there has been no denial of access to the children or where the purpose of the home entry is to conduct a home visit (rather than to gain access to a child). In this case, the Director had already interviewed the older children and the parents were willing to provide additional access to the children at their lawyer's office.

B. SECTION 79 OF THE *CFCSA*: INFORMATION DISCLOSURE

Section 79 of the *CFCSA* creates exceptions to the *Freedom of Information and Protection of Privacy Act*'s protections in relation to the disclosure of personal information by public bodies. It sets out numerous circumstances in which the Director may share information obtained under the *CFCSA* without the consent of a parent. These include circumstances where the disclosure is:[174]

> (a) necessary to ensure the safety or well-being of a child,
>
> (a.1) necessary to ensure the safety of a person, other than a child,
>
> (a.2) intended to facilitate or support, with respect to an Indigenous child,
>
> (i) the child learning and practising the child's Indigenous traditions, customs or language, or
>
> (ii) the child belonging to the child's Indigenous community.

Among other uses, the Director relies upon s. 79 to communicate with, collect information from, and involve Indigenous Nations and third parties in investigations without a parent's consent.

C. SECTION 65 OF THE *CFCSA*: PRODUCTION ORDERS

Section 96(2.1) of the *CFCSA* authorizes the Director to collect "any information" from private individuals or agencies that is "necessary" to enable the Director to do their work under the *CFCSA*. However, the Director does not have the power to compel private individuals or agencies to produce this information.[175] Where a private individual or agency does not consent to a request under s. 96(2.1), s. 65(1) of the *CFCSA* authorizes the provincial court to grant a production order.[176]

NOTE
Section 65 does not apply to public bodies such as hospitals, public health clinics, schools, and the police. Public bodies are subject to a different disclosure regime under s. 96(1) of the *CFCSA*, which is discussed in the section below.

An example of a situation where the Director may seek a s. 65 production order is where (a) a parent does not authorize their private therapist to release their confidential records to the Director and (b) the therapist refuses to provide the records to the Director under s. 14 of the *CFCSA* (duty to report).[177]

A production order is only available where the criteria under s. 65(1) are met. Under s. 65(1)(a), the Director must have reasonable grounds to believe that the records contain information that is necessary for determining whether the child needs protection.[178] Section 65 thus

requires the Director to concretize their records request and to articulate an "objectively reasonable link" between the information sought and assessing whether the child needs protection.[179]

The individual or agency against whom a s. 65 production order is sought is entitled to notice of the application, which allows them to appear at the hearing to contest the application.[180] While s. 65 does not mandate notice to the parent, the Director may use their discretion to serve them with the application.[181]

The Director's use of s. 65 during the investigation process is generally limited to investigations under the CPI Pathway.[182] This is because the FDR Pathway relies on the "collaboration" and "cooperation" of the parents. In other words, under the FDR Pathway, the Director will ask the parent to sign authorizations permitting third parties to release information to the Director.[183] In cases where the parent does not agree, the Director can switch the investigation process to the CPI Pathway.

D. SECTION 96 OF THE *CFCSA*: ACCESSING INFORMATION HELD BY PUBLIC BODIES

Section 96(1) of the *CFCSA* states that the Director has the right to any information that is held by a public body and is necessary to enable the Director to do their work under the *CFCSA*. Examples of public bodies include hospitals, public health clinics, public schools, and the police.

Under s. 96(2) of the *CFCSA*, a public body that holds information that the Director is entitled to under s. 96(1) must disclose that information to the Director upon the Director's request. Section 96 thus provides the Director with an expansive authority to collect any information from public bodies that the Director considers to be useful.[184] This power can be contrasted with the Director's lack of authority to compel private individuals and agencies to produce information.

Where the Director collects information about a person under s. 96(1), there is no general requirement to notify that person. The exception is where the Director collects personal health information, as discussed below.

In response to the BC Court of Appeal's decision in *T.L. v. British Columbia (Attorney General)*, the provincial government amended s. 96 of the *CFCSA* to create additional safeguards in relation to the collection of personal health information from public bodies:[185]

- First, s. 96(2.2) states that the Director's right to personal health information under s. 96(1) is limited to information that is reasonably required to determine whether a child needs protection.

- Second, ss. 96(2.2) to (2.7) impose a series of procedural requirements on the Director.

The procedural requirements under ss. 96(2.2) to (2.7) include:

- Requests to public bodies for personal health information must be in writing.

- After collecting personal health information about a person, the Director must promptly notify that person unless the Director thinks the notification would cause someone physical or emotional harm or threaten someone's safety. When the personal health information is about a child younger than 12, the Director may provide the notification to the person who has legal care of the child.

- The notification must be in writing and provide information about the administrative review process under s. 93.1 of the *CFCSA*.

The Director's use of s. 96(1) during an investigation process, like their use of s. 65, is generally limited to investigations under the CPI Pathway.[186] Under the FDR Pathway, which is supposed to be collaborative, the Director will instead ask the parent to sign authorizations for public bodies to release information to the Director. But once again, if the parent does not agree, the Director can switch the investigation process to the CPI Pathway.

CHAPTER FIVE

The Role of the Police During CFS Investigations

There are several situations during the investigation process where the police may communicate with, support, accompany, or assist the Director.

NOTE
Where a CFS worker attends a home with a police officer, this worsens the power imbalance between the CFS worker and the parents (especially where a parent is Indigenous, racialized, or part of another community that has experienced over-policing). It also creates ambiguity around the respective roles and powers of the CFS worker and the police officer. There is a discussion of the limits on a police officer's home entry and search powers in Chapter 6.

A. CONDUCTING INITIAL SAFETY ASSESSMENTS

A police officer may conduct an initial assessment of a child's health and safety in two scenarios:

- When a protection report indicates emergency circumstances, and a CFS worker is not available to immediately see the child, the Director may request that a police officer see the child instead.[187]
- When a police officer encounters a child at risk during their own policing activities (such as when responding to a call about domestic violence).

B. "TAKE CHARGE" POWERS

Under s. 27(1) of the *CFCSA*, a police officer has the power to "take charge" of a child without a court order when the police officer has "reasonable grounds to believe that the child's health or safety is in immediate danger."

Upon taking charge of a child, the police officer must immediately report the circumstances to the Director and obtain the Director's instructions about whether to return the child, take the child to the Director, or take the child to another person or location.[188]

C. ASSISTING THE DIRECTOR WITH CHILD REMOVALS

At the request of the Director, a police officer must accompany and assist a CFS worker in removing a child under ss. 30, 36, or 42 of the *CFCSA*.[189]

D. ASSISTING THE DIRECTOR UNDER S. 17 OF THE *CFCSA*

Court orders under s. 17 of the *CFCSA* can authorize police to assist the Director in two scenarios:

- Under s. 17(2)(a) of the *CFCSA*, the Provincial Court may grant an order that directly authorizes a police officer to enter a home or premises to search for a child.
- In accordance with s. 17(5) of the *CFCSA*, and upon the request of the Director, a police officer must accompany and assist a CFS worker in enforcing a court order made under s. 17(2).

For a discussion of these orders, see Chapter 4 (A) above.

E. ACCOMPANYING A CFS WORKER TO HOME VISITS

The Director may ask a police officer to accompany a CFS worker to a home visit where the purpose of the home visit is to assess the child's health and safety (i.e., the Director has not yet decided to remove the child). In these cases, the police officer's role is to "keep the peace" and be available to assist the CFS worker in the event of a child removal.

F. INFORMATION-SHARING WITH THE DIRECTOR

Under s. 14 of the *CFCSA*, the police report to MCFD all calls and investigations that involve a child's safety (including domestic violence calls where a child lives in the home).

During an investigation under the FDR Pathway, the Director may rely upon s. 79(a) or (a.1) of the *CFCSA* to contact the police without the parent's consent to determine whether the police have safety concerns about a family member or a CFS worker who attends the family's home.[190]

During an investigation under the CPI Pathway, the Director may additionally rely upon s. 96 of the *CFCSA* to request and obtain information and records from the police.

G. OVERLAPPING CFS AND POLICE INVESTIGATIONS

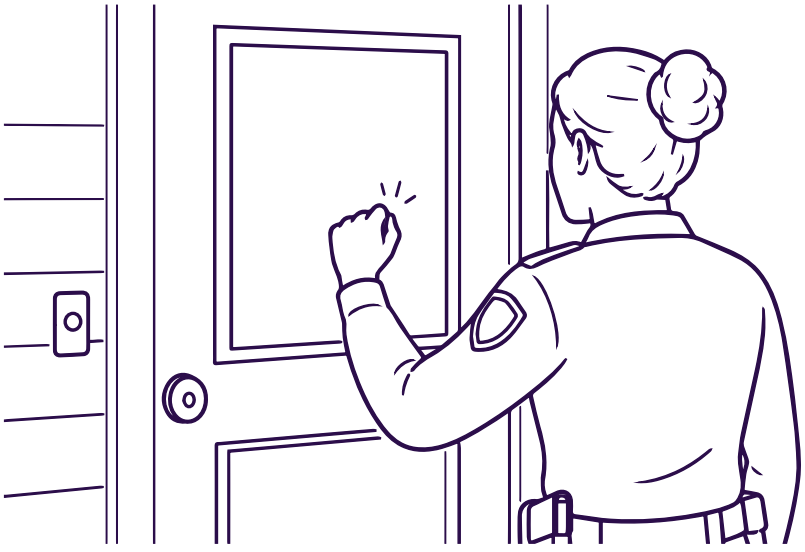
Allegations of abuse, neglect, or harm that are criminal in nature may give rise to overlapping CFS and criminal investigations.

As discussed above, the police report to MCFD all calls and investigations that involve a child's safety. The Director, conversely, must report to the police any information the Director receives that indicates a crime has occurred (including any allegation of sexual abuse or exploitation).[191]

Where there are overlapping CFS and criminal investigations, the Director and the police may engage in ongoing information sharing. Any information shared with the Director (including by the "offending parent") could be provided to the police to aid the criminal investigation under s. 79(a) or (a.1) of the *CFCSA*. Likewise, the Director can access criminal investigation records under s. 96 of the *CFCSA*.

Information sharing between the Director and the police is concerning from a rights perspective because CFS investigations tend to have weaker rights protections and procedural safeguards than criminal investigations.

For example, where the police arrest or detain a person, they must advise the person of their right to consult with a lawyer and their right to remain silent. These rights offer the person protection against self-incrimination. No such rules exist in the CFS context. A person could say something self-incriminating during a CFS investigation without any understanding of their potential criminal jeopardy.



CHAPTER SIX

What Additional Laws Apply to Investigations?

A. THE *CFCSA*'S GUIDING AND SERVICE DELIVERY PRINCIPLES

While the *CFCSA* does not contain a preamble or purpose clause, s. 2 of the *CFCSA* sets out the legislation's guiding principles and s. 3 contains service delivery principles.[192]

The interpretation and administration of the *CFCSA* are subject to the guiding principles under s. 2. However, these principles are not merely an interpretive aid. Rather, they are principles of positive law that must guide the consideration of the legal issues in court applications under the *CFCSA*.[193]

Section 2 confirms that the ***CFCSA***'s paramount considerations during an investigation are the "safety and well-being of children." Other guiding principles that are especially relevant to investigation rights and procedures include:

- (a) Children are entitled to be protected from abuse, neglect and harm or threat of harm.
- (b) A family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents.
- (b.1) Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children.
- (d) The child's views should be taken into account when decisions relating to a child are made.
- (g) Decisions relating to children should be made and implemented in a timely manner.

The *CFCSA*'s service delivery principles that are especially relevant to investigation rights and procedures include:

- (a) Families and children should be informed of the services available to them and encouraged to participate in decisions that affect them.
- (b) In the planning and delivery of services to Indigenous children and families, there should be consultation and cooperation with Indigenous peoples and Indigenous governing bodies.
- (b.1) Services should be planned and provided in ways that prevent discrimination prohibited by the Human Rights Code and that promote substantive equality, respect for rights and culture and, in the case of Indigenous children, cultural continuity.
- (c) Services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services.

B. THE *FEDERAL ACT*'S PREAMBLE, PURPOSES, PRINCIPLES, AND SERVICE DELIVERY PRINCIPLES

The *Federal Act* contains a preamble, purposes (s. 8), principles (s. 9), and service delivery principles (s. 11).

The *Federal Act*'s detailed preamble addresses the historical and social context giving rise to the legislation, including the intergenerational harms of residential schools and colonial CFS systems. In *J.W. v. British Columbia (Director of Child, Family and Community*

Service), Justice Walkem observed that the *Federal Act*, as well as the courts' jurisprudence, requires consideration of such context when interpreting and applying the *CFCSA* and the *Federal Act*.[194]

The *Federal Act*'s purposes are to:[195]

- (a) affirm the inherent right of self-government, which includes jurisdiction in relation to child and family services;
- (b) set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children; and
- (c) contribute to the implementation of *UNDRIP.*

The interpretation and administration of the *Federal Act* are subject to the following principles:[196]

(1) The principle of the best interests of the child (the best interests of an Indigenous child are defined under s. 10 of the *Federal Act*).

(2) The principle of cultural continuity.

(3) The principle of substantive equality.

Like the *CFCSA*'s guiding principles under s. 2, the *Federal Act*'s principles are principles of positive law.

The *Federal Act* defines the principle of substantive equality to include several concepts. The concepts that are especially relevant to investigation rights and procedures include:

- (b) A child must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she must be able to do so without discrimination…
- (c) A child's family member must be able to exercise his or her rights under this Act, including the right to have his or her views and preferences considered in decisions that affect him or her, and he or she must be able to do so without discrimination…

The *Federal Act*'s service delivery principles that are especially relevant to investigation rights and procedures include:[197]

- (a) [Services are to be provided in a manner that] takes into account the child's needs, including with respect to his or her physical, emotional and psychological safety, security and well-being.
- (d) [Services are to be provided in a manner that] promotes substantive equality between the child and other children.

Alignment between the *CFCSA* and *Federal Act*

The Provincial Court has confirmed that the guiding principles in s. 2 of the *CFCSA* are consistent with the purposes and principles set out in ss. 8 and 9 of the *Federal Act*.[198] Further, the service delivery principles in s. 3 of the *CFCSA* are consistent with those set out in s. 11 of the *Federal Act*.[199]

C. BEST INTERESTS OF AN INDIGENOUS CHILD

Under s. 10(1) of the *Federal Act*, the best interests of an Indigenous child must be a "primary consideration" in any decision or action in relation to an Indigenous child under the *CFCSA*, and the "paramount consideration" in any decision or action related to the removal of an Indigenous child under the *CFCSA*.

As discussed above, the *Federal Act* differs from the *CFCSA* in that it mandates the Director to consider the best interests of an Indigenous child at all stages of CFS involvement, including during the investigation process and when deciding whether to remove the child.[200]

When considering the best interests of an Indigenous child, the Director must apply the *Federal Act*'s more expansive and robust definition (rather than the definition of the best interests of a child under the s. 4 of the *CFCSA*).[201] The factors enumerated under s. 10(3) of the *Federal Act* are not "merely examples" of what should be considered "but specific categories that must be addressed."[202]

D. THE *CHARTER*

State intervention in a parent-child relationship engages the *Charter* rights of both parents and children, including during investigations.[203] The *Charter* rights that apply to the investigation process include ss. 7, 15, and 8 of the *Charter*.

i. Section 7 of the *Charter*

Section 7 of the *Charter* provides:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

State intervention in a parent-child relationship engages the s. 7 security interests of both the parent and child.[204] As observed by Justice L'Heureux-Dubé in *Winnipeg Child and Family Services v. K.L.W.*, the "mutual bond of love and support between parents and their children is a crucial one and deserves great respect," and "unnecessary disruptions of this bond by the state have the potential to cause significant trauma to both the parent and the child."[205]

Given the s. 7 interests at stake, the Director's decisions and actions must always be in accordance with the principles of fundamental justice, including procedural fairness.[206] There is a robust and growing body of appellate case law that addresses s. 7 rights to fair procedures in CFS cases.[207]

Courts have confirmed that CFS investigations engage s. 7 rights and interests. In *Children's Aid Society of St. Thomas & Elgin v. J.P.G.*, the Ontario Court of Justice aptly observed:[208]

> The weight of authority a society might exert is as significant as is the inability of most families to effectively respond to it. A society poses a fundamental threat to familial security whenever it appears at the door and as such the family and individuals within it are entitled to constitutional recognition and protection; *New Brunswick v. G.(J.)*, [1999] S.C.J. 47.

In the *O. Decision*, the BC Supreme Court held that an investigation's s. 7 context mandates a "balanced approach" to adjudicating applications under s. 17 of the *CFCSA*.[209] Such an approach must weigh the potential harms connected to the Director's safety concerns and the potential harms arising from unwarranted state intrusion.[210]

In *B.J.T. v. J.D.*, the Supreme Court of Canada confirmed that s. 7 of the *Charter* gives rise to the courts' essential supervisory role in CFS cases, which includes consideration of the Director's investigation conduct.[211] As observed by the Court at para. 75:

> Faced with representations from a child protection agency regarding the fitness of parents, a court should not be prohibited from considering the manner in which the agency investigated and treated the parties involved to assess the weight that can be placed on such evidence or arguments… Here, the hearing judge committed no error in taking into account the Director's prior conduct, including its prior statements and the investigation and level of scrutiny employed *vis-à-vis* each parent, to assess the Director's position at the disposition hearing.

ii. Section 15 of the *Charter*

Section 15(1) of the *Charter* provides:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

There has been limited judicial consideration of s. 15 equality rights in the CFS context, except to the extent that they inform a s. 7 or procedural fairness analysis.

In her concurring decision in *New Brunswick (Minister of Health and Community Services v. G.(J.)*, Justice L'Heureux-Dubé highlighted the intersection of s. 7 and s. 15 rights in CFS cases:[212]

> 113 This case raises issues of gender equality because women, and especially single mothers, are disproportionately and particularly affected by child protection proceedings...
>
> 114 As well as affecting women in particular, issues of fairness in child protection hearings also have particular importance for the interests of women and men who are members of other disadvantaged and vulnerable groups, particularly visible minorities, Aboriginal people, and the disabled. As noted by the United States Supreme Court in *Santosky v. Kramer*, 455 U.S. 745 (1982), at pg. 763:
>
> > Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups. . . such proceedings are often vulnerable to judgments based on cultural or class bias.
>
> Similarly, Professors Cossman and Rogerson note that "The parents in child protection cases are typically the most disadvantaged and vulnerable within the family law system...." ...

More recently, the Ontario Court of Appeal called on courts to be "mindful of the reality and material circumstances" of parents when considering issues of procedural fairness in CFS proceedings, observing:[213]

> [69] Poverty and other forms of marginalization form part of the experience of many parents involved in child protection proceedings. If we do not face up to this reality we risk forgetting the hard-learned lessons of the past by exacerbating pre-existing inequities and harms. The miscarriages of justice outlined in the Report of the Motherisk Commission (2018: Ontario Ministry of the Attorney General) speak, by way of example, to the significant imbalance between parents and Children's Aid Societies, noting that parents, even when represented by counsel, were "simply overpowered" (at pg. 121). Fairness in the child protection context demands recognition of these dynamics.

iii. Section 8 of the *Charter*

Section 8 of the *Charter* provides:

> Everyone has the right to be secure against unreasonable search or seizure.

A search or seizure will be reasonable within the meaning of s. 8 of the *Charter* if: (1) it is authorized by law; (2) the law itself is reasonable; and (3) the search or seizure is carried out in a reasonable manner.[214]

Section 8 protects against "excessive intrusion by the state into the private lives of individuals and more specifically, into their dignity, integrity and autonomy."[215] At its core, s. 8 is concerned with the point at which "the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals."[216]

The BC Court of Appeal recently confirmed that s. 8's reach in the CFS context is "legitimately circumscribed" by the priority given to protecting children's lives and health.[217] However, it also said that where privacy interests are outweighed by other societal claims, there must be "clear rules" about the conditions in which the privacy interests can be violated.[218]

Charter protected equality interests should also inform the s. 8 analysis. In *R. v. Le*, a case addressing s. 8 in the criminal context, the Supreme Court of Canada confirmed the state's enhanced obligation to respect the privacy, dignity and equality of people who are from marginalized and highly scrutinized communities:[219]

> The trial judge noted that this neighbourhood of Toronto experiences a high rate of violent crime. The officers themselves testified to routinely patrolling this housing co-operative. But, the reputation of a particular community or the frequency of police contact with its residents does not in any way license police to enter a

> private residence more readily or intrusively than they would in a community with higher fences or lower rates of crime. Indeed, that a neighbourhood is policed more heavily imparts a responsibility on police officers to be vigilant in respecting the privacy, dignity and equality of its residents who already feel the presence and scrutiny of the state more keenly than their more affluent counterparts in other areas of the city.

iv. The role of the provincial court in upholding the *Charter*

The use of the *Charter* in the CFS context has been rare because of the Provincial Court's limited jurisdiction to grant *Charter* remedies.[220] This Guide will discuss two ways counsel can invoke the *Charter* in a provincial court proceeding without seeking a *Charter* remedy.

Charter costs

If you are interested in learning about applications for Charter costs in CFS cases, please see West Coast LEAF's Access Toolkit: westcoastleaf.org/work/the-access-toolkit

First, parent's counsel can cite *Charter* rights and values when making submissions about the proper interpretation of the *CFCSA*, including in relation to court applications in the investigation context. In the *O. Decision*, the Supreme Court considered s. 7 of the *Charter* when deciding on the legal test to be applied to applications under s. 17 of the *CFCSA*.[221]

In *British Columbia (Director of Child, Family and Community Service) v. D.O.S.*, the appellant relied upon the *O. Decision* to argue that s. 48 of the *CFCSA* should be interpreted in accordance with the Supreme Court of Canada's *Charter* jurisprudence (namely, its decision in *K.L.W.*).[222] While the BC Supreme Court expressly confirmed that the *CFCSA* should be interpreted in accordance with *Charter* values, it went on to caution that those "abstract values cannot override the plain language and structure of a statute."[223]

Second, pursuant to the Supreme Court of Canada's decision in *B.J.T. v. J.D.*, parent's counsel can ask the court to exercise its "essential oversight role" over the Director's conduct, including their investigation conduct. This "important role," "with its attendant checks and balances," arises from the CFS system's *Charter* context and, more specifically, s. 7's requirement that "child protection agencies exercise their jurisdiction only when warranted and with due fairness to children and parents."[224]

SPOTLIGHT ON THE CASE LAW *B.J.T. v. J.D.*, 2022 SCC 24.

In *B.J.T. v. J.D.*, the Supreme Court of Canada confirmed that the trial judge did not err when he considered, as part of the best interests of the child analysis, the Director's misconduct with respect to removing the child from the grandmother's care and placing him with his father in a different province.[225] These considerations led the trial judge to place less emphasis on the child's *status quo* that had arisen because of the Director's compounded errors (i.e., living with his father instead of his grandmother).[226]

E. THE COMMON LAW DUTY OF FAIRNESS

The "modern view" of procedural fairness is that a duty of fairness applies to the investigation stage of an administrative process.[227] However, the requirements of this duty during an investigation are context specific.[228] They will vary with factors such as the nature of the decision, the statutory scheme, the importance of the decision to the affected person, the affected person's legitimate expectations about the procedures, and the choices of procedure made by the decision-maker.[229]

The "fundamental rule" is that where an individual could be adversely affected by an investigation and investigation report, they should be: [230]

(1) Told the allegations against them; and

(2) Afforded a fair opportunity to respond to those allegations.

Generally speaking, the level of fairness required during an investigation will be higher where the investigation will result in a more final decision and lower where an investigation will result in a more preliminary decision.[231] An investigation decision may be considered preliminary when it triggers a subsequent hearing in which the affected individual has participatory rights.[232]

Courts have long confirmed that CFS agencies must act fairly when conducting investigations in accordance with their duty of fairness and s. 7 of the *Charter*.[233] However, there is limited judicial guidance, especially in BC, on what fairness actually requires during a CFS investigation. Any fairness analysis must be situated within the unique CFS context, where a paramount consideration is protecting children's health and safety.[234]

SPOTLIGHT ON THE CASE LAW
***Chapman v. York Region Children's Aid Society*, 2021 ONSC 2620.**

In this case, the Ontario Superior Court of Justice addressed the fairness of a CFS investigation that concluded that a youth sports coach posed a risk of emotional harm to children on his team (note: this decision was considered more "final" in nature because it did not trigger a court proceeding with participatory rights. It could only be challenged on judicial review).[235] The Court confirmed that the youth sports coach was entitled to be told the case against him and afforded a fair opportunity to respond to it.[236] This in turn required notice of the specific allegations against him and the specific standard that would be applied to his conduct.[237]

When advocating for fair procedures in CFS investigations under both the common law and s. 7 of the *Charter*, it is important to emphasize the significance of the investigation outcome to parents and children.

- First, the investigation can result in the removal of a child from their home without a court order. While a child removal triggers a subsequent court process with participatory rights for the parents, there is often substantial delay before there is a substantive protection hearing. Further, even if a court agrees with the parents that the removal was unjustified and returns the child to their home, the harms of the removal and subsequent parent-child separation will remain.

- Second, the investigation can prompt parents—who are making decisions in a highly coercive context—to enter into "voluntary" agreements that contain intrusive terms and conditions. These terms and conditions can result in a parent-child separation, such as where the parties "agree" that a child or a parent will reside outside the home. Unlike a child removal, a voluntary agreement does not trigger a court proceeding with participatory rights.

F. THE BC *HUMAN RIGHTS CODE*

The BC *Human Rights Code* prohibits discrimination in the CFS system, including during CFS investigations. This prohibition is reflected in the *CFCSA*'s service delivery principles and the *Federal Act*'s service delivery principles. The *Code*'s protections in relation to CFS investigations can be realized in two ways.

First, a parent can bring a human rights complaint before the BC Human Rights Tribunal (the BCHRT). The BCHRT has jurisdiction to decide whether the Director's services were discriminatory and, if so, order remedies (such as compensation) to address the discrimination.[238]

Second, a parent can raise issues of discrimination in a Provincial Court proceeding under the *CFCSA* and/or *Federal Act*. Both the *CFCSA* and the *Federal Act* confirm a parent's entitlement to non-discriminatory services. While the *CFCSA*'s service delivery principles state that services should be planned and provided in ways that prevent discrimination prohibited by the *Code*, the *Federal Act*'s principles state that the *Federal Act* must be interpreted and administered in accordance with the principle of substantive equality.[239]

The BC Court of Appeal recently confirmed the Provincial Court's power to consider whether discrimination was present in the Director's actions and decision-making.[240] For example, the Court of Appeal said that the Provincial Court should be guided by the *Code* when determining whether a child removal was justified by the facts or whether the Director was instead acting based on stereotypical reasoning.[241]

G. *UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)*

UNDRIP is an international instrument that protects the individual and collective rights of Indigenous peoples of the world. It was ratified by Canada without qualification in 2016.[242] The inherent rights of Indigenous peoples enshrined in *UNDRIP* include the rights of Indigenous children to equality and freedom from discrimination, as well as to belong to their Indigenous community or nation and to practice their culture.

SPOTLIGHT ON THE CASE LAW: *R.R. v. Vancouver Aboriginal Child and Family Services Society* litigation.

The R.R. litigation set important precedents for the application of the *Human Rights Code* to the CFS system.

In *R.R. v. Vancouver Aboriginal Child and Family Services (No. 6),* the BCHRT held that the Vancouver Aboriginal Child and Family Services Society (VACFSS) had discriminated against an Afro-Indigenous mother by making custody and access decisions about her children based on stereotypical risk assessments.[243]

On judicial review, the BC Supreme Court held that the BCHRT had erred by applying a test for discrimination that did not uphold "the child-centred approach of the *CFCSA*."[244] Such an approach, according to the Court, "accommodates a substantial degree of differential treatment" to achieve its goal of protecting children.[245] Where a Director's risk assessment is made in "good faith," it cannot be discriminatory, "even if it engages stereotypical reasoning and escalating assertions of power and control."[246]

On appeal, the BCCA restored the BCHRT's decision and confirmed that stereotypes should never weigh in risk assessments.[247] It observed:[248]

> By inserting itself into the intimate relationship between parent and child, the state takes on the responsibility of doing so without discrimination. Racial or other stereotypes have no place in decisions to intervene. Relying on stereotypes in such decisions, far from being in the best interests of the child, is in the best interests of no one. If our shared history has taught us anything, it has taught us this.

Both Canada and BC have passed legislation respecting the implementation of *UNDRIP* within their respective jurisdictions.[249] For example, BC is required under its *Declaration on the Rights of Indigenous Peoples Act* to bring all provincial laws into alignment with *UNDRIP* through consultation and cooperation with Indigenous Peoples. In the CFS realm, Canada has additionally sought to implement *UNDRIP* through the enactment of the *Federal Act*.[250]

UNDRIP is a source of positive law that must guide the interpretation and application of the *CFCSA* and *Federal Act*.[251] This is illustrated by a growing number of cases where courts and human rights tribunals have considered *UNDRIP* when making decisions affecting the rights and interests of Indigenous children.[252]

In the recent decision of *Gitxaala v. British Columbia (Chief Gold Commissioner)*,[253] the BC Court of Appeal confirmed that all provincial statutes (such as the *CFCSA*) must be interpreted consistently with *UNDRIP* pursuant to BC's *Declaration on the Rights of Indigenous Peoples Act*,[254] s. 8.1(3) of BC's *Interpretation Act*,[255] and the common law presumption of conformity.[256] The BC Government has appealed the decision.

Looking at the implications of *UNDRIP* for CFS processes as a whole, the *Wrapping Our Ways Around Them* Guidebook on Indigenous CFS practice observes:[257]

> Integrating the *UNDRIP* in child welfare processes requires moving from legal systems and structures that are imposed on Indigenous Peoples toward ones that reflect Indigenous reality, existence, laws and ways of being. This can be done by empowering Indigenous laws and supporting their operation. The *UNDRIP* requires that Indigenous Peoples—as Nations, communities, individuals and families—fully and directly participate in family justice processes that impact them. Where Indigenous Peoples have not articulated their own laws in writing, under the *Federal Act* or through an independent process, the *UNDRIP* nonetheless requires Indigenous Peoples' meaningful participation in direct decisions made about their children and families, including by their own laws.

In other words, where an investigation involves an Indigenous child, *UNDRIP* requires the Director to:

a) adapt the investigation process to reflect the specific laws and approaches of the Nation to which the child belongs; and

b) Ensure the Nation's meaningful participation in the investigation process.

H. *CONVENTION ON THE RIGHTS OF THE CHILD (CRC)*

The *CRC*, which was ratified by Canada in 1991, recognizes the human rights of children, as well as their special vulnerability and corresponding need for protection.[258] While Canada has not expressly incorporated the *CRC* into domestic law, courts and human rights tribunals have long used the *CRC* as an interpretive aid when making decisions that affect the rights and interests of children.[259] The *CRC*—though sometimes overlooked in CFS proceedings—is thus an important advocacy and decision-making tool.[260]

In broad strokes, children's rights under the *CRC* include the right to survival; to develop to the fullest; to be protected from abuse and exploitation; and to participate fully in family, cultural and social life.[261] States that have ratified the *CRC* have committed themselves to protecting and ensuring children's rights in a manner that is consistent with the best interests of the child.[262] With respect to realizing Indigenous children's rights, the *CRC*'s monitoring body (the *CRC* Committee) has stressed the importance of culturally appropriate social services.[263]

CRC Articles that may be relevant to a child's rights during a CFS investigation include:

- Article 3(1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

- Article 9(1): States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to

judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child…

- Article 12(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.

- Article 19(1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Both the *CFCSA* and the *Federal Act* contain provisions that reflect a child's right to be heard under Article 12(1) of the *CRC*. The *CFCSA*'s guiding principles state that a child's views should be considered in decisions relating to the child.[264] Further, its service delivery principles state that the child should be encouraged to participate in decisions that affect them.[265] Finally, the *CFCSA* confirms that a child's views are a factor that may be relevant to the determination of a child's best interests.[266]

The *Federal Act*'s protections are even more robust. Its principle of substantive equality and its definition of the best interests of the child both encompass an Indigenous child's right to have their views and preferences considered in decisions that affect them.[267]

CHAPTER SEVEN

The Impacts of s. 8 of the *Charter* on Home Entry and Search Powers in the CFS Context

A. OVERVIEW

Section 8 jurisprudence recognizes that a person's expectation of privacy is highest in their home.[268] This expectation is "rooted in the ancient law of trespass and finds its modern justification in the intimacies of personal and family life."[269] Warrantless entries to a home are thus presumed to be unreasonable and in breach of s. 8 rights.[270] One of the recognized exceptions to this general rule is where CFS legislation expressly authorizes a warrantless entry to protect a child in exigent circumstances (in other words, a situation that requires urgent action).[271]

B. LIMITS ON THE DIRECTOR'S HOME ENTRY POWERS

The case law on s. 8 in the CFS context is clear: a CFS worker cannot enter a person's home without their consent unless the applicable CFS legislation clearly authorizes them to do so.[272] There are three circumstances where the *CFCSA* provides such authority.

i. Home entries to remove a child under ss. 30, 36, or 42 of the *CFCSA*

A CFS worker has the authority to enter a home without consent and without a court order to carry out a child removal. This authority only arises where the Director has satisfied the statutory criteria under either s. 30, s. 36, or s. 42 of the *CFCSA*.[273]

First, the Director must meet the statutory criteria to remove the child. To remove a child under s. 30(1) of the *CFCSA*, the Director must have "reasonable grounds to believe" that the child needs protection and that:

- The child is in immediate danger; or
- No other less disruptive measure is available to adequately protect the child.[274]

To remove a child under s. 36(1) or s. 42(1) of the *CFCSA*, the Director must have "reasonable grounds to believe" that:

- The supervision order no longer protects the child; or
- A person has not complied with a term or condition of the supervision order, and the order requires the Director to remove the child if the person does not comply with that term or condition.[275]

Second, the Director must meet the statutory criteria to enter the home for the purpose of removing the child. Under all of ss. 30(2), 36(2), 42(2), a CFS worker may only enter a home without a court order where:[276]

- The Director has reasonable grounds to believe that the child is in the home; and
- A person has denied the Director access to the child or no one is available to allow access to the child.

There is no authority under ss. 30, 36, or 42 of the *CFCSA* to enter a person's home without their consent or a court order to conduct a home visit, inspection, or search (unless the search is for the child who will be removed).[277]

ii. Home entries authorized by an order under s. 17 of the *CFCSA*

A CFS worker also has the authority to enter a home without consent to gain access to a child pursuant to a court order under s. 17(2) of the *CFCSA*. As discussed above, a court order under s. 17(2) is only available where all three criteria under s. 17(1) are met:

- There are "reasonable grounds to believe" a child needs protection; and
- There has been a denial of access to the child; and
- Access to the child is necessary to determine if the child needs protection.[278]

Section 17(2) only authorizes court orders to enter a home to gain access to a child. It does not authorize court ordered home visits, inspections, or searches (unless the search is for the child).[279]

iii. Home entries authorized by an express term of a supervision or custody order

A CFS worker also has the authority to enter a person's home without consent when this is an express term of a supervision or custody order under the *CFCSA*. An order that merely authorizes the Director to have access to a child does not provide a CFS worker with the authority to enter the child's home without consent.[280]

C. LIMITS ON THE DIRECTOR'S SEARCH POWERS

In cases where a CFS worker lawfully enters a home, the case law is unsettled about whether the CFS worker has the power to conduct a home search or inspection without the parent's consent. For example, if a parent invites the CFS worker to meet with them in their living room, can the CFS worker go into the bedroom without the parent's consent? If the CFS worker enters the home to remove a child under ss. 30, 36, or 42 of the *CFCSA*, can the CFS worker search for evidence during the removal process?

The *CFCSA* only expressly authorizes a CFS worker to conduct a home search without consent in two circumstances:

- To locate and gain access to a child pursuant to ss. 30(1), 36(1), or 42(1) of the *CFCSA*.
- To locate and gain access to a child pursuant to a court order under s. 17 of the *CFCSA*.

In other words, the *CFCSA* does not expressly authorize a CFS worker to search homes for evidence (or anything more than a child). Examples of home searches for evidence include:

- Searching drawers for items such as drugs, drug paraphernalia, or weapons.
- Looking at the food inside the home's refrigerator.
- Going into the bedroom(s) to view the sleeping arrangements.
- Touring the home to assess its cleanliness.

There is a line of case law that suggests that a CFS worker's search powers are limited to those with clear statutory authority (i.e., the powers must be expressly authorized by the applicable CFS legislation).[281] This means that in BC, a CFS worker would not have the power to conduct a non-consensual home search for anything more than a child. According to this line of case law, a non-consensual home search for evidence would be an illegal search in violation of s. 8 of the *Charter*.[282]

However, there is another line of case law that suggests that the CFS worker may be permitted under s. 8 of the *Charter* to conduct a limited home search to confirm the validity of child removal grounds before carrying out the removal. This search power has been interpreted narrowly; the CFS worker would not be permitted to conduct an unrestricted home search or search the home after the child has already been removed.[283]

D. LIMITS ON A POLICE OFFICER'S HOME ENTRY POWERS IN THE CFS CONTEXT

Under s. 8 of the *Charter*, a police officer cannot enter a home without consent unless their home entry was authorized by a statutory or common law authority. In BC's CFS context, and absent a criminal or other warrant, a police officer's home entry powers primarily

arise from the *CFCSA*.[284] A police officer also has exceptional home entry powers under the common law and other legislation.

i. Home entries to take charge of a child under s. 27(1) of the *CFCSA*

A police officer can enter a home without consent to take charge of a child under s. 27(1) of the *CFCSA* where the statutory criteria under s. 27(2) are met:

- The police officer has reasonable grounds to believe that the child's health or safety is in immediate danger, and
- A person has denied the police officer access to the child or no one is available to provide access.

Like the "reasonable grounds" threshold under other provisions of the *CFCSA*, the "reasonable grounds" threshold under s. 27(2) requires a belief that rises above the level of suspicion, intuition, or a hunch.[285]

ii. Home entries to accompany and assist the Director under ss. 30, 36, or 42 of the *CFCSA*

A police officer can enter a home without consent under ss. 30, 36, or 42 of the *CFCSA* to assist a CFS worker with a child removal. In other words, the police officer's home entry powers under these provisions stem from—and are limited to—those of the Director.[286] A police officer should refuse to accompany a CFS worker who enters a home without statutory authority.[287]

As discussed above, a CFS worker—and thus a police officer assisting the CFS worker with a child removal—can only enter a home without consent under ss. 30, 36, or 42 when the applicable statutory criteria are met.[288]

iii. Home entries authorized by an order under s. 17 of the *CFCSA*

An order under s. 17 of the *CFCSA* can authorize a police officer to enter a home without consent in two scenarios:

- Under s. 17(2)(a) of the *CFCSA*, the Provincial Court may grant an order that directly authorizes a police officer to enter a home or other premises to search for a child.
- Under s. 17(5) of the *CFCSA*, a police officer must accompany and assist a CFS worker in enforcing a court order under s. 17(2) upon the request of the Director. In other words, the police officer's home entry powers under the court order stem from—and are limited to—those of the Director.

iv. The *Godoy* exception: Warrantless entries to protect a person's life or safety

In *R. v. Godoy*, the Supreme Court of Canada confirmed that police officers have a duty to protect life and prevent serious injury.[289] Flowing from this duty, a police officer can enter a home without a warrant if they have reasonable grounds to believe it is necessary to do so to protect a person's life or safety.[290] Once inside the home, a police officer's authority is limited to locating the endangered person, ascertaining their health and safety, and providing any needed assistance.[291]

While *Godoy* was decided in the context of responding to 911 calls, the *Godoy* exception may also apply to other emergency situations, including in the CFS context.[292] Whether the Godoy exception applies to a warrantless home entry is a fact-sensitive and contextual inquiry.[293]

A detailed discussion of the *Godoy* exception in the CFS context is beyond the scope of this Guide. It is important to note that where the *Godoy* exception would apply in the CFS context, the police officer will often be authorized by the *CFCSA* to enter the home to take charge of the child under s. 27 or to assist the Director with a child removal under ss. 30, 36, or 42.

v. Warrantless home entries where the conditions for a warrant exist

In CFS cases where there is an overlapping criminal context, the police may be authorized to enter a home where the conditions for obtaining a warrant exist, but "exigent circumstances" make it impractical to obtain one.[294] It is beyond the scope of this Guide to address these criminal law scenarios in more detail.

E. LIMITS ON A POLICE OFFICER'S SEARCH POWERS IN THE CFS CONTEXT

In cases where a police officer lawfully enters a home in the CFS context, the scope of their warrantless search powers is limited.

i. Search powers under the *CFCSA*

The *CFCSA* only expressly authorizes a police officer to conduct a warrantless and non-consensual home search in the circumstances below:

- To locate and gain access to a child under s. 27(1) of the *CFCSA*.
- To assist a CFS worker with locating and gaining access to a child under sections 30(3) or 36(2) of the *CFCSA*.
- To locate and gain access to a child as authorized by a court order under s. 17(2) of the *CFCSA*.
- To assist a CFS worker with locating and gaining access to a child as authorized by a court order under s. 17(2) of the *CFCSA*.

In other words, the *CFCSA* does not expressly authorize a police officer to search homes for evidence (or anything other than a child) without consent. However, if a CFS worker has the power to conduct a limited home search during the removal process (as discussed in the section above), a police officer may be permitted to assist the CFS worker in carrying out that power.

ii. Search powers arising from the common law duty to protect life and safety

As discussed in the section above, a police officer can enter a home without a warrant if they have reasonable grounds to believe it is necessary to do so to protect a person's life or safety.[295] Once inside the home, a police officer's authority is limited to locating the endangered person, ascertaining their health and safety, and providing any needed assistance.[296] The police officer does not have an additional authority to conduct a home search or otherwise intrude on a resident's privacy interests.[297]

iii. Home entries and searches where the conditions for a warrant exist

A police officer may be authorized to search a home where the conditions for obtaining a warrant exist, but "exigent circumstances" make it impractical to obtain one.[298] It is beyond the scope of this Guide to address these criminal law scenarios in more detail.

CHAPTER EIGHT

Complaints and Administrative Reviews

A. OVERVIEW

A Director's actions and decision-making under the *CFCSA*, including with respect to investigations, are subject to an internal complaints process. There are two streams within this process: the "complaints resolution" stream and the "administrative review" stream. Section 101.1 of the *CFCSA* protects complainants against retaliation.

B. BRINGING A COMPLAINT

Anyone who receives services under the *CFCSA* is entitled to make a complaint.[299] Complaints will generally be accepted where they concern a Director's actions or decision-making under the *CFCSA*.[300] A complainant can choose between participating in the complaints resolution process or requesting an administrative review.[301] Most complaints are addressed through the more informal complaints resolution process.[302]

C. THE COMPLAINTS RESOLUTION PROCESS

The complaints resolution process supports the complainant and their CFS workers to communicate and work together to resolve the complaint.[303] It must conclude within 30 days unless the complainant and their CFS workers agree to an extension.[304] At any time during the complaints resolution process, the complainant may opt to switch to the administrative review stream.[305] The complainant may also request an administrative review at the conclusion of the complaints resolution process.[306]

D. THE ADMINISTRATIVE REVIEW PROCESS

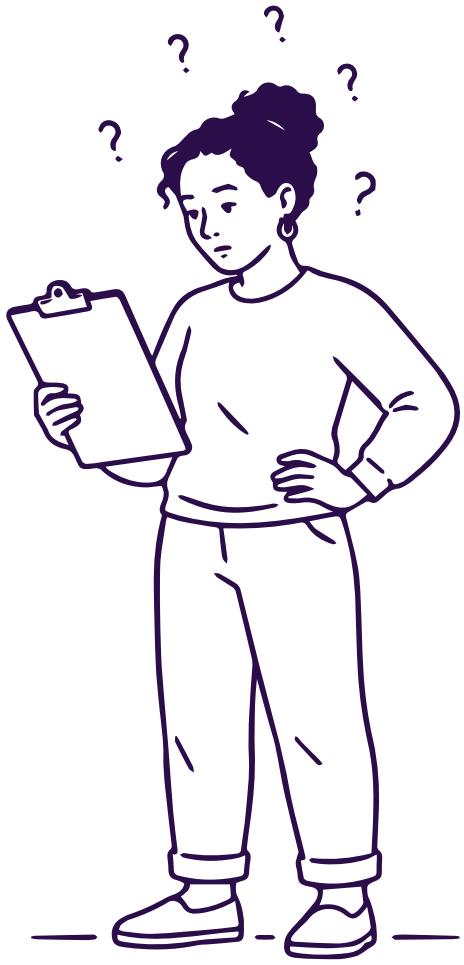
The administrative review process is implemented by MCFD's Quality Assurance Branch (QAB).[307] A designated person (called a "review authority") considers the complaint and provides a written decision containing their conclusions, recommendations, and reasons.[308] Like the complaints resolution process, the administrative review process must conclude within 30 days unless the complainant and the review authority agree to an extension.[309]

An administrative review decision (including a review authority's failure to render a decision) is subject to judicial review by the BC Supreme Court.[310] A judicial review of an administrative review decision is a novel way to invoke the BC Supreme Court's oversight of the Director's actions and decisions. However, we could not locate case law in which a court judicially reviewed the substance of an administrative review decision.

CHAPTER NINE

Frequently Asked Questions (FAQs) About Investigation Rights

The FAQs include summaries of information and legal principles discussed in the preceding chapters (Chapters 1 to 8). Please see those chapters for additional details and supporting references.



Does a parent have a right to consult with a lawyer during an investigation?

Yes. This right is well established and non-controversial. Given the *Charter* interests at stake and the power imbalance between the Director and parents, access to a lawyer is an essential element of a procedurally fair CFS investigation.

Both Legal Aid BC (LABC) and the Indigenous Justice Centres (IJCs) provide legal representation to eligible parents from the time of initial contact with a CFS worker. The IJCs can assist Indigenous parents and caregivers who do not meet LABC's eligibility criteria.

Please see Chapter 10 for a list of practice tips for parent's counsel in connection with CFS investigations.

Can a parent bring a lawyer to a meeting or interview with a CFS worker?

It depends. A parent does not have a right to bring a lawyer to a meeting or interview with a CFS worker. However, a parent also cannot be compelled to meet with a CFS worker without their lawyer present. In practice, and outside of urgent circumstances, a CFS worker will often agree to the attendance of parent's counsel if Director's counsel is also present.

PRACTICE TIP
Unlike lawyers, advocates can attend meetings where Director's counsel is not present.

Can a parent refuse to answer questions, respond to a request, or sign an agreement before talking to a lawyer?

Yes. A parent cannot be compelled to answer questions (without a court order), agree to a request, or sign an agreement before talking to their lawyer. In practice, and outside of urgent circumstances, a CFS worker will often accommodate a parent's request to get legal advice.

PRACTICE TIP

Parents are routinely asked to enter into a safety plan agreement before there is time to get legal advice. The CFS worker may suggest that the alternative to a safety plan is child removal. Parents who enter into a safety plan in these circumstances should get legal advice as soon as possible afterward.

Does a CFS worker have to provide a parent with notice of their rights at the start of an investigation?

No. Neither the *CFCSA* nor MCFD's policies require an explanation of a parent's rights at the outset of the investigation. They also do not expressly require a CFS worker to otherwise explain a parent's investigation rights. A CFS worker may directly or indirectly address some rights when explaining the investigation process to the parent. However, parents should be encouraged to consult with a lawyer or advocate about their rights and the implications of enforcing them in their specific case.

A limited rights notice is required before a parent enters into a safety plan agreement. Specifically, the CFS worker must advise the parent of their right to obtain independent legal advice at any time about the agreement.[311]

PRACTICE TIP

A lawyer is best placed to provide a parent with information and legal advice about their investigation rights in connection with their specific situation. Many parents will be eligible for free legal help through LABC and/or an IJC.

My client is pregnant. Can MCFD alert the hospital before the birth?

No. BC officially ended the practice of birth alerts in 2019. However, health care providers continue to report safety concerns about newborns to MCFD in accordance with s. 14 of the *CFCSA* (the duty to report).

When contacting a parent, does a CFS worker have to identify themselves? Do they have to disclose the purpose of their contact (i.e., to investigate a protection report)?

Yes. These are elements of a procedurally fair CFS investigation. These requirements also have a legislative and policy basis. An undercover or deceptive investigation would be contrary to the *CFCSA*'s guiding principles and service delivery principles. It would also be antithetical to the *Federal Act*, including its preamble, purposes, principles, and service delivery principles.

MCFD's Policy Manual also does not permit an undercover or deceptive investigation. Under both the FDR and CPI Pathways, the CFS worker is required to meet with the parent at the outset of the investigation to explain the protection concerns and the investigation process. The FDR Pathway, in particular, is premised on collaboration and transparency.

An undercover or deceptive investigation is also contrary to MCFD's Rights and responsibilities of clients receiving Child or Family Services, which include the rights to:

- Be treated with respect
- Expect services in a professional and timely manner
- Clearly understand the conditions under which services will be provided

Does a CFS worker have to explain to a parent the allegations against them? Can a parent request more information about the allegations?

Yes. This is an essential element of a procedurally fair CFS investigation, as the subject of an investigation is entitled to know and respond to the case against them (though they are not required to provide a response). It also has a legislative and policy basis. It is consistent with the *CFCSA*'s guiding principles and service delivery principles, as well as the *Federal Act*'s preamble, purposes, principles, and service delivery principles.

Under both the FDR and CPI Pathways, the CFS worker is required to meet with the parents at the outset of the investigation to explain the protection concerns and investigation process. The level of information sharing required by policy depends, to a certain extent, on the investigation stream. Under the FDR Pathway, the CFS worker must involve the parents in a collaborative and transparent assessment process. Meeting this standard requires a high level of information sharing. While the CPI Pathway does not mandate a collaborative approach, the CFS worker should still engage the parents "whenever possible" in the investigation process.

A CFS worker's obligation to disclose and explain the protection concerns is also consistent with MCFD's Rights and responsibilities of clients receiving Child or Family Services, which include the rights to:

- Be involved in all decisions regarding your services
- Clearly understand the conditions under which services will be provided
- Freely provide feedback or express concerns
- Have clear and accessible communication

Is a CFS worker permitted to disclose the identity of the person who made the report to the parent?

No. The identity of a person who has made a report under s. 14 of the *CFCSA* is generally protected from disclosure, including to a parent who has a right to access the Director's records under the *Freedom of Information and Protection of Privacy Act* (*FOIPPA*). In practical terms, this means that the Director redacts identifying information about reporters from any records disclosed to parents under *FOIPPA* and during CFS proceedings.

Does a CFS worker have to explain the investigation process to the accused parent? Can a parent request more information about the investigation process?

Yes. This is an element of a procedurally fair CFS investigation. This requirement also has a legislative and policy basis. It is consistent with the *CFCSA*'s guiding principles and service delivery principles, as well as the *Federal Act*'s preamble, purposes, guiding principles, and service delivery principles.

Under both the FDR and CPI Pathways, the CFS worker is required to meet with the parents at the outset of the investigation to explain the protection concerns and investigation process. The level of information sharing required by MCFD's Policy Manual depends, to a certain extent, on the investigation stream. Under the FDR Pathway, the CFS worker must involve the parents in a collaborative and transparent assessment process. Meeting this standard requires a high level of information sharing. While the CPI Pathway does not mandate a collaborative approach, the CFS worker should still engage the parents "whenever possible" in the investigation process.

A CFS worker's obligation to explain the investigation process is also consistent with MCFD's Rights and responsibilities of clients receiving Child or Family Services, which include the rights to:

- Be involved in all decisions regarding the services they receive
- Expect services in a professional and timely manner
- Clearly understand the conditions under which services will be provided
- Have clear and accessible communication

Does a CFS worker have to give a parent the opportunity to respond to the allegations against them?

Yes. This is an essential element of a procedurally fair CFS investigation, as the subject of an investigation is entitled to know and respond to the case against them (though they are not required to provide a response). It also has a legislative and policy basis. It is consistent with the *CFCSA*'s guiding principles and service delivery principles, as well as the *Federal Act*'s preamble, purposes, guiding principles, and service delivery principles.

Under both the FDR and CPI Pathways, the CFS worker is required to meet with the parents at the outset of the investigation to explain the protection concerns and the investigation process. During this meeting, the CFS worker must also give the parent the opportunity to respond to the protection concerns and share their views.

A parent's right to respond to the allegations against them is also consistent with MCFD's Rights and responsibilities of clients receiving Child or Family Services, which include the right to be involved in all decisions regarding the services the parent receives.

If a Deaf parent requires sign language interpretation, is MCFD required to provide (i.e., arrange and pay for) an interpreter?

Yes. MCFD does not have a publicly available policy about providing interpreters. However, Deaf people have a well-established right under both the *Charter* and the *Human Rights Code* to sign language interpretation when engaging with government services.

If a parent has difficulties understanding or communicating in English, is MCFD required to provide (i.e., arrange and pay for) a spoken language interpreter?

It depends. MCFD does not have a publicly available policy about providing interpreters, and the case law is not settled on the right to spoken language interpretation when engaging with government services.

If a parent has difficulties understanding or communicating in English, access to an interpreter is an element of a procedurally fair investigation. More specifically, it allows the parent to know and respond to the case against them.

The Director's obligation to provide an interpreter also has a legislative and policy basis. It is consistent with the *CFCSA*'s guiding principles and service delivery principles, as well as the *Federal Act*'s preamble, purposes, guiding principles, and service delivery principles. Further, the standards and procedures under both the FDR and CPI Pathways require meaningful communication. Under the FDR Pathway, the CFS worker must involve the parents in a collaborative and transparent assessment process. Meeting this standard requires a high level of communication. While the CPI Pathway does not mandate a collaborative approach, the CFS worker should still engage the parents "whenever possible" in the investigation process.

Finally, the provision of an interpreter is consistent with MCFD's Rights and responsibilities of clients receiving Child or Family Services, which include the rights to:

- Be involved in all decisions regarding the services they receive
- Clearly understand the conditions under which services will be provided
- Freely provide feedback or express concerns
- Have clear and accessible communication

PRACTICE TIP

If the Director refuses to provide an interpreter or does not provide sufficient interpreter services, consider making a complaint or requesting an administrative review.

Does a CFS worker have to advise a parent of the investigation outcome?

Generally, yes. Under both the *CFCSA* and MCFD's policies, the Director is generally required to report the investigation outcome to the parent. The exceptions to this reporting requirement are when:

(a) the Director thinks reporting the result of the investigation would harm someone physically or emotionally or endanger the child's safety, or

(b) a criminal investigation into the matter is underway or being considered.

PRACTICE TIP
When reporting the investigation outcome to a parent, the Director should provide an outcome letter.

Can a CFS worker advise others about the investigation outcome without the parent's consent?

Yes. Under both the *CFCSA* and MCFD's policies, the Director may report the investigation outcome to the child if the child is "capable of understanding the information." Further, the Director is required to make "all reasonable efforts" to report the investigation outcome to:

- The person who made the protection report.
- The child's Indigenous community where a s. 92.1 community agreement applies.
- Any other person if the Director determines that such disclosure is necessary to ensure the child's safety or well-being.

The exceptions to these reporting requirements are when:

(a) the Director thinks reporting the investigation outcome would harm someone physically or emotionally or endanger the child's safety, or

(b) a criminal investigation into the matter is underway or being considered.

Can a parent gain access to their investigation records?

Yes. However, access to these records may be subject to delays and redactions, and it will be difficult (if not impossible) to obtain meaningful disclosure while an assessment or investigation is ongoing.

There are two primary pathways through which a parent can access their investigation records: through an *FOIPPA* request or through a CFS court proceeding.

***FOIPPA* requests**

A parent can request investigation records by submitting a *FOIPPA* request to MCFD or an ICFSA. Both *FOIPPA* and the *CFCSA* contain several exceptions to information disclosure that may apply to investigation records (especially while an investigation is ongoing). These exceptions include:

- Under s. 19(1)(a) of *FOIPPA*, the Director may refuse to disclose information if the disclosure could reasonably be expected to threaten anyone else's safety or mental or physical health.
- Under s. 77(1) of the *CFCSA*, the Director must refuse to disclose information to a person if:
    - The disclosure could reasonably be expected to reveal the identity of a person who has made a report under s. 14 of the *CFCSA* and who has not consented to the disclosure.
- Under s. 77(2) of the *CFCSA*, the Director may refuse to disclose information to a person if:
    - The disclosure could reasonably be expected to jeopardize an investigation under s. 16 of the *CFCSA* or a criminal investigation that is underway or being considered.

- The information was shared with the Director in confidence during an assessment or investigation under s. 16 of the *CFCSA*.

The application of these exceptions could result in MCFD or an ICFSA withholding and/or redacting investigation records.

Disclosure through a CFS court proceeding

When a parent is a party to a CFS court proceeding, the Director has an obligation under s. 64 of the *CFCSA* to disclose, *at a minimum*, the orders sought by the Director, the Director's reasons for seeking those orders, and the Director's intended evidence.[312]

Depending on the nature of the legal issues, the Director's common law disclosure obligations are more robust and extensive.[313] In practice, the Director's disclosure often includes all the relevant records they have in their possession, including records that do not support the Director's position.

Are a parent's interactions with a CFS worker confidential?

No. A CFS worker may take notes about any conversation or interaction with a parent (including the parent's attitude, emotions, and body language). The Director may later use this information as evidence in a CFS court proceeding.

A CFS worker has no obligation to warn a parent that their statements may be used against them in a CFS (or criminal) court proceeding.

Can a parent secretly record their meeting with a CFS worker?

Yes. Under the *Criminal Code*'s one-party consent rule, it is legal for a person to secretly record their own conversation with another person (in other words, a conversation in which they are a participant).[314] A person cannot, however, secretly record a conversation in which they are not a participant (for example, a person cannot legally record a private meeting between their child and a CFS worker).[315]

PRACTICE TIP

While secret recordings under the one-party consent rule are legal, many parent's counsel advise their clients against making them. They can prompt backlash by CFS workers and may not offer practical benefits to your client. As an alternative, encourage your client to (a) always attend meetings with a support person, (b) take detailed notes and/or ask a support person to do so, and (c) ask the CFS worker to provide a written summary of the meeting.

Can information collected by a CFS worker be shared with the police and/or used against a parent in a criminal proceeding?

Yes. The Director must report to the police any information the Director receives that indicates a crime has occurred (including any allegations of sexual abuse or exploitation). This could include information shared by a parent during a meeting or interview with a CFS worker.

A CFS worker has no obligation to warn a parent that their statements may be shared with the police and/or used against them in a criminal proceeding.

Is MCFD required to provide culturally appropriate services to an Indigenous parent?

Yes. Under s. 8 of BC's *Human Rights Code*, MCFD and ICFSAs must ensure that their services meet the distinct needs of Indigenous people. Further, the provision of culturally appropriate services is required by the *Federal Act*'s preamble, purposes, guiding principles, and service delivery principles, as well as the *CFCSA*'s guiding principles and service delivery principles.

The provision of culturally appropriate services will often be accomplished through the involvement of the parent and child's Indigenous community under an Indigenous law and/or coordination agreement, a s. 92.1 community agreement, or Policy 1.1.

Can a CFS worker involve a child's Indigenous community in the investigation without the parent's consent?

Yes. When the Director determines that an Indigenous authority has jurisdiction over the child, the Director must contact the Indigenous authority before completing the screening assessment to confirm (a) their jurisdiction and (b) their agreement to assess the information in the protection report. With the Indigenous authority's agreement, the Director must promptly refer them the report. When an Indigenous authority asks the Director to conduct the investigation, the Director must do so in a way that is consistent with the applicable Indigenous law and/or coordination agreement.

When a s. 92.1 community agreement applies to the child, the Director must ensure that the investigation is in accordance with that agreement. This will often require involving the Indigenous community from the outset of the investigation process. Involving an Indigenous community in accordance with a s. 92.1 community agreement does not require the consent of the parent.

When the child is Indigenous and a s. 92.1 community agreement does not apply to them, the Director must still involve their Indigenous community in accordance with Policy 1.1. The Director can do so without the consent of the parent where this is permitted by s. 79(a) or (a.2) of the *CFCSA*.

Does MCFD have a duty to accommodate a parent's disabilities during an investigation?

Yes. Under s. 8 of BC's *Human Rights Code*, the Director must accommodate a parent's disabilities during an investigation up to the point of undue hardship. Further, a parent is entitled to non-discriminatory services under both s. 3(b.1) of the *CFCSA* and s. 3(c) of the *Federal Act*.

There is little policy guidance or case law about what disability-related accommodation might entail in the unique context of a CFS investigation. A discussion of the law on disability-related accommodation is beyond the scope of this Guide.

Can a parent have a support person when meeting with a CFS worker?

Yes. There is no publicly available policy on a parent's ability to include a support person in meetings with a CFS worker. However, it appears that the Director generally allows support people to attend meetings (including meetings by telephone).

Can a parent refuse to talk to a CFS worker or refuse to answer specific questions?

Generally, yes. The constitutional right to silence only applies to criminal investigations and proceedings. However, neither the *CFCSA* nor the common law imposes a duty on parents to cooperate with a CFS investigation, including by talking to a CFS worker or answering specific questions.

PRACTICE TIP

An outright refusal to talk to a CFS worker or answer certain questions is risky. It can result in an adverse inference (i.e., a negative assumption) about the parent. However, parents should try to talk to a lawyer or advocate before answering questions. Here are some scripts that may be helpful to parents:

- *Is this urgent? Does this need to happen now?*
- *Now is not a good time for me. I'd be happy to schedule another time to talk.*
- *I'd like my lawyer/advocate to be with me when I talk to you.*
- *Can you write down your questions? I'd like to review them with my lawyer/ advocate before answering.*
- *I'd like to talk to my lawyer/advocate before answering that specific question.*
- *I'd like to take a break to call my lawyer/ advocate.*
- *Can you provide me with a written summary of our conversation?*

A court order can only compel a parent to provide information in one circumstance. Under s. 17(2)(b) of the *CFCSA*, a court can order a parent to provide information that may assist the Director in locating a child. If a person does not comply with an order under s. 17(2)(b), the court may issue a warrant under s. 18(1) of the *CFCSA* and order their imprisonment under s. 18(2).

Can a parent refuse entry to their home to a CFS worker?

It depends. A CFS worker only has the power to enter a home without the parent's consent in three circumstances:

- They are removing a child under sections 30, 36, or 42 of the *CFCSA* and they meet the applicable statutory criteria to (a) remove the child and (b) enter the home without consent.
- They have a court order under s. 17(2) that authorizes them to enter the home to locate and gain access to a child.
- They are entering the home under a supervision order that expressly authorizes them to enter the home without consent.

Outside of these circumstances, a CFS worker requires a parent's permission to enter their home. In particular, a CFS worker does not have the power to enter a home without consent for the purpose of conducting a home visit or inspection. A CFS worker also does not have the power to accompany a police officer into a home unless the CFS worker has their own legal authority to enter (an authority that only exists in the three situations listed above).

PRACTICE TIP

Refusing a home visit is risky and can result in an adverse inference (i.e., a negative assumption) about the parent. However, the parent may be able to negotiate time to talk to their lawyer or advocate before agreeing to a home visit. Here are some scripts that may be helpful to the parent:

- *Is this urgent? Does it need to happen now?*
- *I'd be happy to talk to you outside / meet with you somewhere else / schedule a home visit at another time.*
- *I'd like to talk to my lawyer/ advocate before the home visit.*
- *I'd like my lawyer/advocate/ support person to attend the home visit.*
- *I'm going to call my lawyer/ advocate before letting you in..*

Does a parent have a right to refuse entry to their home to a police officer?

It depends. In the CFS context, a police officer only has the power to enter a home without consent in certain circumstances:

- They have a criminal or other warrant.
- They are entering the home to take charge of a child under s. 27 of the *CFCSA* (and they meet the statutory criteria to take charge of the child and enter the home without consent).
- They are assisting a CFS worker with the removal of a child under ss. 30, 36, or 42 of

the *CFCSA* (and the CFS worker meets the applicable statutory criteria to remove the child and enter the home without consent).

- They have a court order under s. 17 of the *CFCSA* that authorizes them to enter the home to locate and gain access to a child.
- They are assisting a CFS worker who has a court order under s. 17 that authorizes them to enter the home to locate and gain access to a child.
- They are entering the home in an emergency context to carry out their common law duty to protect a person's life and prevent serious injury.
- They are entering the home where the conditions for obtaining a warrant exist, but "exigent circumstances" make it impractical to obtain one.

The most common time when a parent will encounter a police officer in the CFS context is when the police officer is accompanying and assisting a CFS worker. In these cases, the police officer's home entry powers generally arise from and are limited to those of the Director under the *CFCSA*. In less common situations, the police officer is acting on a separate authority to enter the home (such as where they have a criminal warrant).

PRACTICE TIP

If a police officer enters a parent's home without their consent, parents should not physically resist. However, if they feel safe to do so, they should clearly state that they do not consent to the entry. They should also request the police officer's name and badge number

Can a parent refuse a medical or psychological examination? In particular, can they refuse drug testing?

Generally, yes. A medical or psychological examination of a parent during a CFS investigation usually requires the parent's consent. The *CFCSA* does not authorize court-ordered examinations of a parent unless the examination will help *the court* (not the Director) in determining whether a child needs protection or making an order relating to a child. In other words, these orders are primarily available in the context of an existing court proceeding (such as after a child has been removed).

Can a CFS worker interview a child without obtaining the parent's consent?

Yes. Under the CPI Pathway, a CFS worker can interview a child without notice to the parent if advance notice might jeopardize:

a) the child's safety; and/or

b) the integrity of the investigation.

In these situations where a parent is not notified, the CFS worker might interview the child at locations such as the child's school or daycare.

Under the FDR Pathway, the Director must tell the parent ahead of time about the need to interview the child.

Can a child be medically or psychologically assessed without their parent's consent?

It depends. Under the CPI Pathway—and depending on the nature of the allegations and/or the child's health status—the Director may seek a medical or psychological examination of the child. Such an examination requires the consent of the parent except in these situations:

- When the child has the capacity to consent to the examination.
- When a court orders a medical examination of the child under s. 17(2) of the *CFCSA* (see the discussion of s. 17 orders in the section below).
- When the Director has legally removed the child and then authorizes the examination.

Can a parent make a complaint to MCFD about investigation conduct or decision-making?

Yes. A Director's actions and decision-making under the *CFCSA*, including with respect to investigations, are subject to an internal complaints process. There are two streams within this process: the "complaints resolution" stream and the "administrative review" stream. Section 101.1 of the *CFCSA* protects complainants against retaliation.

PRACTICE TIP

Parent's counsel should generally make a written complaint on behalf of their client and address it to Director's counsel. The letter should contain sufficient contextual information to ground the complaint, as well as clearly identify the decisions, actions, or failures to act that are at issue. It should also include supporting documentation. Parent's counsel will often indicate in their initial complaint letter whether they want the complaint to be addressed through the complaints resolution or administrative review process.

Does a child have a right to be heard during an investigation?

Yes. Article 12(1) of the *CRC* protects a child's right to be heard in all CFS matters affecting them, with their views to be given due weight in accordance with their age and maturity.

Both the *CFCSA* and the *Federal Act* contain provisions that reflect a child's right to be heard under Article 12(1) of the *CRC*. The *CFCSA*'s guiding principles state that a child's views should be considered when decisions relating to the child are made.[316] Further, its service delivery principles state that the child should be encouraged to participate in decisions that affect them.[317] Finally, the *CFCSA* confirms that a child's views are a factor that may be relevant to determining the child's best interests.[318]

The *Federal Act*'s protections are even more robust. Its principle of substantive equality encompasses an Indigenous child's right to have their views and preferences considered in decisions that affect them. Further, its definition of the best interests of an Indigenous child mandates consideration of the child's views and preferences.[319]

Under both the FDR and CPI Pathways, the CFS worker is required to seek an individual, private, and in-person interview with each child who lives in the home. The only exception is when a different approach is required under a s. 92.1 community agreement. Under the CPI Pathway, the CFS worker may interview a child without the consent of a parent.

While a child has a right to be heard, a child is not required to talk to a CFS worker or answer the CFS worker's questions.

A child might also be able to speak to their own lawyer. Contact the Child and Youth Legal Centre to see if they can provide legal representation.

To learn more about a child's rights and access help for the child, contact:

Representative for Children & Youth
1-800-476-3933 (toll-free)
rcy@rcybc.ca

Child and Youth Legal Centre
1-877-462-0037 (toll-free)
cycl@scyofbc.org

CHAPTER TEN

Practical Tips for Lawyers and Parents

A. PRACTICE TIPS FOR LAWYERS IN CONNECTION WITH CFS INVESTIGATIONS

Note: These considerations are meant to supplement general checklists about CFS practice.

Preparation:

- Learn how to explain the investigation process and investigation rights in a clear, accessible, and trauma-informed way. Keep track of common questions asked by your clients so you can incorporate them into your explanations.
- Supplement your practice checklist with considerations that are specific to supporting your clients during CFS investigations, including investigations involving Indigenous children.
- Compile a list of community resources that can support parents outside of the CFS system.

Early meetings with your client:

- Confirm the MCFD office or the ICFSA that is conducting the investigation. Obtain the names and contact information of the CFS workers and team leader (supervisor) who are involved. If your client does not have this information, ask your client to contact their local MCFD office to request it.
- Find out whether your client's child is Indigenous and to which Nation(s) the child belongs. Explain to your client the legal and cultural considerations that apply to Indigenous children in the CFS system.
- Ask your client about their understanding of the allegations against them, the protection concerns, what steps have already occurred during the investigation, and upcoming investigation steps. Give your client the opportunity to share their views on these matters.
- Confirm the dates of any upcoming meetings or calls with the Director.
- Determine whether your client has already signed any agreements or documents (for example, a safety plan agreement or an authorization to release information). If so, review and discuss the agreement or document with your client.
- Find out whether your client has been served with any court documents. If so, review and discuss the court documents with your client.
- Explain to your client the investigation process and their investigation rights. Talk to your client about the implications of exercising their rights in relation to their specific situation. Your client is not required to cooperate with the investigation. However, in most cases, some level of cooperation and engagement will be helpful to your client's outcome. Your client can exercise their rights to build in legal and advocacy support at every step of the investigation process. This will allow your client to make informed decisions.

- If there is an overlapping criminal proceeding (or the allegations are criminal in nature), encourage your client to seek specialized criminal legal advice. Your client may be able to access criminal legal help through Legal Aid BC or an Indigenous Justice Centre. If possible, consult with your client's criminal lawyer about upcoming investigation steps and strategies to avoid self-incrimination.

- Talk to your client to identify advocates and support people who can attend calls and meetings with them, including on short notice. If your client has difficulties communicating in English, try to include people who can assist with interpretation.

- Discuss tips for meetings and conversations with CFS workers, including when you are not present:

    a. Encourage your client to try to stay calm, even though the interactions may be upsetting and overwhelming. Advise your client that they can request a break at any time, and that taking regular breaks can help them feel calmer and gather their thoughts.

    b. For meetings where you are not present, encourage your client to take detailed notes or ask their support person to do so. Your client does not have to respond to every question or request in the moment. Talk to your client about when and how to ask for legal advice before responding to a question or request.

- Discuss potential collateral contacts who can provide helpful information about the child's safety. Advise your client of the Director's powers under ss. 65 and 96 of the *CFCSA* to collect information from third parties, including without notice to the client.

- Where appropriate, discuss potential voluntary agreements as an alternative to child removal. Discuss potential alternative caregivers, such as a relative, a neighbour, or a community member.

- Build in enough time to address your client's questions and concerns in a trauma-informed way.

- Confirm one or more secure and reliable means of communicating with your client during the investigation (for example, email and text). Where relevant, discuss the potential impacts of intimate partner violence on the security of your communications.

- Talk to your client about authorizing you to contact a support person if you cannot reach your client.

Engaging with an Indigenous child's Nation

- Confirm whether an Indigenous law, coordination agreement, or community agreement applies.
- If your client's child is Indigenous, and with your client's consent, reach out to the child's Nation to let them know that you have been retained and to discuss their jurisdiction and/or involvement in the investigation. Consult with the Nation and/or designated band representative about legal and cultural advocacy during the investigation.

Engaging with Director's Counsel

- Reach out to Director's counsel as soon as possible to confirm that you have been retained. Discuss the specific allegations against your client, the protection concerns, the investigation stream, past investigation steps, upcoming investigation steps, and investigation timelines. Request a copy of any court documents.
- Schedule a collaborative meeting to negotiate an agreement about the investigation steps.
- Advise Director's counsel if your client's child is Indigenous. Discuss with Director's counsel the jurisdiction and/or involvement of the child's Nation.
- Advise Director's counsel if your client needs interpretation. Discuss whether and when the Director will provide an interpreter. If the Director refuses to provide an interpreter or does not provide sufficient interpretation services, consider making a complaint or requesting an administrative review.
- Tell Director's counsel that you want advance notice of the Director's meetings and calls with your client so that you can be present and/or ensure that an advocate or support person is present. Confirm that your client wants an advocate or support person present during every meeting and call with the Director.
- Advise Director's counsel that you want advance notice of any agreements or documents that your client will be asked to sign (for example, a safety plan agreement or an authorization to release information). Confirm that outside of exceptional circumstances, you expect to participate in the development of agreements and provide legal advice to your client before they sign.
- Follow up with Director's counsel to make sure that the investigation is proceeding in a timely way, especially in cases where your client is subject to intrusive terms in a safety plan agreement. Confirm completion of agreed-upon investigation steps (such as contacting a collateral contact or making a referral to voluntary services).
- Confirm the investigation outcome with Director's counsel and make sure your client receives an outcome letter (an outcome letter should be provided unless an exception to the Director's reporting obligations applies).

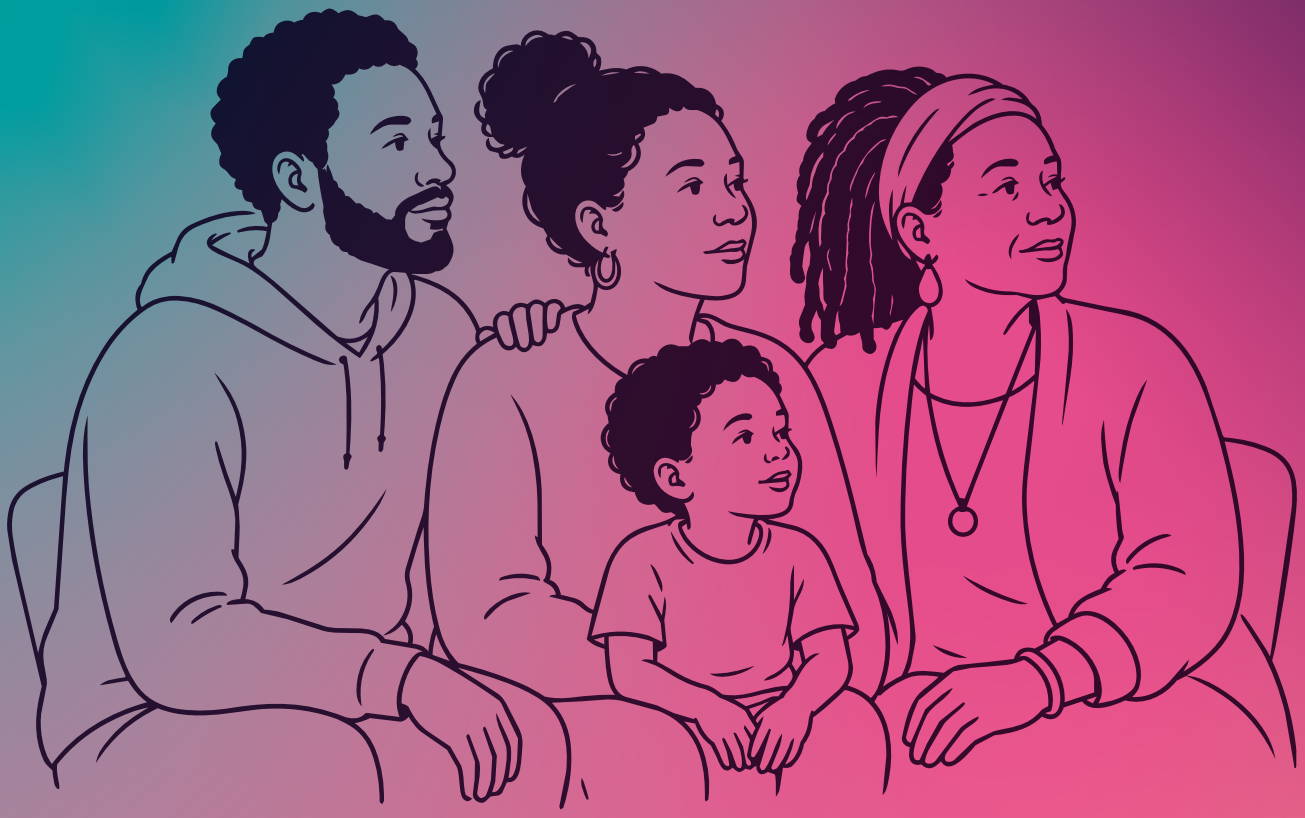
B. UNSCHEDULED CONTACT WITH A CFS WORKER: TIPS FOR PARENTS

Sometimes, parents will have an unscheduled meeting or call with a CFS worker. These tips are aimed at parents in this situation:

- See if you can get the CFS worker to agree to pause the conversation until you can get legal and advocacy support. For example:
    - Ask whether the call or meeting is urgent and whether it needs to happen now. Can you schedule a time to talk or meet later, after you have talked to a lawyer?
    - Ask whether you can take a break to talk to your lawyer on the phone (or have your lawyer join the call or meeting).
    - Ask whether you can take a break to contact your support person and have them join the call or meeting.
- If the call or meeting goes ahead before you can get legal or advocacy support, take detailed notes or have your support person take detailed notes. Write down what the CFS worker says and what you tell the CFS worker.
- Remember that anything you say, do, or express could be recorded by the CFS worker and used against you in court. This includes your body language and perceived attitudes and emotions. Request a break if you are feeling emotional or overwhelmed.
- You have a right to be informed and to understand what's happening. Do not be afraid to ask questions and seek clarification.
- Confirm the CFS worker's name, phone number, and email address, as well as the name and contact information of their team leader (i.e., supervisor).
- If possible, write down questions and requests so you can review them with a lawyer before responding. If you answer questions, less is more. You can provide more information later, after talking to a lawyer.
- If possible, do not sign any agreements or documents before talking to a lawyer. If you decide to sign a safety plan agreement before talking to a lawyer, try to negotiate a shorter expiration date.
- After the call or meeting ends, get legal advice as soon as possible. Many parents will also involve a Band representative, advocate, and/or support person.

LEARN MORE

To learn more about your rights during child and family services investigations, visit westcoastleaf.org/family-investigations



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147 MCFD Policy 3.3: Investigation, "Interviewing Parents and Other Adults in the Home."

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