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Privacy in the *YCJA*: When Cops and Schools Pass Notes

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ABSTRACT

In the wake of the killing of George Floyd in 2020, global protests generated public scrutiny about policing in our communities. Between 2020 and 2022, many school boards in Canada began to re-evaluate the value of having police in schools, as school resource officers or school liaison officers, with many boards eventually electing to end these programs altogether. Interactions with police in and through schools can facilitate a process by which youth are pushed out of the school system and into the criminal justice system, commonly known as the school to prison pipeline.

The *Youth Criminal Justice Act (YCJA)*, which governs youth in conflict with the law, specifically in their interactions with the justice system and information that is permitted to be shared with other entities like schools. In part, these protections are provided to prevent stigmatization and promote rehabilitation. However,

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the *YCJA* had been amended to allow more information disclosures between police and school administrations. This article looks at the legislative history of the *YCJA* to provide context to these amendments. This article also explores how the court has interpreted privacy for youth under the *Act*, and how the privacy provisions operate in practice. Finally, it provides empirical research that relies upon interviews with key informants that shed light on the impacts of information sharing between police and schools on youth.

Introduction

One of the major accomplishments of the *Youth Criminal Justice Act*, 2002 [*YCJA*], since its enactment, is the notable decrease of young people who are incarcerated (Statistics Canada, 2023).[2] However, this same decrease has not necessarily translated into fewer interactions with law enforcement for youth. This is especially true for Black and Indigenous youth who are overrepresented in the criminal justice system (Jackson, 2015; Maynard, 2017). In the wake of the police killing of George Floyd in 2020, the calls for police reform included the review of policies that govern police in schools. With more recent advocacy and action to reverse some of the reforms made in this area, it is imperative to look critically at police interactions with youth in schools, from the youth perspective, as this population is often overlooked in the discussion (Dawson, 2020; Mooney, 2023; Rubayita, 2025).

While youth may encounter law enforcement in many different settings, school is often where these first interactions happen. This can facilitate a process by which youth are pushed out of the school system and into the criminal justice system—a process typically referred to as the school to prison pipeline, or the school to prison nexus (Meiners, 2007). These interactions can also produce records that can follow young people throughout their adolescence—even with the legislated privacy

2 Figures show a steady decline of youth admissions to correctional services from 2003-2022. The statistics are disaggregated by type of correctional service. For example, there were 3237 admissions of youth to secure custody in 2003-2004 while in 2020-2021 there were 531.

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framework the *YCJA* provides. Since schools are one of a number of exceptions to these privacy rules in the legislation, it is important to understand the ways in which this particular exception operates in practice.

This article aims to examine the ways the law allows the flow of private information about youth involved in the criminal justice system between schools and police and how its impacts can perpetuate the process of youth criminalization in schools. It aims to show how the institutional relationships between schools and police services can prevent the policy goals of privacy and rehabilitation in the *YCJA* from being met, and underscores how these relationships and interactions can further stigmatize Black and Indigenous youth in these systems.

While there is a large body of scholarly work on the "school to prison pipeline" in the United States, there have been few studies on the intersections between the criminal justice system and education in Canada (Abdulle & Salole, 2015; McMurtry et al., 2008). In Canada, the effects of the *YCJA* on youth incarceration, restorative practices, youth sentencing, and bail conditions have all been well researched (Webster et al., 2019; Heinmiller et al., 2017; Bala et al., 2009; Carrington et al., 2011; Bala & Cesaroni, 2008). One of the main issues in the available literature is that the criminal justice discourse and educational discourse do not meaningfully engage each other in Canada. The issues of youth crime and youth success in schools are mentioned as having an effect on each other, but the existing studies do not make this relationship a central piece of the research.

To address these issues, this article looks at the legislative history to provide context surrounding the amendments in the *YCJA* to allow disclosures of the identity of youth. It looks at how the court has interpreted privacy in the context of youth and the *YCJA*, and how the privacy provisions of the *YCJA* operate. This article also introduces original empirical research conducted through semi-structured interviews with key informants who have knowledge and experience working with youth at the intersection of schools and police, mainly in Ontario and with one participant in British Columbia. These interviews shed light on the impacts that information sharing between police and school institutions can have on youth, centring on four key themes: i) labelling and stigma of youth, ii) information

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sharing, iii) hyper-surveillance of students leading to targeting and further criminalization, and iv) discriminatory application and impacts flowing from disclosures.

Methodology and theoretical framework

Given the comprehensive privacy framework in the *YCJA*, I set out to understand how youth records are used by educational institutions and police services, and how these interactions and institutional relationships impact youth and potentially contribute to the criminalization of youth in schools.

The nature of my research questions—how the law operates in practice and how non-legal actors can make decisions that shape the law—was best served by a socio-legal approach. A socio-legal approach assumes that law does not operate in a vacuum, that it goes beyond the written statutes and case rulings. It understands the law to be a product of its interpretation and creation by the people who ultimately decide its application (Mather, 2018). In describing the work of socio-legal scholars who began to include analysis of actors beyond lawyers, judges, and juries, Mather writes, "Every decision of a low-level legal official helps to shape a pattern of law interpretation and enforcement, and to construct ideas about law for the public they encounter" (p. 296).

The main actors that this research is concerned with would be considered "less visible legal actors" (Mather, 2018, p. 296), such as police and school administrators. It is their relationships and decisions that ultimately shape how the law works in practice and how these decisions impact youth. These practices also raise questions about the equitable application of these decisions and subsequently, the potential for bias. This potential for bias is especially significant given the over-

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representation of Black and Indigenous youth in the Canadian criminal justice system (Statistics Canada, 2020; John Howard Society, 2021).[3]

In this case, teachers, administrators, and police create the meaning of the *YCJA* information sharing exception by deciding when it is appropriate or inappropriate to disclose information. Because of this process, I chose to conduct semi-structured interviews with key informants who have either direct experience with these processes or have knowledge based on working with youth.

While it is best practice to interview youth who have been affected by these policies, I opted not to take this approach due to the nature of the research question being focused on processes that young people may not be privy to, as well as practical and ethical considerations. Young people are members of a vulnerable population based on their age alone and often young people with involvement in the criminal justice system have also experienced various types of trauma. Contact with police and the justice system can be the basis of those traumatic experiences and without extra supports (i.e., access to counselling), it would be difficult to ethically conduct this type of interview. Specifically in Toronto, there are certain neighbourhoods that have been "over-researched, over-analyzed, stigmatized and objectified," to the point that ethical protocols were designed for any researchers who want to examine the community (York University News, 2020). Recognizing these ethical considerations, this article is informed by research studies that have been done directly with youth in Ontario and Quebec, as well as reviews that were done by school boards across Canada into their own school resource officer (SRO) programs that include input from students (Abdulle & Salole, 2015; Nichols, 2019; Toronto District School Board, 2017; Vancouver School Board, 2021; Ottawa-Carleton District School Board; 2021).

3 Statistics Canada does not keep race-based data on youth corrections with the exception of those who identify as Indigenous. However, a study by the John Howard Society found that Black and Indigenous youth were overrepresented in the remand population.

Background: Privacy in Youth Criminal Justice Legislation in Canada

The *Youth Criminal Justice Act* has gained praise in recent years from academics and legal practitioners after its implementation in 2003 (Bala et al., 2012; Bala et al., 2009). It was given credit for the reduction in youth incarceration across Canada (Bala et al., 2012). While the *YCJA* was hailed as a progressive transformation to the youth justice landscape, especially with its impact on lowering youth incarceration rates (Webster et al., 2019), the legislation also stripped away some of the privacy protections codified by its predecessors: *Young Offenders Act*, 1985, and the *Act respecting Juvenile Delinquents*, 1908. Calls from the public to know the identity of youth dealt with under the *YCJA* to protect Canadians from the spectre of the "violent young offender" led to the clawing back of privacy protections in the *Act* (Smandych & Corrado, 2018). The exceptions in the *Act* that allow information sharing with other institutions, including schools, are numerous and were put in place to address this need. However, these exceptions can have the effect of diminishing the right to privacy that the legislation works so diligently to protect.

This next section explores the legislative context that led to the enactment of the *YCJA* and why subsequent amendments to the *Act* allowing for disclosures of records between schools and police were put in place. It examines the courts' interpretation of the importance of privacy for young people under the *Act* and its reasoning around protecting youth from labelling and stigmatization. Finally, this chapter argues that the disclosure exceptions work to undermine the goals of privacy and rehabilitation embedded in the *Act*.

Protection of Youth Privacy under the YCJA

It is clear from the preamble to the *YCJA* that the protection of privacy for young people dealt with under the *Act* is a central objective. Namely, the preamble outlines

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several principles of the legislation including an emphasis on "enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected" (*YCJA*, 2002, s 3(1)(b)(iii)). Furthermore, the subheading to the publication and records section of the *YCJA* is entitled appropriately "Protection of Privacy of Young Persons," underlining its purpose (*YCJA*, 2002, Part 6).

Generally, the section on privacy that gets the most attention from courts and media protects young people by instituting a publication ban on any identifying information from being published about a youth charged under the *YCJA* (2002, s 110). On a cursory reading, this appears to be a restraint on the media, but it also applies more broadly to the public. For example, social media posts that identified a young person charged under the *Act* made by a member of the public would contravene the prohibition on publication. It might seem to be a modern addition to youth justice legislation given the wide-ranging reach media has today, however, it has been part of the youth justice context since its inception in Canada (Piñero, 2009; *Young Offenders Act*, 1985; *An Act respecting Juvenile Delinquents*, 1908).

A bright-line rule that continued from previous acts to the *YCJA* is that the identity of the *offender* cannot be published (2002, s 110(1)).[4] But this rule was amended to permit exceptions for circumstances when the young person receives an adult sentence or when the publication occurred during the "administration of justice" (*YCJA*, 2002, s 110).[5] This refers to when, in the interest of public safety, media may publish or broadcast the name of a youth under the *YCJA* if a judge finds that: 1) the young person may be a danger to others, and 2) publication of information is necessary to assist in apprehending the young person (2002, s 110(4)).

4 I will not use the word "offender" when describing youth involved in the justice system, however, this is the term that the legislation uses. I italicize it here to signify that it is the legislative term.
5 The section also allows for the young person to publish or cause to be published the information after they reach 18 years old as long as they are not still in custody.

Along with publication, records that identify youth charged under the *Act* are also prohibited from disclosure, as this has the effect of publicizing the young person's identity. When a young person is charged under the *YCJA*, a number of records about the charge and the subsequent proceedings are created through police notes, citations, court appearance documents, etc. These physical records generally may not be published or disclosed except in certain circumstances enumerated in the *YCJA* (2002, Part 6).

Part 6 of the *YCJA* deals with the publication of records and information and is a complex section providing for the type of records that can be kept, time periods when the records are accessible, and who they are accessible to in this time frame. Generally, there are three types of records that are defined and may be kept by the *YCJA*: court and review board records, police records, and government records (2002, s. 114–116). The records are presumptively private; however, the *YCJA* lists a number of individuals and agencies who are exempted from this rule either through access or disclosure.

There are upwards of twenty categories of individuals or institutions who are allowed to access the court records (*YCJA*, 2002, s 119(1)). Furthermore, the amount of time that the records are accessible for depends on the outcome of the charges.[6] Given that the exceptions are so numerous and the time frames allowing for these records to be accessible can be so long, the original purpose—protection for youth privacy—is effectively undermined.

6 For example, if the young person is given an extrajudicial sanction, the record remains accessible for two years from the time the young person consents to the sanction (YCJA, 2002, s 119(2)(a)). This is particularly harsh given that an extrajudicial sanction diverts a young person from the court system into a non-justice system obligation (like anger management classes or community service). Therefore, it is considered a less serious consequence. If the young person receives a conditional discharge after a finding of guilt, the record will be accessible for three years (YCJA, 2002, s 119(2)(f)). The YCJA provides for more than eleven different outcomes, each with their own accessibility period (YCJA, 2002, s 119(2)). This is a problem as well because young people do not always know that their record is still accessible.

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Section 125(6) disclosure exception for schools

There is a separate exception from the list of twenty-plus categories that deals with situations when it is appropriate to disclose this information to schools (*YCJA*, 2002, s 125(6)):

> **(6)** The provincial director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person—including a representative of any school board or school or any other educational or training institution—any information contained in a record kept under sections 114 to 116 if the disclosure is necessary
>
> a) to ensure compliance by the young person [on reintegration leave] or order of the youth justice court;
> b) to ensure the safety of staff, students or other persons;
> c) to facilitate the rehabilitation of the young person.

This section allows disclosure to school officials if an officer deems the situation to fall under any or all of the three categories. While the section may seem narrowly drawn, the categories allow for disclosure in myriad and common circumstances. For example, *ensuring compliance with a court order* can mean adhering to bail conditions. Bail conditions for youth often call for ensuring attendance at school, abiding by a curfew, or prohibiting communication with co-accused or alleged victims (Myers & Dhillon, 2013). This means if a young person breaches one of these conditions, even though it is not criminal conduct, that is a new charge. The nature of bail conditions can allow officers to justify disclosing the charge or the bail condition information (which has the effect of disclosing the fact that the young person has been charged) to the school before a young person has been found guilty of a crime. Some of these conditions are necessary for the school to be informed about (for example, prohibiting contact with the co-accused). However, this is not true of the majority of conditions. Sharing this information with schools

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may also have the effect of putting teachers and administration in the position of policing these conditions while youth are under their charge.

The same issue follows from permitting information sharing *to ensure the safety of staff and students*, which can also be broadly construed. It allows officers wide discretion to share sensitive information with educators who act as the main supervisors of these young people, which can lead to in-school consequences like heightened surveillance and stigma (Bailey, 2017).

These sections give extensive latitude to justice officials to disclose private information to schools. But these rules only apply to records defined in the *YCJA*. In the course of disciplining youth in the education system, however, many more records will be created. These records document incidents, punishments, and schools' contact with police.[7] The protection and administration of these records will vary between school boards, but they will contain similarly sensitive information. Generally, student information is governed by the privacy legislation of the province or municipality, if applicable. However, most information privacy laws include a law enforcement exception that allows administrators to share information with law enforcement if it is in the course of an investigation. With exceptions in the legislation that govern police disclosure of youth information and educators' disclosure of youth information, there are essentially no barriers in place to prevent the sharing of a young person's criminal justice history.

Given that youth crime rates and the number of youth charged under the *YCJA* have continued to decline since these amendments went into force, the use of the exceptions should be thoroughly considered (Moreau, 2022). Moreover, while these numbers decrease, the number of young people affected by these exceptions is difficult to quantify. If charges are withdrawn, or if a young person is diverted from the court process through an extrajudicial measure, their criminal justice history

7 One example is the Ontario Student Record which contains this information.

may still have been shared with their school even though they have not been found guilty of a crime. Once that information has been shared, it is essentially impossible to unring the bell.

The Courts' use of "labelling" in its interpretation of youth privacy

One reason the *YCJA* protects youth records is because of the potential for labelling and stigmatization of youth who are recognized as involved in the justice system. Although adults can face similar problems in terms of labelling, the adoption of separate criminal justice legislation for youth acknowledges the unique circumstances of young people and particular reasons for privacy in this context. Recently, courts in Canada and the United States have recognized that young people have diminished culpability because of their age (*Graham v Florida*, 560 US 48 (2010); *R v DB*, 2008 SCC 25).[8] Accordingly, section 3(1)(b)(iii) of the *YCJA*'s declaration of principles states:

> [T]he criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:
>
> > (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected.

In line with this reasoning, there is a particular concern about the labelling and stigma of youth for no other reason than their age. The Supreme Court of Canada

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8 R v DB, 2008 SCC 25, at para. 69: "The third criterion for recognition as a principle of fundamental justice is that the principle be identified with sufficient precision to yield a manageable standard against which to measure deprivations of life, liberty or security of the person. This is not a difficult criterion to satisfy in this case. The principle that young people are entitled to a presumption of diminished moral culpability throughout any proceedings against them, including during sentencing, is readily administrable and sufficiently precise to yield a manageable standard. It is, in fact, a principle that has been administered and applied to proceedings against young people for decades in this country."

addresses this in *R v DB*, 2008 SCC 25, when it discusses the reasoning underlying the publication ban mandate in the *YCJA* at paragraph 69:

> [84] In s. 3(1)(*b*)(iii) of the *YCJA*, as previously noted, the young person's "enhanced procedural protection . . . including their right to privacy", is stipulated to be a principle to be emphasized in the application of the Act. Scholars agree that "[p]ublication increases a youth's self-perception as an offender, disrupts the family's abilities to provide support, and negatively affects interaction with peers, teachers, and the surrounding community" (Nicholas Bala, *Young Offenders Law* (1997), p. 215). [...]
>
> [85] International instruments have also recognized the negative impact of such media attention on young people. The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("Beijing Rules") (adopted by General Assembly Resolution A/RES/40/33 on November 29, 1985) provide in Rule 8 ("Protection of privacy") that "[t]he juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling" and declare that "[i]n principle, no information that may lead to the identification of a juvenile offender shall be published."

As the Court points out, publicity can lead to stigmatization and labelling, and also have a detrimental effect on a young person's interactions with peers and teachers. However, the identity of a youth charged under the *YCJA* does not necessarily need to be widely publicized for labelling and stigmatization to become an issue. Court records and records created during police interactions can contribute to the process of labelling a young person as a "criminal" or "bad kid"—and this label can impact a young person through the rest of their life. This can have a more pronounced impact if that information is shared with educational institutions.

The idea of labelling and its potential negative consequences come from the widely studied sociological approach of labelling theory (Walklate, 2020). Labelling theory posits that particular labels can have adverse internal and external consequences

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for an individual. In Jon Gunnar Bernburg's summary of current labelling theory research, he explains that:

> The theory assumes that although deviant behavior can initially stem from various causes and conditions, once individuals have been labeled or defined as deviants, they often face new problems that stem from the reactions of self and others to negative stereotypes (stigma) that are attached to the deviant label (Bernburg, 2019, p. 179).

Specifically, Bernburg lays out a set of criminogenic processes that can occur as a result of labelling: 1) deviant self-concept; 2) processes of social exclusion; and 3) involvement in deviant groups.

Bernburg points out that there can be both formal and informal labelling (2019, p. 180). He uses the example of being formally processed as a criminal by police as one kind of formal labelling (Bernburg, 2019, p. 181). He goes on to describe the finding of Paternoster & Ionvanni that informal labelling happens when formal labels are introduced into informal settings, explaining:

> An arrest may have no impact on a youth's life if it is kept secret from school authorities and members of the local community. But, if school authorities are notified of the event or if it becomes known in the community, it can trigger exclusionary reactions by teachers and community members (Bernburg, 2019, p. 181).

This example is particularly helpful to our understanding of how labelling can have negative consequences for youth, especially in the context of school. It is also a helpful illustration of why the *YCJA*'s protection of the information contained in youth records acts to prevent the labelling of youth.

While the *YCJA* does not use the terms "labelling" or "stigma," the courts have inferred that this is the underlying rationale for the *YCJA*'s explicit protection of the right to privacy for youth (*FN (Re)*, 2000 SCC 35 (CanLii), [2000] SCR 1 880). For example, the Court of Appeal for Ontario acknowledged that Part 6 of the *Act*,

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"seeks to avoid the premature labeling of young offenders as outlaws and to thereby facilitate their rehabilitation and their reintegration into the law-abiding community" (*SL v NB*, 2005 CanLII 11391 (ON CA) at para 35).

Part 6 of the YCJA and Formal and Informal Records

Part 6 of the *Act* generally protects the formal records that are created once charges have been laid.[9] While there is some scholarship on the problem of youth criminal records, this research tends to be focused on the effects of formal youth criminal records that are created once the young person has been charged (McMullen, 2018; van Wiltenburg, 2018). These articles examine issues like gaining employment and housing, similar to problems resulting from adult records. However, there are records that document youth behavior that are created before a youth is ever charged and contribute to labelling and potential criminalization. I will refer to these records as "informal records." While the *YCJA* creates a comprehensive privacy regime for access to records that are created in the course of a court proceeding ("formal records"), informal records can disclose the same private information but fall outside the scope of the legislation.

Informal records may have potential negative impacts on young people in schools if the records are shared between schools and police. Records are created every time a young person has an interaction with the police (i.e., police notes) (Hoffman & White, 2015; Wortley & Owusu Bempah, 2022) and every time the police are called by the school (i.e., documentation of reasons for police calls). There are also

9 Part 6 protects court records, police records and government records but these records are accessible for a limited period of time, depending on the disposition of charges, and are accessible to only certain categories of people listed in s 119(1).

instances in which records are kept about a young person and shared with police even without an inciting incident. In some school districts in Ontario, a record is created by school administration when a student exhibits violent behavior (often referred to as a VTRA: Violence/Threat Risk Assessment) which can be shared with the police (Tanner, 2021). These informal records can contain the same, if not more intimate, information as formal court records since they can contain family history, mental health issues, etc. The *YCJA* does not explicitly protect these records and therefore it can be inferred that there are no consistent safeguards across jurisdictions to ensure that these records are properly handled and not indiscriminately disclosed.

Since informal records do not have the same level of protection as formal records, they can be more easily shared between institutions. However, as discussed above, officers have wide discretion to disclose even formal records. Permitting this type of information sharing without a more rigorous legal standard undermines the privacy protections afforded by the *Act* and puts young people at risk for labelling and stigmatization at school.

Many of the cases regarding a young person's entitlement to privacy in their records examine the question of publication of a young person's name and identity to the public. However, fewer cases deal with the disclosure provisions of the *YCJA* that allow for law enforcement to disclose these records to schools and other institutions. The justification for disclosure of information contained in these records is also provided by s 125 of the *YCJA*. Disclosures by peace officers to schools are permitted by s 125(6) when the disclosure is necessary:

> (a) to ensure compliance by the young person with an authorization under section 91 or an order of the youth justice court;
> (b) to ensure the safety of staff, students or other persons; or
> (c) to facilitate the rehabilitation of the young person.

The permissible circumstances for sharing information contained in a record governed by this section of the *Act* is outlined but ultimately, the "necessity" of the disclosure will be interpreted by the record holder (often a police officer). Given the

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broader context of Part 6 and the principles of the *YCJA*, the calculus of whether a disclosure is necessary should include a consideration of the breach of the young person's privacy rights.

Accordingly, in line with the *YCJA*, the courts have consistently found that young people have a heightened privacy interest. In *AB v Bragg Communications Inc*, 2012 SCC 46, the Supreme Court of Canada looked at whether a young person could anonymously seek an application for the identity of a Facebook profile that published allegedly defamatory content about the young person. While this case does not directly deal with the *YCJA* or youth criminal records, Abella J. in the majority opinion quotes Cohen, J. in *Toronto Star Newspaper Limited v. Ontario* at paragraph 18:

> The concern to avoid labelling and stigmatization is essential to an understanding of why the protection of privacy is such an important value in the Act. However, it is not the only explanation. The value of the privacy of young persons under the Act has deeper roots than exclusively pragmatic considerations would suggest. We must also look to the Charter, because the protection of privacy of young persons has undoubted constitutional significance.
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> Privacy is recognized in Canadian constitutional jurisprudence as implicating liberty and security interests. In *Dyment*, the court stated that privacy is worthy of constitutional protection because it is "grounded in man's physical and moral autonomy," is "essential for the well-being of the individual," and is "at the heart of liberty in a modern state" (para. 17). *These considerations apply equally if not more strongly in the case of young persons.*
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> ... The protection of the privacy of young persons fosters respect for dignity, personal integrity at a time to be of the young person.

The quoted case dealt with an application by a Toronto Star journalist to disclose and publish the records of three young people who were charged with serious

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crimes. In both cases, the privacy of the young persons prevailed over the public interest in their identities and records. This particular paragraph is cited by the courts to demonstrate the heightened privacy interests extended to young people.[10]

Since both the Court and the *YCJA* provide young people with a heightened protection of privacy, and acknowledge privacy as a right under the *Charter*, it should follow that disclosure of information contained in a record covered by the *YCJA* should be subject to a high bar. Accordingly, informal records that provide identifying information about youth who are dealt with under the *YCJA* should be given a level of protection similar to the formal records protected by Part 6. Corresponding with the *YCJA*'s treatment of privacy, any reasons to disclose should be balanced against the well-established right to privacy for young people.

Findings

This section examines information sharing between schools and police and the impacts of these disclosures. Interviews were held in the fall of 2021 to the winter of 2022. Participants included one lawyer from the Ontario region, one executive director of a youth legal clinic, one GTA youth worker, one Ontario-based researcher and youth worker, one Ontario region principal, and one lawyer based in rural British Columbia. These participants all had worked directly with youth who had experience with police in relation to the school environment.[11] The relevant themes that came out of the interviews were: 1) problematic informal information sharing; 2) information sharing and labelling/stigma; 3) the hyper-surveillance of

10 R v Jarvis, 2019 SCC 10 (CanLII), [2019] SCR 1 488; P1 v XYZ School, 2022 ONCA 571 (CanLII); SEL v OVP, 2022 ONSC 1390 (CanLII).

11 Some participants had knowledge of information sharing between schools and police from their conversations with youth and some had first-hand knowledge of the information sharing from inside schools. Interviews were semi-structured and lasted between forty-five minutes to an hour. Because of the semi-structured nature of the interviews, questions were designed to elicit observations from each participant's area of professional expertise (i.e. the lawyer participants were asked about s 125(6) of the YCJA). The majority of the participants work in the Southern Ontario region, while the youth legal clinic serves all of Ontario. The BC lawyer provided insight into particular issues in the region in which they work.

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youth resulting in or related to breaching bail conditions; and 4) discriminatory impacts of stigma resulting from information sharing.

From the participant interviews, a consensus emerged that information sharing between police and schools can create conditions that lead to blurring the boundaries between these institutions resulting in unclear roles. The problem was observed when the information sharing occurred via continuous police presence in schools or via police performing community relations work with schools. Some participants observed that information sharing can be helpful for school administrations in providing context for a young person's behaviour. However, the majority of participants pointed to the problems of information sharing resulting in increased surveillance, leading the young person to be stigmatized and increased contact with the justice system, and the targeting of Black and Indigenous youth, and youth with disabilities. These observations suggest that information sharing between police and schools can contribute to the systems that perpetuate the criminalization of youth.

Informal information sharing

"Once the information is disclosed, there's no way to control who then has it and what use they make of it." – JM

Information sharing about young people between schools and police was described by participants as generally informal. According to the *YCJA*, criminal charges cannot form part of a student's official school record (OSR). Therefore, any information about those charges would have to be shared by police with school administration in another manner (*YCJA*, 2002, s. 125(7)). As discussed earlier, the *YCJA* allows for police to share information with educational institutions in certain circumstances (*YCJA*, 2002, s. 125(6) for school safety, assisting youth to comply with a court order; rehabilitative purposes).

Because of this, participants consistently described various scenarios in which information that would be prohibited to physically keep with a student's school records would be verbally shared. Principal A, who worked in the southern Ontario

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region for approximately two decades, explained that the administration might contact their assigned police liaison officer[12] when a student is exhibiting behavioural issues, or what he perceived to be warning signs, in order to come up with a safety plan[13] for the student. He provided an example of when he consulted with the liaison officer about a particular student's behaviour issues and this consultation was helpful as it allowed them to develop a safety plan that included the health and safety of staff.[14]

> So we had a student coming to us—this was quite a few years ago now—and there were things in his student record that suggested some serious behaviour problems. He had struggled in elementary school and was coming to grade 9. We had some meetings and there were some warning signs. As part of our developing a safety plan, we consulted with our liaison officer and they looked at what charges and what involvement the police had had. And when we started comparing our notes with the police notes what became clear was that this young man seemed to be safe with kids his own age. If he was alone in the room with an adult woman, it was only a matter of time before he would sexually assault some[one], whether it was rubbing up against the teacher from behind, fondling. But we didn't have a complete story and the police didn't have the complete story but we were able to fit it together. So we were able to put together a plan where he didn't have female teachers as a safety plan to try... and he was great, but when he was in a class

12 In this example, the school liaison officer is one that is not necessarily on campus everyday but is assigned to a school and may visit weekly or to do workshops. The liaison is also the point of contact for the administration for non-emergency issues.
13 An explanation of a safety plan in the educational context: "A student safety plan is a plan developed for a student whose behaviour is known to pose an ongoing risk to themselves, other students, workers or other people in general. It can serve as a crisis-response plan that outlines the roles and responsibilities of the workers in dealing with specific problem behaviours. The development of a student safety plan involves all workers who work on an ongoing basis with a student, as well as parents and the representatives from any community agencies working with the student/family." Ontario, "Student Safety Plan" (March 2018) online: <https://www.ontario.ca/document/workplace-violence-school-boards-guide-law/student-safety-plan>.
14 Interview Principal A at 12:27.

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> he could not control himself. But there was something else there. That's where we're working together to kind of develop a plan to support the kids.[15]

While this incident resulted in a good outcome for the student, sharing such private and protected information raises privacy concerns. Notably, an officer sharing information in the context that the principal described could be considered within the parameters of a necessary disclosure under s 125(6) of the *YCJA* since it affected the safety of the school staff. However, it raises the question of what kinds of circumstances will prompt police to make a disclosure about a record that should be protected under the *YCJA*. In this example from Principal A, there was a clear safety issue but there may be other circumstances when the safety issue might be tangential to the school environment or unsupported by evidence. Essentially, this type of disclosure should be the exception and not the rule.

The above issues of information sharing are underscored in a longitudinal study which examined the value offered by school resource officer programs in the Peel Region of Ontario (Bennell & Duxbury, 2019).[16] This multi-method (quantitative, qualitative, and ethnographic) study looked specifically at the SRO program in Peel Region using data from 2014 to 2017.

It should be noted that the study essentially starts from the premise that SROs have value and draws conclusions about this value based on interviews with SROs, school administration, students, staff sergeants, and researcher observations from "ride-alongs" (Bennell & Duxbury, 2019, p. 2). Moreover, the study uses an "outcomes-

15 Interview Principal A at 12:27.
16 In its research objectives, the researchers state: "First, the research seeks to provide answers to communities, politicians, and school boards who question the value of SRO programs. Second, the research adds to the existing body of work on the subject of public value measurement in general and SROI techniques in particular. This study fills a critical gap in our understanding of the SRO role and should assist other policing services who seek to demonstrate the value that such programs deliver to their governing bodies (e.g., municipalities and provincial or state-level governments); For a critique of the study see Kanika Samuels-Wortley "The state of school liaison programs in Canada" (May 2021) online: <https://bchumanrights.ca/wp-content/uploads/Samuels-Wortley_May2021_School-liaison-programs.pdf>.

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based measurement tool that helps organizations understand and quantify the social, environmental, and economic value they are creating" (Duxbury & Bennell, 2019, p. 191). Since the study uses business management analytical tools, the question of value was approached from a primarily economic perspective. Because of this, the practice of information sharing is characterized as value added on the part of the police presence in schools. According to the study, school administrators felt that one of the central values of the SRO program was the information provided by officers to the school:

> Police have information or have access to information that the school administrators might not (e.g., assaults that occur off campus, graffiti and gang-tagging that occurs on and off school grounds). The SRO ensures that such information is shared with the school. (Duxbury & Bennell, 2019, p. 81)

SROs were asked the same question and responded similarly, that information gathering from officers in schools assisted in the criminal investigations of the police department. Given these descriptions, it can be inferred that, at least in Peel Region, information sharing not only happens regularly between schools and police, but it is considered an asset by many. What is not addressed by this study are the potential impacts on youth who may be harmed by the disclosure of this information. The interviews I conducted for this project take a different perspective and aim to shed light on the impacts that information sharing has on youth rather than how those disclosures can be helpful to school boards and police.

On this point, it is important to note that information sharing in school-police partnerships is usually governed by a Memorandum of Understanding or protocol, as well as legislation like the *YCJA* and applicable provincial information privacy laws, that formally lay out these boundaries (Upper Grand District School Board, 2022, p. 12).[17] These restrictions on information recognize that information sharing

17 The UGDSB protocol states: "A number of different statutes deal with information sharing and disclosure. These include federal legislation (the Criminal Code and the Youth Criminal Justice Act) and

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often produces such harms and must therefore be tightly regulated. For instance, the "Police/School Board Protocol" for the Toronto District School Board and Toronto Police Service includes a section on information sharing and disclosures which outlines the applicable legislation and policies that bind the parties (Toronto District School Board, 2011, section 8). It lists the *YCJA* (2002), *Municipal Freedom of Information and Protection of Privacy Act* (1990), the *Education Act* (1990), and the *Child and Family Services Act* (1990). The protocol provides the legislative exceptions that permit information sharing in certain circumstances. While this gives the impression of clearcut rules for the parties to follow, these exceptions are written broadly enough to invite generous interpretations. For example, the protocol reads:

> "Section 32(g) of the Municipal Freedom of Information and Protection of Privacy Act (*MFIPPA*) expressly permits a school board to disclose confidential information to the police to aid in an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result" (Toronto District School Board, 2011, section 8).[18]

This clause could describe a number of circumstances, especially as it allows for disclosure if a law enforcement proceeding is likely to result. The permission for disclosure in the protocol puts administrators in the position to judge if a law enforcement proceeding is likely to result before they disclose confidential student information. Given the close relationship between police and school boards under a protocol, it is possible that an administrator would be willing to withhold information from police if they felt that the requirements of *MFIPPA* were not met. Similarly, the OCDSB report discusses how the protocols for information sharing with police will detail that a disclosure is permitted by legislation like *MFIPPA* but

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provincial legislation including the Municipal Freedom of Information and Protection of Privacy Act, the Child, Youth and Family Services Act and the Education Act. In situations where federal and provincial laws are in conflict with each other, the federal law takes precedence."

18 This is based on the 2011 protocol and not the legislation which may have updated language and section numbers.

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does not explain that disclosure may not be required, or that it is only permitted with consent of the young person (Tanner, 2021, p. 64). All that is to say is that formalizing the process of information sharing will likely not clarify instances of appropriate information sharing for administrators or police.

That said, even in instances with clear rules, inappropriate information sharing can still take place. This was illustrated by JM, the lawyer who works for an Ontario legal clinic that focuses on youth. They explained that the *YCJA* specifically states that disclosed information should be kept separate from other records relating to the student.[19] However, JM stated that the information or records disclosed by police often are not separated from the student's school records:

> Very often it's shared in these general terms and then schools are in a bit of a bind because they don't know what to do with that information, or they use it in ways that it was not intended or that the *YCJA* would not permit.[20]

JM gives an example of schools using the disclosed information to make decisions about a student's placement at school or further disciplinary measures to be taken by the school. Presumably, since the information should not be shared for these purposes under the *YCJA*, then the information should not be used for these purposes.

In reference to s 125(6) of the *YCJA*, and what would be considered a disclosure necessary to ensure compliance with a court order, ED, the executive director of a youth legal clinic, provides the example of a student who had a "no-contact" order with another student who attends their school as part of their bail conditions.[21] ED

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19 YCJA, 2002, at s 125(7) states "A person to whom information is disclosed under subsection (6) shall (a) keep the information separate from any other record of the young person to whom the information relates; (b) ensure that no other person has access to the information except if authorized under this Act, or if necessary for the purposes of subsection (6); and (c) destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed."
20 Interview JM at 29:05.
21 Interview ED at 42:00.

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argued that the necessary disclosure in this instance might be to the school board in order to secure the student's registration at a new school, but ED says it should stop there. The new school should also not be given that information. Accordingly, JM explained that this type of disclosure is a practice that the clinic sees often, sometimes as a result of parents and sometimes as a result of police. They explain that a school using that information to make decisions about the young person's ability to attend school can have substantial consequences:

> If it's a decision made by the youth court or a decision made at the school level, if a student is no longer able to attend that school, that can be massively disruptive for a young person. Schools are not just places where they learn academically, they're also places that support their social and emotional development and social relationships. And places where they may have trusted adults or trusted peers that are really important parts of their lives. So if they are no longer able to attend that school that can be really disruptive to all of those relationships and sort of put them in another environment where they may not have the same kinds of supports in place. Whether those be actual, professional supports provided by the school or more kinds of social supports provided by a familiar environment. That happens all the time. Frequently. Even if a school isn't imposing its own disciplinary measures, the use of this information to transfer a student or otherwise prevent them from attending school can be massively disruptive to their academic attainment but also to all those other really important relationships and structures that are in place to support them.[22]

All of the factors that JM lists highlight how not only being out of school but also being transferred from a school can disrupt a young person's life.

22 Interview JM2 at 18:06.

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What these examples illustrate is that there are various circumstances in which information is informally, and sometimes casually, shared between educational institutions and police agencies. Whether the circumstances are appropriate or inappropriate under the *YCJA* or other privacy legislation ends up being decided by the school staff or police officer, usually in the moment. When safety is the paramount concern, it is easy to justify these disclosures. What is not clear is if the child's privacy rights are considered as a factor in these decisions.

Given that one major purpose of the *YCJA* is the protection of youth from the stigma of association with the criminal justice system, information sharing decisions should start from the presumption of privacy and allow access or disclosure only when there is significant justification to overcome that presumption. Such a presumption of privacy would better reflect the purposes of the *YCJA* and would ensure that the unique needs of youths are given sufficient weight in the inevitably balancing between privacy interests and public safety concerns. To ensure that the rights of young people are being respected in this process, there is a need for oversight and review of these decisions. There are no records of every time a disclosure is made. They are made informally in a range of circumstances. Providing a review mechanism for these decisions could give recourse to young people whose information is improperly disclosed.

Labelling/Stigma

"That's exactly what you're trying to protect against, is the sharing of information that might serve to stigmatize a young person and thereby impeding their rehabilitation."—ED

During the interviews, participants suggested that information sharing is particularly problematic because of how that information is used to label and stigmatize young people who have criminal justice involvement. Participants observed that information about incidents that happened off school property would often be relayed back to the school, frequently by police, but also sometimes by parents, students, or service providers.

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JM explained how s 125(6) of the *YCJA* allows this information to be shared and in turn, how the sharing affects how the student is perceived at school:

> The way that it gets used, unfortunately, is that if someone is charged with something serious, like a serious violent offence, whether or not, it has anything to do with the school, there's a likelihood, and it happens in practice all the time, that information gets shared with the school. And they take that to mean, well this is a person who has been charged with a dangerous offence and so this is a dangerous person and therefore, you're not allowed to come to school, which is precisely the opposite effect that these provisions are supposed to have. Where they are supposed to limit the information that can be known about a young person's youth criminal justice involvement, specifically to prevent stigma and to prevent that kind of labelling as "you are a dangerous person and you are not allowed to come to school."[23]

Consistent with this assessment, YW noted that information about incidents that occurred off school premises often made its way back to schools:

> It happens all the time. There have been instances where a charge happens off school property but then a young person ends up getting suspended as a result of that. Or expelled. Or there's repercussions when it comes to their schooling. Parents have vocalized their challenge with that as well because, in terms of privacy and protection of information and all of that stuff, something that happens outside of school should not be relayed back to schools. And it consistently happens. It's that sharing of information has always been an area that is problematic and I've seen it happen firsthand. So many of our youth come through courts and something happened at the mall or outside their house and they go back to school and they're told,

[23] Interview JM2 at 00:10.

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> especially when it happens between students from that school or something like that—suspensions are always the result of that. It creates a not-so-great environment for the students because the teachers are aware. They're aware that this student now has a record or the student is going through the justice system and the student now feels labeled.[24]

While this paper focuses on information sharing between schools and police, some examples were raised by participants where other justice system workers, like probation officers and youth court workers, would also inappropriately disclose information to schools. As previously discussed, when information sharing results in school disciplinary measures like suspensions and expulsions, it can cause major disruptions and adverse consequences for young people inside and outside of school.

If a young person continues at the same school where criminal justice information has been shared with the staff, that young person must navigate the school environment knowing that teachers and staff are aware of their criminal justice involvement. Another example provided by JM describes one of their clients who was charged with assault as a result of a fight that took place at school. The young person's bail conditions included a no-contact order with another student at the school and because of this, the young person had to attend a suspended students program. JM was able to convince the Crown to vary the bail conditions to allow the young person to go back to their home school. In advance of his return, the young person expressed anxiety about transitioning back, questioning if he would be singled out or targeted, and if the other student would taunt or goad him into trouble. More generally, JM explained that the consequences of disciplinary actions and school transfers can result in considerable disruption for youth, including

[24] Interview YW at 25:28.

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missed classes for a considerable period of time, setbacks in academic attainment, disrupting social and emotional supports, and access to trusted adults.

Hyper-surveillance and breaching bail conditions ("breach")

Almost all participants identified hyper-surveillance as one of the consequences of labelling. Hyper-surveillance describes a type of surveillance that engages police, institutions like schools, and other community members in the monitoring of youth of colour which can contribute to and create the criminalization of youth (Rios, 2011; Remster & Kramer, 2018). One lawyer who represents youth in rural British Columbia described this process happening for her clients most often in the context of breach of bail conditions. She explained that the original charges for young people tend to stem from low-level assaults or bullying. However, her clients continue to come into contact with police and the justice system as a result of breaching their bail conditions. As described above by other participants, bail conditions can include "no contact" orders which prohibit the charged youth from coming into contact with a specific person. Other bail conditions might include a curfew, or prohibition from being on school property or school events, etc. These are court-ordered conditions that the young person must comply with and if a condition is breached, the individual is charged (*Criminal Code*, 1985, s. 517(2)). This means that information sharing when it comes to ensuring youth comply with these conditions, under s 125(6) is permitted. However, DL, the lawyer from BC who represents youth, explains that this can also stigmatize youth:

> These youth probation officers are, at least in small communities, they'll monitor kids while they're on bail as well. And oftentimes they will attend at the school. So you have this association that develops very early on where you know, let's just use the name John, little Johnny we know that he goes to the counsellor every day at 2 o'clock and he has to see the youth bail supervisor. And so, Johnny's bad because we know that the youth bail supervisor has to come and see him. We're sort of stigmatizing them very early on. We're trying to help by saying let's hook you up with this person who is theoretically supposed to connect you with resources and get you out

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> of the system, but in fact you're really getting acquainted with the system that we're trying to pull you away from.[25]

The problem of bail conditions and "breach" is well documented throughout Canada as a particular issue in both our adult and youth criminal justice systems (Canadian Civil Liberties Association, 2014; Standing Senate Committee on Legal and Constitutional Affairs, 2017; Myers & Dhillon, 2013). In a 2013 study of bail conditions for youth in Toronto, researchers found that over 40% of youth had more than 10 conditions (Myers & Dhillon, 2013). Research has also shown that long bail periods with numerous conditions on youth can make it more likely for a young person to breach, and consequently, have more interactions with the justice system (Sprott & Myers, 2011; Smandych & Corrado, 2018).

The participating lawyers explained that bail conditions for youth often include the requirement to attend school, which is one reason that the bail supervisor in DL's example would check on a young person at school. The consequence is that a young person's criminal justice involvement then intersects with, and depends on, their school. It can also create the perception that a young person needs to be watched more closely while at school to ensure they are complying with their bail conditions. Additionally, ED remarked on how s 125(6) can be interpreted to allow information sharing about bail conditions with schools to ensure compliance, which is why the section should be read narrowly:

> Maybe there is a surety in place. That is a person who's supposed to monitor. Maybe there are the police, that's a person who is supposed to monitor. Your employer is not meant to monitor your bail conditions or your sentence conditions in the same way that your school is not meant to monitor your compliance with the conditions. That's the job of a probation officer or the police or the court or maybe your lawyer is to help you

[25] Interview DL at 19:19.

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> understand your circumstances. You want to make sure there is something "necessary" about passing that information on.[26]

This raises the issue of blending the roles of police/justice system with schools. JM explained it is important that these institutions perform their specific functions for youth to be rehabilitated. Essentially, the youth court makes the determination that the young person is not a safety risk by allowing them into the community and the school is part of that community. For the school to use that information to punish or monitor the young person can make it difficult for them to transition back into the community.

Discriminatory Application and Impacts

Participants shared their perception that Black and Indigenous students were being disproportionately impacted by the stigma that resulted from information disclosures.[27] Most of the available data about discrimination in Canadian schools is based on studies that survey students' perceptions of their treatment based on race (Salole & Abdulle, 2015; Samuels-Wortley, 2021). These studies suggest that Black youth feel they are treated more harshly than white students by teachers and administration in schools. Accordingly, RW explained that in discussions with Black youth and their families, Black youth conveyed that they were heavily disciplined for behaviour that would be considered typical of children and teenagers. They also noted that schools often called police when managing these disciplinary issues. This disproportionate targeting of Black youth is supported by the statistics provided by the Toronto District School Board (one of the only school boards disaggregating data by race in Ontario) which showed that between 2011 and 2016 Black students were disproportionately the subjects of suspensions and expulsions

[26] Interview JM2 at 03:48.
[27] The cumulation of years of experience that informed the interviews' observations should be taken into account when assessing the reliability of their information. Half of the participants have been working in their area of expertise for more than a decade.

(Zheng & De Jesus, 2017). Specifically, Black students accounted for half of the board expulsions (Zheng & De Jesus, 2017).

RW also shared their own experience growing up as a Black youth in a heavily policed GTA neighbourhood:

> I grew up in [GTA neighbourhood] where I faced heightened surveillance by police officers outside of schools. Just being on the basketball courts alone where police officers would come harass you there. I went to McDonalds with my friends and my brother and we're sitting down and eating McDonalds in a brown bag and police officers came to tell us, "Oh we got a report that you guys are smoking weed" because we had McDonalds bags with us... I didn't even tell my parents about it because I didn't have the language. I thought it was just a normal thing that happens to people within Canada.[28]

This anecdote is illustrative of the heightened surveillance and suspicion Black youth can be subject to in the community by police. Furthermore, there is growing research showing that Black youth and adults are disproportionately targeted by police for surveillance, which might contribute to their over-representation in the justice system (Owusu-Bempah & Wortley, 2014; Wortley & Owusu-Bempah, 2011; Tanovich, 2006; Meng, 2017). More recently, the Ontario Human Rights Commission (2020) released a report on the use of force by the Toronto Police Service, which concluded that Black people are greatly over-represented in use of force incidents.

[28] Interview RW at 31:00.

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This can pose a problem for Black youth when they attend school and police are present. From discussions she had with the community about the issue of SROs, YW explained:

> Students are very vocal, they said they do not feel comfortable with police officers being in schools. They don't feel safe, they don't feel supported, they feel targeted, they feel oversurveilled, overpoliced. And so as a result, it's the entire environment that's creating this kind of ripple effect of our students just falling through the cracks or coming into contact with the justice system.[29]

Outside of school, YW observed the demographics of charged youth they worked with being mainly Black and Indigenous youth, and youth with disabilities. They recalled often seeing Black and white youth with the same set of charges based on similar circumstances receive different treatments by the courts. They also described diversion being offered less often to Black and Indigenous youth. This particular issue was recently studied by Kanika Samuels-Wortley (2022, p. 387), who analyzed pre-charge diversion data from a policing service in Ontario and found that "Black youth are more likely to be charged and less likely to be cautioned than White youth and youth from other racial backgrounds." Given that these are the realities that Black youth face in their encounters with the justice and educational institutions, it is unsurprising that they would feel over-surveilled at school when police are present. Having police on school property, continuously or sporadically, puts young people in an environment where these systemic biases overlap and perpetuate each other.

YW expressed that they felt that information sharing between the schools and police led to police surveilling young people in the community. They explained that, "It creates that revolving door. Some of the same students we see are youth coming

[29] Interview YW at 06:20.

through that system. They go through schools and interact with the police, then courts and it's just this big cycle."[30] As other researchers have observed, the school to prison pipeline is not a linear process (King et al., 2018; Devlin et al., 2018). It tends to act as a set of processes that repeat and increase the likelihood of outcomes where youth are pushed out of school and/or into the justice system.

YW and RW's observations show that there can be biases inherent in these systems and when these institutions interact, these biases have the potential to compound. This is also evident in DL's recollections but in the context of Western Canada's rural communities, and specifically, Indigenous youth:

> So usually what ends up happening, the teachers or staff will be familiar with the sort of quote unquote high needs students and they'll be acquainted when their familial circumstance, with the parameters of their housing, how transient they are, and I would say that generally speaking, they are. The teachers and the school administration, become less reluctant to rely on those families, or those caregivers, because there is this belief, conscious or subconscious, that the familial unit won't be able to control, monitor risk so there's increased reliance in those circumstances on law enforcement. This idea that family can't do it because the family life is disturbed or the foster home isn't adequate so we need to rely on police because we've exhausted all of our options. And that happens much more readily with structurally vulnerable youth.[31]

DL also described that these factors make Indigenous youth "subject to a greater level of scrutiny not only by law enforcement but also administrators."[32] This is indicative of other factors that make youth vulnerable like being in care and unstably housed. Research shows that Indigenous youth are overrepresented in

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[30] Interview YW at 30:00.
[31] Interview DL at 06:47.
[32] *Ibid.*

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Canada's correctional system (Jackson, 2015). Furthermore, a 2009 report by the BC Representative for Children and Youth & Provincial Health Officer (Turpel-Lafond & Kendall, 2009) found that youth who are in care (under the care or supervision of a child welfare agency) are more likely to be incarcerated than to graduate from secondary education. The example DL provided shows how both educational administrators and law enforcement can supplant the role of child welfare services to take on a surveillance role in the lives of young people. Again, it appears that these systems with built in biases are compounded to disproportionately impact Indigenous youth.

Findings Summary

These interviews shed light on the complex ways in which information sharing between police and schools can impact the lives of young people, especially Black and Indigenous youth. The observations of the participants indicate that disclosures between police and schools about youth records and private information can exacerbate existing issues like discrimination and problems within the criminal justice system (bail breaches). At the very least, these disclosures can serve to assist in the process of pushing young people out of school, because of stigma or criminal justice involvement.

These interviews suggest that there is a lack of standards or thresholds that need to be met when schools and police exchange information about a young person's involvement with the criminal justice system. Generally, interviewees indicated that the appropriateness of a disclosure is considered through a lens of safety rather than a young person's right to privacy. Though the *YCJA* provides standards, there is no simple way to measure how the *YCJA*'s concepts like *necessity* and *safety* are being interpreted in practice. Further, because inappropriate disclosures, if they are uncovered, do not usually result in litigation, we do not have judicial case law or guidelines about how the exception ought to be interpreted.

Though the governing framework for information sharing seems comprehensive, with protection from the *YCJA*, *MFIPPA*, *PHIPA*, and other privacy-protecting statutes, it is still unclear how much weight these protections are given by the ones

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making these disclosures in practice. Myriam S. Denov (2004) points out that the *YCJA*'s provisions that allow disclosure to certain categories of people without a requirement that courts consider the best interests of the young person does not comply with the *United Nations Convention on the Rights of the Child* (1991) guarantee of privacy rights for children (Article 16). Given the potential impacts that a disclosure can have on a young person (as laid out by the participants in this project), the decision to disclose this information should be met with the presumption of privacy to respect the rights of the young person.

Conclusion

This article fills a small but important gap in the research by using key informants to reveal how the relationships between schools and police (on campus or off campus) can infringe on the privacy of youth protected by the *YCJA* and increases the potential for processes that criminalize youth to occur. One of the purposes of the *YCJA* is rehabilitation, which is aided by the privacy provisions. However, this aim is frustrated by the close relationship between police and schools. Young people are not funnelled from school to prison, as the term school to prison pipeline suggests, but are pulled into a complex set of processes that criminalize their behaviours and increase their contact with police. As participants discussed, there are unclear roles for police relationships with schools and students; problematic informal information sharing that can lead to labelling/stigma; labelling that increases surveillance of youth resulting in or related to breaching bail conditions; and discrimination based on race and disability in the application of exclusionary discipline and/or police intervention. These themes show how difficult it is to be rehabilitated when the shadow of having police involvement is cast over youth. As one of the participants said, one would not expect their employer to know about charges that were laid outside of their employment. Why should young people have different expectations about their privacy when it comes to school?

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