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## Landlords, Tenants, and Domestic Violence: Clarifying Privacy Issues

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**Case Commented On:** Centre for Public Legal Education Alberta, [Domestic Violence: Roles of Landlords and Property Managers](#)

A recent report written by Professor Lois Gander for the Centre for Public Legal Education Alberta (CPLA) explores how landlords and property managers can play a part in responding to domestic violence. [Domestic Violence: Roles of Landlords and Property Managers](#) concludes that “some property managers and the landlords they represent go to considerable lengths to prevent, intervene, and support victims of domestic violence as much as they can” (at 7). This was the case even before Bill 204, the [Residential Tenancies \(Safer Spaces for Victims of Domestic Violence\) Amendment Act, 2015](#), amended the *Residential Tenancies Act*, [SA 2004 cR-17.1 \(RTA\)](#), to allow victims of domestic violence to terminate their tenancies early without the usual penalties (for a post on Bill 204 see [here](#)). The report includes several recommendations to support landlords and property managers as front-line service providers in this context, including the development of training and resources. It also recommends that “further consideration should be given to ways that the law impedes or assists landlords in accommodating the needs of their tenants who are experiencing domestic violence” (at 9). Appendix F sets out several legal issues revealed by interviews with landlords and property managers, including uncertainty about: (1) the extent to which privacy laws constrain them from reporting domestic violence to tenants’ emergency contacts, guarantors and family members, (2) who is a tenant and how and when a guest or occupant acquires the rights and responsibilities of tenants, (3) the power of landlords to suspend or terminate tenancies for acts of domestic violence, (4) the power of landlords and tenants to change locks and bar access, (5) the ability of landlords to recover the cost of repairs for damages caused by tenants or their guests, and (6) the implications of different forms of no-contact orders for landlords and property managers (at 44-45). This post will address the first issue; I will comment later on issue 6 and Jonnette Watson Hamilton will discuss issues 2, 3, 4 and 5.

### Confidentiality Obligations under the *Residential Tenancies Act*

The most directly relevant privacy obligation for landlords is found in the amendments to the *RTA* enacted by Bill 204. Under section 47.7, landlords must ensure that any information they receive from or about a tenant who is a victim of domestic violence under Part 4.1 of the *RTA*, Victims of Domestic Violence, is kept confidential, unless they are authorized by the regulations to disclose that information. Failure to abide by these confidentiality obligations is an offence, with the landlord liable to a fine of up to \$5,000 (see section 60(1)(a) of the *Residential Tenancies Act*).

Section 4(1) of the *Termination of Tenancy (Domestic Violence) Regulation*, [Alta Reg 130/2016](#), provides that a landlord may disclose the information in several circumstances:

- (a) to the Minister / Director of Residential Tenancies or their delegates in connection with the investigation or prosecution of an alleged offence under the Act;
- (b) to the designated authority responsible for issuing a certificate confirming that there are grounds for terminating the tenancy because of domestic violence;
- (c) to a law enforcement agency, but only upon the request of the agency in relation to an investigation;
- (d) in connection with an emergency that threatens the life, health or security of an individual or the public;
- (e) to a lawyer who provides services to the landlord;
- (f) to a court or the Residential Tenancy Dispute Resolution Service in proceedings under the Act;
- (g) with the consent of the tenant who claims domestic violence;
- (h) to the extent that the information is available to the public; or
- (i) as otherwise required by law.

The interaction of clauses (c) and (d) is interesting to contemplate. Although disclosure to a law enforcement agency is only permitted upon the request of the agency in relation to an investigation, it seems reasonable to interpret these clauses such that a landlord could disclose information from or about a tenant who is a victim of domestic violence where there was an emergency threatening her or someone else's life, health or security, whether to law enforcement officials or others. Clause (g) also permits landlords to disclose such information with the consent of the tenant, which may include consent given on a lease about contact information for emergency purposes. These provisions do not appear to have been subject to any judicial interpretation yet, at least in reported decisions.

Section 4(2) of the *Termination of Tenancy (Domestic Violence) Regulation* also provides that a landlord is not prevented from disclosing the following information to any tenants referred to in section 47.3(5) of the *RTA* – i.e. all the tenants residing in the same residential premises as the victim of domestic violence:

- the fact that a notice for termination of tenancy was served; and
- the termination date specified in the notice.

This *Regulation* is to be reviewed beginning on or before August 1, 2017 (section 5), and to ensure that it is reviewed for ongoing relevancy and necessity, it expires on July 31, 2018, with the option that it may be reenacted in its current or amended form following a review (section 6).

These confidentiality obligations and exceptions only apply to information landlords receive about tenants under Part 4.1 of the *RTA* in relation to the termination of a tenancy because of domestic violence. What do other laws provide about landlords' privacy obligations?

## Privacy Laws

### *Freedom of Information and Protection of Privacy Act*

Alberta's *Freedom of Information and Protection of Privacy Act*, [RSA 2000, c F-25](#) (*FOIP Act*) does not mention domestic violence explicitly. It does, however, create restrictions and obligations on public bodies around the collection, use and disclosure of personal information that could be relevant in the domestic violence context. Public bodies are defined in s 1(p) to include government departments, branches, and offices; agencies, boards, commissions, corporations, and offices; the Executive Council Office and Legislative Assembly Office; offices of the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner, the Information and Privacy Commissioner, the Child and Youth Advocate and the Public Interest Commissioner; and local public bodies, including educational and health care bodies and local government bodies.

The only public bodies covered by the *FOIP Act* in the housing context are management bodies administering and operating social housing under the *Alberta Housing Act*, [RSA 2000, c A-25](#) (*FOIP* s 1(i)(vii)), and, pursuant to the *Freedom of Information and Protection of Privacy Regulation*, [Alta Reg 186/2008](#), the Alberta Social Housing Corporation and the Residential Tenancy Dispute Resolution Service (RTDRS). Apart from the social housing context, private landlords and property managers are not "public bodies" bound by the *FOIP Act*. Their obligations flow from the *Personal Information Protection Act*, [SA 2003, c P-6.5](#) (*PIPA*), which I will discuss later.

The following provisions of the *FOIP Act* are relevant to public bodies in the domestic violence context.

Generally speaking, no personal information may be collected by or for a public body unless the collection of the information is expressly authorized by legislation, is for law enforcement purposes, or is directly related to and necessary for a program or activity of the public body (*FOIP Act*, section 33). Any personal information that is collected within these parameters must be collected directly from the individual the information is about, with some exceptions, including where the information: "is collected in a health or safety emergency" and "direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person" (section 34(1)(c)(ii)); "concerns an individual who is designated as a person to be contacted in an emergency or other specified circumstances" (section 34(1)(d)); or "is collected for the purpose of law enforcement" (section 34(1)(g)). In the latter circumstances, personal information can be collected indirectly.

Turning to disclosure, public bodies must refuse to disclose personal information to an applicant seeking that information if the disclosure would be an unreasonable invasion of a third party's personal privacy. Disclosure is deemed not to be unreasonable where there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party, who does not object (see *FOIP Act* sections 17(2)(b) and 17(3)). Disclosure is

also not considered an unreasonable invasion of privacy where it is necessary to dispose of a law enforcement matter or to continue an investigation (section 17(4)). See also section 40(1)(ee) of the *FOIP Act*, which provides that a public body may disclose personal information if it reasonably believes the disclosure will avert or minimize the risk of harm to the health or safety of a minor or an imminent danger to the health or safety of any person.

These provisions around disclosure would apply to entities such as social housing management bodies and the RTDRS so as to permit disclosure where necessary to protect tenants' health and safety or for law enforcement purposes in the domestic violence context.

The *FOIP Act*'s disclosure provisions were addressed in a case where a complainant argued that his personal information had been improperly disclosed by the Calgary Police Service (CPS) to an unnamed society for the prevention of domestic violence and to child welfare authorities. In Order F2008-029, [2009 CanLII 90966 \(AB OIPC\)](#), Adjudicator Christina Gauk found that the complainant's personal information contained in police reports had been disclosed by the CPS to the domestic violence organization and child welfare authorities, including his name, address, phone number, employment information, driver's license number, physical description, marital status, race, and relationship with other persons who were involved in the domestic violence incidents described in police reports (at paras 19, 21). The evidence showed that CPS reports were shared with the domestic violence organization pursuant to an Interagency Domestic Violence Protocol under which the CPS provides the organization with information about domestic violence reported to and investigated by it, and the information was then used by the organization to contact victims of domestic violence and offer them support and safety planning and information about the court process. The organization's caseworkers also received CPS reports regarding an upcoming court date in Calgary's domestic violence court (at para 36). The Adjudicator held that the CPS had disclosed the complainant's personal information for the purpose of enforcing the law, policing and reducing incidents of domestic conflict, even though the domestic violence organization was a private entity not bound by *FOIP Act* and even though its caseworkers were not themselves involved in policing – nevertheless, “the disclosure [was] for the same purpose – maintaining peace and preventing crime – for which the CPS collected the information” (at paras 44, 47-48). The CPS had thus complied with section 40(1)(c) of the *FOIP Act* by disclosing the complainant's personal information to the domestic violence organization for the purpose for which the information was collected.

The Adjudicator also addressed the disclosure of the complainant's personal information to child welfare authorities. It was unclear from the evidence if this disclosure had been made by the CPS or the domestic violence organization. If the CPS had made the disclosure, she found that it was authorized by section 40(1)(f) of the *FOIP Act*, which provides that “A public body may disclose personal information ... for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure.” The *Child, Youth and Family Enhancement Act*, [RSA 2000, c C-12 \(CYFEA\)](#), section 4(1) provides that “Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to a director.” Under section 1(2)(g) of the *CYFEA*, “a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of a child is endangered because the guardian of the child is unable or unwilling to protect the child from emotional injury.” In turn, section 1(3)(a)(ii)(C) defines a child as “emotionally injured” when there are reasonable and probable grounds to believe that “exposure to domestic violence or severe domestic disharmony” has caused emotional injury to the child. The Adjudicator noted

the CPS reports indicated that “there were children present at the time domestic violence or severe domestic disharmony occurred”, which “in itself triggers the reporting requirement” (at para 61). Alternatively, if the domestic violence organization had disclosed the information, and it was bound by *PIPA* rather than the *FOIP Act*, a similar provision authorized disclosure pursuant to a statute of Alberta that requires the disclosure (*PIPA* section 20(b)).

Unfortunately, this case does not engage in an interpretation of section 40(1)(ee) of the *FOIP Act*, the provision allowing disclosure to avert the risk of harm to minors or of an imminent danger to any persons, which could be relied upon by public bodies in the social housing context where there are risks posed to health or safety due to domestic violence. However, the case provides the opportunity to remind landlords and property managers – including those not bound by the *FOIP Act* – that they have a duty to disclose any knowledge they have of children’s exposure to domestic violence or severe domestic disharmony under the *CYFEA*, where that knowledge is based on reasonable and probable grounds. The case also shows that where police disclose information to private actors such as landlords and property managers, that disclosure may be protected under the *FOIP Act* where it is made for policing purposes.

In addition to their ability to disclose personal information to avert harm, public bodies may also refuse to disclose personal information to an applicant, if the disclosure could reasonably be expected to threaten anyone else’s safety or mental or physical health or interfere with public safety (*FOIP Act*, section 18(1)). This provision would presumably allow public bodies (including social housing authorities and the RTDRS) to refuse disclosure to perpetrators of domestic violence about the personal information of their victims. Public bodies may also refuse to disclose to applicants their own personal information if, in the opinion of appropriate experts, “the disclosure could reasonably be expected to result in immediate and grave harm to the applicant’s health or safety” (section 18(2)). Importantly for landlords and property managers, section 18(3) of the *FOIP Act* provides that public bodies “may refuse to disclose to an applicant information in a record that reveals the identity of an individual who has provided information to the public body in confidence about a threat to an individual’s safety or mental or physical health.” This provision would likely protect the identities of landlords and property managers who provide information about the risk of domestic violence to public bodies such as police, child welfare or housing authorities.

Section 18 was considered in a case where the Edmonton Police Service (EPS) refused an applicant’s request for access to records in circumstances where they were concerned about the likelihood of harm to third parties. The applicant had made a complaint to EPS against a number of its officers who were involved in investigations that led to charges against him, and sought records of the EPS internal investigations. In Order F2004-029, [2006 CanLII 80889](#) (AB OIPC), Adjudicator Dave Bell noted that the burden was on the EPS to prove on a balance of probabilities that it is “more likely than not that the disclosure of the information in the records could reasonably be expected to threaten anyone’s safety or mental or physical health” (at para 12). Based on earlier case law, the following criteria must be met (at para 13):

- there must be a causal connection between the disclosure and the anticipated harm;
- the harm must constitute “damage” or “detriment” and not mere inconvenience;
- there must be a reasonable expectation that the harm will occur.

In the case at hand, the evidence (including that of the applicant and a psychiatrist) was found to meet these criteria. The applicant had been convicted of “serious violent crime” and “failed to

comply with provisions of court orders that were made in response to previous violence and were designed to prevent that crime” including “specific conditions prohibiting contact with his victim” (at para 19). Moreover, “the [a]pplicant blames many people in the criminal justice system with whom he has had contact, as well as his victim. He has made threats of violence towards them...and seeks information to further blame based on that information” (at para 20). There was also evidence that the applicant had been diagnosed with a “serious mental illness” for which he had not sought treatment, the features of which “go directly to the likelihood of harm occurring to third parties” (at para 22). The Adjudicator noted that “exceptions to disclosure are to be applied narrowly” (at para 27); however, this was a “rare case” where severing the records “could not be done in a way that would afford the protection required by section 18 and still provide meaningful information to the [a]pplicant” (at para 25).

This case reads like one involving domestic violence, although the relationship between the applicant and victim is not specified. One could apply the same reasoning where a perpetrator of domestic violence sought personal information about a tenancy from one of the public bodies covered by the *FOIP Act*. Disclosure could be justifiably refused because of a reasonable expectation of harm to the victim, landlord or other tenants. The Adjudicator indicated that “the threat of harm need not be to a specific individual and need not be based on an individual’s subjective fear” (at para 24). At the same time, “being difficult, challenging, or troublesome, having intense feelings about injustice, being persistent, and to some extent, using offensive language, do not necessarily bring section 18 into play” (at para 23).

In contrast to Alberta’s *FOIP Act*, BC’s *Freedom of Information and Protection of Privacy Act*, [RSBC 1996, c 165](#), contains a number of provisions dealing explicitly with domestic violence. The Act generally restricts the circumstances in which public bodies can collect personal information, but allows such information to be collected where it is “necessary for the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur” (section 26(f)). Public bodies are required to collect personal information directly from the individual the information is about, but an exception is created where “the information is collected for the purpose of ... reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur” (section 27(1)(c)(5)). The Act also allows public bodies to disclose personal information in circumstances including “for the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur” (s 33.1(m.1)). While many of these provisions are similar to those in Alberta’s *FOIP Act* in terms of seeking to reduce harm, it is useful that they explicitly reference public bodies’ obligations in cases involving domestic violence, and Alberta may wish to consider amending its legislation to do so.

### ***Personal Information Protection Act***

*PIPA* governs the collection, use and disclosure of personal information by “organizations” in order to recognize the right of individuals to have their personal information protected, as well as the need of organizations to collect, use or disclose personal information for purposes that are reasonable (section 3). Organizations are defined to include corporations as well as individuals acting in a commercial capacity, which would include landlords and property managers (see section 1(1)(i)(v)).

Like the *FOIP Act*, *PIPA* does not mention domestic violence explicitly, but it creates obligations for organizations around the collection, use and disclosure of personal information that could be relevant in the domestic violence context. *PIPA* does not apply to personal information in the custody of an organization where the *FOIP Act* applies to that information, or to personal information contained in court files or records, or to personal information that is collected, used or disclosed for personal or domestic purposes (see *PIPA* section 4(3)).

Generally, *PIPA* requires consent of the individual before an organization can collect, use or disclose their personal information (section 7). Organizations may collect, use and disclose personal information “only for purposes that are reasonable” and “only to the extent that is reasonable for meeting the purposes for which the information” is collected, used or disclosed (see sections 11, 16 and 19). An organization may collect, use and disclose personal information about an individual without their consent where a reasonable person would consider that the collection, use or disclosure of the information “is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent” (sections 14(a), 17(a), 20(a)). Information may also be used or disclosed where reasonable for the purposes of an investigation or a legal proceeding (sections 17(d), 20(f) and (m)) or where necessary to respond to an emergency that threatens the life, health or security of an individual or the public (sections 17(i), 20(g)). Organizations may refuse access to personal information in several circumstances, including where the information was collected for an investigation or legal proceeding (section 24(2)(c)), and must refuse such access where the disclosure of the information could reasonably be expected to threaten the life or security of another individual (section 24(3)).

These provisions create similar obligations and permissions for landlords and property managers with respect to their tenants’ personal information as those under the *FOIP Act* in investigative and emergency circumstances, as well as more general authority to collect, use and disclose personal information where reasonable to do so.

In Order P2010-003, [2010 CanLII 98626 \(AB OIPC\)](#), Adjudicator Wade Riordan Raaflaub considered a case where a housing cooperative shared a complaint letter written by the complainant with another coop member who was the subject of the complaint (the third party). Allegedly, the third party’s children had damaged the complainant’s car, the third party’s husband refused to pay for the damage, and the complainant “then endured verbal abuse from the ... family” including “threats of violence” and “threats of being kicked out of the housing cooperative” (at para 26). The complainant wrote to the coop’s board of directors to seek help in resolving the situation, and shared information about the car incident, verbal abuse, and two previous incidents between the parties involving property damage and harm to the complainant’s daughter by the third party’s children. The Adjudicator held that the letter contained personal information about the complainant and that it had been disclosed contrary to *PIPA*, as the complainant had not given his consent to disclosure nor was disclosure otherwise authorized. It was arguable that the disclosure was “for the purposes of an investigation” under section 20(m) of *PIPA*, given that the definition of “investigation” in *PIPA* section 1(1)(f) includes investigation of a breach of a bylaw (as a type of “enactment”). However, the coop had concluded that the third party did not breach any of its bylaws. The Adjudicator also held that the information involved “essentially personal matters” of property damage and personal injury, falling outside the scope of *PIPA* (at para 46). The fact that the complainant’s allegations were well known by other members of the coop did not authorize the disclosure; “personal

information does not lose its character as personal information if the information is widely or publicly known” (at para 17). According to the Adjudicator, the coop’s “only options were to address the matter without disclosing the Complaint Letter, obtain the Complainant’s consent to disclose the Letter, find some other basis (if it existed) for disclosing the Letter without the Complainant’s consent, or decline any further involvement once it determined that there was nothing that it could really do” (at para 50).

What are the implications of this case for landlords and property managers in domestic violence situations? Knowledge of personal injury or property damage in a tenancy context cannot always be characterized as information about “essentially personal matters” or, to put it in the language of *PIPA*, as “personal information that is collected, used or disclosed for personal or domestic purposes” such that it is excluded from the scope of *PIPA* under section 4(3). At the very least, this sort of personal information may be used or disclosed where necessary to respond to an emergency that threatens someone’s life, health or security (see *PIPA* sections 17(i) and 20(g)). This is a fairly high bar, however. This information can also be disclosed for investigation purposes, provided the investigation meets the definition in *PIPA* section 1(1)(f) (which includes, as noted, breach of a bylaw, or of an enactment or an agreement, such as a lease).

## **Conclusion**

The privacy obligations of landlords and property managers in the domestic violence context are based on several statutes involving both public and private relationships. The specific terms of those statutes should be consulted where landlords and property managers are uncertain about their obligations, but generally, the collection, use and disclosure of personal information about tenants without consent is restricted unless there are circumstances which amount to an emergency or grave risk of harm, or the information is collected, used or disclosed for law enforcement or investigation purposes. Similarly, landlords and property managers can and sometimes must refuse to disclose personal information where these risks are reasonably expected. Landlords and property managers can also consult with lawyers about their obligations without fear of violating privacy legislation.

This analysis show that privacy laws may make it difficult for landlords and property managers to act in a preventative manner, given the need for an emergency. Specific provisions like those in BC, which are based on reducing the risk of domestic violence where it is reasonably likely to occur, should be considered in Alberta under both public and private sector privacy legislation. The amendment of the *Residential Tenancies Act* was an important step forward in protecting the interests of domestic violence victims in the tenancy context, but more could be done in this respect.

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