

Clare's Law: Unintended Consequences for Domestic Violence Victims?

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Bill Commented On: [Bill 17, Disclosure to Protect Against Domestic Violence \(Clare's Law\) Act](#)

On Wednesday the Alberta government introduced Bill 17, the *Disclosure to Protect Against Domestic Violence (Clare's Law) Act*. Plans for this law were [announced](#) during the spring 2019 election campaign by the United Conservative Party (UCP). Given that the [UCP voted against](#) several measures to combat violence against women introduced by the previous NDP government, it is worth exploring why this government might prioritize such a law and what its impacts – both intended and unintended – might be.

Saskatchewan was the [first Canadian province](#) to enact a domestic violence disclosure (DVD) law. *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act*, [SS 2019, c I-10.4](#), was introduced in November 2018. The term “Clare's Law” comes from a DVD law passed in England and Wales in 2014 that was named after Clare Wood, who was murdered by her ex-boyfriend and was unaware of his history of intimate partner violence. Wood's family lobbied for a law that would allow the police to disclose a person's criminal history to their partner if police believed disclosure was necessary. The objective of this kind of legislation appears to be to provide information that a person might use in deciding to avoid or leave a relationship with someone who could be or become violent. In addition to Alberta and Saskatchewan, Manitoba's recently re-elected Progressive Conservatives have also [promised to introduce](#) a version of Clare's Law.

Bill 17 is similar to Saskatchewan's legislation in many respects. The key provision of both is section 3(1), which states that police services “may provide disclosure information” to an applicant or another person in accordance with the Disclosure Protocol. In Alberta, “applicants” are those who apply for disclosure and either believe they are at risk of domestic violence or are authorized to be applicants by the regulations. Also left to the regulations in Alberta – which, like Saskatchewan's, are yet to be developed – are the definitions of “disclosure information” and “person at risk” and the scope of the Disclosure Protocol that will govern police disclosure practices. With the consent of the applicant, applications for disclosure can be made by other persons on their behalf, or, without their consent, by persons authorized by the regulations (section 3(2)). It may be that the Saskatchewan legislation will be useful in crafting the Alberta regulations on this issue – it stipulates that shelter workers, lawyers, police, social workers, psychologists and medical professionals may also apply for disclosure (section 3(2)).

In both provinces, police may also provide disclosure information to individuals who they determine to be at risk under the Disclosure Protocol, even if such individuals have not applied

for disclosure (see section 3(3) of both Acts). The legislation [is thus said to have](#) both “right to ask” as well as “right to know” components, although it bears repeating that disclosure is discretionary. Both provinces also require that those who receive disclosure information must comply with terms and conditions in the Disclosure Protocol (section 3(4)), which appears to be an attempt to balance the privacy rights of the person the information concerns with the right to information about a partner’s history of domestic violence (see also section 8 of Bill 17 for confidentiality obligations around disclosure information and information about the applicant).

Saskatchewan’s Interpersonal Violence Disclosure Protocol does not appear to be available yet and will presumably be part of the regulations. Alberta’s Disclosure Protocol will, as noted, be established by regulation, and section 4 of Bill 17 requires that the Protocol contain terms and conditions for safeguarding received disclosure information and for prohibiting the disclosure or subsequent use of information for purposes unrelated to the Act without consent or authorization.

Importantly, until the regulations are introduced (expected in spring 2020 for Alberta) it is unclear whether “disclosure information” in either province will include information about criminal convictions only, or also about charges and other police interactions related to domestic violence. The Alberta government’s October 16 [press conference](#) refers to “history of domestic violence” and “criminal and police records” so the scope of the available information is potentially broad. This is a critical issue because – in spite of mandatory charging and prosecution policies since the 1980s – there is continued evidence of both undercharging and overcharging in domestic violence cases, often in relation to members of marginalized groups (see [here](#) at note 3).

Bill 17 also authorizes police services and the Minister to collect, use or disclose personal information for the purposes of assessing risk and disclosure (section 2). In a similar vein, section 5 provides that the Act preserves the ability of police services to disclose information that they are otherwise permitted or authorized by law to disclose. Police are bound by freedom of information and privacy (FOIP) legislation (in Alberta see [here](#)), which governs the collection, use and disclosure of personal information more generally but may also have specific application to circumstances involving domestic violence. FOIP legislation would continue to apply to police disclosure following the passage of Bill 17 (see this [previous post](#) on that topic).

It is important to situate DVD laws within the broader context surrounding domestic violence in each province. Saskatchewan has the highest rate of police-reported domestic violence of any Canadian province and Alberta’s rate is third highest (see [here](#)). In Saskatchewan, the government’s Domestic Violence Death Review Panel released its first report in May 2018 (available [here](#)). That report made several recommendations, including for information sharing between criminal and family courts, but there was no specific recommendation for police disclosure to potential victims. Similarly, Alberta’s Family Violence Death Review Committee has made several recommendations for responding to family violence in a series of reports I blogged on [here](#), but none of those recommendations include a DVD law.

In terms of response to the DVD laws, Saskatchewan’s legislation [appears to have had some early support](#) from organizations supporting survivors of intimate partner violence, and the Alberta government’s [news release about Bill 17](#) and October 16 press conference also contain

statements of support from survivors and domestic violence organizations. For example, speaking on behalf of [Sagesse](#), Andrea Silverstone discussed the potential of Bill 17 to improve trust between police and victims of violence and its potential to help direct victims to appropriate services that can break the cycle of violence.

However, other organizations and some survivors [questioned](#) how many people would actually benefit from Saskatchewan's DVD law, noting that it would not be useful in the case of abusers without police records. The Provincial Association of Transition Houses and Services of Saskatchewan (PATHS) and YWCA Regina – and in Alberta, the [Alberta Council of Women's Shelters](#) – have argued that access to information about abuse must be accompanied by more supports for victims. It is important to recognize that violence often begins or increases at the time of separation, supporting the need for resources to assist women in being able to safely leave abusive relationships. While provinces such as Saskatchewan, Alberta and Manitoba have amended their residential tenancy laws to allow domestic violence victims to terminate their tenancies early without financial penalty, these amendments do not make it easier for these victims to stay in rented premises without their abusers (see [here](#)), and shelters and longer term housing are notoriously overburdened. The Alberta government has committed to maintaining funding levels for shelters in next week's budget, which is certainly better than the alternative of cuts, but that funding is just part of what is needed.

To the extent that police will administer the legislation and their disclosure of information is discretionary, [concerns have also been raised](#) about the need for enhanced police training on domestic violence. Even if this training is provided, YWCA Regina has expressed the view that some Indigenous women may not avail themselves of the law given their distrust of police.

When we first heard about Clare's Law coming to Canada, we had concerns similar to those that have been mentioned so far – namely the need for resources to train police and to ensure the safety of victims of domestic violence and their children regardless of whether they leave or stay in relationships that may be abusive. But we had other concerns as well. Based on our experiences working with domestic violence victims and doing research in this area, we have seen that victim blaming can still be rampant. There has been some recognition and critique of myths and stereotypes about abused women by the courts – such as the myth that if women are truly abused they will leave their partners (see *R v Lavallee*, [1990] 1 SCR 852, [1990 CanLII 95 \(SCC\)](#)). However, this and other myths persist, and some of these myths are reinforced by law. A vast literature shows that women who do not leave abusive partners are at risk of having their children apprehended, because exposure to domestic violence has been legally defined as placing children in need of protection (see e.g. [here](#)). Rather than providing supports to abused women in these situations so that they can remain in their homes and communities with their children, we often bring the full force of state intervention upon them – and it is well known that Indigenous women are disproportionately susceptible to this risk, explaining in some cases their reluctance to engage with the police (see e.g. [Reclaiming Power and Place](#), Executive Summary of the Final Report, National Inquiry Into Missing and Murdered Indigenous Women and Girls, p 41).

If Bill 17 becomes law, will victims who obtain disclosure about their partners' violent histories – or who could have done so – be blamed if they do not leave and they later sustain abuse? Will remaining with a potentially abusive partner put women at risk of losing their children? Why are

we placing the responsibility on individual women to protect themselves from violence when the weight of evidence is that violence against women is systemic and requires systemic remedies and structural change? How will Clare's Law play out in cases involving women who have been criminally charged where they were defending themselves or their children from violence, or where they were wrongfully accused of abuse by their partners?

As we have [argued previously](#), more information sharing about domestic violence can be a good thing – for example, where parties in family litigation may be seeking exemptions from mandatory alternative dispute resolution procedures. However, we must be very cautious about the unintended consequences that information sharing might have in a context where women continue to be blamed or made responsible for the violence they experience – particularly women who are Indigenous, racialized and poor. Past experience with mandatory charging policies and reform of child protection laws shows that these kinds of unintended consequences are not just hypothetical.

What does the evidence show about the impact of DVD laws in England and Wales and the presence of unintended consequences? A [report by the Home Office](#) indicates that police forces are inconsistent in disclosing information about previous abuse, ranging from 9% in some regions to over 90% in others, with an average of 43% for 8,490 requests for disclosure in 2016/17. These statistics are reminiscent of Robyn Doolittle's investigative reporting for the [Globe and Mail](#) on police rates of finding sexual assault claims to be “unfounded” (or not worthy of charges) across Canada, which show both low rates of charging and great variability across police forces – reinforcing the need for appropriate training for police if they are to administer DVD laws.

In a [summary of their study of Clare's Law](#), Professors Sandra Walklate and Kate Fitz-Gibbon, experts on family violence, found no evidence so far that the law “acts as a preventive strategy or an effective intervention” for domestic violence (at para 4.2). Citing the Home Office statistics above, they note that the average time for disclosure of 39 days may compromise the safety of potential victims (at para 4.5). They also argue that women who rely on their “right to ask” may gain “a false sense of security” if they find their partner does not have a documented history of violence, given the likelihood of underreporting by previous partners (especially victims who are racialized or have disabilities) (at paras 3, 4.4). They raise similar concerns to ours in arguing that disclosure information may improperly capture “records of domestic violence histories made as malicious allegations of violence by previous partners” or “cases where police have misidentified the primary aggressor” (at para 4.4) and that victims may be blamed in cases where they do not leave potentially abusive relationships and later seek the assistance of police (at para 4.6). Walklate and Fitz-Gibbon recommend more evidence-based research on the costs and benefits of DVD laws; the need for the disclosed information to be “accurate, appropriate, timely, and of good quality” with appropriate supports in place to offset adverse consequences; and the need for proper resources to deal with implementation problems and to improve the prevention and intervention capacities of the law (at para 5).

Given this lack of evidence of efficacy, what explains the recent trend in governments adopting versions of Clare’s Law? DVD laws are relatively easy to draft – especially when they are essentially a shell and leave the majority of significant content to the regulations, outside the scrutiny of legislative debate. Governments can point to DVD laws as evidence that they are doing something while avoiding the need for increased funding for support services for survivors and the larger structural issues underlying domestic violence. This is not to say that DVD laws will not be a useful tool in some cases, but they must be accompanied by the kinds of resources and training that advocates and survivors have called for, as well as more structural reforms to deal with the ongoing effects of inequality and colonization.

In its October 16 press conference, the Alberta government said that it had consulted with stakeholders on domestic violence issues in developing Bill 17 and that these (and further) consultations would inform the regulations and implementation of Bill 17 if it is passed. It is incumbent upon the government to publish the results of these consultations so that more details as well as the potential benefits and concerns about DVD laws are made public and become part of the debate.

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