

Bill M217: The *Interpersonal Violence Disclosure Act* BRITISH COLUMBIA'S CLARE'S LAW

ISSUE: Intimate partner violence is among the most pervasive and underreported violent crimes in Canada. The statistics relating to harm and death to women as a result of intimate partner violence have remained substantially unchanged for many years as have low reporting by women to police. As a result, it is crucial to examine policies and enhance the use of the technologies that are effective in best addressing intimate partner violence and reducing the risk of bodily harm or death to women.

Clare's law will not reduce harm or decrease intimate partner violence. It replicates the existing laws, policies and effective procedural strategies. Clare's law also has unintended negative consequences: placing an undue onus on the victims and potential victims. The law does not address the recognised core issues that lead to the deaths as a result of intimate partner violence.

Bill M217 (the *Interpersonal Violence Disclosure Act*) was recently introduced by a private member of British Columbia legislature. This memo considers whether Clare's Law, the *Interpersonal Violence Disclosure Act* and other similar legislation can reduce death or enhance safety related to intimate partner violence. The Ending Violence Association of BC has created programs and protocols in collaboration with police, community-based victim services and others throughout the province in order to address gender-based violence. For example, Interagency Case Assessment Teams (ICATS) have been created in response to the high potential for lethal violence in high risk cases of relationship violence. EVA BC considers cross-sectoral responses and policies, collaboration and trauma-informed training more useful and important tools in ensuring women in British Columbia can survive intimate partner violence.

1. BACKGROUND

The Domestic Violence Disclosure Scheme ("Clare's Law") was legislation developed and introduced in the UK and Wales in 2014. The law allows the police to disclose information to women victims of domestic violence, on request, about a partner's previous history of domestic/ intimate partner violence or violent acts. The legislation also allows UK magistrates to grant Domestic Violence Protection Orders ("DVPO") preventing perpetrators from contacting victims for up to 28 days.

When describing some of the concerns about implementation of Bill M217 (B.C.'s Clare's Law) in the British Columbia legislature, this memo will refer to "Clare's Law" in order to describe the type of legislation being referenced. Clare's Law is named after Clare Wood¹, who was strangled and set on fire in her home at the hands of her ex-boyfriend in 2009. It became important to her story that, despite making several police complaints, she was never informed by the police of her ex-boyfriend's history of violence against women, which included kidnapping at knifepoint of a previous partner. Proponents of Clare's law say that it provides access to 'life-saving information' and its use could prevent deaths like Clare Wood's. At the time of its introduction, Home Secretary Theresa May told the BBC.:

¹ Clare Wood's case became very high profile with her father speaking regularly in media after her death and advocating for changes to the law.

Clare's Law will give some help to those people who think they have a partner who may be acting in a way which suggests that they are somebody who is violent...It enables that individual then to go to the police and they've got the right to ask for information about that partner. The police obviously have to think about that carefully, what information they give to the individual, and the support needs to be there for them... But it enables somebody to know whether their partner has a record of violence, and to be able to take a decision as to whether to stay with them or not.

In the past two years, the debate of Clare's Law has entered Canada. In November 2018, Justice Minister Don Morgan introduced the *Interpersonal Violence Disclosure Protocol Act* making Saskatchewan the first Canadian province to introduce a version of Clare's Law. The purpose of the law is to inform people who may not know they are in an intimate relationship with someone who has a history of violence.

As laid out, the Saskatchewan legislation is intended to allow for applications from the police, the person at risk, family members, medical professionals and anti-violence workers, among others. In all cases, even in cases where someone else makes the application, only the partner would be provided the criminal history. The Minister of Justice stated that, "[if] we are able to identify risk [of interpersonal, domestic and sexual violence] and inform those at risk, we hope to help protect people in Saskatchewan from violent and abusive behaviour by a partner."

Saskatchewan has the highest rate of domestic/intimate partner violence among all Canadian provinces - 5,976 cases of intimate partner violence reported to police in 2015. One high-profile domestic/intimate partner violence case has especially affected the Saskatchewan Party government and likely helped to propel the implementation of this law. In 2015, Lisa Strang², the party's longest serving employee and its finance director, was fatally shot twice from behind by her husband. John Strang pleaded guilty to second degree murder and was sentenced to life in prison with no parole for 17 years.

In order to inform people who may not know they are in an intimate relationship with someone who has a history of violence (which was not the case for Lisa Strang), a panel created for this purpose would review potential cases of intimate partner violence submitted by the police and decide whether the risk is great enough to merit disclosing a person's past, according to a government spokesperson. In Saskatchewan, the legislation has not been implemented – the Ministry of Justice continues to work to develop the disclosure protocol. In Alberta, Premier Jason Kenney has repeatedly pledged to pass some form of Clare's Law in accordance with his election campaign promise. In October 2019, he introduced similar legislation that would give people access to their partner's criminal records in hopes it will help prevent domestic/intimate partner violence.

A variety of practical matters and policy decisions must be made in order to determine the appropriate protocol and personnel to support this type of legislation. Questions abound including but not limited to: who would sit on the panel, what guidelines would be used to determine risk and what parameters would surround the type of information released. A key determination to be made by Saskatchewan and Alberta policy makers is what type of information will be released: will it include the entirety of someone's criminal history or be limited to convictions for intimate partner violence?

In British Columbia, the MLA for Vancouver-Langara introduced the *Interpersonal Violence Disclosure Act, 2019* (Bill M217, aka Clare's Law) to the legislature. Michael Lee is currently the Official Opposition Critic for the Attorney General, Member of the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills. At the first reading, the bill's sponsor introduced the proposed bill & explained its purpose: to allow at-risk individuals to access information about their partner's potentially abusive or violent past. In his introductory remarks, Lee stated the following: "This bill will be especially impactful for women. Unfortunately, women in B.C. are four times more likely than men to be victims of intimate partner violence."

² Lisa Strang's case became high profile as she was a longstanding public servant and members of the Saskatchewan government spoke to media about the circumstances of her death and her husband's guilty plea.

MLAs do not discuss the bill's merits at first reading, but simply vote on whether to accept it for future debate. Bill M217 was placed on orders of the day for second reading at the next sitting of the House after May 14, 2020. In support of the adoption of Bill M 127, other Liberal Party MLA's provided the following commentary:

Cariboo North MLA Cora lee Oakes: "This bill is part of a larger effort to protect those who may be in danger. We still need more resources to provide essential supports..."

North Vancouver-Seymour MLA Jane Thornthwaite: "The legislation will allow police officers to disclose any information regarding a partner's violent history to an at-risk individual...The goal of this legislation is to increase prevention and reduce the prevalence of partner violence by giving women a preventative strategy."

2. CLARE'S LAW IS NOT NEEDED IN B.C.

Once women are advised by the police of their partner's violent history, legislation like Clare's Law does not guarantee a woman will receive any extra protection nor is there an identifiable deterrent to the abuser/offender as a result. There will be limits to when police can disclose and what they can disclose. Finally, in Canadian jurisdictions, supporting provisions and necessary ground support are needed to enact this legislation. This leaves extensive funding and drafting to be done.

Most importantly, there are existing, relevant privacy laws (and recent amendments) in B.C. and Canada³ to help ensure that safety of an individual by allowing information sharing when an individual is at risk. The *Freedom of Information and Protection of Privacy Act* (FIPPA) and other provincial and federal privacy legislation allows information to be shared to reduce the risk of domestic violence where domestic violence reasonably likely to occur. The Federal *Privacy Act* which governs federal police (RCMP) also allows the disclosure of otherwise confidential information when a person or group is at risk of grievous harm or death.

A risk of imminent harm, under Section 25(1) and 33.1(1) of *FIPPA* can trigger the allowance or even a duty to breach standard confidentiality. The wording of section 33.1(1)(m.1) of *FIPPA*, for example reads that, "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". When accessing or disclosing information, the police can already assess whether an individual is faced with an imminent risk of serious harm and act to protect that individual. Clare's Law does not impose additional protections or different disclosures than those that are already in place.

In order to align with provincial and federal privacy legislation, there are policy & practice directives to RCMP to share criminal histories as a safety measure. Other measures have been taken in B.C. to ensure the safety of potential victims of intimate partner violence including but not limited to: B.C. Court Services Online, Community Based Victim Assistance Programs, Inter-Agency Case Assessment Teams and Domestic Violence Units. B.C.'s safety measures have focused on collaboration between agencies and transparent, publicly available information. Collaboration has repeatedly illustrated its effectiveness in addressing intimate partner violence.

Searchable Criminal Database by Name: B.C. Court Services Online (CSO) is a free online database that provides access to the public court records including criminal records. Most of the records displayed in this site are traffic, bylaw offences or criminal code offences. The database lists show all court proceedings - not only findings of guilt.

Community Based Victim Assistance Programs: These programs have proven instrumental in ensuring support for victims in communities and liaising with police and other local agencies. The implementation and formalized use of these services in facilitating and participating in specialized programs (ICATs, etc.) increase security to women in the community and reduce death rates. The expansion and increase of these programs, particularly in rural and remote communities and Indigenous communities will increase women's safety.

³ FIPPA, Privacy Act

The Presence of Community Inter-Agency Case Assessment Team: ICAT is a partnership of local agencies, including police, child welfare, health, social service, victim support, and other organizations working together to keep women safe. Each community-based group responds to referrals of suspected highest risk domestic violence cases with an aim to increase safety. This goal is achieved by identifying risk, sharing risk-related information, creating a collaborative safety management plan. Co-ordinated intervention is proven to help prevent injury or death resulting from domestic violence is preventable and is cost effective. Cross-sector coordination should continue to be enhanced.

Domestic Violence Units: These operational partnerships are comprised of police officers partnered with anti-violence and child protection workers. The units focus on safety and risk management, working together on cases of high risk domestic violence. For cities with large populations and high caseloads, the investment is worth it. Some CBVS staff within these units have access to the JUSTIN database which allows full access to criminal histories of abusers as well as outcomes of bail hearings and sentencing as well as other official system information. EVA has been working with MPSSG to provide all CBVS with access to JUSTIN to better support and inform clients.

When Saskatchewan and then Alberta introduced legislation akin to Clare's Law, Canada's Department of Justice (DoJ) raised concerns about this type of legislation. Those concerns included privacy issues and cost of implementation. As part of a report on family violence cases, the DoJ stated that timely information sharing between various sectors is critical to averting tragedy, and that there are ways to prioritize safety without compromising established privacy laws. B.C. already has a very sophisticated set of information sharing policies and responses to IPV and therefore we concur with Canada's DoJ; that the cost of implementing something that already exists would be wasting critical resources that could be better used on other forms of gender based violence.

We believe this type of "Clare's law" being proposed in B.C., one that allows the potential release of information relating to a partner's previous violent history has very limited practical application and impact because of the existing laws, policies and community resources in B.C. Furthermore, "Clare's law" is predicated on the assumption that people - women, can make safe choices about relationships if they were simply better informed. This assumption is both incorrect and paternalistic. Most victims of intimate partner violence do not lack information. A lack of understanding of the victim's perspective creates policies that do not effect change and instead help perpetuate ongoing violence. What the victims of intimate partner violence lack is either an escape route or the ability to survive without their partner.

There are some features to responding to intimate partner violence that have been identified as integral to the continued high rate of death as a result of intimate partner violence in British Columbia, we have begun to address. We must continue this work.

3. CAN CLARE'S LAW HELP WOMEN WHO DON'T REPORT INTIMATE PARTNER VIOLENCE?

Statistics repeatedly illustrate that women are reluctant to report intimate partner violence/abuse to the police: only 22% women report their abuse to the police. A women's reluctance to report or to proceed through the criminal justice process is largely misunderstood. A woman may lack resources to report their abuse, worry her children will be taken away by the state, she may love her perpetrator, have children and family ties and/or no access to alternative housing or income supports to name a few.

A Death Panel Report from the B.C. Coroner's Service found that marginalized women (Indigenous, rural, living with a disability, for example) were more likely to die as a result of intimate partner violence. The panel referred to three deaths as an example of lethal violence as a result of intimate partner violence. The report found that few victims of intimate partner violence disclose and those who do, may encounter people who do not

understand the associated risks or how to help. In very general terms, the three women the panel considered representative who died as a result of intimate partner violence were described as follows:

1. A woman who denied that she was being assaulted,
2. A woman who sought help from an advocacy group for assault, and
3. A woman whose ‘ministry’ file had been previously closed.

It is important to consider the matter of reporting from the perspective of the woman who has undergone significant violence and trauma. Without the continuing enhancements and increasing trauma informed police practices to address allegations of intimate partner violence, Clare’s law is unlikely to impact the number harmed or killed women as a result of intimate partner violence as the police cannot assess that which has not come to their attention.

4. CAN CLARE’S LAW HELP WOMEN WHO DON’T LEAVE THE ABUSIVE RELATIONSHIP?

Most women surviving intimate partner violence are acutely aware of the risk that they face daily. They are working constantly to manage their own risks in their circumstances. A woman may choose not to end their relationship for a variety of reasons including but not limited to financial or housing issues, immigration status concerns, a child custody battle or fear for themselves or their children’s safety. It is widely recognized that women are most at risk for serious bodily harm or death after leaving a relationship. A woman may be putting herself at risk when she makes overt moves to end or leave the relationship.

A victim of intimate partner violence or a potential victim for intimate partner violence may have been abused in the past or not. She may have been subject to chronic assault: twenty one percent of women are subject to ongoing, chronic assault by an intimate partner.⁴ She is likely in fear and reluctant to leave because of a range of personal factors. Sometimes, even after pressing charges for violence at the hands of their partner, a woman may be unwilling to leave.

It is not information about their abuser that abused women most often lack – it is the necessary level of supports and resources to leave or to create the safety for them to stay.

5. DOES “CLARE’S LAW” HAVE UNINTENDED NEGATIVE CONSEQUENCES?

One potentially dangerous consequence of the proposed law is that women victims may be “shamed” if they choose to remain in an abusive relationship after being informed of their risk by the police just as they are when they return to a relationship after intimate partner violence charges have been laid. Knowing the background of a potential partner is not a significant factor in death reviews and other intimate partner violence statistics. Arguably, the cases that have led to the introduction of these laws have been somewhat sensationalized cases where “victim is innocent” – unknowing of the risk she faces and therefore cannot be blamed for what happened to her.

Another potential consequence of this law is a false sense of safety for a woman after seeking information on their partner. As well, as protocols to address the nature and method of disclosure under this law, and additional supports would be required for women who seek this information. And how does this framework understand or respect women who choose to stay in an abusive relationship. Again, the concerns raised above identify the risk factors in all of these situations. Clare’s Law or akin legislation may support a reliance on official agency’s records and a discounting of a women’s own instincts and create a false sense of security. It is important to empower women to be safe through access to trained, trauma informed advocates such as those in community

⁴ VAWIR

based victim assistance, outreach and shelters, better coordinated support services and safety planning and a more informed police response.

It is also important to note that jurisdictional discrepancies in police investigation and variances in criminal convictions affect victim willingness to report. Some police authorities are trained sufficiently, acting early enough to gather vital evidence and addressing the victim from a trauma informed lens. Others are not. Clare's Law will be ineffective in radically changing the statistics related to harm and death as a result of intimate partner violence because it does not address the need for a coordinated response to a report of intimate partner violence – a response that allows women to feel safe in reporting their abuse and leaving their abuser. Taking advantage of Clare's Law requires women to work with the police and there is an identified lack of comfort for certain victims in doing so.

6. WE MUST KEEP WOMEN SAFE

Keeping women safe is the recognized and reported best outcome for those working with victims of intimate partner violence. The best way to reach this outcome requires the support and growth of community agencies, consistent trauma informed training, cross-agency comprehensive policies and organized information sharing and funding. With respect to all victims of intimate partner violence, Clare's Law (and its Canadian cousins) assume that "safe" choices about relationships would be made if women were better informed about their partners. This is not borne out by the evidence.

We do not support the implementation of Clare's Law type legislation. Instead, funding for women's services overall must be increased. If this bill were to be passed, extensive supporting resources would still be required. In Saskatchewan, implementation of the law has been difficult. The financial costs associated with violence against women are already enormous. Statistics Canada estimates a cost of \$5.2 billion a year (Varcoe, 2006) in Canada.

It is important that we maintain focus on how the police and other agencies respond to people who ask for protection, and how police and communities are already creating exit routes, safety plans, ongoing support for those when they are ready to leave abusive relationships or looking to enhance their safety within these relationships. Interagency information sharing should be encouraged and legal exceptions to confidentiality already exist in law and within coordinated practices such as Interagency Case Assessment Teams.

We argue that we can prevent intimate partner violence and the deaths that have resulted with funding, police training and comprehensive collaborative trauma informed response to intimate partner violence. There are a variety of ways safety has been increased already, without new, costly legislation. There are ways that safety can be increased further by simply further funding and supporting already proven methods. Listed below are initiatives and programming that work to protect women from harm or death by intimate partner violence.