



“Clare’s Law” was first introduced in the United Kingdom and is named in honour of Clare Wood, a woman who was murdered by her partner and unaware of his violent past. Clare’s father advocated for more disclosure by police to protect domestic violence victims. The Domestic Violence Disclosure Scheme gives members of the public a ‘right to ask’ police where they have a concern that their partner may pose a risk to them or where they are concerned that the partner of a member of their family or a friend may pose a risk to that individual.

Overview

The aim of this scheme is to provide a formal mechanism to make inquiries about an individual if a person is worried, they may have been abusive in the past.

If police checks show that your partner has a record of violent behaviour, or there is other information to indicate that you may be at risk from your partner, the police will consider sharing this information with you. The scheme aims to help you to make a more informed decision on whether to continue a relationship, and provides further help and support to assist you when making that choice.

How the Domestic Disclosure Scheme Works

Who can ask for a disclosure?

A disclosure under this Scheme is the sharing of specific information about your partner with either you or a third person for the purposes of protecting you from domestic violence.¹

You can make an application about your partner if you have a concern that they may harm you; any concerned third party, such as your parent, neighbour or friend can also make an application if they are concerned about you; however, a third party person making an application would not necessarily receive information about your partner. It may be more appropriate for someone else to receive the information, such as you, or a person that is in a position to protect you from the

¹ Humberside Police, Domestic Abuse Disclosure Scheme: Clare's Law

abuse; and information will only be given to someone who is in a position to use the information to protect you from the abuse.

How do I make an application?

Step One: Initial contact with the police

When you contact the police, a police officer or a member of police staff will take the details of what promoted your enquiry and the nature of your relationship with your partner. They will also ask you when and where it is safe to make contact with you again.

You will also need to give your name, address and date of birth. At a later stage, you will need to provide proof of your identity.

The police will run some initial checks based on the information you have provided and conduct an initial risk assessment. The purpose of these initial checks is for the police to establish if there are any immediate concerns. If when speaking to the police you allege a crime against your partner - for example, you tell them that your partner has hit you - then the police may investigate this as a crime and may arrest your partner.

No disclosure of information will take place at this stage unless it is necessary to provide immediate protection to you. If the police believe that you are at risk and in need of protection from harm, they will take immediate action.

Step Two: Face to face meeting to complete the application

Depending on the outcome of Step One, you may then be required to participate in a face to face meeting. This meeting will be to establish further details about your application in order to assess any risk and for you to provide proof of your identity. This should comprise of a photo ID and another form of ID (if photo ID is not available, the police will consider other forms of ID).

The forms of ID that could be used are: your passport; your driving license; a household utility bill; your bank statement; or your birth certificate.

The police will then use the meeting to gather more information from you about the nature of the relationship between you and your partner to help the police decide if you are at risk. The police may run checks and speak to other agencies including the Prison Service, the Probation Service and Social Services based on the information you give them.

They will work as quickly as possible to complete the checks but, depending on the circumstances, some checks may take longer for the results to be received by the police. It is envisaged that the maximum time that it will take to complete the whole process, including these and the disclosure of information if decided necessary, is 35 days. The police will act immediately if at any point they consider you to be at risk and in need of protection from harm.

Step Three: The decision to disclose

A police manager will decide whether any disclosure is lawful, necessary and proportionate to protect you from your partner. If they decide to disclose information, they will decide who should receive the information and set up a safety plan tailored to your needs to provide you with help and support.

Step four: potential disclosure

What kind of information you might be given?

If the checks show that your partner has a record of violent offences or there is other information that indicates there is a pressing need to make a disclosure to prevent further crime, the police may disclose this information to you or to a person who is more able to protect you.

A person's previous convictions are treated as confidential and the information will only be disclosed if it is lawful and proportionate, and there is a pressing need to make the disclosure to prevent further crime.

If the checks do not show that there is a pressing need to make a disclosure to prevent further crime, the police will tell you that. This may be because your partner does not have a record of violent offences or there is no information held to indicate they pose a risk of harm to you. Or it may be that some information is held on your partner but this is not sufficient to demonstrate a pressing need for disclosure.

It may be the case that your partner is not known to the police for violent offences or there is insufficient information to indicate they pose a risk of harm to you but they are showing worrying behaviour. In this case, the police can work to protect you by providing advice and support.

Privacy Concerns

The key privacy issue relating to information sharing between the various sectors of the justice system relates to how protecting the disclosure of personal information is balanced against the use of this information to prevent risk and protect individual safety.

Efforts to improve information-sharing conflict with another important value – concern for privacy when intimate or confidential information is being held by local, provincial and federal public agencies, boards, commissions and corporations, victim services, police services, community programs, advocacy organizations, and health and other professionals. This value is supported by the *Charter's* protection against undue interference with an individual's reasonable expectation of privacy in section 8.

Under the federal *Privacy Act*, the RCMP must ask whether the public interest in disclosure outweighs the harm associated with the invasion of the offender's privacy². Under most provincial acts and regulations, municipal or sometimes provincial police officers must ask themselves whether there are imminent health and safety concerns that require them to disclose past criminal

² *Privacy Act*, RSC 1985, c P-21, s 8(2) (m).

records³. Furthermore, the information provided must be limited only to what is deemed necessary to avert potential harm. According to the Privacy Commissioner of Canada, Jennifer Stoddart, privacy should be defined not merely as the passive right to be left alone, but rather as the broader “ability to control our personal information⁴.”

There are important reasons for keeping certain information confidential⁵. In the case of health records, for example, fears of exposure of personal information could discourage people from seeking the very help which may in fact prevent violence from occurring. Revealing information may, perversely, further endanger someone whose safety depends on the ability to keep contact information and whereabouts secret. Moreover, the disclosure for collateral purposes of information gathered by the police could prohibit people from communicating freely in support of a criminal investigation.

In Canada, there is a wide array of legislation, regulations, guidelines and codes of ethics across the federal provincial and territorial jurisdictions relating to privacy. In recognition of the importance of privacy to society, in 1995, the Canadian Standards Association adopted a voluntary national standard for the protection of personal information that addresses the way organizations collect, use, disclose, and protect personal information, and the right of individuals to have access to personal information about themselves⁶.

³ British Columbia Association of Specialized Victim Assistance & Counselling Programs, British Columbia/Yukon Society of Transition Houses and British Columbia Institute Against Family Violence, *Critical Elements of an Effective Response to Violence Against Women: High Risk Information-Sharing Protocol* (2007), online.

⁴ Jennifer Stoddart, *Commissioner's Message* (Office of the Privacy Commissioner of Canada, 2008).

⁵ See Saskatchewan Human Services, *Sharing Information to Improve Services for Children, Youth and Families*, (Regina: ADM's Forum on Human Services, May, 1997). This forum studied the issue of information sharing and compiled a list of reasons why the children, youth and families they canvassed were concerned that private information remain confidential, including to avoid embarrassment from disclosure of their private problems; avoid the exposure of inaccurate, inflammatory information; protect their personal and family security in particular with regards to the location and contact information of victims of domestic violence; allow a victim of intimate partner violence to talk freely with an advocate and share details of her abuse in order to effectively plan for safety; support victims' autonomy by placing the control over personal information squarely in their hands.

⁶ The Canadian Standards Association's CAN/CSA-Q830 *Model Code for the Protection of Personal Information* was adopted in 1995.

When there is no consent, the release of personal information may be permitted when the public interest outweighs privacy concerns or when disclosure is necessary to protect health and safety, but often only in specified circumstances and sometimes with qualifications ⁷.

Domestic Violence Disclosure in other Jurisdictions

Saskatchewan is the first province in Canada to introduce legislation that allows police to release information about someone's violent or abusive past to intimate partners who may be at risk. *The Interpersonal Violence Disclosure Protocol (Clare's Law) Act* will provide the legislative framework for police services to disclose relevant information to people at risk through the "right to know" process and to applicants through the "right to ask" process. ⁸

Prince Edward Island and New Brunswick have reported considerable progress in this regard over the past year. In 2011, the Saskatchewan legislature passed *The Victims of Crime Amendment Act, 2011*,⁹ which now requires police to provide information about certain victims to victim services, even though consent was not obtained. This information is used to contact the victim for the purpose of providing or facilitating the delivery of victim services. In Alberta, police services (other than the RCMP) share information with the victim service unit without issue¹⁰.

Manitoba is currently reviewing its *Police Services Act* ¹¹ in order to ensure that privacy concerns do not impede the sharing of information by police with victim services.

⁷ See e.g. section 42 (h) of *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 refers to "compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates".

⁸ Interpersonal Violence Disclosure Protocol Act – Clare's Law – Introduced in Saskatchewan, 2018.

⁹ SS 2011, c 21.

¹⁰ *Victims of Crime Act*, RSA 2000, c V-3.

¹¹ SM 2009, c 32, CCSM c P94.5.