

Family

Interplay between Clare's Law in Alberta and amendments to Divorce Act

By **Barb Cotton and Christine Silverberg**



Barb Cotton



Christine Silverberg

(April 14, 2021, 11:06 AM EDT) -- On April 1, 2021, Alberta followed the lead of Saskatchewan in proclaiming "Clare's Law." Only the second province to proclaim the legislation, Clare's Law aims to prevent domestic violence by giving the victims or potential victims of violence in an intimate partner relationship access to information about the history of a partner's violence or abuse.

The goal of this groundbreaking legislation is simple: to give people an opportunity to make informed choices to reduce their risk of harm in an intimate relationship. A secondary goal of Clare's Law is to link the person at risk to social support services in the community.

The *Divorce Act*, which is federal legislation, has been amended effective March 1, 2021, to incorporate the analogous concept of "family violence" into considerations of the best interests of a child for the purpose of parenting and contact orders (formerly custody and access orders) (s. 16(3)(j), 16(4)).

Although the Alberta Clare's Law uses the term "domestic violence" as opposed to "family violence," as defined in Alta. Reg. 66/2021 s. 1(a), in substance these two terms are similarly defined and have a wide-ranging scope. Thus, these terms overlap in that they cover more expansive violence such as physical abuse; sexual abuse; criminal harassment, including stalking; threats to harm children, other family members or pets; property damage; coercive control; and emotional or psychological abuse. The federal statute also includes financial abuse and failure to provide the necessities of life in the definition of family violence (*Divorce Act* s. 2(1)).

The notable feature of the Alberta Clare's Law is that it is limited in its purpose to preventing potential violence between intimate partners, and secondarily to allowing the person at risk to receive the social support services they need. The information disclosed by both the Right to Ask and the Right to Know is shielded by an implied right to privacy, pursuant to the statutory terms of confidentiality and non-compellability.

This means that considerations of family violence for the purposes of a parenting or contact order under the new *Divorce Act* provisions, or indeed under other family law legislation, cannot be informed by the information disclosed under Clare's Law, specifically the level of risk faced and the context surrounding that risk (although information as to such history of domestic/family violence obtained by a victim outside the procedures established by Clare's Law can presumably continue to be used by court litigants in family law and related cases where there is high conflict and often egregious conduct).

Alberta's initiatives in the area of domestic violence have been substantive, including the seminal initiatives of Alberta Family and Social Services in the 1980s, and Alberta's Solicitor General in the 1990s. The Integrated Threat and Risk Assessment Centre (I-TRAC) was founded in 2007 under the name Alberta Relationship Threat Assessment and Management Initiative (ARTAMI).

ARTAMI/I-TRAC was the first threat assessment unit in Canada to harness expertise from various fields and agencies into a single joint forces multidisciplinary unit with the sole purpose of assessing threats and developing risk reduction plans in high-risk domestic violence and stalking cases. Led by a Crown prosecutor, and with the significant involvement of police, child protection experts, family law experts and consulting psychologists/psychiatrists, I-TRAC's history and accomplishments have been substantial.

With this notable backdrop, Clare's Law is a significant further step in Alberta's commitments to help victims of domestic violence, and using the expertise of I-TRAC to conduct risk assessments under Clare's Law will be instrumental to the impact of the new legislation.

In its early stages, those working intimately with the new Clare's Law must enhance focus to ensure consistencies with the newly amended *Divorce Act*, and in particular, ensure that the goal of protecting children, as set out in the family violence provisions of the *Divorce Act*, are incorporated within the ambit of Clare's Law. While it is clear in Clare's Law that a "person at risk" is any individual who is determined to be at risk in accordance with the companion Regulation, the Regulation itself narrows the definition of "domestic violence" to intimate partnership relationships.

While that definition does include threats to harm children, it must be ever-present and explicit, in our opinion, that in any discussion of family violence, in any application of Clare's Law, children's vulnerabilities must be afforded the same significance as intimate partner vulnerabilities. There may be an unintended consequence of not being able to use information disclosed under Clare's Law in legal proceedings determining the best interests of the children within the context of a parenting or contact order in divorce proceedings, or in broader family law litigation.

Harmonizing the *Divorce Act's* new focus on family violence in the context of the "best interests of the child" with the important initiatives set out in Clare's Law should be a priority as it surely has not been intended that there be anomalies in our treatment of family violence.

This is part two of a two-part series. Part one: The newly proclaimed Clare's Law in Alberta.

Barb Cotton is the principal of Bottom Line Research and assists solo, small and specialized lawyers with their research and writing needs. She can be reached at (403) 240-3142, cell (403) 852-3462 or e-mail barbc@bottomlineresearch.ca. Christine Silverberg is a Calgary-based lawyer with a diverse advocacy, regulatory and litigation practice. She can be reached at (403) 648-3011, christine@silverberglegal.com or through www.christinesilverberg.com.

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