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Legislative Assembly of Nunavut



TD 419-5(2)  
Sept. 14/21

Nunavut Maligaliurvia  
Assemblée législative du Nunavut

July 15, 2021

Mr. Graham Steele  
Information and Privacy Commissioner of Nunavut  
P.O. Box 1000, Station 270  
Iqaluit, NU  
X0A 0H0

**TRANSLATION TO FOLLOW**

Dear Commissioner Steele:

I am writing to you in my capacity as the Member of the Legislative Assembly for Iqaluit-Manirajak.

As you may be aware, I have raised the idea of introducing a "Clare's Law" for Nunavut on a number occasions during sittings of the Legislative Assembly. I am pleased to take this opportunity to provide you with copies of relevant interventions that I have made on this important issue.

Earlier today, your office announced that it recently provided a formal written submission to the territorial Department of Justice on this issue. I am pleased to take this opportunity to request that you provide my office with a copy of your submission.

By way of copy to the Minister of Justice, I ask that he provide copies of his department's consultation materials to all Members of the Legislative Assembly for their review.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Adam Arreak Lightstone".

Adam Arreak Lightstone, MLA  
Iqaluit-Manirajak

c.c. Minister of Justice  
Regular MLAs

Attachments

15, 2021

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crew shifts happen, most times those members are on the ship for weeks at a time, so it would have very little chance of contracting COVID-19 in most cases. Where there are crew resupplies, I'm sure the shipping companies are very aware of what happened like in cruise ships of how fast the COVID-19 can spread and I have to assume that they're taking appropriate measures, but I will reinforce the fact that crews from these ships like the resupply ships that we had here in town and all over the territory do not have contact with anyone onshore at the community. Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. (interpretation ends) Your second and final supplementary question, Mr. Qamaniq.

**Mr. Qamaniq:** Thank you, Mr. Speaker. I thank the minister for his answers. Mr. Speaker, I understand that the Baffinland COVID-19 tests have to be confirmed by another lab before the results are final. If a presumptive case of COVID-19 is found on one of these tests, will Public Health Measures ensure that the iron ore carrier is held in port until the second lab result is available? Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. Minister of Health, Minister Hickes.

**Hon. George Hickes:** Thank you, Mr. Speaker. Again, these are voluntary testing at the corporate level; they're not mandated by Nunavut or any other health entity. That measure would not be enforced or take place. Whatever on-site testing that the mining companies do, if there is a presumptive positive, which we have had and have had a positive case come out of that as well, that it is substantiated by our chief public health office team, but as there is no direct contact with any communities, we have been leaving the isolation and the procedures to the mining companies, along with informing Nunavummiut, as we have and will continue to do. Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. Oral Questions. Member for Iqaluit-Manirajak, Member Lightstone.

#### **Question 961 – 5(2): Clare's Law for Nunavut**

**Mr. Lightstone:** Thank you, Mr. Speaker. My questions today are for the Minister of Justice.

Mr. Speaker, as you and my colleagues are aware, I have been strongly advocating for the introduction of a Clare's Law in Nunavut. This initiative would be of significant benefit to protecting vulnerable Nunavummiut from the threat of domestic violence abuse.

As the minister will recall, we exchanged correspondence on this issue over the summer. In my letter I noted that Saskatchewan's version of Clare's Law recently came into force. However, it has come to light that the RCMP's ability to cooperate fully in administering legislation of this type is being hindered by federal legislation.



As the minister is aware, I have written directly to the responsible federal minister and Nunavut's parliamentarians on this issue, urging them to take the necessary actions to amend federal law. I would like to ask: will the minister commit to also formally writing to her federal counterpart on this issue? Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. Minister of Justice, Minister Ehloak.

**Hon. Jeannie Ehloak** (interpretation): Thank you, Mr. Speaker. (interpretation ends) I thank the member for his question. Department officials have had the opportunity to look more into Clare's Law since the member had brought up this issue in the 2020 fall session.

At this time we are not pursuing this legislation. Instead we are moving on focused and direct supports, including amendments to the *Family Abuse Intervention Act* and the *Labour Standards Act*. Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. (interpretation ends) Your first supplementary question, Mr. Lightstone.

**Mr. Lightstone**: Thank you, Mr. Chairman. Sorry. Thank you, Mr. Speaker. As I noted in my initial question, Saskatchewan now has a Clare's Law in place. Both the provinces of Newfoundland and Alberta have passed similar statutes. Mr. Speaker, two days ago Alberta formally joined Saskatchewan in calling on Ottawa to ensure the RCMP uses provincial legislation that allows police to warn those at high risk.

Mr. Speaker, there are strength in numbers, so I would like to urge the minister to work with her provincial colleagues to ensure that Ottawa responds to our concerns. I would like to ask if she would commit to doing so. Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. (interpretation ends) Minister of Justice, Minister Ehloak.

**Hon. Jeannie Ehloak** (interpretation): Thank you, Mr. Speaker. (interpretation ends) I thank the member for his question. In this Legislative Assembly, members have discussed the desire to provide offenders with support and forgiveness in the priority for communities and families. Through this, we work through a restorative justice program to ensure that those who have or are offenders have the opportunity to take the programs, the Department of Justice, through their programs and services to ensure that they can bring back to their community and that they don't reoffend. Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. (interpretation ends) Your second and final supplementary question, Mr. Lightstone.

**Mr. Lightstone**: Thank you, Mr. Speaker. I would like to first express my disappointment that the Department of Justice and the minister have decided not to pursue creating a Clare's Law in Nunavut.



Mr. Speaker, when I initially brought up the topic of Clare's Law on February 18, 2020, I pointed out the high rates of child sexual abuse and the fact that nearly half of all of the individuals on the registered sexual offenders list have been charged with offences against children.

Mr. Speaker, at that time I asked the minister to set a precedent by expanding a Nunavut's version of Clare's Law to give authorities the ability to proactively disclose information that could protect vulnerable children. Mr. Speaker, for my last question, I would like to ask the minister if she or the officials within the Department of Justice had considered that option. Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. (interpretation ends) Minister of Justice, Minister Ehloak.

**Hon. Jeannie Ehloak** (interpretation): Thank you, Mr. Speaker. (interpretation ends) I thank the member for his question. As the member and I, this item is very dear to our hearts, one of the main questions that persist with this Clare's Law is the lack of knowledge about an inmate's or partner's history of violent behaviour presents an imminent risk to Nunavummiut. Given the size of our communities and our close relationships with our community, it is likely not the lack of information that is the principle risk to the individuals.

At this time I cannot commit, but once the federal government responds to your questions regarding Clare's Law and how they feel and how they would work towards Clare's Law, at this time the Department of Justice will not be doing any more research on Clare's Law until we hear back from the federal minister on your letter. Thank you, Mr. Speaker.

**Speaker** (interpretation): Thank you. Members will note that the time for question period has expired and we will proceed to Item 7. Item 7. Written Questions. Mr. Lightstone.

#### **Item 7: Written Questions**

##### **Written Question 071 – 5(2): Administration of Government of Nunavut's Staff Housing Policy 2020**

**Mr. Lightstone:** Thank you, Mr. Speaker. Today I would like to submit three additional year-end questions that I would have submitted at the spring sitting.

Mr. Speaker, the first written question is for the Minister of Finance and the subject is the administration of the Government of Nunavut's Staff Housing Policy.

Mr. Speaker, over the last two years I have submitted detailed questions on the administration and utilization of the Government of Nunavut's Staff Housing Policy. The results have indicated that there was disparity among the distribution of staff housing where employees in higher salary positions, such as professionals and middle and upper management, had 54 percent of all employees receiving the staff housing subsidy,

\*See Appendix for full text of Written Questions 71 – 5(2), 72 – 5(2), and 73 – 5(2).

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Legislative Assembly of Nunavut



Nunavut Maligaliurvia  
Assemblée législative du Nunavut

August 14, 2020

The Honourable Bill Blair, P.C., M.P.  
Minister of Public Safety and Emergency Preparedness  
House of Commons  
Ottawa, ON, K1A 0A6

Tabled Document

291-5(2)

Sept 24/20

The Honourable David Lametti, P.C., Q.C., M.P.  
Minister of Justice and Attorney General  
House of Commons  
Ottawa, ON, K1A 0A6

Dear Ministers:

I am writing to you in my capacity as the Member of the Legislative Assembly of Nunavut for Iqaluit-Manirajak to draw your attention to the attached exchange of correspondence that I recently had with the Honourable Jeannie Ehloak, Minister of Justice for Nunavut, concerning the important issue of introducing a "Clare's Law" for the territory. As you will note in her reply to me, Minister Ehloak indicates that:

"... the Royal Canadian Mounted Police has been on record regarding the incompatibility of this type of legislation with existing federal privacy laws. As the RCMP is the only provider of policing services in Nunavut, their inability to provide information due to federal statutes would be a major barrier to implementing this legislation. Until such time that the federal government has decided to support Clare's Law, the introduction of this legislation in Nunavut would offer little to no support for vulnerable persons."

As you will appreciate, I would very much welcome your commitment to address this issue through the introduction of appropriate amendments to federal legislation. By way of copy, I am drawing this issue to the attention of Nunavut's federal Parliamentarians, as well as your provincial counterparts whose jurisdictions have recently passed "Clare's Law" initiatives.

I look forward to your reply.

Yours sincerely,

Adam Arreak Lightstone, MLA  
Iqaluit-Manirajak

c.c. Dennis Patterson, Senator for Nunavut  
Mumilaq Qaqqaq, Member of Parliament for Nunavut  
Jeannie Ehloak, Minister of Justice, Nunavut  
Don Morgan, Minister of Justice, Saskatchewan  
Andrew Parsons, Minister of Justice, Newfoundland  
Doug Schweitzer, Minister of Justice, Alberta

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Legislative Assembly of Nunavut



Nunavut Maligaliurvia  
Assemblée législative du Nunavut

June 25, 2020

The Honourable Jeannie Ehloak, MLA  
Minister of Justice  
Office of the Minister  
Legislative Assembly Precinct  
Iqaluit, NU, X0A 0H0

Dear Minister Ehloak:

As you will recall, I have been a strong advocate for the introduction of a "Clare's Law" for Nunavut, an initiative that would be of significant benefit in protecting vulnerable Nunavummiut from the threat of domestic violence.

When I last raised this issue during the Legislative Assembly's winter sitting, I appreciated your commitment to consulting with your counterparts in other Canadian jurisdictions that have introduced similar legislation.

I wish to take this opportunity to bring to your attention the attached information concerning the coming into force of Saskatchewan's *Interpersonal Violence Disclosure Protocol (Clare's Law) Act*. As you will appreciate, it will be important to engage directly with federal authorities concerning the role of the Royal Canadian Mounted Police in the administration of Nunavut's legislation. Please note that I am also providing this information to Nunavut's Parliamentarians for their consideration in respect to potential amendments to the federal *Privacy Act*.

I ask that your reply to my correspondence provide a detailed update on the status of your work to introduce a "Clare's Law" for Nunavut.

I look forward to your reply.

Yours sincerely,

Adam Arreak Lightstone, MLA  
Iqaluit-Manirajak

c.c Senator for Nunavut  
Member of Parliament for Nunavut  
Minister of Justice, Province of Saskatchewan  
Regular MLAs





**Government  
of  
Saskatchewan**

**Minister of Justice  
and Attorney General**  
Legislative Building  
Regina, Canada S4S 0B3

**June 19, 2020**

**Honourable Bill Blair  
Minister of Public Safety and Emergency Preparedness  
House of Commons  
Ottawa, Ontario  
Canada  
K1A 0A6**

**Dear Minister Blair:**

**We are extremely disappointed to have been informally advised this week that the RCMP in Saskatchewan has now indicated its refusal to participate in an important new Interpersonal violence protection program. As you know, "Clare's Law" is legislation passed in the province of Saskatchewan to protect primarily women from interpersonal violence by authorizing the disclosure of limited risk information to individuals regarding their intimate partners.**

**This legislation was introduced in the Fall of 2018 and unanimously passed in the Legislative Assembly of Saskatchewan in the Spring of 2019. The RCMP representatives in Saskatchewan both directly and through the Saskatchewan Association of Chiefs of Police have been involved in the development of the Act, the Regulations and the Protocol on an ongoing basis from the outset. This includes monthly meetings since June of 2019 regarding the specific development of the Protocol. This legislation is scheduled to come into force on June 29, 2020. To now be advised that the RCMP, in its capacity as the Saskatchewan Provincial Police Service, is refusing to comply with this process is beyond disappointing.**

**We have not been advised why the RCMP has taken this position other than reference to an undisclosed legal opinion. We have offered from the outset to meet with any legal counsel the RCMP may be using to explain how this process works and why it is in full compliance with any applicable legal requirements, including privacy legislation.**

**... 2**

Honourable Bill Blair  
June 19, 2020  
Page 2

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We remain open to establishing a dialogue with respect to this matter and urge you to ensure that this decision of the RCMP is revisited. It is unclear why the RCMP is refusing to protect potential victims of interpersonal violence through *Clare's Law*. Alberta and Newfoundland and Labrador are among the other provinces that have introduced similar legislation and we cannot accept that the RCMP cannot find a positive solution to their concerns, whatever they may be.

We trust that you share our commitment to the protection of victims of interpersonal violence and that you will ask that this issue be immediately addressed. Whether that requires adjustments to the Saskatchewan Protocol (none of which have been identified in the year and a half that the RCMP has participated with the ministry in the development of this program), or whether an adjustment at the federal level is required, this problem needs to be resolved.

In Saskatchewan, we have taken this step to recognize both an individual's "right to ask" for information regarding an intimate partner they feel may put them at risk as well as their "right to know" that information once the police have it. We think these potential victims have a right to know why the federal government now seems to think otherwise.

Sincerely,

A handwritten signature in black ink that reads "Don Morgan". The signature is written in a cursive, flowing style.

Don Morgan, Q.C.  
Minister of Justice  
and Attorney General



## **Saskatchewan RCMP is committed to supporting victims and survivors of domestic violence**

June 22, 2020  
Saskatchewan, Saskatchewan

<https://www.rcmp-grc.gc.ca/en/news/2020/saskatchewan-rcmp-is-committed-supporting-victims-and-survivors-domestic-violence>

### **Statement**

We know there have been questions relating to how the RCMP provides support to victims of domestic violence since the announcement of changes to provincial legislation. We know these changes will be especially meaningful for anyone experiencing domestic violence.

Investigating reports of domestic violence is not new to us. We hear you. We believe you. We will be with you every step of the way. What we want victims and survivors of domestic violence to know is that you can continue to rely on the Saskatchewan RCMP to keep you safe, 24/7.

Domestic violence is not a private affair and causes serious harm to families and loved ones involved. It is also a serious social problem often resulting in violation of the law. We prioritize all reports of domestic violence and ensure we place the victim's safety at the forefront.

We recognize that domestic violence continues to harm people in the communities we serve, which is why we continue to increase our efforts, services and support for all victims and survivors.

In October, we launched a Violence in Relationships Course. This training gave our officers an opportunity to listen, firsthand, to the experiences of survivors of domestic violence. This helped our officers increase their understanding of the cycles of violence and how interactions with police impacts the situation.



We have been involved with the planning for Clare's Law from the very beginning. We have been, and continue to be, supportive of this initiative. Early on in the discussions and planning for the implementation of Clare's Law, we identified to our partners that there may be some challenges with our participation because unlike municipal police services, the RCMP is subject to federal privacy legislation.

The RCMP is continuing to look into the matter, and considering how best it can support Clare's Law objectives within its obligations under the federal *Privacy Act*. This hasn't impacted our commitment to keeping families and communities safe and we will continue to work in a cooperative manner with our partner agencies and government departments to seek solutions to the serious problem of domestic violence.

We remain committed to helping any individual with concerns on domestic violence through processes that have always existed for the RCMP. We are also implementing a process that will ensure anyone who comes forward with concerns and is then identified by the RCMP as being at risk is safe and has access to Victim's Services and other resources to assist with their safety. It is important to note that any member of the public can access information relating to criminal convictions through provincial court houses.

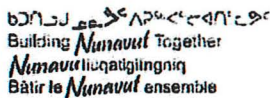
Our focus has, and always will continue to be on victims and survivors. This will never change.

There are many resources that can assist victims and survivors with safety planning. Whether or not victims and survivors decide to report the violence to police, they can reach out to local victim services, shelters, cultural and community health centres, Indigenous friendship centres and other community centers for support.

If you think someone you know might be a victim or survivor, we encourage you to reach out to them and encourage them to seek support and identify their support network.

For more information on intimate partner violence and abuse, creating safety plans and where to get support, visit: <https://www.rcmp-grc.gc.ca/en/intimate-partner-violence-and-abuse>. Call 211, text 211 or visit website [abuse.sk.211.ca](http://abuse.sk.211.ca) to connect domestic violence victims with resources in their community. The service is free, confidential, 24/7 service available in over 175 languages, including 17 Indigenous languages.

All non-emergency incidents can be reported to any local RCMP detachment by calling 306-310-RCMP (7267).



## The Honourable Jeannie Ehaloak

20-July-20

The department may consider this legislation in the future, however given the information presented, it is not a priority for the department at this time. I have committed to amendments to the *Labour Standards Act* that will allow individuals facing domestic violence to seek out support and assistance without fearing the loss of employment. In addition, the Department of Justice continues to work on the review of the *Family Abuse Intervention Act* to ensure it is addressing the needs of families facing violence and continues to be effectively implemented.

Yours truly,

  
Jeannie Ehaloak  
Minister

cc: The Honourable Senator Patterson, Senator for Nunavut  
Ms. Mumilaaq Qaqqaq, Member of Parliament for Nunavut  
The Honourable Don Morgan, Minister of Justice, Government of Saskatchewan  
Regular MLA's  
Mr. Stephen Mansell, Deputy Minister, Department of Justice, Government of  
Nunavut





August 18, 2021

Adam Arreak Lightstone  
MLA for Iqaluit–Manirajak  
Email: [alightstone@assembly.nu.ca](mailto:alightstone@assembly.nu.ca)

BY E-MAIL ONLY

Dear Mr Lightstone:

**Re: Clare's Law for Nunavut**  
**Our file: 21-135**

Thank you for your letter of July 15, 2021, concerning a Clare's Law for Nunavut. I regret to say that, due to mail delivery issues, I received your letter only today.

As requested, my submission to the territorial Department of Justice is attached.

Yours sincerely,

Graham Steele  
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Encl.



July 13, 2021

Department of Justice (Nunavut)  
Policy & Planning  
P.O. Box 1000, Station 500  
Iqaluit NU X0A 0H0  
Email: familylaw@gov.nu.ca

BY E-MAIL ONLY

Attention: Stephen Mansell  
Deputy Minister

Dear Mr Mansell:

**Re: Consultation on Clare's Law for Nunavut**  
**Our file: 21-135**

Thank you for the opportunity for us to comment on the possibility of a Clare's Law for Nunavut.

At the time of writing, there is a Clare's Law in force in Saskatchewan and Alberta. There is also a Clare's Law enacted in Newfoundland and Labrador, but it is not yet in force and the final details are not yet known. In the course of preparing this submission, I have consulted with my counterparts in Saskatchewan, Alberta and Newfoundland and Labrador. I have incorporated their experience and advice into my recommendations.

### **1. Advisability of a Clare's Law**

The question in your letter is "Should a Clare's Law be considered for Nunavut?"

We do not believe it is our role to say whether a Clare's Law is advisable for Nunavut. That is a public-policy question outside our area of expertise. We do not know if a Clare's Law would be an effective tool against domestic violence.

Instead, we will focus on what we know best: the access and privacy issues that will need to be addressed once the decision is made to go ahead with the development of a Clare's Law.

Clare's Law is, in essence, a new access and privacy law to deal with the special case of domestic violence. It would supplement Nunavut's current access and privacy law, the *Access to Information and Protection of Privacy Act* (ATIPPA).

The core concept of a Clare's Law is that an assessment of the risk of domestic violence may be disclosed to a person-at-risk (PAR) about a person-of-disclosure (POD). A PAR may apply for a risk assessment (right-to-ask, or RTA). In some circumstances, the police may proactively conduct a risk assessment (right-to-know, or RTK). Under both RTA and RTK, the result of the assessment is disclosed to the PAR.

In this letter, we assume that a Clare's Law for Nunavut will be broadly similar to the Clare's Laws, with supporting regulations and protocols, currently in force in Alberta and Saskatchewan. We assume there will be RTA and RTK elements. We assume that there will an application process, a risk-assessment process, and a disclosure process.

We will start by considering Nunavut privacy law as it currently applies to domestic violence, and then move on eight key issues that need to be addressed. At this early stage in the consultation, we will not be overly prescriptive. The Saskatchewan and Alberta protocols demonstrate that proper implementation of a Clare's Law has many nuances.



## **2. The ATIPPA and domestic violence**

The ATIPPA, as it currently stands, could be used to warn a PAR of a risk of domestic violence.

A person's criminal history is "personal information"<sup>1</sup> and the disclosure of personal information to another person is normally prohibited by the ATIPPA if the disclosure would be an unreasonable invasion of the person's personal privacy.<sup>2</sup>

Despite s 23, the ATIPPA does permit disclosure in certain circumstances. Section 48 lists the circumstances in which disclosure of personal information is permitted. Even without a Clare's Law, there are two paragraphs in s 48 that are broad enough to permit disclosure of a risk of domestic violence:

48. A public body may disclose personal information

...

(q) when necessary to protect the mental or physical health or safety of any individual;

....

(s) for any purpose when, in the opinion of the head,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates; ....

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<sup>1</sup> Section 2, definition of "personal information", paragraph (g).

<sup>2</sup> Section 23 permits the disclosure of personal information if, after taking into account all relevant circumstances, the public body judges that there would not be an unreasonable invasion of personal privacy. The public body is, however, required to notify the person and give them a chance to object. That makes disclosure under s 23 unworkable for domestic violence purposes.

However, these provisions provide no details about how and when they should be used. We are not aware of s 48 being used for domestic violence preventative purposes in Nunavut.<sup>3</sup> With no guidelines and no precedent, there is a risk of non-application or inconsistent application. Moreover, the threshold, especially for the public-interest override in paragraph 48(s), appears high.

The benefit of a Clare's Law for Nunavut is that its application to domestic violence would be better known than the ATIPPA, the threshold for disclosure would be lower, and there would be a set of clear rules around its use.

### **3. Eight key issues**

#### **(a) What would be disclosed?**

As previously mentioned, a person's criminal history is "personal information" under the ATIPPA, which is not normally disclosed. A Clare's Law would, in effect, override this prohibition. But that still does not tell us what exactly is disclosed.

In Saskatchewan and Alberta, the focus of the disclosure is on a level of risk. There are three risk levels: low risk, moderate risk, and high risk. There is also a category for "insufficient information".

The Saskatchewan protocol does contemplate that more information might be disclosed, including specific convictions and contextual information to help the PAR understand the level of risk. While that is understandable, there have to be some boundaries around the level of detail that is disclosed.

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<sup>3</sup> The NUIPC would become aware of such a use only if there were a privacy breach complaint, presumably by a POD.

The Information and Privacy Commissioners in Saskatchewan and Alberta have stated they have no objection to the disclosure protocols. If Nunavut adopts a protocol similar to Alberta or Saskatchewan, I anticipate that I, too, would have no objection.

If a Clare's Law is adopted in Nunavut, I recommend the protocol state what may be disclosed, and that the disclosure be limited to the information necessary to fulfill the objectives of the Act.

### **(b) Who would assess the risk?**

The next key issue is who exactly will assess the risk. From a privacy perspective, this is an important question because it is the assessors, not the PAR, who see everything.

In Saskatchewan and Alberta, the criminal-history information is gathered by the community police force, and passed to a risk-assessment committee internal to government. The committee's assessment is then relayed back to the police, who disclose the risk level in accordance with the protocol. Assuming everyone on the risk-assessment committee is a public servant, then both the committee and the police are subject to the usual constraints of public-service confidentiality.

If a Clare's Law is adopted in Nunavut, I recommend a similar kind of risk-assessment process. Any member of the risk-assessment committee who is not a GN employee should take an oath of confidentiality.

### **(c) Who could apply?**

Obviously, a PAR can apply for and receive disclosure on their own behalf. But under what circumstances can someone else apply on behalf of a PAR? And if someone else applies, who would receive the disclosure?

The ATIPPA, s 52, recognizes that there are situations in which a substitute decision-maker can exercise rights of access and privacy.<sup>4</sup> I recommend that a Clare's Law should have something analogous. There is room here for debate. Alberta and Saskatchewan have different lists of who can apply.

#### **(i) PAR under legal disability**

If a PAR is under legal disability and has a legal representative, the representative should be able to apply under the Clare's Law and receive disclosure.

The same principle should apply when the PAR has authorized someone to make a Clare's Law application on their behalf. The ATIPPA and the Alberta Clare's Law require that the authorization be in writing. That may be too stringent a requirement for cases of potential domestic violence.

If a PAR is a minor, the situation is a bit more complex. Privacy law generally recognizes the right of a "mature minor" to make decisions for themselves, without the involvement of a parent or guardian. In

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<sup>4</sup> Section 52 recognizes the access and privacy rights of a person's guardian or trustee (for a person under legal disability), power of attorney, person having custody (for a minor), and any other person authorized in writing by the individual. In the case of a minor, the public body must first satisfy itself that the guardian's exercise of the minor's rights would not constitute an unreasonable invasion of the minor's privacy. Section 52 also provides for rights being exercised by a person's estate, but that is not relevant to a Clare's Law.



medical matters, the question whether a minor is a “mature minor” is treated case-by-case as a matter of clinical judgment. If the PAR is a minor but not a “mature minor” in the legal sense, then a parent or guardian should be able to apply under the Clare’s Law and receive disclosure.

The remaining question is whether a PAR under legal disability should be present for the disclosure. In privacy law, it is considered desirable for the person concerned to receive disclosure directly, but that will not be advisable in every case.

### **(ii) PAR not under legal disability**

The more difficult situations are those in which the PAR is not under a legal disability, and does not make or authorize a Clare’s Law application. The challenge is to discourage busybodies, while recognizing that some PARs will not be in a position to recognize or act upon danger signs.

The Saskatchewan Clare’s Law has a long list of people who can assist with or make an application. The Alberta Clare’s Law has a much shorter list.

If a Clare’s Law includes a right-to-know, then in our view it should not matter who initiates the risk review. The risk-assessment committee can decide if a risk assessment should be conducted, and if the PAR should be informed under RTK.

The real question in these cases, from a privacy perspective, is whether the non-PAR applicant should receive disclosure. In our view, the Saskatchewan protocol strikes a good balance by saying that disclosure should be made to the person best able to protect the PAR, and that is usually the PAR themselves. There will be rare occasions, however, when someone else needs to receive disclosure in order best to protect the PAR.

In cases of a non-PAR application, or RTK disclosure, the PAR should not be told why the risk review was initiated. That respects the purpose of the law, while maintaining appropriate privacy for the applicant, the PAR and the POD.

#### **(d) How would the PAR's privacy be protected?**

In addition to the questions of who can apply and who can receive disclosure, there are at least three other aspects of a PAR's privacy that require protection: the anonymity of the application; who makes the disclosure; and collection of information about the applicant.

##### **(i) Anonymity of the application**

It is good privacy practice to limit knowledge of the applicant's name.

For example, section 6.1 of the ATIPPA provides for the anonymization of the file. The name of the applicant should be known only to the person receiving the initial request, and thereafter limited to the extent necessary to respond to the request.

If a Clare's Law is adopted in Nunavut, I recommend that the protocol include a similar restriction. The fewer people that know the applicant's name, the better.

##### **(ii) Communication with police**

The Clare's Law protocol in Alberta specifies that police make the disclosure to the PAR. The protocol says the disclosure will be done in person if the risk is moderate or high. Otherwise, disclosure is by telephone.

In Nunavut communities, implementation of this protocol might be challenging. In a small community, visits to the police station by a PAR,

or visits to a PAR by the police, are almost certain to be noticed and to attract attention. It might be difficult to protect the PAR's privacy.

There is also the broader issue in Nunavut of public distrust or fear of the police. This is outside our area of expertise, but we flag it in the context of the disclosure protocol.

There is no easy solution. Perhaps in Nunavut the risk assessment can be delivered by someone other than the police, such as a social worker or community nurse. That may solve one privacy problem, but it also creates another by expanding the number of people who are aware of the application and the disclosure.

If a Clare's Law is adopted in Nunavut, I recommend that protection of the PAR's privacy, taking into account the small size of Nunavut's communities, be addressed in the protocol.

### **(iii) Collection of information about the PAR**

Under a Clare's Law, a certain amount of information has to be collected from the PAR in order to assess the risk, e.g. name, address, and relationship with the POD. That is to be expected.

But in Alberta, the police also do a background check on the PAR. They say it is a normal part of police work – they like to know with whom they are dealing. And if they find there is an outstanding warrant against a PAR they will execute the warrant.

In my view, this checking into the background of the PAR is problematic. A PAR might be arrested as a result of their Clare's Law application. People in the most vulnerable groups may be those most likely to have an outstanding warrant, e.g. for failure to appear. This could well be a disincentive to applying.

If a Clare's Law is adopted in Nunavut, I recommend that the issue of PAR background checks be addressed in the protocol.

### **(e) How would the POD's privacy be protected?**

The POD also has privacy rights, as far as is consistent with the purpose of a Clare's Law.

One of the gaps in the Saskatchewan and Alberta legislation is that there is no particular accountability from a POD's perspective. They are generally not told that a Clare's Law application has been made, and they are not told what has been disclosed, or to whom. That is appropriate in the context of potential domestic violence.

Nevertheless, if incorrect information about the POD is collected, used or disclosed, there is no mechanism for a POD to correct it, or even to know that they are the subject of incorrect information.

The ATIPPA, s 45, provides for the correction of personal information held by a public body. It is difficult to see how an analogous provision might work in a Clare's law, since typically a POD will be unaware of what has been disclosed or to whom.

In Alberta, a small measure of accountability was introduced into the Clare's Law with the requirement of annual aggregate reporting to the Information and Privacy Commissioner.<sup>5</sup> Because the Alberta law has only just come into force, there has not been such a report yet. We do not know what the report will look like or how useful it will be. In my view, aggregate reporting is a weak accountability measure and I do not necessarily recommend it.

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<sup>5</sup> Alberta Protocol, page 19: "Annual aggregate reporting on Clare's Law will be provided to the Office of the Information and Privacy Commissioner (OIPC) of Alberta." That is all the protocol says. The reporting requirement is not in the Act or the regulations.



There is provision for a penalty if a PAR should disclose information obtained through the Clare's Law, but it is likely that such a penalty will be difficult to enforce.

Also in Alberta, the authority of the IPC was expressly preserved.<sup>6</sup> That should give a POD an opportunity to complain about a breach of privacy, if the Clare's Law is improperly applied. But again, in most cases the POD will be unaware of what happened.

#### **(f) How would the Clare's Law relate to the ATIPPA?**

As I have already noted, a Clare's Law is a special case of access and privacy. There will inevitably be overlap between a Clare's Law and the ATIPPA. To avoid any confusion, a Clare's Law in Nunavut should specify its legal relationship to the ATIPPA.

Section 48(u) of the ATIPPA goes some way to resolving any conflict between the two laws:

48. A public body may disclose personal information...

(u) for any purpose in accordance with any Act that authorizes or requires the disclosure; ....

If a Clare's Law authorizes disclosure, then the disclosure is consistent with the ATIPPA.

But there are additional questions that arise. If there is a direct conflict between the two laws, which law prevails? Are the complaint,

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<sup>6</sup> Alberta, *Disclosure to Protect Against Domestic Violence (Clare's Law) Act*, s 6: "For greater certainty, nothing in this Act shall be construed as limiting the powers and duties of the Information and Privacy Commissioner under the *Freedom of Information and Protection of Privacy Act*."

investigation, and decision-making procedures under the ATIPPA applicable to access and privacy under a Clare's Law?

If the Clare's Law is silent on paramountcy, the ATIPPA will prevail: ATIPPA, s 4(2). That is what happened in Saskatchewan.

The Alberta Clare's Law says that the law does not limit the powers and duties of the Information and Privacy Commissioner, but does not otherwise address the question of paramountcy.

If a Clare's Law is adopted in Nunavut, I recommend that it should clearly specify its relationship to the ATIPPA.

I also recommend that a Clare's Law should state that it is paramount in the case of direct conflict with the ATIPPA, but that the ATIPPA procedure for a privacy breach complaint is available under the Clare's Law, and that the powers and duties of the Information and Privacy Commissioner are preserved.

### **(g) Which privacy law applies to the RCMP?**

There is another issue specifically concerning the RCMP, namely the question of which privacy law governs its operations in Nunavut. This may appear to be a technical legal issue, but in my view it is important and needs to be addressed.

The RCMP is currently the only community police force in Nunavut. Despite being a contracted "territorial police force" under the *Royal Canadian Mounted Police Agreement Act*,<sup>7</sup> the RCMP does not

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<sup>7</sup> Which will become the *Police Act* when *An Act to Amend the Royal Canadian Mounted Police Agreement Act*, S.Nu. 2021, c. 16, is proclaimed in force.

acknowledge that it is subject to the ATIPPA. It does acknowledge that it is subject to federal privacy law.<sup>8</sup>

Early discussions on the possibility of a Clare's Law, whether in Nunavut or elsewhere in Canada, were scuttled on the basis that the RCMP said that federal privacy law did not permit them to disclose information under a Clare's Law.

This objection disappeared when the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281, were amended by SOR/2021-58 at the end of March 2021. The amendment added new sections 57.5 to 57.7 to the regulations. Those sections allow the RCMP to disclose information under a Clare's Law.<sup>9</sup>

In my view, it is problematic that the RCMP in its capacity as the contracted territorial police force (as opposed to its capacity as a federal police force dealing with national and international policing issues) can decide which privacy law it will obey. As long as the RCMP maintains the position that it is not subject to territorial privacy law, even when hired under contract by the GN, there is a risk that implementation of a Clare's Law could be undermined if the RCMP regulations change again.

If a Clare's Law is adopted in Nunavut, I recommend it specify that the territorial police force under the *Police Act* is bound by that law.

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<sup>8</sup> This issue arose, for example, with respect to the body-worn camera pilot project in Iqaluit in 2021. The RCMP's public materials stated that privacy complaints should be made to the federal Privacy Commissioner.

<sup>9</sup> See also the government news release: Public Safety Canada, "RCMP can now participate in Clare's Law legislation in Saskatchewan and Alberta" (March 31, 2021).

**(h) Will there be a privacy impact assessment?**

Finally, I recommend that the Department of Justice prepare a privacy impact assessment (PIA) for a Clare's Law, as contemplated by s 42.1 of the ATIPPA.

In Alberta, a PIA was still being prepared when the Clare's Law came into force. That is obviously not satisfactory. A PIA should be done as early as possible, because the results will guide the drafting of the law and the protocol.

If the decision is made to develop a Clare's Law for introduction in the Legislative Assembly, I recommend that work on a PIA for the Clare's Law should start as soon as possible.

**4. Conclusion**

I thank the Department of Justice for inviting this office to share its views on a Clare's Law for Nunavut.

A Clare's Law raises many access and privacy issues. I would welcome the opportunity to continue to be involved if a Clare's Law, with supporting regulations and protocol, is developed for Nunavut.

Yours sincerely,



Graham Steele

b1 P.A. / Commissioner / Kamisina / Commissaire

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