

BACKGROUND

November 2006

Issue: Can a Woman Get Information from Police about Her Abuser's Criminal Past?

I. INTRODUCTION¹

A. THE CASE OF MARTINA SEYMOUR

In the summer of 2004 in Port Moody BC, Antonio Pinheiro shot his former girlfriend Martina Seymour five times. Seymour had recently left Pinheiro because he was abusing her. Although she was critically injured, Seymour survived the attack. Two witnesses and a passing motorist helped her escape the scene.

Before the shooting Seymour had gone to police about Pinheiro's other assaults against her and had let them know about his threats and access to weapons. Police requested and obtained a Peace Bond. They did not inform Seymour that Pinheiro already had a criminal record dating back to 1991 for threats and violence committed against his former wife Debbie Pinheiro and members of her family. The National Parole Board had denied Pinheiro early release because they believed there was a risk he could commit serious harm or death to an individual. A court-ordered psychiatric report stated that there was a risk of a repeated pattern of events. ("Court documents," 2004; Gracey, Aug 12 2004 and Aug 12 2004a; Harper, 2004; Lazaruk, 2004; Lee, Aug 11 2004 and Aug 12 2004; Page, 2004).

In Seymour's case a number of people were put at risk. This included the witnesses who helped Seymour, police who arrived at the scene and motorists affected by the high speed chase and gun battle that later ensued between police and the shooter. Pinheiro later died in hospital from self inflicted injuries. The incident forced closure of both lanes of Lougheed Highway, a major traffic artery, for about half a day.

¹ This document is for general information only. It is not intended to be, and cannot be relied upon, as legal advice.

The Martina Seymour Shooting

Key points about information sharing and risk management came up during media coverage of the case:

- *Forensic psychologist Steve Hart said Pinheiro's increasing abuse and controlling behaviour towards Seymour was clear indication he was reentering a violent phase.*
- *Seymour said she found it difficult to understand why police didn't let her know about Pinheiro's criminal past. She said the information would have helped her develop a safety plan. For example, she may have left the province.*
- *Police cited restrictions contained in privacy laws that made it difficult for them to release information about criminal convictions.*
- *Federal privacy commissioner Jennifer Stoddart said that the Privacy Act has broad exemptions allowing release of information in cases like Seymour's in the interests of public safety. She stressed the need for better understanding of privacy laws and the public interest within the criminal justice system. ("Court documents," 2004; Gracey, Aug 12 2004 and Aug 12 2004a; Harper, 2004; Lazaruk, 2004; Lee, Aug 11 2004 and Aug 12 2004; Page, 2004).*

B. PURPOSE OF THIS BACKGROUNDER

This Backgrounder is written primarily for victim service workers to help them understand privacy rules which apply to release of information about an abuser's criminal record. This will help with the safety planning process.

A victim service program located in her community may be one of the first places an abused woman goes to for help. Developing a safety plan will be an important priority for the woman at risk as well as the victim service worker.

Safety planning involves identifying and managing known risk factors. Current risk assessment tools in use in BC, including SARA and B-SAFER, have identified past criminal acts by the abuser as known risk factors for further violence. This analysis is also supported by existing research (BC Institute Against Family Violence, 2006; Province of Ontario 2004; Agar 2003; Canadian Centre for Justice Statistics, 2002; Campbell et al., 2001; Dutton & Krop, 2000; Fagan et al., 1983;).

This Backgrounder will also be used as a tool to encourage more dialogue between community based services and system based responders regarding privacy issues and the safety needs of victims of violence in relationships.

C. THE NEED FOR MORE DIALOGUE

Seymour's case brings up long standing questions about privacy rights, safety planning and coordinated risk management.

The importance of interagency information sharing and coordination in family violence cases was highlighted in recommendations made in the 2006 Hughes Report regarding the tragic death of Sherry Charlie. (BC Ministry of Children and Family Development, 2006) Sherry died from abuse at the hands of her Uncle who had a previous conviction for spouse assault. Sadly, child welfare authorities were not aware of the presence of this risk factor when they placed the child.

Two other tragic deaths have highlighted the need for effective information sharing strategies in spouse assault cases. In the Bethell case, Mr. Bethell is alleged to have sexually assaulted his former spouse and then abducted his daughter. Bethell and four-year old Seth Thornett died after a head-on collision following a police chase. Thornett was a passenger in another car. A coroner's inquest was held. **In 2006, the coroner's jury recommended that police, government and community-based victim services agencies work together to develop inter-agency information sharing protocols and coordinated risk management strategies in violence in relationships cases.** (Coroner's Court of BC, 2006)

This Backgrounder cannot address all outstanding issues related to offender privacy rights and victim safety needs. What this Backgrounder *can* do is stimulate further discussion at the local and provincial level about the relationship between privacy laws and risk management/assessment in vawir (violence against women in relationships) cases.

We also intend to:

- ◆ support consistent interpretation and implementation of provincial and federal privacy laws by criminal justice system personnel in violence against women in relationships cases
- ◆ support coordinated risk management among local agencies responding to violence against women in relationships
- ◆ help ensure that women experiencing abuse from their partners and at risk of further violence obtain enough information about the abuser so that they can better manage the risk
- ◆ support victim service workers in cases of this kind.

II. PRACTICAL CONCERNS

A. WHAT PRIVACY LAWS APPLY?

RCMP decisions about whether to disclose information about a suspect or abuser's criminal record are governed by the federal *Privacy Act*. Municipal police are governed by the provincial *Freedom of Information and Protection of Privacy Act*.

B. WHAT DO WE MEAN BY "CRIMINAL RECORD"?

"Criminal record" includes criminal convictions for which pardons have not been granted. It does not include outstanding charges, acquittals, absolute discharges or cases which are stayed.

CPIC is the data base used by RCMP and police to access information about potential suspects. It contains other information besides any criminal record. This might include: outstanding charges, protection orders, alternative measures imposed etc. While information of this kind will also help inform the police response to a woman who feels threatened by her spouse, this Backgrounder focuses on police release of information about the criminal record itself and not other information which may be on CPIC.

C. WHAT DO PRIVACY LAWS SAY REGARDING RELEASE OF INFORMATION ABOUT A SUSPECT'S CRIMINAL RECORD?

1. A Discretionary Decision to Disclose Personal Information

Information about someone's criminal record is considered "personal information". Under the federal *Privacy Act*, which applies to R.C.M.P., personal information must not be released without the consent of the person to whom it relates except in certain specific situations. This would include situations where, in the opinion of the head of the government institution involved, the public interest in disclosure clearly outweighs any invasion of privacy that could result from disclosure. This decision is discretionary. It is important to know that any decision to release will only be made in high risk situations and is viewed by the RCMP as a last resort.

The Federal Privacy Act—Applies to R.C.M.P.

- *Decisions about whether to release personal information, such as information about someone's criminal record, involve an exercise of judgment by the commanding officer of E Division.*
- *If a woman comes in reporting threatening behaviour or actual assaults, an assessment would be made by the R.C.M.P. about whether the public interest in disclosing any information about the*

abuser's criminal record to the complainant clearly outweighs the invasion of privacy involved.

- *If a decision is made to release the information, then the Privacy Commissioner must be notified in writing.*

The provincial *Freedom of Information and Protection of Privacy Act*, which applies to municipal police, also states that personal information cannot be disclosed by the head of the public body involved without consent, except in certain circumstances. This includes situations where compelling circumstances exist which affect anyone's health or safety.

The Provincial Freedom of Information and Protection of Privacy Act—Applies to Municipal Police

- *Decisions about whether to release personal information, such as information about someone's criminal past, involve an exercise of judgment by a senior member of the municipal police force.*
- *If a woman reports threatening behaviour or actual assaults, an assessment should be made by the municipal police about whether compelling circumstances are present which affect anyone's health or safety.*
- *If a decision is made to release the information, then the abuser must be notified unless doing so could harm someone's health or safety.*

2. Factors that RCMP or Police will consider when deciding About Release

In making decisions about whether to disclose criminal record information about a past offender, RCMP and police will decide on a case by case basis. They must consider the potential harm involved in invading the offender's privacy. They must also consider whether the public interest or health and safety concerns might require disclosure. Information which is disclosed must be necessary to avert potential harm. The higher the degree of harm involved for the woman, the more likely that RCMP/Police discretion might be exercised in favour of release.

For example, if the woman is afraid and the suspect:

- ◆ has an extensive history of violence
- ◆ has threatened the complainant and
- ◆ has access to weapons

the risk to the individual woman, her extended family and the wider community is likely high.

In these situations which involve dangerous offenders, releasing information about the suspect's criminal record to the complainant could possibly be justified:

- under the federal act as being in the public interest or
- under the provincial act as necessary to protect health or safety.

If a decision is made to disclose information, it will be the least amount of information necessary to avert the potential harm. In some cases, specific information about the criminal record will not be released. Instead RCMP or police may decide to provide general information to the victim about the fact that certain risk factors are present.

Research suggests that in violence against women in relationships cases, all past criminality is a good predictor of future violence, not just prior convictions for assaulting a spouse. Still, if the risk is deemed to be moderate rather than high, RCMP or police may decide not to release any records or only records that relate to the risk currently being posed to the woman-- in other words information on previous convictions for a similar offence.

3. The Consistent Use Clause

Both the provincial and federal privacy laws also allow public bodies to release information without consent if:

- ◆ the information is being disclosed for the same reason it was obtained in the first place or
- ◆ the information is being disclosed for a use consistent with that purpose (*Privacy Act 1983, s. 8(2)(a)*; *Freedom of Information and Protection of Privacy Act 1996, ss.32 and 34*).

Under the provincial act information can be shared under the consistent purpose clause if the use:

- ◆ has a reasonable and direct connection to the original purpose for which the information was gathered; and
- ◆ is necessary for performing statutory duties or for operating a legally authorized program.

The consistent use clause might come into play where police believe that releasing information to the current complainant about the suspect's past

convictions is consistent with the original purpose for having this information, namely, to protect the victim and members of the public from further violence.

One of the reasons that police collect and retain criminal information about a suspect is to help them assess risk and protect the public from further harm from that person. In Seymour's case, Martina informed police she had been threatened by her partner, Pinheiro. At this point, police would access information about his criminal past as part of their assessment of the risk Pinheiro now posed. Police then find Pinheiro has a criminal record for similar offences. Sharing that information with Martina could be justified as necessary to protect her and possibly other members of the public from further harm.

Is Protecting the Victim a Consistent Use?

Many emergency responders believe that the consistent use clause is a potentially useful tool. It could be used to share information which can help complainants better manage risk. Indirectly, it can encourage:

- *appropriate information sharing between community and system based responders; and*
- *a more seamless service for people who are highly traumatized and at risk of further violence.*

4. A Duty to Disclose

In cases where the risk of harm is more serious and immediate, the *Freedom of Information and Protection of Privacy Act* imposes a positive duty to disclose information rather than granting a discretionary right. The head of the public body has a duty to disclose:

- ◆ information about a risk of significant harm to the health or safety of the public or a group of people, or
- ◆ information which should be released for another reason which is clearly in the public interest.

If either of the above two situations apply, then the information in question *must* be released. The person who the information is about, as well as the information and privacy commissioner must be notified before the release.

This type of disclosure would generally involve issuing a notice to a particular community or group of people rather than informing one person. For example, Corrections personnel might issue a notice to police or to schools letting them know that an offender who is at high risk to reoffend has been released into their community.

D. WHY IS IT IMPORTANT FOR THE COMPLAINANT TO GET INFORMATION ABOUT THE ABUSER'S CRIMINAL PAST?

The complainant plays a key role in developing and implementing an effective safety plan:

Women must construct their own safety plan, tailored to their own circumstances, based on the resources they have access to, and each plan requires active, diligent work by her community. Anything that will help the woman trust her sense of risk and her sense of how to get safe will increase her safety (Hart, 1998)

To help keep her safe, the plan must address all known risks (Ibid).

Victims of abuse are forced to make many difficult choices as they strive to cope with the abuse and increase their safety. Safety planning is essentially a process of empowering the victims of intimate partner violence to make these choices (Agar, 2003).

Statistical evidence indicates that in cases involving intimate partner violence, past criminality of the suspect is a risk factor for further violence (Province of Ontario 2004; Agar 2003; CCJS Daily Sept 25 2002; Campbell et al., 2001; Dobash, Dobash and Medina-Ariza 2000;).

In other words, a criminal past contributes to present risk.

Part of the diligent work of the community involves warning the woman of the risks she faces so that she can take appropriate action (Province of Ontario, 1998 and 2004).

In Seymour's case, the fact that Pinheiro had a history of violence involving a former spouse was a significant risk factor. This was acknowledged by risk management experts after the shooting. (Harper, 2004) Seymour said that had she known about this additional risk, she would have taken measures to protect herself. Perhaps she would have left the province to stay with relatives in the

Maritimes. Perhaps she would have consulted with a specialized victim service program to help her develop a safety plan.

In BC, the *Aid to Safety Assessment and Planning Guidelines (ASAP)* recently developed by the Ministry of Public Safety and Solicitor General, the BC Institute Against Family Violence and risk management experts Steve Hart and Randy Krop, stress the need for involved agencies and the complainant to work together to gather and, where appropriate, share information on known risk factors (ASAP 2006). This can then form the basis for a coordinated and more effective risk management strategy. The literature indicates that coordinated case management helps prevent further violence (Community Coordination for Women's Safety, 2004).

E. WHAT ROLE CAN VICTIM SERVICE WORKERS PLAY?

Facilitating safety planning and coordinating the flow of information to the complainant is an important part of the victim service worker's job. Victim service workers can:

- ◆ help the woman gather and document information about risk factors. (For example, in Seymour's case this would have included information about the recent assaults and threats made by Pinheiro and the fact that he was actively interested in weapons and had access to them.)
- ◆ help the woman identify any other evidence supporting the view that the abuser is a high risk to offend.
- ◆ support the woman in sharing this information with police and other criminal justice system personnel involved with the case. (For example, in Seymour's case it would have been important for police to know that Pinheiro had threatened Seymour before and then carried out the threats.)

If the woman goes to police and is having trouble getting the information she needs to manage the risk, victim service workers can, with her consent:

- ◆ make enquiries about why certain information was not released and whether safety and public interest considerations in the applicable privacy laws have been considered.

Decisions about disclosing information are not always straightforward. While concerns about safety are critical, RCMP/police must also consider the possibility of civil liability if they release information in violation of privacy laws. It is important to frame any question as an effort to support safety planning and coordinated risk management.

Victim service workers should also look at the option of registering the woman for notification with the Victim Safety Unit (Victim Services and Community Programs Division). The woman may be eligible to register if:

- she is a protected party in either a criminal or family protection order; and
- the accused/offender is being supervised by B.C. Corrections, either in the community (for example; bail or probation) or in custody (jail).

The Victim Safety Unit tracks offender movements (for example: admissions, releases and transfers; both in the community and jail) and can provide information to the woman under the authority of the *Victims of Crime Act* (VOCA) or provincial privacy legislation.

F. WHAT IF POLICE/RCMP ARE NOT ABLE TO DISCLOSE INFORMATION ABOUT PAST CONVICTIONS?

Victim service workers should let the victim know that certain court documents contained in a BC court file at the courthouse are public. Members of the public can access these documents at most courthouses through the JUSTIN terminal.

Past Convictions are Accessible at the Courthouse

Information available through the JUSTIN database would generally include pending charges or convictions and previous convictions in BC going back to approximately 2000.

A JUSTIN search using the accused's/offender's full name will help to access this information. If you leave the location field in the query blank, then the JUSTIN search for past convictions or other dispositions will be province-wide.

III. WHERE CAN I GET MORE INFORMATION ON THIS ISSUE?

1. You can review the following background materials (see references section for details):

- *Managing Safety by Knowing the Risks*
- *Aid to Safety Assessment & Planning (ASAP) for Women Who Experience Violence in Their Relationships*

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- *A Review of the Effectiveness and Viability of Domestic Violence Interventions as an Adjunct to the Formal Criminal Justice System*
 - *Intimate Partner Fatalities*
 - *Measures of Empowerment for Women Who Are Victims of Violence and Who Use the Justice System*
 - *BC Children and Youth Review (the Hughes report on the death of Sherry Charlie)*
 - *Verdict at Coroner's Inquest: Findings and Recommendations as a Result of the Inquest into the Death of Seth Thornett*

2. You can review the relevant sections of federal and provincial privacy laws included in the Appendix.

3. You can contact Community Coordination for Women's Safety:

Call 604-633-2506 ext. 15 or go to www.endingviolence.org and click on Community Coordination for Women's Safety.

4. You can contact Victim Services Division (Ministry of Public Safety and Solicitor General):

Policy/Program Analyst, Manager

Victim Services:

Jane Coombe 250-356-6567

Manager,

Victim Safety Unit:

Karen Spears 1-877-316-8822 (toll free)

IV. ACKNOWLEDGEMENTS

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The Ministry of Community Services

- Information, Privacy and Records Branch

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- Stopping the Violence Branch

The Ministry of Public Safety and Solicitor General

- Privacy, Information and Records Management Division
- Victim Services and Community Programs Division
- Community Corrections Division

Victoria City Police

BC Association of Municipal Chiefs of Police

RCMP E Division

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APPENDIX-APPLICABLE INFORMATION AND PRIVACY PROVISIONS

Privacy Act (federal)

Disclosure of personal information	8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.
Where personal information may be disclosed	(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; (m) for any purpose where, in the opinion of the head of the institution, (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.
Notice of disclosure under paragraph (2)(m)	(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

Freedom of Information and Protection of Privacy Act (BC)

Information must be disclosed if in the public interest

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

- (a) any third party to whom the information relates, and
- (b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

- (a) to the last known address of the third party, and
- (b) to the commissioner.

Use of Personal Information

32 A public body must ensure that personal information in its custody or under its control is used only

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),
- (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or
- (c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36.

Disclosure of personal information

33 A public body must ensure that personal information in its custody or under its control is disclosed only as permitted under section 33.1 or 33.2.

Disclosure inside or outside Canada

33.1 (1) A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:

(m) if

- (i) the head of the public body determines that compelling

circumstances exist that affect anyone's health or safety, and

(ii) notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that giving this notice could harm someone's health or safety;

Disclosure inside Canada only

33.2 A public body may disclose personal information referred to in section 33 inside Canada as follows:

(a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34);

Definition of consistent purposes

34 (1) A use of personal information is consistent under section 32 or 33.2 with the purposes for which the information was obtained or compiled if the use

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information or causes the information to be used or disclosed.

(2) [Repealed]

Victims of Crime Act (BC)

Information that must be offered

5 Justice system personnel must offer a victim general information concerning

(a) the structure and operation of the justice system,

(b) victim services,

(c) the *Freedom of Information and Protection of Privacy Act*,

(d) the *Crime Victim Assistance Act*, and

(e) this Act.

Information that must be given on request

6 (1) Subject to the *Youth Criminal Justice Act* (Canada) and insofar as this does not prejudice an investigation or prosecution of an offence, justice system personnel must arrange, on request, for a victim to obtain information on the following matters relating to the offence:

- (a) the status of the police investigation;
- (b) the specific counts with which the accused is charged or for which the offender is convicted;
- (c) the reasons why a decision was made respecting charges;
- (d) the name of the accused;
- (e) the date, location and reasons for each court appearance that is likely to affect the final disposition, sentence or bail status of the accused;
- (f) the outcome of each court appearance that is likely to affect the final disposition, sentence or bail status of the accused;
- (g) the length of any sentence that the offender is serving and the date the sentence began;
- (h) the means for the victim to report breaches of the terms of supervision by the offender released under supervision;
- (i) the means to contact agencies that may grant or amend conditions of parole or authorize release from custody of the offender;
- (j) the eligibility and review dates applicable to the offender and how to make representations in any proceedings that may lead to a change in the custodial status or release conditions of the offender.

(2) Subject to the *Youth Criminal Justice Act* (Canada), justice system personnel must arrange, on request, for a victim to obtain copies of orders and permits setting conditions for the accused or offender that are relevant to the safety of the victim.

Information that will be given in appropriate circumstances

7 (1) The minister charged with the administration of the *Correction Act* or the designate of the minister or the chair of the Board of Parole for the Province of British Columbia or the designate of the chair must give the following information relating to the offence to a victim on request if, in the opinion of the person giving the information, the interests of the

victim outweigh the privacy interest of the accused or offender in the circumstances:

(a) whether the offender is in custody and, if the offender is in custody, the name and address of the institution where the sentence is being served;

(b) if the accused or offender is in custody and is to be released, the date the release will begin, the length of the release and the terms of supervision during that release;

(c) if the accused or offender is released from custody under supervision and the terms of supervision are to change, the nature of the change and the date the change begins;

(d) if the offender is or will be on supervised probation, parole or temporary absence, the area of British Columbia where the offender may be and whether the offender will be in the vicinity of the victim while travelling to that area.

(2) Subsection (1) applies despite the *Freedom of Information and Protection of Privacy Act* but is subject to the *Youth Criminal Justice Act* (Canada).

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