



Engagement on Missing Persons Legislation

Topic 1: Definition of “Missing Person”

Legislation related to missing persons in other jurisdictions clearly defines when a person can be considered a “missing person.” Although the definition varies in each jurisdiction, a missing person is commonly defined as:

- an individual whose whereabouts are unknown and who has not been in contact with those persons who would likely or normally be in contact with the individual; or
- an individual whose whereabouts are unknown despite reasonable efforts to locate the individual and whose safety and welfare is feared for. Some jurisdictions also include an element of urgency/necessity to locate the individual.

Conditions under which an individual’s safety and welfare could be considered “feared for” may include such things as their physical or mental capabilities, the circumstances surrounding their disappearance, or their age.

Question:

- 1) Should a definition of missing person be adopted in the NWT that uses similar criteria as noted above?**

Yes

No

Not sure

Topic 2: Vulnerable Persons and Persons at Risk

“Vulnerable persons” are generally defined in legislation related to missing persons in Manitoba, Newfoundland, Nova Scotia, Saskatchewan and British Columbia as individuals for whom a decision-maker has been appointed under applicable trusteeship or guardianship legislation because the individual is unable to make their own decisions. Minors are also considered to be vulnerable.

In addition, British Columbia, and Yukon (legislation not yet in force) define a person as being “at risk” if they meet certain criteria. For example, in British Columbia a missing person is considered at risk when they:

- may be likely to provide sexual services for consideration,

- may have been hitchhiking when the missing person went missing,
- may be likely to self-harm,
- may have a substance use problem,
- may require medication, or
- may not be prepared to deal with the weather, the terrain of the location, or the remoteness of where the missing person may have gone missing.

Some legislation also recognizes that certain factors such as sexism, racism, transphobia, homophobia, other forms of marginalization, and the legacy of colonization may increase the risk of a person becoming a missing person.

Questions:

- 2) Do you think that the NWT legislation should consider the unique needs of missing persons who are considered vulnerable or persons at risk, or whose safety or welfare is of special concern given their personal history or the circumstances of their absence?**

Yes

No

Not sure

- 3) If yes, please feel free to explain the types of factors and/or personal attributes that you think should be considered:**

Topic 3: Courts Orders

All legislation related to missing persons in Canada includes provisions for police to apply for a court order to access records about a missing person and to enter premises to search for a missing person.

In many jurisdictions, applications to the court for search orders are specifically intended for investigations involving minors or vulnerable persons. The same is true in British Columbia, with the addition of individuals assessed to be “at risk” (more information on vulnerable and at risk persons is provided above under *Topic 2: Vulnerable Persons and Persons at Risk*).

Ontario’s legislation takes a wider approach, allowing a member of a police force trying to locate any missing person to apply for a warrant to enter a premises if there are reasonable grounds to believe that a missing person may be located at the premises and authorizing members of a police force to enter the premises is necessary to ensure the safety of the missing person. Generally, although this varies by jurisdiction, a court order may be obtained if:

- There is a missing person as per the definition of “missing person” in the applicable legislation, and
- There are records or an identified location that may assist the police in locating the missing person, and
- The records are in the possession/under the control of the person against whom the order is sought (via an access to records order) or access to a place or premises is necessary to ensure the safety of the missing person (via a search order).

In all cases of court orders to locate a missing person, the purpose is to protect the missing person. As such, court orders allow police to access records about a missing person and to enter premises to search for a missing person, and for no other purpose.

Questions:

- 4) Should the NWT legislation include provisions to address court orders to access records about, and to enter and search premises for, a missing person?**

Yes No Not sure

- 5) Should search orders (of premises/dwellings) apply only to missing persons who are minors or considered vulnerable (instead of applying to all missing persons)?**

Yes No (they should apply to all missing persons) Not sure

Additional comments (if any)

Topic 4: Emergency Demands for Records

Most legislation related to missing persons in Canada allows for police to make an emergency demand for records without a court order in certain situations, such as where it is suspected the missing person is at risk of serious bodily harm, or records may be destroyed by the time a record access order is obtained from the court. Going to court can be time consuming and requires precious policing resources when time is of the essence to locate a missing person.

Some jurisdictions include a specific provision in their legislation that states emergency demands for records are allowable in specific circumstances, such as when it is not practicable to obtain a record access order, given the urgency of the circumstances. Generally, although this varies from jurisdiction to jurisdiction, emergency demands are only allowed to occur if:

- the officer making the demand has reasonable grounds to believe that the records are in the custody or under the control of the person to whom the demand is being made;
- the records will assist in locating the missing person; and
- in the time required to obtain a court order to access the records, the missing person may seriously harmed or the records may be destroyed.

In general, “reasonable grounds” requires something more than a mere hunch and suspicion. Reasonable grounds will exist where there is an objective basis for the belief and that belief is based on compelling and credible information that a reasonable, prudent person would rely on which makes it more likely than not that something is true. What is “reasonable” depends on the circumstances of each case.

Question:

- 6) Should the NWT legislation include similar provisions to those noted above for emergency demands by the RCMP to access records about a missing person quickly, without obtaining a court order?**

Yes No Not sure

Additional comments (if any)

Topic 5: Access to Records

Information kept in records about or belonging to the missing person can be key in locating the missing person. Usually, the types of records that may be accessed through court orders or police emergency demands are similar.

Most legislation related to missing persons in Canada includes provisions pertaining to access of the following:

- Records containing contact or identification information;
- Telephone and other electronic communication records, including:
 - Records related to signals from a wireless device that may indicate the location of the wireless device;
 - Cell phone records;
 - Inbound and outbound text messaging records; and
 - Internet browsing history records;
- Global positioning system (GPS) tracking records;
- Video records, including closed circuit television footage;
- Records containing employment information;
- Records containing health information;
- Records from a school, university or other educational institution containing attendance information;
- Records containing travel and accommodation information;
- Records containing financial information;
- Any other records specified in the order that the court considers appropriate.

The types of records that can be obtained through emergency demands compared to court access orders are largely similar across jurisdictions, with some variations primarily in recognition of privacy considerations. For example, some jurisdictions do not allow police to access the same types of records through emergency demands as they can access through court orders.

Question:

- 7) What records should the RCMP be able to access when trying to trace a missing person? Check all that should apply:**

Records containing contact or identification information

Photos, videos or other records containing visual representations

Global positioning system (GPS) or wireless device tracking records that may indicate the person's location

Cell phone records and inbound and outbound text messaging records

Internet browsing history records, including social media

Records containing employment information

Records containing health information

Records relating to services received under the *Child and Family Services Act*, including adoption and child protection services

Records from a school, university or other educational institution containing attendance information

Records containing travel and accommodation information

Records containing financial information

Other record (specify):

None

Additional comments (if any)

Topic 6: Privacy and Accountability

Modern legislation recognizes the right to privacy of both the missing person and third parties who may be requested or ordered to provide records and information in relation to the missing person. A third party is another person who may be with the missing person or who may have information about the missing person. When developing legislation related to missing persons, privacy legislation such as the NWT's *Access to Information and Protection of Privacy Act* and the *Health Information Act* must be taken into consideration.

The records being requested by police in a potential missing person case may contain information over which people (the missing person themselves and others) would have a reasonable expectation of privacy. Legislation in several jurisdictions states that records on a third party can only be accessed if the third party is believed to be in the company of a minor or vulnerable person who is missing. In British Columbia, before applying for an order requiring a person to give access to a record in respect of a third party that was last seen in the company of a missing person, the police must make reasonable efforts to obtain the

consent of the third party to access the records. This could be problematic if the third party is holding the missing person against their will (more information on access to records about the missing persons is provided under *Topic 4, Access to Records* above).

Some legislation related to missing persons includes limits on the disclosure of information and records pertaining to a missing person case, specifying what types of information may be disclosed publicly under specific circumstances to further a missing person investigation. For example, for the purposes of a missing person investigation in British Columbia, police may make public the following information:

- the name of the missing person;
- the age of the missing person;
- a physical description of the missing person;
- a photograph of the missing person;
- information about any medical conditions of the missing person that may pose a serious or immediate threat to the health of the missing person;
- pertinent vehicle information;
- the location where the missing person was last seen;
- the circumstances surrounding the absence of the missing person;
- the name of the individual with whom the missing person was last seen;
- any other information that the police force considers appropriate.

In addition, to ensure accountability on the use of emergency demands, legislation in British Columbia, Manitoba, Newfoundland, Ontario, Saskatchewan, and the Yukon (not yet in force) all require the preparation of a detailed annual report on the use of emergency demands by police. Generally, although specific reporting requirements varies amongst jurisdictions, the reports must be released publicly and include information on the number of missing persons investigations for which an emergency demand was made, the total number of persons who were served with a demand for records, and any information that must be included in the report in accordance with the regulations.

Questions:

- 8) Should the NWT legislation limit the information about a third party (a person other than the missing person) that can be accessed by police?**

Yes

No

Not sure

Additional comments (if any)

- 9) Should the NWT legislation limit the information that can be publicly released about a missing person investigation?

Yes No Not sure

Additional comments (if any)

- 10) Should the NWT's legislation include a requirement for the RCMP to report annually on the use of emergency demands?

Yes No Not sure

Topic 7: Family Violence Situations

In Ontario, when a justice (Judge or Justice of the Peace) is determining whether to issue an order for access to records or when an officer is determining whether they will make an urgent demand for records, the *Missing Persons Act* has provisions that requires them to consider any information that suggests that the missing person may not wish to be located, including information that suggests that the missing person has left or is attempting to leave a violent or abusive situation. In all cases in Ontario, the public interest in locating the missing person must outweigh the privacy interest of any person whose information may be contained in a record in order for a court order or emergency demand for records to be allowed.

Question:

- 11) Should the NWT legislation consider the unique circumstances of missing persons who may be attempting to flee violence or abuse, similar to Ontario?

Yes No Not sure

Additional comments (if any):

Topic 8: When a Missing Person is Found

It is important that protections to the missing person and respect for their privacy continue once they are found. For example, to help ensure the safety of a victim of family violence, the legislation could provide limits on the information that the RCMP provide, allowing only for a statement that the missing person has been found, is alive and well, and that no further information regarding their whereabouts can be disclosed.

The Ontario legislation has such limits on the disclosure of information to the public and to family, specifying that “if the missing person is located, [...] police shall not disclose a missing person’s personal information, including the missing person’s location, to facilitate contact between the missing person and the spouse of the missing person or a relative, friend or acquaintance of the missing person, except with the consent of the missing person”.

Question:

12) Should the NWT legislation include limits on the information that can be shared about a previously missing person who has been found?

Yes

No

Not sure

Additional comments (if any)

13) Do you have any other comments on the development of any aspect of NWT legislation related to missing persons?

Thank you for sharing your views!

Privacy Notice:

Personal information may be collected during this engagement in accordance with Section 40(c)(i) of the Access to Information and Protection of Privacy Act (the “ATIPP Act”). This information is being used in order for residents of the Northwest Territories to provide their feedback in relation to the development of missing persons legislation. The privacy provisions of the ATIPP Act protect any personal information that is collected. If you have questions about the collection of this information, please contact the GNWT Access and Privacy Office by phone at 867-767-9256 ext. 82477, by email at APO@gov.nt.ca, or by mail at P.O. Box 1320, Yellowknife NT, X1A 2L9.