



What We Heard

Missing Persons Legislation

JULY | 2023

Government of
Northwest Territories

English

French

Cree

Tłychq

Chipewyan

South Slavey

North Slavey

Gwich'in

Inuvialuktun

Inuktitut

Inuinnaqtun

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Executive Summary

The National Inquiry into Missing and Murdered Indigenous Women and Girls highlighted the need for legislation related to missing persons in Canada. The Government of the Northwest Territories (GNWT) is committed to responding to the Calls for Justice from the National Inquiry and has committed to advancing this legislation. This legislation will provide police with additional tools to help respond to cases of missing persons in the Northwest Territories (NWT).

On June 16th, 2022, the GNWT's Department of Justice launched a public engagement to collect feedback to help inform the development of missing persons legislation for the NWT. This engagement consisted of an online survey, with sections for participants to provide written feedback. The survey itself was anonymous and designed to be completed in 5-10 minutes. Respondents were also invited to provide further comments and recommendations through email or physical mail.

The engagement ended on July 25th, 2022, with 88 contributions from 81 participants. The feedback covered a wide range of topics. While many residents agreed that law enforcement should be able to access some private information to aid an investigation, privacy and protection of personal information was also a common concern. Most respondents agreed that law enforcement should limit the information publicly released about missing persons. Many respondents expressed concerns about the possibility of overreach by law enforcement. Respondents wanted clear legislation, with many stating the wording of legislation commonly contains too much jargon or that some definitions are unclear. Some also called for more nuanced legislation, accounting for vulnerable groups or situations where a missing person is fleeing domestic abuse, or cannot or does not want to return home.

Background

Many Northerners know someone or know of someone who has disappeared in their community. In the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Call for Justice number 5.8 calls upon provinces and territories to adopt legislation related to missing persons.

When police begin a missing person investigation, they often do not immediately have reason to suspect that a crime has been committed and cannot obtain a production order under the *Criminal Code*, or otherwise compel parties to release personal information about the missing person. Missing persons legislation can help address some of the aspects that may make it difficult to investigate a missing person case.

In many jurisdictions, legislation also allows police in certain situations to make emergency demands for records without a court order. Examples of cases where this may occur include if it is suspected that records may be destroyed, or that a missing person may be harmed during the time that would be required to obtain a court order. When an investigation spans more than one jurisdiction, having similar legislation across provinces and territories can help police work together more effectively to locate a missing person.



Missing Persons Legislation Across Canada

As of June 2023, missing person legislation has been enacted in Saskatchewan, Alberta, Nova Scotia, New Brunswick, Manitoba, British Columbia, Newfoundland, and Ontario. Yukon's *Missing Persons Act* received assent in 2017 but is not yet in force. While there are many commonalities in missing persons legislation throughout Canada, specifics can vary between jurisdictions.

Public and Stakeholder Engagement

The development of missing persons legislation for the NWT has been based on findings from a comparative analysis of legislation related to missing persons across Canada, feedback from NWT residents, best practices in policing, the protection of victims and those at risk of being victimized, and access to information and the protection of privacy. The proposed legislation will also recognize the unique northern context of the NWT, including the fact that policing services related to missing persons investigations in the NWT is done by Canada's national police force, the Royal Canadian Mounted Police (RCMP).

The engagement paper and survey provided an opportunity for all residents of the NWT to share feedback to assist the GNWT Department of Justice with developing missing persons legislation. Partners and stakeholders were also contacted directly by letter and invited to provide input on this topic. A printable version of the survey was available from the Department of Justice's website. The online survey was anonymous and took approximately 5-10 minutes to complete and remained open from June 16th to July 25th, 2022.

What We Heard

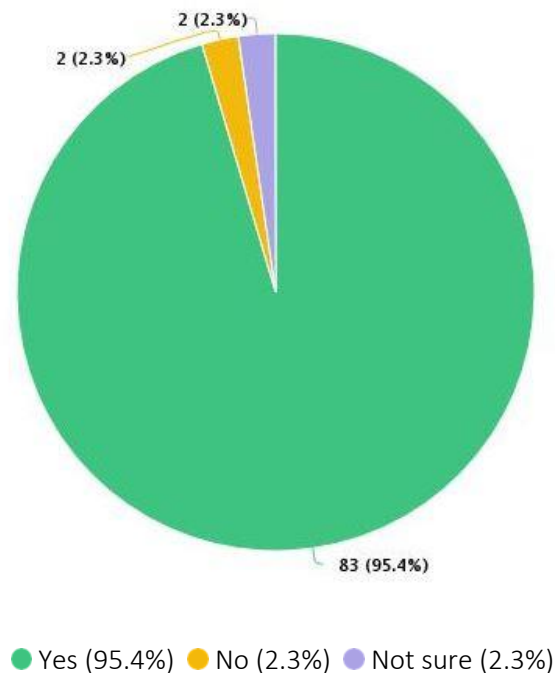
The online survey received 88 responses from 81 participants. It is important to note that when taking the survey, participants were also allowed to skip questions. For example, one could answer only the first question and not complete the rest of the survey. Therefore, the number of responses for different questions will not add up to the number of total respondents. For additional context regarding the questions asked below, please see the full survey [here](#).

The survey first asked respondents about how the NWT should define a 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:

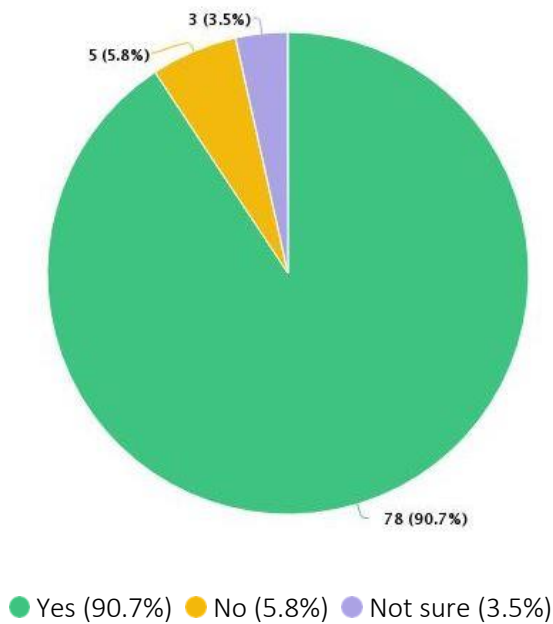
- an individual whose whereabouts are unknown and who has not been in contact with those persons who would likely or normally be in contact with the individual; or
- an individual whose whereabouts are unknown despite reasonable efforts to locate the individual and whose safety and welfare is feared 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.

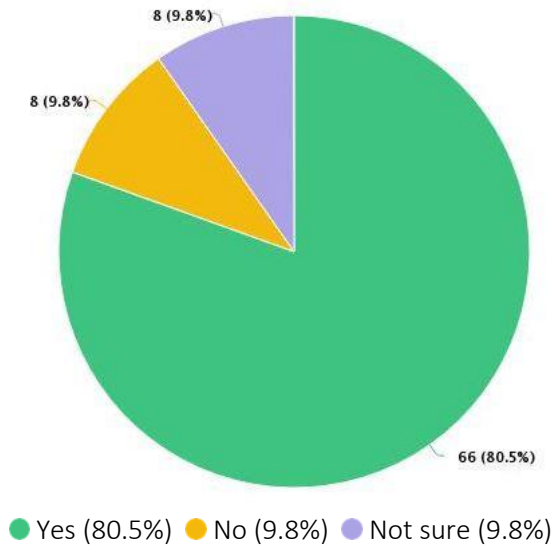
Question: Should a definition of missing person be adopted in the NWT that uses similar criteria as noted above?



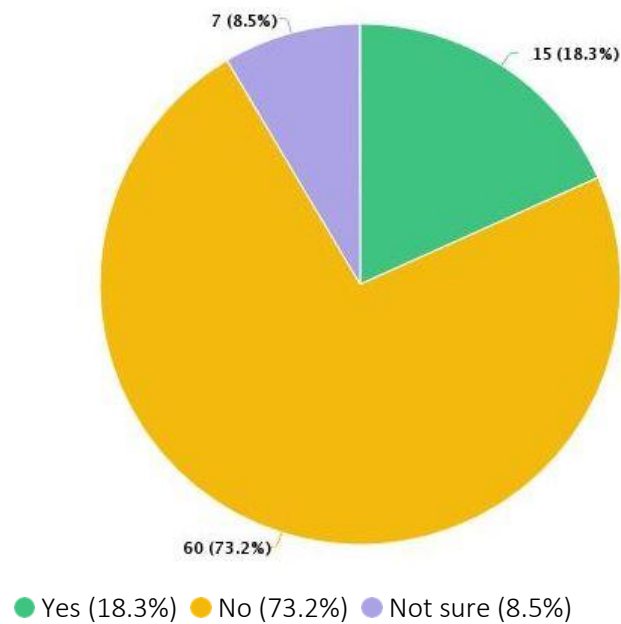
Question: Do you think that the NWT legislation should consider the unique needs of missing persons who are considered vulnerable or persons at risk, or whose safety or welfare is of special concern given their personal history or the circumstances of their absence?



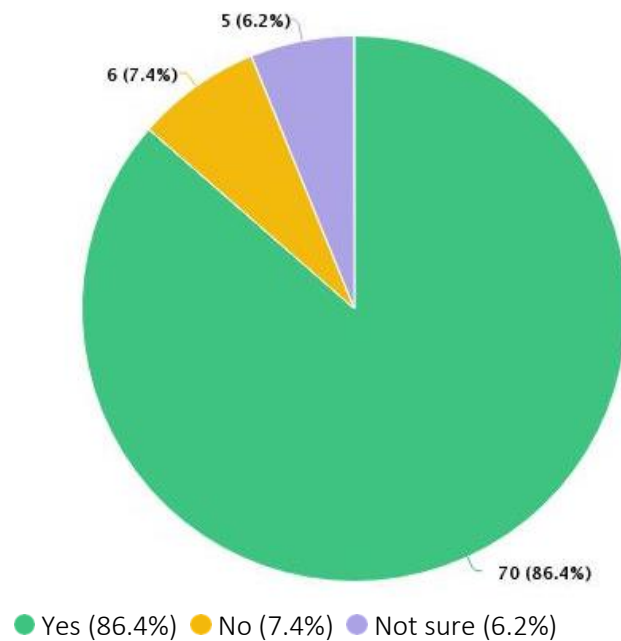
Question: Should the NWT legislation include provisions to address court orders to access records about, and to enter and search premises for, a missing person?



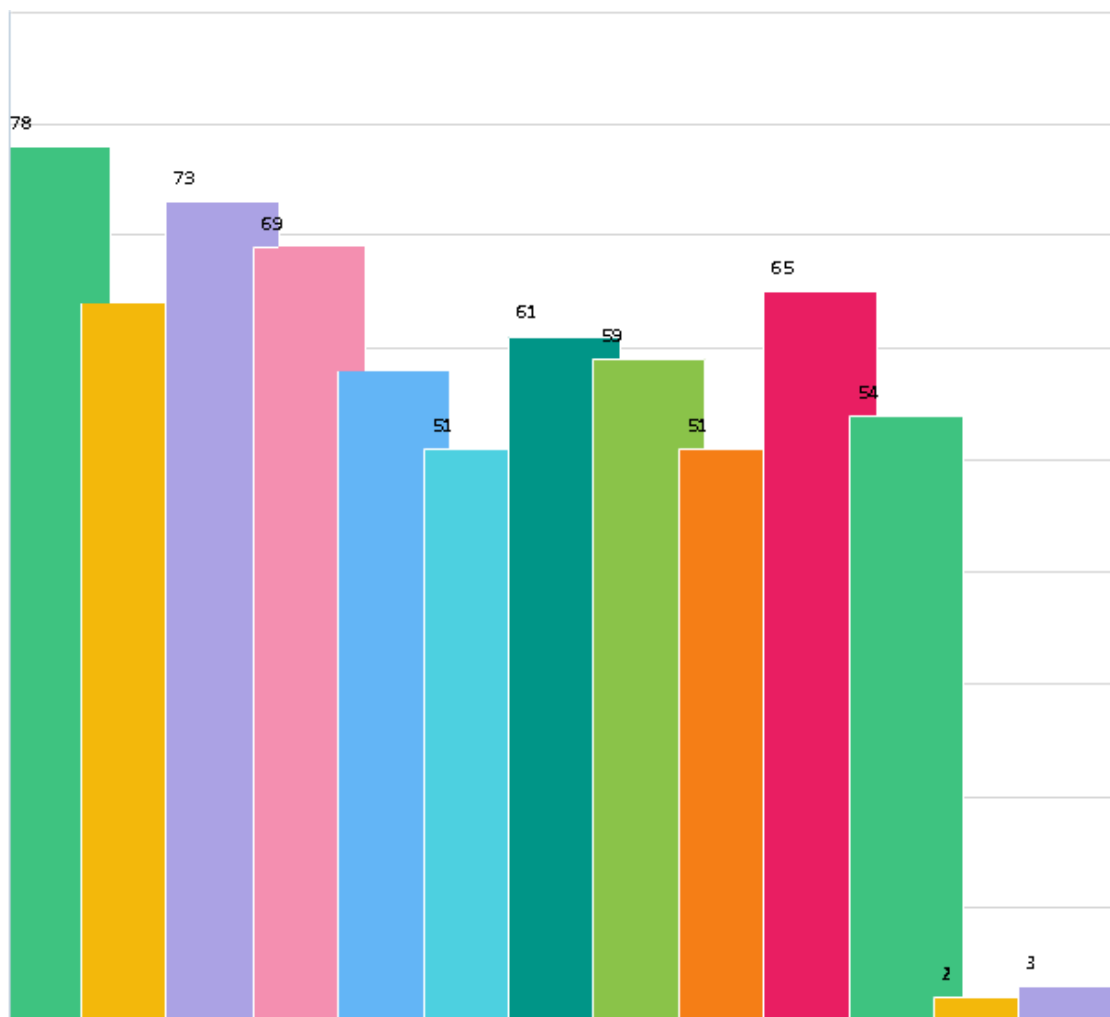
Question: Should search orders (of premises/dwellings) apply only to missing persons who are minors or considered vulnerable (instead of applying to all missing persons)?



Question: 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?



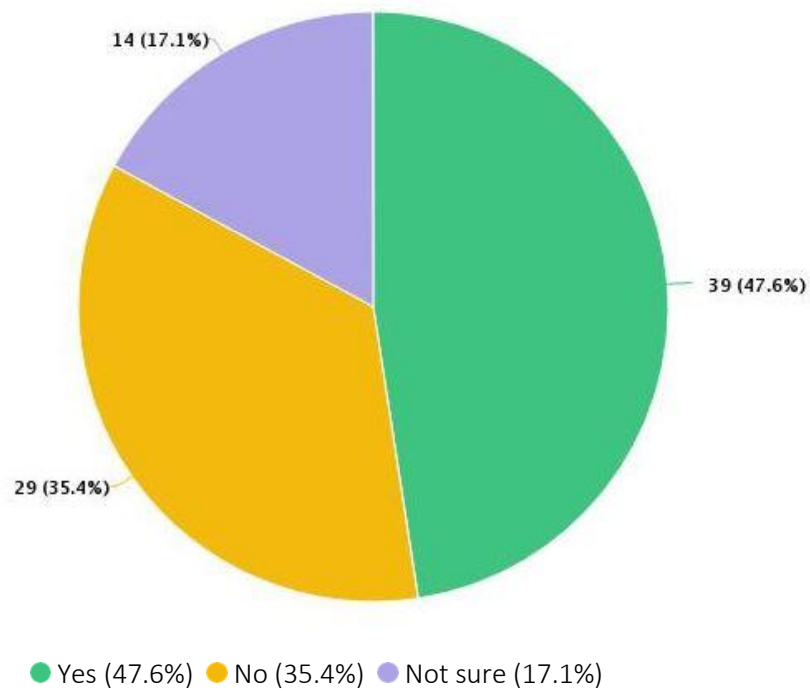
Question: What records should the RCMP be able to access when trying to trace a missing person?



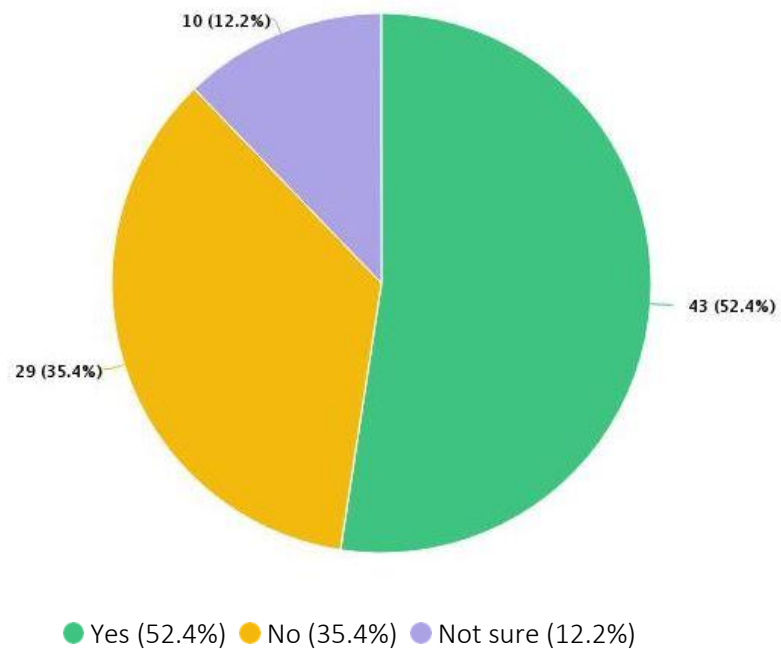
- Records containing contact or identification information (78)
- Photos, videos or other records containing visual representations (64)
- Global positioning system (GPS) or wireless device tracking records that may indicate the person's location (73)
- Cell phone records and inbound and outbound text messaging records (69)
- Internet browsing history records, including social media (58)
- Records containing employment information (51)

- Records containing health information (61)
- Records relating to services received under the Child and Family Services Act, including adoption and child protection services (59)
- Records from a school, university or other educational institution containing attendance information (51)
- Records containing travel and accommodation information (65)
- Records containing financial information (54)
- None (2)
- Other record (please specify) (3)

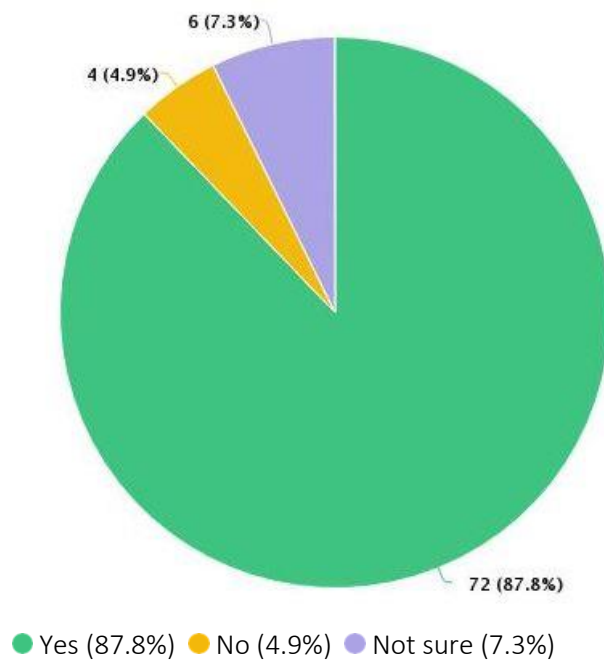
Question: Should the NWT legislation limit the information about a third party (a person other than the missing person) that can be accessed by police?



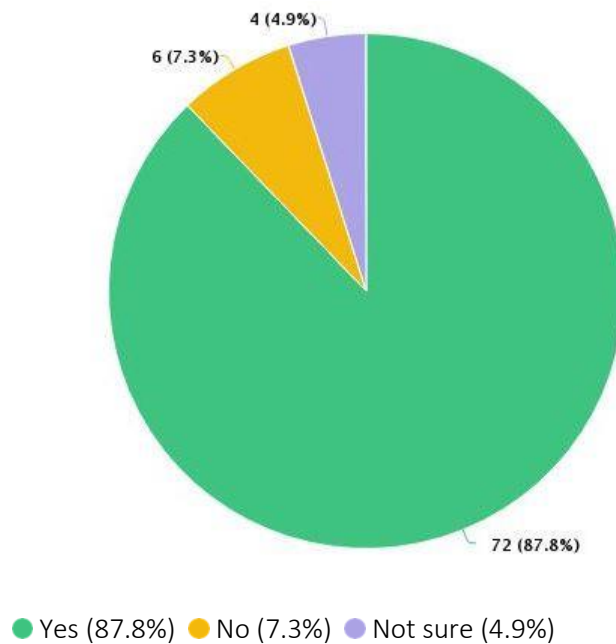
Question: Should the NWT legislation limit the information that can be publicly released about a missing person investigation?



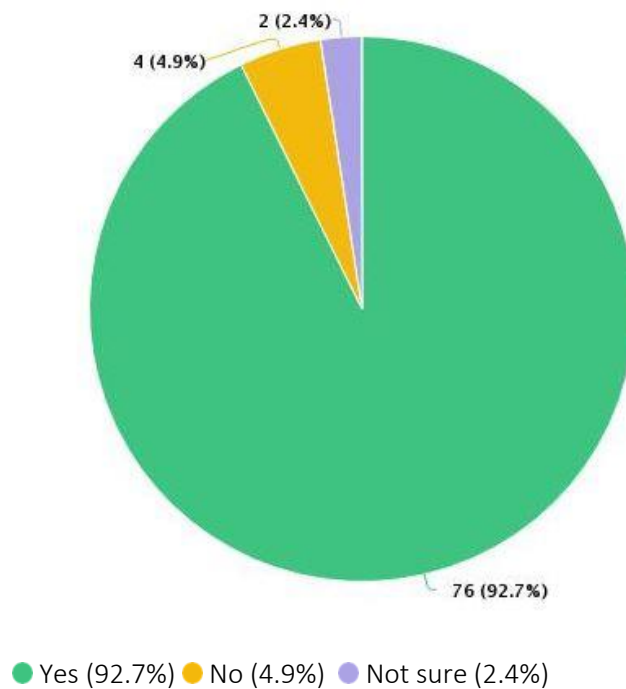
Question: Should the NWT's legislation include a requirement for the RCMP to report annually on the use of emergency demands?



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



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



Many questions also provided space afterwards for respondents to comment. While this is not all of the written feedback received, some recurring or notable comments covered the following:

- Language in survey is too technical and contains too much jargon.
- Current legislation is geared towards recent cases, which could be problematic in cases where the person has been missing for years.
- Legislation should consider that a person may not want to be found (i.e. if a person is fleeing from domestic abuse). Police/RCMP should not reveal a found person's location without their consent, if they are a capable adult. Others responded that this could be used against someone who is fleeing, as law enforcement could see it as reason not to adequately investigate.
- Legislation should consider if the missing person has any mental illnesses, disabilities, or addictions, particularly ones which may significantly affect their mental capacity or perception of reality.
- "Reasonable grounds" should be more clearly defined in legislation.
- Some expressed concerns over giving extra powers to law enforcement even in missing persons cases. Conversely, others responded that anything that could be done to help quickly find a missing person should be done.
- Vulnerabilities should include factors which are not the missing person's responsibility, such as family dysfunction, mental illness, sexism, LGBTQ+ marginalization, racism, homelessness, effects of colonialism, etc. Others responded that all missing persons should be considered "vulnerable" by default, as any missing person could potentially be in danger.
- NWT's legislation should be consistent with provincial legislation.
- Law enforcement could use search orders or access to records about a missing person inappropriately, particularly without cultural training on how to engage with Indigenous persons.
- Once a missing person has been found, all missing persons information about them in the media should be removed if possible.
- Missing persons who are sex workers should receive special consideration, as they are a particularly vulnerable group.
- Legislation should consider human trafficking, particularly in cases involving minors. Some suggested the 24 hour period before a person is considered missing may be too long in cases involving minors.

- Legislation should consider that law enforcement may be able to access records illegally. If not already, emergency demands to access records should be justified by objective evidence which proves the need to do so.
- In certain cases, (i.e. if the missing person has a history of abuse), law enforcement may not be suited to deal with the situation and should be accompanied by a professional with appropriate training.
- Legislation should consider using community resources to build trust and accountability.
- Legislation should consider that information publicly released about a missing person investigation could hinder said investigation if the person has been abducted.

The Department of Justice also received some recommendations and comments via email. Some notable responses included:

- Racial bias can be a factor in missing persons cases, with cases involving a missing white person sometimes being given priority while cases involving an Indigenous person receive less attention.
- Families who have had children apprehended are unable to provide information on their missing children, which prevents them from providing information which may help an investigation.
- Britain has a 1-800 help line available for missing persons who don't want to contact family directly but still want to communicate that they are okay. A system like this could be valuable in the NWT.
- Regular reports and updates on investigations should be provided to the family of the missing person, to show that law enforcement is remaining proactive in the search.
- School breaks and graduation are reported to be particularly dangerous times for young people. LGBTQ+ youth and young women are disproportionately targeted at these times.
- Supporting and facilitating Cadet programs in the north helps youth develop skills in leadership, decision-making, planning, and diplomacy in difficult situations, which could help prevent youth disappearances. There is already demand for such programs in the north.

Conclusion

This What We Heard report provides a high-level summary of the input received from NWT residents throughout the public engagement period. It has been compiled to provide an understanding of the areas of interest and concern raised by Northerners regarding missing persons legislation.

The results of this public engagement will inform how the GNWT proceeds with the development of missing persons legislation.