

Interpersonal Violence Disclosure Protocol Act Protocol Document



Interpersonal Violence Disclosure Protocol

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Department of Justice and Public Safety

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&
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Introduction

Intimate partner violence is a serious crime with consequences for victims, families and communities. The **Interpersonal Violence Disclosure Protocol Act** (the Act), also known as ‘Clare’s Law’, authorizes police services to disclose certain information to individuals who may be at risk of intimate partner violence. Providing individuals with information about their risk of experiencing intimate partner violence is one tool that can help address this complex issue and help individuals make an informed decision about their safety.

According to the **Interpersonal Violence Disclosure Protocol Regulations**, interpersonal violence means actual or threatened acts of violence in an intimate partner relationship, including a single act of violence or a number of acts forming a pattern of abuse. This may include one or more of the following: physical abuse, sexual abuse, criminal harassment, threats to harm children, other family members or pets, property damage, exerting control over an individual’s movements, communications or finances, or emotional and psychological abuse.

Under the Act, Newfoundland and Labrador’s police services, the Royal Newfoundland Constabulary (RNC) and the Royal Canadian Mounted Police (RCMP) are authorized to provide a person at risk with relevant information about a current or former intimate partner (the person of disclosure). Disclosures are meant to empower individuals to make informed decisions about their relationships and help protect them from potential interpersonal violence.

The disclosure process can be initiated through an application from the public (**Right to Ask**), or by a police officer who has received information that may affect the safety of the current/former partner of an individual (**Right to Know**). The process associated with each may vary, but both require a risk assessment and may result in the disclosure of information to the person at risk. Receiving a risk assessment through either process is voluntary and intended to be victim-centred.

This Protocol document guides the administration of the Act. Operating policies and procedures may be adapted in accordance with the Act, Regulations, and Protocol.

The Protocol does not replace existing arrangements to obtain information, such as access to information requests made under the provincial **Access to Information and Protection of Privacy Act, 2015**, the federal **Access to Information Act**, or court record searches.

This Protocol may overlap with and complement other investigative or intervention processes (e.g., Emergency Protection Orders). If a crime is reported or the police become aware of outstanding warrants, the police have a duty to respond and conduct an investigation in line with standard operating procedures. Police also maintain a duty to report information that a child or youth is or may be in need of protective intervention under the provincial **Children, Youth and Families Act**.



Right to Ask

Under the **Interpersonal Violence Disclosure Protocol Act**, individuals have the **Right to Ask** for disclosure of information about their risk of experiencing interpersonal violence from a current or former intimate partner. The current or former partner is referred to as the person of disclosure.

Right to Ask applications can be submitted online or directly to either of the province's police services. An application can be submitted independently or with the support of another person (see Making an Application). Applications are confidential, and the person of disclosure will not be contacted at any point in the process and will not be made aware that an application has been made about them.

A parent of an individual under 16 years of age or a court-appointed guardian of an individual declared to lack capacity by a court may also make an application. In these circumstances, applicants may be required to provide additional supporting documentation, such as a birth certificate or a court order, to receive a disclosure.

Police will use the information in an application to verify identity, determine eligibility, establish consent, identify/prevent malicious intent, establish the context of the intimate partner relationship, and assess risk.

Police will assess applications as soon as reasonably possible. Processing times may vary based on risk, operational policies, and operational demand but processing an application should be completed in a timely manner.

The **Interpersonal Violence Disclosure Protocol Act** does not override existing police duties concerning criminal investigations. If, during an application process, a crime is reported, or if an applicant, person at risk, person of disclosure, or a support person has outstanding warrants, the police have a duty to respond and conduct an investigation in accordance with standard police operating procedures.

Application Eligibility

To be eligible to make a Right to Ask application, the applicant and/or the person at risk must:

- Live in Newfoundland and Labrador;
- Be in a current or former intimate partner relationship, which is physically or emotionally intimate, or both;
- Have a reason for wanting risk level information, such as fear or worry for safety or well-being; and
- Be willing to meet with the police to receive information.

If police cannot verify identity, determine eligibility, or establish the consent of the person at risk (for supported applications), the application process will be discontinued, and disclosure cannot occur. Police will also discontinue an application that appears to be made with malicious intent. All decisions to discontinue an application are reviewed and approved by a supervising police officer. Police must document the reasons for discontinuation.

If a Right to Ask application is discontinued, police may assess whether the Right to Know process or another existing process, such as filing a police report, is appropriate. If an application is discontinued, the applicant and/or the person at risk must be advised in a timely manner. A clear reason for discontinuation, as well as information regarding possible supports, should be provided, where appropriate.

Discontinuation of an application does not mean that risk is not present. Discontinuation of an application also does not prohibit a person from making future applications.

Making an Application

Applications may be made by an individual or a support person on behalf of the person at risk.

Applications can be made online or directly to the police. Applications will be processed by one of the province's police services, the RNC or the RCMP, depending on where the person at risk resides.

Applications can be made by a parent of an individual under 16 years of age at risk of interpersonal violence or a parent or guardian of an individual who has been declared to lack capacity by a court and is at risk of interpersonal violence. Additional supporting documentation, such as a birth certificate or a court order, may be required in these circumstances.

Applications made by a support person can be made online or directly to the police. The support person may also communicate with the police on behalf of the person at risk and attend meetings with the police and the person at risk. Applications can be made by the following individuals listed under section 6 of the **Interpersonal Violence Disclosure Protocol Regulations**:

- an individual selected by a person at risk;
- a lawyer;
- a police officer;
- a medical doctor;
- a registered nurse;
- a registered psychologist;
- a registered social worker ;



- a representative of an Indigenous government or organization where the person at risk is Indigenous; or
- a representative of an agency or organization that assists and supports the person at risk.

Applications will only proceed with the consent of the person at risk. A designated support person must also sign a confidentiality agreement if they are party to a disclosure.

The person at risk can withdraw consent for the support person at any point in the application process and disclosure process.

If you have concerns about an individual but are ineligible to make an application, please report these concerns to the police. The information provided to police may inform the Right to Know process under this Protocol.

Pre-disclosure Meeting

The Right to Ask application process may include a pre-disclosure in-person meeting with the police and, if applicable, the designated support person. This is an optional step in the application process, which may occur at the discretion of police in consultation with the applicant. A pre-disclosure meeting may:

- provide information and advice about safety;
- establish details about the application to further assess risk and inform a decision regarding disclosure;
- verify identity with photo identification or another means acceptable to the police;
- confirm consent for supported applications;
- determine whether another police service may have relevant information; or,
- ensure the application meets eligibility requirements.

If a pre-disclosure meeting is deemed appropriate, the person at risk will be contacted using the safe means of communication indicated on their application form. The person at risk may request that a support person accompany them to the meeting.

Pre-disclosure meetings should occur as soon as possible after an application is submitted. The timing of a pre-disclosure meeting may be based on risk, operational policies, and operational demand. If the police determine that this meeting is unnecessary, they may proceed with conducting the risk assessment and arrange for a disclosure. Should the person at risk be at an increased risk by attending the police station for a meeting, where possible, arrangements may be made for the meeting to occur

at a safe, neutral location. If the meeting cannot proceed for practical reasons or due to risk factors, the police may offer to conduct the meeting by other means (e.g. telephone or video conference).

At the pre-disclosure meeting, the person at risk may be offered information about intimate partner violence and safeguarding themselves. It may not be appropriate to provide physical copies of this information, depending on risk factors. This will be decided in consultation with the person at risk.



Right to Know

A **Right to Know** disclosure may occur when police receive information, directly or indirectly, indicating a person is at risk of interpersonal violence. Information may be provided to police through:

- a criminal investigation where, as part of the investigation, police have reason to believe a person is at risk from a violent/abusive individual;
- partner agencies (government and/or non-profit sector) as part of routine information sharing;
- the person at risk or the person of disclosure coming into contact with police as part of routine operations; or
- an individual concerned about the safety of a person at risk.

Police must confirm the accuracy of the information received, identify whether a person is at risk, and determine if approaching that person to make a Right to Know disclosure is appropriate. Any member of a police service contemplating whether a Right to Know disclosure is appropriate should discuss the option with a supervisor. If police determine that a Right to Know disclosure is appropriate, they should attempt to establish direct contact with the person at risk and to advise of the risk of interpersonal violence. Risk should be assessed using normal risk assessment processes, and disclosures are to occur using the procedure outlined in this Protocol document.

The police should only complete a disclosure under the Right to Know if it is safe to do so for the person at risk, including establishing a safe means of communication. Police may exercise discretion to terminate a disclosure under the Right to Know if a safe means of communication cannot be established or if a person at risk cannot be located in a timely manner despite reasonable efforts to locate the person at risk.

The person at risk may also refuse to accept a disclosure using the Right to Know. Police must notify a supervisor if a Right to Know process is terminated for any reason. Police must discontinue the Right to Know process if a person at risk refuses a disclosure. Refusing a Right to Know disclosure does not prohibit or limit the person at risk from making a Right to Ask application at a later date.

A person at risk who accepts a disclosure through Right to Know must adhere to all confidentiality requirements, including signing a confidentiality agreement. A person at risk may choose to be supported by a designated individual during the Right to Know process. The police should notify the person at risk that they may have a designated support person present during a disclosure if they wish and provide the person at risk an opportunity to arrange for a support person. Support persons must adhere to the same confidentiality requirements as the person at risk in accordance with the Right to Ask process.

Risk Assessment

The risk assessment occurs following either a Right to Ask or Right to Know process in accordance with the **Interpersonal Violence Disclosure Protocol Act**.

This step consists of analyzing available information and assessing the risk a person of disclosure poses to their current or former intimate partner (the person at risk). Police complete this analysis using established methods and standard police operating procedures and/or risk assessment tools. This analysis will assist police in determining the likelihood and degree to which an individual may be at risk of experiencing interpersonal violence from the person of disclosure. The disclosure will inform an individual of the level of risk but will not include any details about the specific criminal or personal history that factored into the analysis, unless that information is already publicly available.

When assessing risk, police will perform relevant records checks associated with the information provided in the Right to Ask application or information received by the police in accordance with a Right to Know process. Applicable databases and sources of information could include:

- Canadian Police Information Centre (CPIC);
- Canadian Firearms Registry Office (CFRO);
- local Records Management Systems such as PROS (RCMP) and ICAN (RNC);
- Police Information Portal (PIP); and
- checks with other law enforcement agencies and/or police services in other jurisdictions, where appropriate.

Police should **not** complete assessments or records checks in the presence of the person at risk.

Information contained in records used by the police to assess risk may include:

- Convictions for non-violent offences related to interpersonal violence, including offences that may cause fear or distress through the threat of harm, controlling or coercive behaviour, or stalking;
- Convictions for violent offences related to interpersonal violence, including offences that lead to, are intended to lead to, or are likely to lead to the death of a person or physical injury to a person;
- Other relevant criminal charges and/or convictions; and
- Other information known about the person of disclosure, including:
 - cases not proceeded with;
 - information concerning violent or abusive offences;
 - patterns involving the perpetration of interpersonal violence, if known to police;



- concerning behaviour towards previous partners, if known to police;
- police warnings;
- diversions (charges dealt with by an alternative process – e.g., Intimate Partner Violence Intervention Court); and
- information included in the application regarding the behaviour of the person of disclosure towards the person at risk. This may include a pattern of behaviours indicating the person of disclosure is exercising coercive control.

Information obtained during the risk assessment process is based on the point in time in which the assessment occurred and the information available to police.

Police should complete records checks and risk assessments in a timely manner; however, processing times may vary depending on risk, operational policies, and operational demands. If an immediate or imminent risk of harm is identified during the records check process, action must be taken to safeguard those at risk.

Levels of Risk

In the **Interpersonal Violence Disclosure Protocol Regulations**, disclosure information means the level of risk of interpersonal violence faced by the person at risk and the context associated with risk. The level of risk is determined by the police based on an assessment of information obtained or received. A person at risk is assigned one of four categories indicating level of risk – Insufficient Information, Low, Medium, or High.

The contextual information informing risk will vary on a case-by-case basis. The analysis may consider the recency, frequency, and severity of previous interpersonal violence or related acts by the person of disclosure. This is a holistic assessment of risk, which is unique to the person at risk. The disclosure information will not normally include details about the person of disclosure’s personal history or specific interactions with the justice system. However, at the discretion of police, information that is already publicly available, such as relevant conviction information, may also be provided verbally as part of a disclosure.

It is important to note that interpersonal violence often goes unreported to the police. Record searches that do not indicate any previous police contact, criminal charges or convictions, or concerning behaviour may result in a risk assessment deemed “insufficient information” or “low risk.” **This does not mean that a risk of interpersonal violence is not present.** The behaviour of the person of disclosure identified by the person at risk may be reason enough for the police to be concerned that the person at risk is experiencing interpersonal violence.

Regardless of the assigned category of risk, police will assess each situation to determine if any actions should be taken to safeguard the person at risk. The person at risk may be provided with appropriate resources, including information about interpersonal violence and local services.

The four categories of risk are:

- 1. Insufficient Information:** There was insufficient information for the police to determine a specific risk level. Insufficient information does not mean a risk of interpersonal violence is not present. The behaviour of the person of disclosure may still be consistent with interpersonal violence or abuse and indicate a risk for interpersonal violence.
- 2. Low:** Low risk means that the available records and the information provided or received did not show relevant information or enough information for the medium- or high-risk categories. Low risk does not mean that there is no risk of violence.

Based on the information known to police, there may be incidents of past interactions with the police and/or the justice system but no indications that the person of disclosure has a violent or abusive past. The person of disclosure would have no history of convictions for an offence related to interpersonal violence or abuse. The person of disclosure has no other recorded incidents or information that indicates that their behaviour may cause harm to a current or former partner.

- 3. Medium:** Medium risk means that the available records and the information provided or received caused the police to be concerned that the person at risk may experience interpersonal violence. Completed records checks indicated that past interactions with police and/or the justice system involved applicable incidents of violence or abuse by the person of disclosure. Known behaviours could indicate an elevated risk of violence to the person at risk. In addition to telling the person at risk that there is a medium risk, police may also verbally disclose relevant criminal convictions to the person at risk.
- 4. High:** High risk means that the available records and the information provided or received caused the police to be concerned for the safety of the person at risk. Records checks indicate that past interactions with police and/or the justice system involved applicable incidents of violence or abuse by the person of disclosure. These incidents are consistent with an elevated risk of interpersonal violence. Immediate victim safety and risk mitigation strategies should be implemented. In addition to telling the person at risk that there is a high risk of interpersonal violence from the person of disclosure, police may also verbally disclose relevant criminal convictions to the person at risk.



Disclosure

Disclosure is the final step in the Interpersonal Violence Disclosure process. It is when information is provided to a person at risk regarding their level of risk in relation to the person of disclosure. During the disclosure, a person at risk will be verbally informed of their risk of experiencing interpersonal violence and offered contextual information concerning that risk. The person at risk is informed about their specific risk level (Insufficient Information, Low, Medium, or High). The disclosure would consist of risk level and contextual information but would not normally include specific details about the person of disclosure's personal history or interactions with the justice system. At the discretion of police, information that is already publicly available, such as relevant conviction information, may be provided as part of a disclosure. This information may also be obtained through court records.

Disclosure meetings usually occur in-person at a police station. Support persons may accompany the person at risk to this meeting. Should the person at risk be at an increased risk by attending the police station for a meeting, where possible, arrangements may be made for the meeting to occur at a safe, neutral location. If the meeting cannot proceed for practical reasons or due to risk factors, the police may offer to conduct the meeting by other means (e.g. telephone or video conference). These arrangements will be determined on a case-by-case basis at the discretion of the police and in consultation with the person at risk. Additional care must be taken to verify identity and/or consent if a meeting does not occur in-person. Regardless of the setting for disclosure meetings, a disclosure will not proceed unless identity and consent are verified.

Before a disclosure, the police must advise the person at risk that the information provided is confidential and must only be used to safeguard themselves. If the person at risk or the support person does not agree to the conditions of confidentiality, the disclosure process will be terminated. The police must document the reason for discontinuing a disclosure.

The person at risk and the support person must sign a confidentiality agreement. Disclosure information will not be provided in written or electronic form and may only be communicated by police verbally. The person at risk and the support person are not permitted to record or take notes during the disclosure meeting. A support person acting in a professional capacity (e.g., social worker, doctor, nurse, psychologist, or lawyer) may be required to take notes in accordance with their professional practice. These records would be subject to professional confidentiality requirements. The person at risk and the support person must refrain from publishing, broadcasting, or sending any information that could identify a specific person, including the person of disclosure. This is intended to minimize the risk of inappropriate distribution, protect personal information, and mitigate potential risks to the person at risk.

Where an application is made by a support person, a person at risk may be accompanied to the disclosure meeting by that support person. This must not occur without the consent of the person at risk. The support person will be subject to the same confidentiality requirements as the person at risk, including the signing of a confidentiality agreement. Police must never provide a disclosure to a support person without the person at risk being present. Consent for a support person can be withdrawn by the person at risk at any point in the application process, including during the disclosure.

If a disclosure includes a risk categorization of “Insufficient Information” or “Low risk,” the person at risk will be informed by police that this does not mean a risk of interpersonal violence is not present. The behaviour of the person of disclosure may be consistent with patterns of interpersonal violence or abuse and could indicate a reason for concern.

At the disclosure meeting, the person at risk should be offered information about interpersonal violence and safeguarding themselves. It may not be appropriate to provide physical copies of this information depending on risk factors. The person at risk and/or the support person (in the case of supported applications) should also be advised that if a mobile device or computer was used to access information related to the **Interpersonal Violence Disclosure Protocol Act**, that information may also be accessible to the person of disclosure and that this may increase risk.



Data Collection and Privacy

The collection, use and disclosure of personal information throughout the Interpersonal Violence Disclosure Protocol are protected by the **Access to Information and Protection of Privacy Act, 2015** and the **Privacy Act** (Canada). Information collected by the police will be used to process applications and provide disclosures. The RNC and the RCMP will manage the information collected during an application in accordance with each organization's information management and protection of privacy legislation, regulations, policies, and procedures.

Personal information is collected in accordance with the **Interpersonal Violence Disclosure Protocol Act** and will be used for:

- verifying identities;
- confirming eligibility for disclosure;
- identifying/preventing program misuse;
- conducting a risk assessment;
- establishing the context of the intimate partner relationship; and
- providing disclosures.

Personal information collected by the Government of Newfoundland and Labrador is protected by the **Access to Information and Protection of Privacy Act, 2015**. For information regarding privacy, the collection of information under Clare's Law, and the **Access to Information and Protection of Privacy Act, 2015**, please contact the Department of Justice and Public Safety's Access to Information Coordinator at ATIPPJPS@gov.nl.ca or 709-729-0840.

The following safeguards will be put in place to minimize the risk that personal information will be inappropriately collected, used, or disclosed:

- All persons receiving disclosure information through the Right to Ask or Right to Know processes must sign a confidentiality agreement.
- Disclosure information will not be provided in written or electronic form and may only be communicated by police verbally.
- The person at risk and the support person must not record or take notes during the disclosure meeting. The person at risk and the support person must refrain from publishing, broadcasting, or sending any information that could identify a specific person, including the person of disclosure.
- Police agencies must follow applicable legislation concerning privacy protection and fair information practices.

- In accordance with section 7 of the **Interpersonal Violence Disclosure Protocol Act**, members, agents, or employees of a police agency are not compellable to give evidence in any proceeding of a judicial nature concerning information that comes to their knowledge under the Act or to produce documents relating to the Interpersonal Violence Disclosure Protocol.
 - This provision does not apply to an application for judicial review. A judicial review under the **Interpersonal Violence Disclosure Protocol Act** is the only reason a person may be compelled to testify under this Act.

Nothing in the **Interpersonal Violence Disclosure Protocol Act** prevents a police service from disclosing information that the police service is otherwise permitted or authorized by law to disclose.

Police should collect de-identified aggregate information for evaluation purposes. This may include:

- Number of Right to Ask applications;
- Number of Right to Ask applications made by the person at risk or by another individual on behalf of the person at risk;
- Number of Right to Ask and Right to Know disclosures;
- Age ranges;
- Gender (if applicable)
- If an application is discontinued, the reason for discontinuation (e.g., person at risk withdrew, contact could not be established, the application did not meet eligibility requirements, consent could not be established).
- If the application proceeds to disclosure, the categorization of risk – the number of disclosures where risk was categorized as Low, Medium, High, or Insufficient Information.



Glossary of Terms

Applicant

An applicant is an individual who applies for disclosure under the Interpersonal Violence Disclosure Protocol under the Right to Ask process. An applicant may be the person at risk or a selected support person applying on behalf of the person at risk.

Disclosure Information

Disclosure information is information provided to an applicant and/or person at risk by a police service in accordance with the **Interpersonal Violence Disclosure Protocol Act** and **Interpersonal Violence Disclosure Protocol Regulations**. Disclosure information means the level of risk of interpersonal violence faced by the applicant or person at risk and would include the context of interpersonal violence respecting the person of disclosure. This information is to be provided verbally and will not contain specific details on the person of disclosure unless this information is otherwise publically available.

Police Service

Police service means a police force defined in section 2 of the **Interpersonal Violence Disclosure Protocol Act** and includes the Royal Newfoundland Constabulary and the Royal Canadian Mounted Police.

Interpersonal Violence

Interpersonal violence means actual or threatened acts of violence in an intimate partner relationship that may include a single act of violence or a number of acts forming a pattern of abuse. “Interpersonal violence” is defined in the **Interpersonal Violence Disclosure Protocol Regulations** and includes one or more of the following: physical abuse; sexual abuse; criminal harassment (i.e. stalking); threats to harm children, other family members or pets; property damage, exerting control over an individual’s movements, communications or finances; and emotional or psychological abuse.

Intimate Partner Relationship

An intimate partner relationship is a current or past relationship between two people, which can be reasonably characterized as being physically or emotionally intimate or both. “Intimate partner relationship” is defined in the **Interpersonal Violence Disclosure Protocol Regulations**.

For operational purposes, this includes but is not limited to current and former marriage relationships, current and former common-law relationships, current and former dating relationships, and persons who are parents of one or more children, regardless of marital status or cohabitation.

Person of Disclosure

The person of disclosure is the individual whose information is disclosed to a person at risk through a Right to Ask process or a Right to Know process.

Person at Risk

A person at risk is an individual who is or was in an intimate partner relationship and is determined to be eligible for disclosure under the **Interpersonal Violence Disclosure Protocol Act**. A person at risk can be identified by police through the Right to Know process or an applicant under the Right to Ask process. In accordance with the **Interpersonal Violence Disclosure Protocol Regulations**, a person at risk can also be the parent or guardian of an individual under 16 years of age or an individual declared to lack capacity by a court. Additional documentation would be required to demonstrate these circumstances to the police.

Supported Application

An application made on behalf of a person at risk. The categories of eligible support individuals are defined in the **Interpersonal Violence Disclosure Protocol Regulations**. Supported applications can be made by a lawyer, a member of a police service, a medical doctor, a registered nurse, a registered psychologist, a social worker, a representative of an Indigenous government or organization where the person at risk is Indigenous, or a representative of a community agency or organization that assists and supports persons at risk in making an application. Supported applications may also be made by an individual selected by the person at risk, such as a trusted friend or close family member. Support persons must have the consent of the person at risk to proceed with an application and must adhere to confidentiality requirements under the **Interpersonal Violence Disclosure Protocol Act**.

Right to Ask

The Right to Ask process is the ability of an individual who believes they are at risk of interpersonal violence to request disclosure information from the police about the level of risk for interpersonal violence, as set out in this Protocol.

Right to Know

The Right to Know process is the right of an individual to know or receive information from the police regarding their risk of interpersonal violence. This may occur when police receive information through the course of their regular duties without the need for an application. Under the **Interpersonal Violence Disclosure Protocol Act**, police can initiate the Right to Know process and provide a person at risk with a disclosure, subject to that person's agreement.

Risk Assessment

An analysis of relevant interpersonal violence information conducted by a police service used to provide relevant information to a person at risk.

