

Draft 1

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INTIMATE IMAGES PROTECTION ACT

BILL NO.

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BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. Definitions

In this Act

- (a) “court” means the Supreme Court of Prince Edward Island;
- (b) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording
 - (i) in which the person depicted in the image
 - (A) is nude or is exposing his or her genital organs or anal region or her breasts, or
 - (B) is engaged in explicit sexual activity,
 - (ii) that was recorded in circumstances that gave rise to a reasonable expectation of privacy with respect to the image, and
 - (iii) where the image has been distributed, in which the person depicted in the image retained a reasonable expectation of privacy at the time it was distributed.

2. Interpretation

For the purposes of this Act, a person distributes an intimate image where that person publishes, transmits, sells, advertises or otherwise makes the intimate image available to a person other than the person depicted in the intimate image.

3. Distribution of intimate image without consent

- (1) It is a tort for a person to distribute an intimate image of another person without the other person's consent.

Commission of tort

- (2) A person who distributes an intimate image commits the tort referred to in subsection (1) against the person depicted in the intimate image where the person
- (a) knows that the person depicted in the intimate image did not consent to the distribution; or
 - (b) is reckless as to whether or not the person depicted in the intimate image consented to the distribution.

4. Action without proof

An action for the non-consensual distribution of an intimate image may be commenced without proof of damage.

5. Expectation of Privacy

In an action for the non-consensual distribution of an intimate image, the person depicted in the intimate image does not lose the expectation of privacy with respect to the intimate image where

- (a) the person
 - (i) consented to another person recording the intimate image, or
 - (ii) provided the intimate image to another person; and
- (b) that other person knew or ought reasonably to have known that the person depicted in the intimate image did not consent to the further distribution of the intimate image.

6. Reverse onus

Where an action for the non-consensual distribution of an intimate image is commenced,

- (a) it shall be presumed that the intimate image was distributed without the consent of the person depicted in the intimate image; and
- (b) the defendant shall establish that he or she had reasonable grounds to believe that he or she had ongoing consent for distribution of that intimate image.

7. Defence

It is a defence to an action for the non-consensual distribution of an intimate image to show that the distribution of the intimate image is in the public interest and does not extend beyond what is in the public interest.

8. Remedies

- (1) In an action for the non-consensual distribution of an intimate image, the court may
- (a) award damages to the plaintiff, including general, special, aggravated and punitive damages;

- (b) order the defendant to account to the plaintiff for any profits that have accrued to the defendant as a result of the non-consensual distribution of the intimate image and make an order in favour of the plaintiff with respect to the recovery of those profits from the defendant;
- (c) issue an injunction on the terms and conditions that the court determines appropriate in the circumstances; and
- (d) make any other order that the court considers just and reasonable in the circumstances.

Court may disregard order

- (2) In awarding damages in an action for the non-consensual distribution of an intimate image, the court may disregard an order made under clause (1)(b) in respect of the non-consensual distribution of the intimate image.

9. Publication ban

- (1) Where an action for the non-consensual distribution of an intimate image is commenced, a person shall not publish or make public the names of the parties to the action or any information that may identify the parties to the action until the court determines whether to issue an order under subsection (2).

Order prohibiting publication of name

- (2) The court may make an order prohibiting the publication of the name of any party to the action or any information that may identify a party to the action where it considers the making of the order to be in the interest of justice.

Name of minor not to be published

- (3) Notwithstanding subsection (1), where a person involved in an action for the non-consensual distribution of an intimate image is under the age of majority, a person shall not publish or make public the name of that person or any information that may identify that person.

Prohibition continues

- (4) Subsection (3) continues to apply after the person reaches the age of majority.

Offence

- (5) A person who contravenes subsection 9(1) or (3) commits an offence.

10. Other rights not affected

A right of action under this Act is in addition to, and does not affect, any other right of action or remedy available to a person under another Act.

11. Coming into force

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

EXPLANATORY NOTES

SECTION 1 establishes definitions for the purposes of the Act.

SECTION 2 provides that a person distributes an intimate image where that person publishes, transmits, sells, advertises or otherwise makes the intimate image available to a person other than the person depicted in the intimate image.

SECTION 3 creates a tort for a person to distribute an intimate image of another person without the other person's consent, and sets out the conditions that constitute the commission of the tort.

SECTION 4 provides that an action may be commenced without proof of damage.

SECTION 5 provides that a person who has consented to another person recording an intimate image of them or has provided such an image to the other person, does not lose the expectation of privacy respecting that image if the other person knew or ought reasonably to have known that the person depicted did not consent to the further distribution of the image.

SECTION 6 establishes a reverse onus in an action, creating a presumption that an intimate image was distributed without the consent of the person depicted in it, and requiring a defendant to establish that there were reasonable grounds for the belief that they had ongoing consent for the distribution of that image.

SECTION 7 establishes a defence that the distribution of an intimate image is in the public interest and does not extend beyond what is in the public interest.

SECTION 8 establishes the remedies that the court may determine, including various types of damages, an order for a defendant to turn over to the plaintiff any profits they have accrued from the distribution of the intimate image, an injunction against the defendant, or any other order the court considers just and reasonable in the circumstances.

SECTION 9 provides for a publication ban on the names or identifying information of the parties to an action, provides an automatic ban for the publication of such information about a minor that continues after the minor reaches the age of majority, and creates an offence for any contravention of a publication ban.

SECTION 10 provides that a right of action under the Act is in addition to, and does not affect, any other right of action or remedy available to a person under another Act.

SECTION 11 provides that the Act comes into force on proclamation.

