

Intimate Images and Cyber-protection Act

CHAPTER 7 OF THE ACTS OF 2017



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**An Act Respecting
the Unauthorized Distribution of Intimate Images
and Protection Against Cyber-bullying**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Intimate Images and Cyber-protection Act*. 2017, c. 7, s. 1.

Purpose of Act

- 2** The purpose of this Act is to
- (a) create civil remedies to deter, prevent and respond to the harms of non-consensual sharing of intimate images and cyber-bullying;
 - (b) uphold and protect the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication; and
 - (c) provide assistance to Nova Scotians in responding to non-consensual sharing of intimate images and cyber-bullying. 2017, c. 7, s. 2.

JULY 5, 2018

Interpretation

3 In this Act,

(a) “agency” means the agency established or designated under Section 12;

(b) “Court” means the Supreme Court of Nova Scotia or a judge of that Court;

(c) “cyber-bullying” means an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual’s health or well-being where the person responsible for the communication maliciously intended to cause harm to another individual’s health or well-being or was reckless with regard to the risk of harm to another individual’s health or well-being, and may include

(i) creating a web page, blog or profile in which the creator assumes the identity of another person,

(ii) impersonating another person as the author of content or a message,

(iii) disclosure of sensitive personal facts or breach of confidence,

(iv) threats, intimidation or menacing conduct,

(v) communications that are grossly offensive, indecent, or obscene,

(vi) communications that are harassment,

(vii) making a false allegation,

(viii) communications that incite or encourage another person to commit suicide,

(ix) communications that denigrate another person because of any prohibited ground of discrimination listed in Section 5 of the *Human Rights Act*, or

(x) communications that incite or encourage another person to do any of the foregoing;

(d) “distribute without consent”, in respect of an intimate image, means to publish, transmit, sell, advertise or otherwise distribute the image to or make the image available to a person other than the person depicted in the image while

(i) knowing that the person in the image did not consent to the distribution, or

(ii) being reckless as to whether that person consented to the distribution;

(e) “electronic communication” means any form of electronic communication, including any text message, writing, photograph, picture recording or other matter that is communicated electronically;

- (f) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording,
- (i) in which a person depicted in the image is nude, is exposing the person’s genital organs, anal region or her breasts, or is engaged in explicit sexual activity,
 - (ii) that was recorded in circumstances that gave rise to a reasonable expectation of privacy in respect of 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;
- (g) “Minister” means the Minister of Justice. 2017, c. 7, s. 3.

Expectation of privacy not lost

4 (1) A person depicted in an intimate image does not lose the person’s expectation of privacy in respect of the image if the person consented to another person recording the image in circumstances where the other person knew or ought reasonably to have known that the image was not to be distributed to any other person.

(2) A person depicted in an intimate image does not lose the person’s expectation of privacy in respect of the image if the person provided the image to another person in circumstances where the other person knew or ought reasonably to have known that the image was not to be distributed to any other person. 2017, c. 7, s. 4.

Application to Court

5 (1) An individual whose intimate image was distributed without consent or who is or was the victim of cyber-bullying may apply to the Court for an order under Section 6.

(2) Where the individual referred to in subsection (1) is a minor, that individual’s parent or guardian may apply to the Court for an order under Section 6.

(3) Subject to subsection (4) and the regulations, the applicant shall name as a respondent

(a) the person alleged to have distributed an intimate image without consent or to have cyber-bullied;

(b) where the application identifies an electronic device, Internet Protocol address, website, electronic user name or account, electronic mail address or other unique identifier as being or having been used for the distribution of intimate images without consent or cyber-bullying,

(i) the owner of the electronic device,

(ii) any person who has been assigned or has control over the use of the Internet Protocol address, or

(iii) the user or person responsible for the website, user name or account, electronic-mail address or other unique identifier;

(c) where the person referred to in clause (a) or (b) is a minor, the parent or guardian of the person;

(d) any other person against whom an order is sought; and

(e) any other person as directed by the Court.

(4) An application under this Section must identify the respondent by name or, where the name of the respondent is not known, by the Internet Protocol address, website, username or account, electronic-mail address or other unique identifier used for intimate image distribution or cyber-bullying. 2017, c. 7, s. 5.

Order

6 (1) Where the Court is satisfied that a person has engaged in cyber-bullying or has distributed an intimate image without consent, the Court may make one or more of the following orders:

(a) an order prohibiting the person from distributing the intimate image;

(b) an order prohibiting the person from making communications that would be cyber-bullying;

(c) an order prohibiting the person from future contact with the applicant or another person;

(d) an order requiring the person to take down or disable access to an intimate image or communication;

(e) an order declaring that an image is an intimate image;

(f) an order declaring that a communication is cyber-bullying;

(g) an order referring the matter to dispute-resolution services provided by the agency or otherwise;

(h) an order provided for by the regulations;

(i) any other order which is just and reasonable.

(2) Where it is shown that distribution of an intimate image without consent or cyber-bullying has occurred, the Court may order any person to do one or more of the following

(a) provide to the applicant any information in the possession of the person that may help identify a person who may have used an Internet Protocol address, website, electronic username or account, electronic mail address or other unique identifier that may

have been used to distribute an intimate image without consent or for cyber-bullying;

(b) take down or disable access to an intimate image or cyber-bullying communication;

(c) perform such other action as the Court considers just and reasonable.

(3) Where the Court is satisfied that a person has distributed an intimate image without consent or has engaged in cyber-bullying, the Court may

(a) order the person to pay general, special, aggravated or punitive damages to the person depicted in the intimate image or the victim of cyber-bullying; and

(b) order the person to account for profits.

(4) In awarding damages under clause (3)(a), the Court shall not have regard to any order made under clause (3)(b).

(5) An order made under this Section may be interim or final and may include any time limit the Court considers advisable.

(6) The Court may, on application, extend, vary or terminate an order under this Section.

(7) In determining whether to make an order under this Section and what order to make, the Court shall consider the following factors, if relevant:

(a) the content of the intimate image or cyber-bullying;

(b) the manner and repetition of the conduct;

(c) the nature and extent of the harm caused;

(d) the age and vulnerability of the person depicted in the intimate image distributed without consent or victim of cyber-bullying;

(e) the purpose or intention of the person responsible for the distribution of the intimate image without consent or the cyber-bullying;

(f) the occasion, context and subject-matter of the conduct;

(g) the extent of the distribution of the intimate image or cyber-bullying;

(h) the truth or falsity of the communication;

(i) the conduct of the person responsible for the distribution of the intimate image or cyber-bullying, including any effort to minimize harm;

(j) the age and maturity of the person responsible for distribution of the intimate image without consent or cyber-bullying;

- (k) the technical and operational practicalities and costs of carrying out the order;
- (l) the Canadian *Charter of Rights and Freedoms*; and
- (m) any other relevant factor or circumstance. 2017, c. 7, s. 6.

Defences

7 (1) In an application for an order respecting the distribution of an intimate image without consent or cyber-bullying under this Act, it is a defence for the respondent to show that the distribution of an intimate image without consent or communication is in the public interest and that the distribution or communication did not extend beyond what is in the public interest.

(2) In an application for an order respecting cyber-bullying under this Act, it is a defence for the respondent to show that

- (a) the victim of the cyber-bullying expressly or by implication consented to the making of the communication;
- (b) the publication of a communication was, in accordance with the rules of law relating to defamation,
 - (i) fair comment on a matter of public interest,
 - (ii) done in a manner consistent with principles of responsible journalism, or
 - (iii) privileged;
- (c) where the respondent is a peace officer acting in the course of the peace officer's duties, that the communication was necessary to prevent a crime or discover, investigate or prosecute the perpetrators of a crime and did not extend beyond what was necessary;
- (d) where the respondent is a public officer acting in the course of the duties of the public officer's office, that the communication was necessary to fulfil the duties of that office and did not extend beyond what was necessary. 2017, c. 7, s. 7.

Publication ban for minors

8 (1) Subject to the regulations, where any person involved in a proceeding relating to an application made under Section 5 is a minor, no person shall publish or broadcast the name of that person, or any information likely to identify that person.

(2) In a proceeding to which subsection (1) applies, the Court shall identify the person by a pseudonym.

(3) For greater certainty, this Section continues to apply once the person is no longer a minor. 2017, c. 7, s. 8.

Publication ban where intimate image distributed

9 (1) Subject to the regulations, where an application is made under Section 5 respecting the distribution of an intimate image without consent and the applicant so requests, no person shall publish or broadcast the name of the applicant or any information likely to identify the applicant.

(2) In a proceeding to which subsection (1) applies, the Court shall identify the applicant by a pseudonym if the applicant requests to be so identified. 2017, c. 7, s. 9.

Additional right of action or remedy not barred

10 Applying for an order under this Act does not limit the right of a victim of cyber-bullying or a person depicted in an intimate image to pursue any right of action or remedy available to that person under common law or by statute. 2017, c. 7, s. 10.

Offence

11 A person who contravenes an order made under this Act, other than an order for payment of damages or accounting of profits, is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both a fine and imprisonment. 2017, c. 7, s. 11.

Role of agency

- 12 (1)** The Minister may establish or designate an agency to
- (a) provide public information and education regarding harmful on-line conduct;
 - (b) advise public bodies on policies for on-line safety and conduct;
 - (c) provide support and assistance to victims of intimate image distribution without consent and cyber-bullying;
 - (d) provide information to victims of intimate image distribution without consent and cyber-bullying respecting the criminal justice system and proceedings under this Act;
 - (e) provide information to victims of intimate image distribution without consent and cyber-bullying respecting contacting police;
 - (f) provide voluntary dispute-resolution services, including advice, negotiation, mediation and restorative justice approaches in respect of harmful on-line conduct; and
 - (g) provide such other services, exercise such other powers and authorities and perform such other duties as may be prescribed by the regulations.

(2) The Minister may assign any of the functions and responsibilities of the agency to another person or organization on such terms and conditions as the Minister considers appropriate. 2017, c. 7, s. 12.

No action lies

13 No action lies against the Minister, the agency, the employees of the agency or any other person acting under the authority of this Act for anything done, or omitted to be done, in good faith in the exercise of a power or performance of a duty under this Act or the regulations. 2017, c. 7, s. 13.

Review of Act

14 The Minister shall, within three years after this Act comes into force, undertake a review of its effectiveness in meeting its purposes and, within one year after the review is undertaken, table a report on the review in the Assembly if the Assembly is then sitting or, where it is not then sitting, file it with the Clerk of the Assembly. 2017, c. 7, s. 14.

Regulations

- 15 (1) The Minister may make regulations
- (a) respecting forms and procedures for hearing an application under Section 5, including an application to extend, vary or terminate an order; and
 - (b) respecting record-keeping and recording requirements for the agency.
- (2) The Governor in Council may make regulations
- (a) respecting who must or may be named as a respondent to an application made under Section 5;
 - (b) respecting the form and content of orders;
 - (c) providing for additional orders that may be made by the Court;
 - (d) respecting restrictions on the publication or broadcasting of identifying information respecting a minor pursuant to Section 8;
 - (e) respecting restrictions on the publication or broadcasting of identifying information respecting an applicant pursuant to Section 9;
 - (f) prescribing services to be provided by, powers and authorities to be exercised by and duties to be performed by the agency;
 - (g) respecting the agency's authority and duties in regard to personal information;

- (h) defining any word or expression used but not defined in this Act;
- (i) further defining any word or expression defined in this Act;
- (j) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out the intent and purpose of this Act.

(3) The exercise by the Minister or the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*. 2017, c. 7, s. 15.

CYBER-SAFETY ACT

Repeal of Act and re-enactment of certain provisions

16 (1) Chapter 2 of the Acts of 2013, the *Cyber-safety Act*, is repealed.

(2) The amendments to Chapter 1 of the Acts of 1995-96, the *Education Act*, in Chapter 2 are deemed to

- (a) have never had effect; and
 - (b) be re-enacted by this Act effective August 6, 2013.
- 2017, c. 7, s. 16.

Safer Communities and Neighbourhoods Act amended

17 to 28 amendments

COMING INTO FORCE

Effective date

29 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2017, c. 7, s. 29.

Proclaimed	-	July 5, 2018
In force	-	July 5, 2018