



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# INTIMATE IMAGES PROTECTION ACT

## PLEASE NOTE

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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## INTIMATE IMAGES PROTECTION ACT

### Table of Contents

Section	Page
1. Definitions.....	1
2. Reasonable expectation of privacy.....	1
3. Distribution of intimate image without consent.....	1
4. Action without proof.....	1
5. Expectation of Privacy.....	2
5.1 Application for declaratory and injunctive relief.....	2
5.2 Claim for damages, etc.....	3
5.3 Protection for internet intermediary.....	3
6. Reverse onus.....	3
7. Defence to application under section 5.1.....	4
7.1 Consent revocable.....	4
8. Remedies.....	5
9. Limit of Liability.....	5
10. Publication ban.....	5
11. Other rights not affected.....	5





## CHAPTER I-9.1

## INTIMATE IMAGES PROTECTION ACT

## 1. Definitions

In this Act,

- (a) “**applicant**” means a person who makes an application under section 5.1;
- (b) “**claimant**” means a person who makes a claim under section 5.2;
- (c) “**court**” means the Supreme Court;
- (d) “**distribute**” means to transmit, publish or otherwise make accessible;
- (e) “**internet intermediary**” means a commercial body that hosts or indexes third-party content through an online platform;
- (f) “**intimate image**” means a visual recording of a person, whether or not the person is identifiable and whether or not the image has been altered in any way, made by any means, in which the person is or is depicted as
  - (i) engaging in a sexual act, or
  - (ii) nude or nearly nude or exposing the person’s genital organs, anal region or breasts, andin relation to which the person had a reasonable expectation of privacy at the time the recording was made and, if the recording has been distributed, at the time it was distributed;
- (g) “**parent**” when used in reference to a person under the age of 18 years, includes any person who has lawful custody of, or a lawful right of access to, the person under the age of 18 years;
- (h) “**respondent**” means a person responding to an application made under section 5.1 or a claim made under section 5.2. *2020,c.55,s.1; 2020,c.71,s.1.*

## 2. Reasonable expectation of privacy

For greater certainty, a person may have a reasonable expectation of privacy in an altered image. *2020,c.55,s.2; 2020,c.71,s.2.*

## 3. Distribution of intimate image without consent

A person who distributes or threatens to distribute an intimate image commits a tort that is actionable without proof of damage. *2020,c.55,s.3; 2020,c.71,s.3.*

## 4. Action without proof

Repealed by 2020,c.71,s.4. *2020,c.55,s.4; 2020,c.71,s.4.*

**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.

*2020, c.55, s.5.*

**5.1 Application for declaratory and injunctive relief**

- (1) A person depicted in an intimate image may apply to the court for relief under this section.

**Application by parent**

- (2) Where the person referred to in subsection (1) is a person under the age of 18 years, the person's parent may apply to the court for relief under this section on behalf of the person.

**Remedies - distribution of intimate image**

- (3) The court may do any or all of the following in respect of an application where the court is satisfied that the image is an intimate image of the applicant that has been distributed by the respondent:
  - (a) declare the distribution to have been unlawful;
  - (b) order the respondent to make every reasonable effort to make the intimate images inaccessible to others, including by
    - (i) destroying all copies of the intimate images in the respondent's possession or control,
    - (ii) having the intimate image removed from any platform operated by an internet intermediary, and
    - (iii) having the intimate image de-indexed from any search engine;
  - (c) order an internet intermediary to make every reasonable effort to remove or de-index the intimate image;
  - (d) order the respondent to pay nominal damages to the applicant;
  - (e) make any other order the court considers just and reasonable in the circumstances.

**Remedies - threat to distribute intimate image**

- (4) The court may do any or all of the following in respect of an application where the court is satisfied that the image is an intimate image of the applicant and that the respondent has threatened to distribute the image:
  - (a) declare the threat to have been unlawful;
  - (b) enjoin the respondent from distributing the intimate image;
  - (c) order the respondent to make every reasonable effort to make the intimate images inaccessible to others, including by destroying all copies of the intimate images in the respondent's possession or control;
  - (d) order the respondent to pay nominal damages to the applicant;
  - (e) make any other order the court considers just and reasonable in the circumstances.

*2020, c.71, s.5.*

**5.2 Claim for damages, etc.**

- (1) A person depicted in an intimate image may claim relief from the court under this section.

**Remedies - distribution of intimate image**

- (2) The court may do all or any of the following in respect of a claim where the court is satisfied that the image is an intimate image of the claimant that has been distributed by the respondent:
- (a) declare the distribution to have been unlawful;
  - (b) order the respondent to make every reasonable effort to make the intimate images inaccessible to others, including by
    - (i) destroying all copies of the intimate images in the respondent's possession or control,
    - (ii) having the intimate image removed from any platform operated by an internet intermediary, and
    - (iii) having the intimate image de-indexed from any search engine;
  - (c) order an internet intermediary to make every reasonable effort to remove or de-index the intimate image;
  - (d) order the respondent to pay damages, including compensatory, aggravated and punitive damages;
  - (e) make any other order the court considers just and reasonable in the circumstances.

**Remedies - threat to distribute intimate image**

- (3) The court may do any or all of the following in respect of a claim where the court is satisfied that the image is an intimate image of the claimant and that the respondent has threatened to distribute the image:
- (a) declare the threat to have been unlawful;
  - (b) enjoin the respondent from distributing the intimate image;
  - (c) order the respondent to make every reasonable effort to make the intimate images inaccessible to others, including by destroying all copies of the intimate images in the respondent's possession or control;
  - (d) order the respondent to pay damages, including compensatory, aggravated and punitive damages;
  - (e) make any other order the court considers just and reasonable in the circumstances.
- 2020, c.71, s.5.*

**5.3 Protection for internet intermediary**

- (1) No application or claim may be brought against an internet intermediary if the internet intermediary has taken reasonable steps to address unlawful distribution of intimate images in the use of its services.

**Authority of court**

- (2) Nothing in this section limits the court's authority under subsection 5.1(3) or 5.2(2) to make an order against an internet intermediary or other person or organization. *2020, c.71, s.5.*

**6. Reverse onus**

Repealed by *2020, c.71, s.6. 2020, c.55, s.1; 2020, c.71, s.6.*

**7. Defence to application under section 5.1**

- (1) A person is not liable under section 5.1 if the person proves that the person had the consent of the individual depicted in the intimate image to the distribution of the intimate image at the time when and to the extent that the intimate image was distributed by the person.

**Defence to claim under section 5.2**

- (2) A person is not liable under section 5.2 if the person proves that the distribution of the intimate image was made in any of the following circumstances:
- (a) the person did not intend to distribute the intimate image;
  - (b) the person had, or honestly and reasonably believed that the person had, the consent of the person depicted in the intimate image to the distribution of the intimate image at the time when and to the extent that the intimate image was distributed by the person;
  - (c) the distribution was made in the public interest and did not extend beyond what was in the public interest.

**Clarification - public interest**

- (3) For greater clarity, the public interest includes circumstances in which an intimate image was
- (a) distributed in good faith in
    - (i) law enforcement,
    - (ii) a legal proceeding, or
    - (iii) medical education or treatment;
  - (b) made in good faith in the reporting or investigation of
    - (i) unlawful conduct, or
    - (ii) unsolicited and unwelcome conduct; or
  - (c) reasonably intended to assist the depicted individual.

**Limitation**

- (4) The distribution of an intimate image is not a matter of public interest solely because the depicted individual is a public figure. *2020, c.55, s.7; 2020, c.71, s.7.*

**7.1 Consent revocable**

- (1) Where a person depicted in an intimate image consents to distribution of the intimate image, and later revokes consent to distribution of the intimate image and communicates that revocation to a person who distributed the intimate image, the person who distributed the intimate image shall make every reasonable effort to make the intimate image inaccessible to others, including by
- (a) destroying all copies of the intimate image in the person's possession or control;
  - (b) having the intimate image removed from any platform operated by an internet intermediary; and
  - (c) having the intimate image de-indexed from any search engine.

**Liability**

- (2) A person who does not make every reasonable effort to make the intimate image inaccessible under subsection (1) is liable for damages for any injury resulting from the failure to make that effort. *2020, c.71, s.8.*



**8. Remedies**

Repealed by 2020,c.71,s.9. 2020,c.55,s.8; 2020,c.71,s.9.

**9. Limit of Liability**

Repealed by 2020,c.71,s.10. 2020,c.55,s.9; 2020,c.71,s.10.

**10. 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) and subject to subsection (5), where a person involved in an action for the non-consensual distribution of an intimate image is under the age of 18 years, a person shall not publish or make public the name of that person or any information that may identify that person.

**Prohibition continues**

- (4) Subject to subsection (5), subsection (3) continues to apply after the person reaches the age of 18 years.

**Order revoking publication ban**

- (5) Where a party in an action respecting the non-consensual distribution of an intimate image is under the age of 18 years or reaches the age of 18 years during or following the action, the party may apply to the court for an order revoking any prohibition with respect to the publication of
- (a) the names of one or more of the parties to the action;
  - (b) any information that may identify the parties; or
  - (c) both.

**Offence**

- (6) A person who contravenes subsection 10(1) or (3) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

**“Action”, clarified**

- (7) In this section, “action” includes an application under section 5.1 and a claim under section 5.2. 2020,c.55,s.10; 2020,c.71,s.11.

**11. 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. 2020,c.55,s.1; 2020,c.71,s.12.