



Civil Resolution Tribunal

Date Issued: April 30, 2024

File: IS-3-2024-002059

Type: Intimate Images – Damages

Civil Resolution Tribunal

Indexed as: *B.D.S. v. M.W.*, 2024 BCCRT 410

Publication Ban Applies

B E T W E E N :

B.D.S.

APPLICANT

A N D :

M.W.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. The applicant, who I will call BDS, says the respondent, who I will call MW, shared intimate images of him without his consent. BDS claims \$5,000 in damages under

section 6 of the *Intimate Images Protection Act* (IIPA). He also asks for various protection orders, as outlined below.

2. MW admits sharing images of BDS, but says he cropped out anything sexual or intimate. He also says he shared the images to help women on X (formerly Twitter) identify BDS, who MW considers a cyberbully. He asks me to dismiss BDS's claims.
3. The parties are both adults and are self-represented.

JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over this damages claim under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The IIPA section 6 creates a statutory tort for the non-consensual sharing or threatened sharing of intimate images. Under the IIPA, the CRT may order compensatory, aggravated, and punitive damages, up to the CRT's \$5,000 monetary limit under its small claims jurisdiction. Under the IIPA section 6(2), the CRT may also make the expedited protection orders listed in the IIPA section 5 in an application under section 6.
5. CRTA section 39 says the CRT has discretion to decide the hearing's format, including whether it is an oral hearing or based on written materials. The CRT's mandate includes speed, efficiency, and proportionality. Under the *Intimate Images Protection Regulation*, the CRT must consider the potential for an expedited intimate image protection order to mitigate harm. I find I can fairly make an expedited decision based on the written material before me.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant and appropriate, even if it would not be admissible in a court. The CRT may also ask questions and inform itself in any other way it considers appropriate. Through CRT staff, I asked the parties numerous questions before making this decision.
7. The IIPA section 5(9) says that an "individual" must not be named in a "determination or order" under section 5 they are a respondent, and section 1 defines "applicant" as

an “individual”. I find BDS is an “individual”, so I have not named him in this decision or the accompanying protection order. As noted below, I did include BDS’s name in my damages order, which I find is not covered by section 5(9), to ensure it is enforceable.

8. In my protection order, I have included the usernames of the X accounts involved in sharing the images at issue in this dispute. Some of the usernames may be, or may include parts of, an individual’s name. I considered whether the IIPA section 5(9) prevented me from including these usernames. I decided that I could include them for several related reasons.
9. First, it is often impossible to know whether usernames are also an individual’s name. Many people use their full names as usernames, but many usernames are pseudonymous or anonymous. Second, I find that the mischief section 5(9) seeks to address is that a person should not be identified in a decision as having done something unlawful and immoral without the procedural protections of being a respondent. Inadvertently identifying recipients of an intimate image does not engage the same concern. Third, internet intermediaries may have more success in removing intimate images if they have the usernames of the accounts where those images were shared, which furthers the IIPA’s overall legislative purpose. So, I find that section 5(9) does not prevent me from including usernames.
10. The IIPA section 13(1) requires me to order a ban on publishing BDS’s name or anything that would identify him. Because he is an adult, BDS may apply to the CRT to have the publication ban lifted. For clarity, the publication ban applies to BDS unless and until the CRT orders otherwise. **I order a ban on publishing BDS’s name and anything that would identify him.**
11. While MW did not use the term “publication ban”, he requested anonymity. As part of that request, he asked that BDS be required to respect his anonymity. I find that he requests what amounts to a publication ban because he does not want BDS to publish his identity. I first considered whether MW’s identity was covered by the mandatory publication ban of BDS’s identity under the IIPA section 13(1). It will often be the case

that a respondent's identity will point to an applicant's identity in IIPA disputes because the parties are commonly former romantic partners. In those circumstances, a publication ban on the respondent's identity is mandatory to protect the applicant's anonymity.

12. Here, I find it unlikely that publishing MW's name would indirectly identify BDS. They have never met in person and there is no evidence of anything public that would connect them. Contrary to MW's assertion that BDS has been "bandying about my name online", the only evidence of this is a single X post where BDS referred to MW by his very common first name. There is nothing else in that post, or any other post in evidence, that would identify MW.
13. Are there other reasons to order a publication ban on MW's identity? The IIPA section 13(2) is about publication bans for respondents. It does not require me to order a publication ban on MW because he is an adult, but I may do so if there are reasons to protect MW's identity. MW says that he was not motivated by malice when he shared BDS's images and was only following his moral compass to try to protect a vulnerable individual by helping her identify BDS. In short, he argues that he should not be exposed to the negative attention he is likely to receive without a publication ban.
14. BDS objects to me anonymizing MW in this decision. He strongly disputes MW's characterization of his motives. He says that anonymizing MW will prevent him from bringing claims against other people who have shared his intimate images, although he does not say how.
15. I find that the starting point for considering a publication ban covering MW's identity is the open court principle, which applies to CRT proceedings. Consistent with that principle, the CRT generally identifies parties in published decisions. This furthers the goals of transparency and integrity in the justice system. The CRT's Access to Information and Privacy Policy says that published IIPA decisions will "generally be anonymized" because of the mandatory publication bans in the IIPA section 13. However, since MW is not covered by a mandatory publication ban, I find that there

must be a valid reason to depart from the usual practice of identifying CRT participants.

16. The policy says that I should consider three things when deciding whether to anonymize a decision, which I find apply equally to requests for a publication ban:
 - a. The dispute's circumstances and the nature of the evidence provided,
 - b. The potential impact of disclosure on the person and any others impacted by the dispute, and
 - c. How anonymization would impact the CRT's goals of transparent decision-making processes and protection of personal information.
17. First, as explained in more detail below, I do not agree with MW that his decision to share BDS's images was justified on moral grounds. That said, I still find that a publication ban on MW's identity is warranted. My reasons follow.
18. There is nothing wrong with exchanging intimate images with strangers on the internet. Still, it is a personal and private choice. Publishing MW's identity would reveal details of his sex life, and a person's sex life is a highly private matter. Related to this, MW identifies as a gay man and there is evidence that he is not fully out, including to members of his family. I find that publishing MW's identity could have a negative impact on him by depriving him of autonomy and privacy over his sexual orientation, how he chooses to express it, and to whom. I find that these circumstances outweigh the goals of the open court principle. Contrary to BDS's submission, I find that anonymizing MW will not prevent BDS from bringing claims against other people who he believes have shared his intimate images. As discussed below, he already knows who at least some of those people are. So, under the IIPA section 13(2), **I order a ban on publishing MW's name and anything that would identify him.**
19. I also order that the CRT's dispute file be sealed and only disclosed by order of the BC Supreme Court or the CRT.

ISSUES

20. The issues in this dispute are:

- a. What images of BDS did MW share, and who did he share them with?
- b. Were any of those images “intimate images” as defined by the IIPA?
- c. Is BDS entitled to damages, and if so, how much?
- d. Is BDS entitled to any of the protection orders he requests?

EVIDENCE AND ANALYSIS

21. In a civil proceeding like this one, BDS must prove his claims on a balance of probabilities, which means more likely than not. While I have read all the parties’ evidence and submissions, I only refer to what is necessary to explain my decision.

What images of BDS did MW share, and who did he share them with?

22. The parties have never met in person. They only interacted via direct message on X. Their online interaction was relatively brief, all taking place on March 10, 2021. Their chat was flirtatious, and before long, they both shared numerous images, some nude and some not. There are two photos at issue in this dispute that BDS sent to MW. In the first, BDS is facing the camera. It shows him shirtless and in tight underwear with the outline of his erect penis clearly visible. The second is taken from the side with BDS looking over at the camera. It shows BDS pulling his underwear down to expose parts of his buttocks. Again, he is shirtless. I will call these photos the underwear photo and the buttocks photo.

23. There is no evidence that anything else happened with these photos until April 2023. MW says that around April 6, he came across an X post from a person I will call EH. MW says he did not follow EH’s account, did not know her, and still has never met her in person. Instead, EH’s post appeared in his timeline based on X’s algorithm. EH posted that a certain X user had harassed her and had encouraged others to do the

same. EH said this was so distressing she contemplated self-harm. MW recognized the X account EH accused of harassment as BDS's. MW thought he could help EH because BDS's X account was anonymous, and MW knew BDS's full name and had photos of him from their chat.

24. MW provided a signed statement from EH. In that statement EH says that BDS had targeted her with abusive comments on X, calling her things like "human garbage", "monstrously evil", "a transphobe", "deranged", and other similar things. EH's statement includes screenshots of tweets confirming this. BDS does not deny posting these things, although he considers his comments valid criticism and not cyberbullying because EH is a public figure.
25. MW says he felt compelled to contact EH to help her learn BDS's identity. He thought this was important so that EH could pursue legal action against BDS to stop the harassment. He also contacted another person, who I will call CS. MW says CS is a lawyer who represented several women who claimed BDS had harassed them online. The screenshots in evidence show CS was also a target of BDS on X. MW admits that he provided them both BDS's name and some of the photos BDS had shared with him. I detail those photos below.
26. There is no direct evidence from CS. MW says CS ignored his attempt to get a written statement for this dispute.
27. The evidence about what exactly MW shared has changed since this dispute started. Initially, MW and EH both said MW had provided a cropped photo of BDS that only showed his torso and face. MW said that he had deleted his X account, so he no longer had access to his message history. He said his evidence was therefore based on memory. In other words, he was not entirely sure. In her first written statement, EH provided many screenshots of BDS's X activity but did not provide any of her conversation with MW. Given this absence of direct evidence, BDS asked me to order X to provide MW's entire message history with EH and CS. BDS said this was the only way to know for sure what MW had sent.

28. I agreed that the absence of the actual conversation between MW and either EH or CS was concerning. I returned the dispute to the CRT's facilitation process so that the CRT's case manager could explore with the parties how to get MW's X messages in evidence. In response, MW provided a second written statement from EH that included screenshots of her entire X conversation with MW. For reasons that will become obvious, at this point I found it unnecessary to pursue obtaining evidence directly from X.
29. EH's new evidence contradicts what she and MW both previously said about what MW had shared. In EH and MW's conversation, MW first told EH BDS's name. EH had believed that the X account in question belonged to someone else, so she asked for a photo. MW said he would "find something I can share with you". The first photo MW sent was the underwear photo. The second was the buttocks photo. Neither was cropped. MW later sent three more photos. BDS is wearing shirts in these three, and they are all cropped above the waist. The originals BDS had sent MW of these three photos all showed BDS's exposed penis.
30. With that, it is now beyond dispute that MW sent EH uncropped versions of the underwear photo and the buttocks photo. As noted, CS did not provide any evidence. However, given what EH's evidence revealed, I do not find MW's evidence that he sent CS only cropped photos to be credible or reliable. I say this because he was clearly wrong in his initial evidence that he sent only cropped photos to EH. I find that he likely provided the same uncropped photos to CS.
31. MW says these are the only two times he has shared any images of BDS with anyone. MW says he has no copies of any image BDS had sent him. EH also says she never shared any of the images. However, shortly after MW shared BDS's images with EH and CS, the underwear photo surfaced publicly. Someone created a fake account seemingly for the sole purpose of sharing it. The fake account requested that BDS follow it, and then posted a closeup of BDS's penis from the underwear photo. That photo has since been posted elsewhere on X, although not by EH's or CS's known X

accounts. There is no evidence before me that the photo that shows BDS's buttocks has been publicly shared.

Are the underwear photo and buttocks photo “intimate images” as defined by the IIPA?

32. The IIPA section 1 says defines an “intimate image” as follows:
 - a. It depicts or shows the applicant as engaging in a sexual act, nude or nearly nude, or exposing their genitals, anal region, or breasts, and
 - b. The applicant had a reasonable expectation of privacy at the time the image was recorded or livestreamed and also when it was shared, if it was shared.
33. In the underwear photo, BDS's genitals are visible through his clothes, but he was not “exposing” them. He also was not “nude”, which is an absolute term that only captures being “completely bare”. See *R. v. Verrette*, 1978 CanLII 208 (SCC).
34. In the buttocks photo, BDS is not nude because his underwear are pulled down but still on. His buttocks are exposed, but mostly from a side angle. I find that the term “anal region” used in the IIPA is intended to capture only the anus and area immediately around the anus, not the entire buttocks. While the decision is from a different legal context, I agree with the reasoning in *R. v. Holynski*, 2024 SKPC 7, that the legislature could have used the word “buttocks” if that is what it intended to capture. Instead, the IIPA includes the more specific “anal region”. So, I find that the photo does not show BDS's anal region.
35. The question is whether BDS was “nearly nude” in either photo. The IIPA does not define this term, and it is somewhat ambiguous. The overall definition of “intimate image” makes clear that the overarching purpose of the IIPA is to promote autonomy and privacy over images that are either intentionally sexual (like an intimate selfie) or may be sexualized by others (like a surreptitiously taken image in a changeroom or bathroom). The term “nearly nude” must be interpreted in that spirit.

36. I find that there are two components that inform whether a person is “nearly nude” in an image. First, to state the obvious, the term “nearly nude” requires that the person not be wearing very much clothing. However, I find that the term “nearly nude” is not characterized by the amount of clothing alone. The context for the image’s creation is crucial. To take the example above, surreptitious footage from a changeroom of a woman trying on a bikini would likely be an intimate image, whereas a photo of a public beach that includes a distant shot of the same woman in the same bikini likely would not be.
37. Turning first to the underwear photo, BDS’s underwear are small but not more revealing than many swimsuits. However, the photo is very different than a photo of a man at the beach. It is taken for a flirtatious or seductive purpose. The outline of BDS’s erect penis is plain to see. Anyone seeing the photo would immediately recognize that it depicts a sexualized and private moment. The same can be said for the buttocks photo. The image is clearly taken for a sexual purpose and shows much of BDS’s buttocks. The IIPA is designed to protect a person’s autonomy over photos like these. I have no difficulty concluding that both photos depict BDS as “nearly nude”.
38. I also find that BDS had a reasonable expectation of privacy when he took the photos and when MW shared them. The photos were taken at his home and he sent the photo only to MW as part of a private, intimate chat. He never gave MW consent to share them with anyone.
39. Therefore, I find that the two images are “intimate images” under the IIPA. Section 3(1)(a) of the IIPA says that a person commits an unlawful act if they distribute another person’s intimate image without their consent. I find that MW did so. I turn next to the question of damages.

Is BDS entitled to damages, and if so, how much?

40. As noted above, the IIPA section 6(2) allows the CRT to award compensatory, aggravated, and punitive damages. Compensatory damages are for pain and

suffering, and are also known as non-pecuniary damages or general damages. Aggravated damages are for intangible injuries, like mental distress and anxiety, when a respondent's behaviour has been particularly egregious. Punitive damages are not intended to compensate applicants. Instead, punitive damages are intended to punish respondents for malicious and outrageous conduct. In claiming a total of \$5,000, BDS wants compensatory, aggravated, and punitive damages.

41. The IIPA section 11(1)(b) creates a defence to a damages claim. It says that a respondent is not liable if the distribution of the intimate image "was in the public interest and did not extend beyond what was in the public interest". MW does not refer specifically to section 11(1)(b), but he argues that he was motivated by altruism, and never intended to harm BDS. He says his only goal was to protect vulnerable people.
42. I find it unnecessary to decide whether it was in the "public interest" to identify BDS to EH and CS. I find that MW clearly fails the second part of the legal test in section 11(1)(b), which is that the disclosure be limited to what is in the public interest. MW cropped three of the five photos he shared. Why not crop them all? MW says that he wanted to provide "appropriate context for height, body type, clothing and other identifiable marks, such as the presence or absence of tattoos". I do not find this at all persuasive. The only clothing in either photo is underwear. How would it help EH and CS identify BDS by knowing his underwear preferences, or for that matter, the presence or absence of a tattoo on his buttocks or the shape of his erect penis? Whatever his motivations, I find that MW clearly went far beyond what was necessary to help identify BDS. This only required a photo of his face, which was in all five photos.
43. With that, I turn to the amount of damages BDS is entitled to. There are very few published cases in Canada where a court awarded damages for the non-consensual disclosure of intimate images. They are, in order of lowest to highest non-pecuniary damages award: *Roque v. Peters*, 2022 MBQB 34 (\$45,000), *Doe 464533 v. N.D.*, 2016 ONSC 541 (\$50,000), *Jane Doe 72511 v. N.M.*, 2018 ONSC 6607 (\$50,000),

Grummett v. Warholik, 2023 ABKB 208 (\$80,000), *E.S. v. Shillington*, 2021 ABQB 739 (\$80,000), *LDS v. SCA*, 2021 ABQB 818 (\$80,000), and *S.B. v. D.H.*, 2022 SKKB 216 (\$85,000).

44. I find that the most similar case is *Roque*. There, the defendant shared the plaintiff's intimate images with the Brandon Police Service, where the plaintiff had applied to become an officer. The defendant shared 16 images, only two of which were "intimate images" as defined by Manitoba's version of the IIPA. The defendant only sent them to one person, not widely on the internet. However, the images were shared further within the department, and it impacted the plaintiff's job application.
45. There are some parallels here. MW shared two intimate images, and only shared them with two people on X. MW did not post them publicly. This case is worse than *Roque* in that one of the images ended up on X, and as several of the above cases point out, the internet does not forget. While MW did not post them, by sharing the images he lost control of them. Even if the images are removed from X, it is impossible for BDS to be certain they will never resurface because it is impossible to know if anyone has copied them.
46. I acknowledge that most of the above cases were about "revenge porn", where a former intimate partner weaponized intimate images as a form of intimate partner violence. This is not the case here, and I recognize that BDS is not as vulnerable as most of the other plaintiffs. I also recognize that the intimate images MW shared were not as sexually explicit as the images at issue in the other cases.
47. Still, any non-consensual disclosure of an intimate image is a serious violation of a person's privacy. As the court said in *Doe 464533*, non-pecuniary damages address this harm by providing solace to the person's pain, suffering, and loss of enjoyment of life, and vindicating the plaintiff's dignity and personal autonomy. In submissions, BDS says he has suffered considerable mental distress and feels humiliated. This experience closely matches that of the plaintiffs in the above cases.

48. The IIPA empowers people to choose between the CRT, the Provincial Court, and the Supreme Court when claiming damages. There are pros and cons to each venue. BDS chose the CRT's faster and simpler process and in doing so limited his claim to the CRT's \$5,000 monetary limit. There is no precedent for a non-pecuniary damages award for anything close to \$5,000, and I have no difficulty concluding that he is entitled to considerably more. I therefore order MW to pay \$5,000 in non-pecuniary damages. This means I do not have to consider whether BDS is also entitled to aggravated or punitive damages. I note that I have created a separate order for this damages award, which includes BDS's and MW's full names for enforcement purposes. For clarity, the publication ban I ordered above covers both this decision and the resulting orders.
49. I note that BDS's submissions included arguments about how MW's decision to reveal BDS's identity affected him. He says others have harassed, defamed, and threatened him. However, I find that MW's decision to reveal BDS's identity is outside the scope of what the IIPA protects. So, I did not consider this when assessing damages. In any event, I note that the CRT does not have jurisdiction over defamation claims and there is no recognized tort of harassment in BC.

Is BDS entitled to any of the protection orders he requests?

50. BDS asked for numerous protection orders under the IIPA section 5, which as noted above is permitted by the IIPA section 6(2)(a).
51. He asks for a formal determination that MW shared his intimate images without his consent. He also asks for a determination that it was unlawful for MW to do so. Given my conclusions above, I find he is entitled to both orders.
52. BDS also asks for the various protection orders listed in section 5, and I find he is clearly entitled to them, with one partial exception. The only order BDS seeks that I will not fully grant is for MW to reveal the name and contact information of any people he shared BDS's intimate images with. The IIPA section 5(2)(d) says that the CRT

may order a person to provide any information necessary to further the objectives of removal, deletion, destruction or de-indexing the intimate image.

53. First, MW denies sharing the image with anyone other than EH and CS. BDS already knows both of their full names. So, I find this requested order could only apply to contact information MW has for EH and CS. In considering whether to make this order, I am mindful that EH found BDS's online conduct towards her troubling. While BDS considers it valid public criticism, the comments he makes about EH are very personal. Still, the IIPA section 5(2)(d) is about empowering individuals to take back control of their intimate images, and BDS being able to contact EH will further that purpose because she still has copies of them. It is also possible that EH has been involved in sharing them, although she denies this. I therefore order MW to inform BDS of any contact information he has for EH via email. I note that BDS agreed to have the CRT share his email address with MW for the purposes of complying with this order.
54. As for CS, there is no evidence MW knows how to contact her other than on X. So, I do not make an order that MW provide CS's contact information. That said, the evidence suggests CS is a licensed lawyer in the jurisdiction where she lives, meaning her contact information is likely publicly available.

TRIBUNAL FEES, EXPENSES, AND INTEREST

55. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. BDS was largely successful, so he is entitled to reimbursement of \$175 in paid CRT fees. I also find he is entitled to \$30.45 reimbursement for a BC Registry search to find MW's address for service, which I find reasonable.
56. The *Court Order Interest Act* applies to the CRT. Section 2(e) says that there is no court order interest on non-pecuniary damages arises from personal injury or death. While MW did not injure BDS in any physical sense, the court has given this exclusion

a broad interpretation. For example, in *Dhillon v. Jaffer*, 2013 BCSC 1860, the court did not award interest on mental distress damages arising from a lawyer's negligence. I therefore find that BDS is not entitled to interest.

ORDERS

57. I make the following protection orders under the IIPA section 5(3):

- a. The photo showing BDS in his underwear and the photo showing BDS's buttocks both meet the definition of "intimate image" under the IIPA (together, the photos). I have attached the photos to the protection order as Schedule A, edited by me to blur any intimate or identifying features,
- b. I determine that MW shared the photos without BDS's consent, and that this was unlawful.
- c. I order MW and any other person who shared the photos to **immediately:**
 - i. Delete or destroy all copies of them in their possession or control, and
 - ii. Make every reasonable effort to make the photos unavailable to others, including by
1. having them removed from any online website or platform and from any other electronic form of application, software, database, or communication method, and
2. Having them de-indexed from any search engine.
- d. Within 7 days of the CRT informing MW of BDS's email address, I order MW to provide BDS with any contact information he has for ES.
- e. I order internet intermediaries or any other person or organization to **immediately:**

- i. Remove the photos from any platform it operates and from any other electronic form of application, software, database, or communication method,
- ii. Delete or destroy the photos, and
- iii. De-index the photos from any search engine.

In the protection order, I have included the usernames of the X accounts involved in the sharing as Schedule B.

58. Within 30 days of this decision, I order MW to pay BDS \$5,205.45, broken down as follows:

- a. \$5,000 in non-pecuniary damages, and
- b. \$205.45 for \$175 in CRT fees and \$30.45 in dispute-related expenses.

59. Under the IIPA section 13, I order a ban on the publication of BDS's and MW's names or anything that would identify either of them.

60. **Notice to anyone who receives the protection order.** BDS can later apply to the CRT for an administrative penalty under the IIPA section 16 and section 9 of the *Intimate Images Protection Regulation*, with notice to you, if you fail to comply with the protection order after receiving it. For individuals, the penalty is up to \$500 per day to a maximum of \$10,000 per penalty order. For organizations, the limit is \$5,000 per day up to a maximum of \$100,000 per penalty order. Penalties are payable to the BC Government. BDS can ask the CRT to issue a further penalty order, with the same monetary limits, if your non-compliance continues. Under the IIPA section 5(7), a person affected by this protection order has a right to ask the CRT to cancel it.

61. This is a validated decision. Under the IIPA section 14, a validated copy of the protection order can be enforced through the Supreme Court of British Columbia. Under CRTA section 58.1, a validated copy of the damages order can be enforced

through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the court it was filed in.

Eric Regehr, Vice Chair