



Civil Resolution Tribunal

Date Issued: May 27, 2024

File: IS-3-2024-002572

Type: Intimate Images

Category: Protection Order & Damages

Civil Resolution Tribunal

Indexed as: *AB v. CD*, 2024 BCCRT 490

Publication Ban Applies

BETWEEN:

AB

APPLICANT

AND:

CD

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. In this decision, I refer to the applicant as AB, and the respondent as CD. These are not the parties' initials. As discussed below, this decision is anonymized to protect the applicant's privacy.

2. AB says CD shared and threatened to share intimate images of her without her consent. The parties are former spouses.
3. AB claims \$5,000 in damages under section 6 of the *Intimate Images Protection Act* (IIPA). She also asks for various protection orders, as outlined below.
4. CD denies AB's claims.
5. Both parties are adults and are self-represented.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons and order of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over AB's damages claim under section 118 of the *Civil Resolution Tribunal Act* (CRTA).
7. 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 small claims monetary limit. Under IIPA section 6(2), the CRT may also make the expedited protection orders listed in IIPA section 5 in an application under section 6.
8. 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.
9. 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.

10. 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 AB is an “individual”, so I have not named her in this decision or the accompanying protection order.
11. As required under IIPA section 13, **I order a ban on publishing AB’s name or anything that would identify her.** Since the parties are former partners, I find that publishing CD’s name could identify AB. So, I also order a ban on publishing CD’s name, or anything that would identify him. Given this publication ban, I will anonymize the parties’ names in the published version of this decision. I also order that the CRT’s dispute file be sealed and only disclosed by order of the British Columbia Supreme Court or the CRT. As AB is an adult, she may ask the CRT to cancel the publication ban order.

ISSUES

12. The issues in this application are:
- a. Did CD share or threaten to share intimate images of AB without her consent?
 - b. If so, is AB entitled to damages, and how much?
 - c. Is AB entitled to the protection orders she requests under the IIPA?

REASONS AND ANALYSIS

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

Did CD share or threaten to share intimate images of AB without her consent?

14. IIPA section 1 defines “intimate image” as follows:

- a. It depicts or shows the applicant 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.
15. Intimate images can also include videos.
16. AB says that sometime between June 2023 and February 2024, CD took 5 videos and 16 photos (Images) of her in a nude or nearly nude state. She says CD took the Images in their then-shared home, without her knowledge or consent, while CD was giving her a massage.
17. AB says that sometime later, CD shared all or some of the Images with at least 1 co-worker and 1 friend. AB says she was unaware of this at the time, and did not consent to it. AB also says the Images were shared on their child's iPad and iPhone, through the "cloud".
18. CD admits he took the Images in their home, and admits he did so without AB's knowledge or consent. However, CD says he deleted the Images the same day he took them, when AB found out about them. CD says he did not share the Images with anyone.
19. I have reviewed the Images provided in evidence. I find it is not necessary to determine whether they meet the IIPA definition of "intimate image". That is because for the reasons explained below, I find AB has not proved that CD shared the Images.
20. In her application, AB said CD shared the Images via WhatsApp, but she provided no evidence of this, such as screenshots. AB did not provide a copy of text messages, or any other evidence confirming that CD sent the Images to anyone.
21. AB provided a written statement dated May 7, 2024 from a witness I will call EF. EF wrote that she is a former co-worker and friend of CD, and has known him since 2000. EF described various aspects of CD's personal life, and his relationship with AB. EF described CD's behaviour, which she said became worse over time. She talked about

behaviour at work, and behaviour in CD's personal life. EF said CD treats women badly, and included examples she says prove this point, including a copy of text message CD allegedly sent to a former intimate partner (not AB).

22. I find that none of this information in EF's witness statement, including the attached text message, proves that CD shared or threatened to share intimate images of AB. The text message does not mention AB. It contains threats against someone else, but the threats are not about sharing intimate images.
23. EF also says CD told her that he had shared videos of "sexual interactions with other women" with another co-worker. However, EF specifically says she did not see these videos. I place limited weight on this part of EF's evidence, because it is a second-hand description of a conversation EF did not personally witness (hearsay). Also, even accepting that it is true, EF does not say that CD told her he shared videos or photos of AB.
24. In summary, EF's statement says EF saw and heard about CD engaging in various forms of negative behaviour, including negative behaviour towards women. However, EF does not say she saw or heard about CD sharing or threatening to share any images of AB. So, I find EF's statement, and the accompanying text message, does not prove AB's claims against CD.
25. AB also provided letters from several medical, care, and support providers. I accept that AB received care and support from these individuals and organizations. However, none of these letters say that CD shared or threatened to share intimate images of AB. They do not mention any images. So, I find these letters do not prove AB's claim that CD shared or threatened to share intimate images of her.
26. As explained above, AB also says the Images were shared on their child's iPad and iPhone. In her application, AB said the Images "were shared in the cloud and were later discovered in their [child's] iPhone." AB did not clearly state that CD did this, or how he did it. She only said the images "were shared." Also, AB provided no evidence establishing that this assertion is true. AB provided photos of an iPhone with images

of her on the screen. The images appear to be saved in the “Notes” app. However, it is not clear from the evidence whose iPhone it is, or how the images came to be in the Notes app.

27. Even if the Images were “shared in the cloud” (which is not proved), there is no evidence before me establishing that CD did this.
28. There is no evidence before me clearly establishing that CD shared any images of AB using WhatsApp, the cloud, or any other method. As explained above, for the CRT to order any remedy, AB must prove her claims. Based on the evidence before me, I find AB has not proved that CD shared the Images.
29. In her application form, AB also said CD threatened to share the Images. However, in her subsequent submissions, AB did not say CD threatened to share the Images. AB did not provide any evidence that CD threatened to share the Images. So, I conclude that AB has not proved that CD threatened to share any Images.
30. For these reasons, I dismiss AB’s claims for both a protection order and for damages.
31. Even if I had found that CD shared or threatened to share intimate images, I would not have ordered all of AB’s claimed \$5,000 in damages. This is because in her submissions, AB says she is entitled to damages because of CD’s actions, including events related to their relationship breakdown, including their division of financial assets and property, her housing situation, and alleged forgeries of her signature on documents. These matters are not within the CRT’s intimate images jurisdiction, and do not specifically relate to the Images. So, I would not have ordered damages for these actions in this application.
32. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As AB was unsuccessful, I dismiss her claim for reimbursement of CRT fees. CD paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

33. I dismiss AB's claims and this application.

Kate Campbell, Vice Chair