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Civil Resolution Tribunal

Indexed as: *J.G. v R.C.*, 2024 BCCRT 518

Publication Ban Applies

BETWEEN:

J.G.

APPLICANT

AND:

R.C.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. The applicant, JG, says the respondent, RC, shared the applicant's intimate image without his consent. The applicant asks the Civil Resolution Tribunal (CRT) for

protection orders under section 5 of the *Intimate Images Protection Act* (IIPA). The applicant also claims $5,000 in damages under section 6 of IIPA.

2. The respondent acknowledges that he shared an intimate image of the applicant online. The respondent generally agrees with the requested protection orders and says he has taken steps to have the image removed. As for damages, the respondent says he accepts responsibility for his actions and agrees to compensate the applicant, but says $5,000 is too much.

3. The parties are both adults and are self-represented.

AUTHORITY AND PROCEDURE

4. These are the CRT's formal written reasons and order. The CRT has jurisdiction over applications for expedited intimate image protection orders under *Civil Resolution Tribunal Act* (CRTA), Part 10 – Division 8, and under IIPA sections 1 and 5. The CRT may order compensatory, aggravated, and punitive damages, up to the CRT's $5,000 monetary limit under CRTA section 118, and IIPA 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* (IIPR), the CRT must consider the potential for an expedited intimate image protection order to mitigate harm. The parties agree on most of the facts and the requested remedies. Where they disagree, I find it makes no difference to the outcome, as I explain below. I find I can fairly make an expedited decision based on the written material before me, so I decided not to hold an oral hearing.

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 court.

7. IIPA section 5(9) says that an "individual" must not be named in a "determination or order" unless they are a respondent. Section 1 defines "applicant" as an "individual". I find the applicant is an "individual", so I have not named the applicant in this decision

or the accompanying order. To assist with enforcing this order, CRT staff will provide the applicant with a cover letter addressed to him with a file number that matches the file number at the top right of this decision and order's first page.

8. As required under IIPA section 13, **I order a ban on publishing the applicant's name or anything that would identify him**. Given that the parties were intimate partners, however briefly, I find that publishing the respondent's name could identify the applicant. So, I order a ban on publishing the respondent's name, or anything that would identify him. Given this publication ban, I will anonymize the parties' names in any 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 the applicant is an adult, he may ask the CRT to cancel the publication ban order.

Preliminary issue – territorial competence

9. The respondent lives in Canada but outside of BC. The video in question was made in the respondent's home province and shared from there. Although the respondent did not specifically raise it, a question arises about whether the CRT, as a BC tribunal, has jurisdiction to hear the applicant's application.

10. Before hearing an application, a court or tribunal must have "territorial competence" to do so. This means there must be some connection between the application and the court or tribunal's location.

11. The test to establish territorial competence is whether there is a "real and substantial connection" between BC and the application's subject matter. The burden is on the applicant to establish a real and substantial connection (see *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17), but the threshold is not high (see *JTG Management Services Ltd. v. Bank of Nanjing Co. Ltd*., 2014 BCSC 715 at paragraph 59).

12. IIPA section 6 creates a statutory tort (legal wrong) for the non-consensual sharing or threatened sharing of intimate images. In tort cases, the common law establishes

four factors, any of which is presumed to create a real and substantial connection between the tort and BC. Those factors are:

a. The respondent resides in BC,

b. The respondent carries on business in BC,

c. The tort was committed in BC, or

d. A contract connected with the dispute was made in BC.

13. Here, as noted, the respondent does not live in BC. The applicant does not allege that there is any contract connected to this application. If there was one, it was not made in BC.

14. The respondent posted the video on his OnlyFans and Just For Fans websites. I find This is insufficient to establish that he carries on business in BC. There is no evidence about where his paying customers live.

15. The remaining factor is whether the tort was committed in BC. Unlike torts that typically occur in a fixed physical location, such as battery or trespass, the alleged wrong in this case (the non-consensual sharing of the applicant's intimate images) took place online.

16. Because intimate image protection legislation is relatively new in Canada, there are very few court or tribunal decisions considering the place where the non-consensual sharing of images occurs. However, courts have considered a similar question in the context of the tort of defamation. Defamation involves harmful material communicated to a third party. Courts have held that the location of online defamation is the place where the defamatory statements are read, accessed, or downloaded by the third party (see *Haaretz.com v. Goldhar*, 2018 SCC 28 at paragraph 36).

17. While the IIPA does not require an applicant to prove that a third party accessed their image, an applicant must establish that someone has distributed or threatened to

distribute their image. Under IIPA section 1, “distribute” means to transmit, publish or otherwise make available.

18. While most images posted online could be considered to have been distributed anywhere, adopting such a broad approach could amount to the CRT having “universal jurisdiction”. This type of broad interpretation is not intended or encouraged (see *Van Breda* at paragraph 87). So, I find that proving distribution in BC requires something more than showing that the image could have been accessed from BC.

19. Although the applicant’s place of residence is not determinative, the place where the applicant suffered harm may be relevant to a determination of where the tort was committed (see *The Original Cakerie Ltd. v. Renaud*, 2013 BCSC 755). The applicant lives in BC and it was there that he viewed the image online and became aware that the respondent had distributed his image. So, I find that the image was distributed in BC and the applicant suffered the alleged harm while in BC. I find this sufficiently connects the alleged non-consensual image sharing to BC, and the CRT has jurisdiction over these applications.

ISSUES

20. The issues in this application are:

    a. Did the respondent share an intimate image of the applicant without his consent?

    b. Is the applicant entitled to the protection orders he requests under IIPA?

    c. Is the applicant entitled to damages, and if so, how much?

EVIDENCE AND ANALYSIS

21. In a civil proceeding like this one, the applicant must prove his applications 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. The respondent provided submissions but no evidence, despite having the opportunity to do so.

22. The applicant met the respondent on Grindr. He consented to being filmed engaging in sexual intercourse with the respondent in the respondent's bedroom. The respondent made a video with his phone, which is approximately 5 minutes long. The respondent sent the video to the applicant privately. Later, the respondent shared the video online to subscribers of his OnlyFans and Just For Fans accounts, from which he earns income. The respondent also posted short clips of the video on his X or Twitter accounts, one of which has over 100,000 followers. None of this is disputed.

23. For this application for an expedited intimate image protection order, the evidence must show the image at issue meets the definition of "intimate image" set out in IIPA section 1:

    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.

24. The definition of "intimate image" includes videos.

25. The respondent agrees that the video shows the applicant nude and engaging in a sexual act. The respondent says they do not know whether the applicant had a reasonable expectation of privacy when the image was made or shared.

26. Under IIPA section 9, the respondent must that prove the applicant did not have a reasonable expectation of privacy and so the image is not an "intimate image". The respondent is not responsible under IIPA sections 5 and 6 if he proves he had the applicant's consent to share the image the way the respondent shared it. Further, IIPA section 4 says an applicant can revoke their consent to share the image. If they do, a respondent must make every reasonable effort to make the intimate image unavailable to others. This means the respondent cannot share it.

27. The applicant says he consented to the filming with the understanding that the video would remain private between the two of them. The respondent says he thought the applicant was aware that the video "was shared, based on a conversation" they had about it. The respondent does not explain whether this conversation happened before he put the video online, or provide any other details. On balance, I find the respondent has not met the burden of proving that the applicant consented to sharing the video. I find the applicant always had a reasonable expectation of privacy in the video.

28. With that, I find the video, and any clips or still images made from it, is an "intimate image" as defined under IIPA and that the respondent shared it without his consent.

29. Given my conclusions above, I find the applicant is entitled to the requested protection orders he requested. While the respondent says the images have been removed from OnlyFans, Just For Fans and X, he has multiple accounts on X and one of them is currently suspended, so it is not clear that all images have been removed. In any event, the respondent says he agrees with the requested protection orders. In the circumstances, I find it is appropriate to make the protection orders below.

Damages

30. As noted above, 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 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 intended to punish respondents for outrageous and malicious conduct. In claiming $5,000, the applicant wants compensatory, aggravated, and punitive damages.

31. The applicant says it is horrifying to know that a video showing him having sex, with his face shown, has been on the internet for over two years. He says although the video has now been removed, the violation continues to cause him mental distress in general and anxiety around sex and intimacy, specifically. The applicant also requests that any profit made from the videos be redirected to him.

32. The respondent agrees he should pay damages. He suggests that $2,000 in damages is appropriate for the emotional damage caused. The respondent says the video appeared on OnlyFans but was taken down quickly because there was no accompanying consent form. The respondent says he believed that he had removed the video from his Just For Fans account years ago and only became aware that he had not done so as a result of this claim. He says no harm was intended. The respondent also says profit from the video was minimal. He appears to have around 100 subscribers on each of his fan-based platforms.

33. In *B.D.S. v. M.W.*, 2024 BCCRT 410, the CRT reviewed cases where Canadian courts awarded damages for the non-consensual disclosure of intimate images. The CRT noted that the lowest compensatory damages award was $45,000 and the highest award was $85,000. This does not include aggravated and punitive damages.

34. Most of the cases involve "revenge porn", where a former intimate partner weaponized intimate images. That is not the case here, and I find the respondent's conduct is less blameworthy that that of the revenge porn cases because it was not directly intended to harm the applicant. However, the respondent still attempted to monetize an intimate video by sharing it without consent. Any non-consensual disclosure of an intimate image is a serious violation of a person's privacy. 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 (see *Doe 464533 v. N.D.*, 2016 ONSC 541). Here, there is no way to determine here how many times the applicant's video was viewed, downloaded, copied, or shared. As the cases point out, even if the images are removed, the applicant can never be certain that they will not resurface.

35. As noted in *B.D.S.,* 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. The applicant 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 court precedent for a non-pecuniary damages award for anything close to $5,000, and I

have no difficulty concluding that the applicant would be entitled to more than $5,000. I therefore order the respondent to pay $5,000 in non-pecuniary damages. This means I do not have to consider whether the applicant is also entitled to aggravated or punitive damages, and therefore I do not have to determine whether the respondent intentionally or inadvertently left the video up on his Just For Fans account.

36. I have created a separate order for this damages award, which includes the parties' full names for enforcement purposes. For clarity, the publication ban I ordered above covers both this decision and the resulting orders.

TRIBUNAL FEES, EXPENSES AND INTEREST

37. 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. The applicant was largely successful, so he is entitled to reimbursement of $125 in paid CRT fees. I also find he is entitled to reimbursement of $22.50 for subscriptions to the respondent's OnlyFans and Just For Fans websites to see if the video was online. I find this was a reasonable step to take to obtain evidence for this dispute, and there was likely no cheaper access option.

38. When describing his dispute-related expenses the applicant asked if he could claim therapy costs. Therapy costs must be claimed as damages, not dispute-related expenses, because they are related to the underlying tort, not the CRT proceeding. As I found the applicant was entitled to the maximum $5,000, I cannot award anything more for therapy.

39. 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 the respondent did not injure the applicant in a 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 the applicant is not entitled to interest.

ORDERS

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

    a. The applicant's video, and any videos or images made from that video, meets the definition of "intimate image" under the IIPA. The video may be identified by the screenshot attached to this order as Schedule A, edited by me to blur any personal and identifying features.

    b. The respondent shared the applicant's intimate image without his consent, and this was unlawful.

    c. The respondent must **immediately:**

        i. Stop distributing the image, and

        ii. Make every reasonable effort to make the intimate image unavailable to others, including by:

            1. Having it removed from any online website or platform and from any other electronic form of application, software, database, or communication method, and

            2. Having the intimate image de-indexed from any search engine.

    d. Internet intermediaries or any other person or organization must **immediately:**

        i. Remove the intimate image from any platform it operates and from any other electronic form of application, software, database, or communication method,

        ii. Delete or destroy the intimate image, and

        iii. De-index the intimate image from any search engine.

41. Within 30 days of this decision, I order the respondent to pay the applicant $5,147.50, broken down as follows:

a. $5,000 in non-pecuniary damages, and

b. $147.50, for $125 in CRT fees and $22.50 in dispute-related expenses.

42. The applicant is entitled to post-judgment interest, as applicable.

43. **Under IIPA section 13, I order a ban on publishing the parties' names or anything that would identify them.**

44. I order the dispute records sealed. Only the parties, their lawyers, and the CRT may have access to the dispute records. With the applicant's consent, the CRT may share information from the dispute record with the Intimate Images Protection Service of the British Columbia Minister of Public Safety and Solicitor General.

45. **Notice to the respondent and anyone who receives this protection order.** If you fail to comply with this protection order after receiving it, the applicant can apply to the CRT for an administrative penalty under IIPA section 16 and IIPR section 9, with notice to you. For individuals, the penalty is up to $500 per day to a maximum of $10,000 per penalty order. For organizations, the penalty is up to $5,000 per day up to a maximum of $100,000 per penalty order. Penalties are payable to the BC Government. The applicant can ask the CRT to issue a further penalty order, with the same monetary limits, if the non-compliance continues.

46. Under IIPA section 5(7), a person affected by this protection order has a right to ask the CRT to cancel it.

47. This is a validated decision and order. Under IIPA section 14, the CRT's order can be enforced through the British Columbia Supreme Court. Once filed, a CRT order has the same force and effect as an order of that court.

Micah Carmody, Tribunal Member