



# Civil Resolution Tribunal

Date Issued: June 14, 2024

File: IS-3-2024-004008

Type: Intimate Images

Category: Damages

Civil Resolution Tribunal

Indexed as: *JT v. Sowinski*, 2024 BCCRT 553

## Publication Ban Applies

BETWEEN:

J.T.

**APPLICANT**

AND:

BYRON SOWINSKI

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. The applicant, whose initials are JT, says the respondent, Byron Sowinski, has shared and threatened to share intimate images of her without her consent. The

applicant claims \$5,000 in damages under section 6 of the *Intimate Images Protection Act* (IIPA). The applicant is self-represented.

2. The respondent failed to participate in this proceeding, despite acknowledging receipt of the Dispute Notice. So, the respondent is technically in default, which I address further below.
3. The parties are both adults.

## **JURISDICTION AND PROCEDURE**

4. The Civil Resolution Tribunal (CRT) has jurisdiction over this damages claim under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. These are the CRT's formal written reasons.
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.
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" under section 5, or a related CRT decision, unless they are a respondent, and section 1 defines "applicant" as an "individual". I find the applicant is an "individual", so I have not named her in this decision, which I find is a decision related to a previous section 5 decision. However, I have included her name in my damages order, which I find is not covered by section 5(9), to ensure it is enforceable.
8. As required under section 13 of the IIPA, **I order a ban on publishing the applicant's name or anything that would identify her.** Given this publication ban,

I will anonymize the applicant's name in any published version of this decision. I considered whether to extend the publication ban to the respondent. However, the applicant does not assert that naming the respondent would indirectly identify her. So, I have not extended the publication ban to include the respondent. I order that the CRT's dispute file be sealed and only disclosed by order of the Supreme Court of British Columbia or the CRT. As the applicant is an adult, she may ask the CRT to cancel the publication ban order.

### ***Protection Orders***

9. This proceeding relates to 1 of 3 linked applications. The other 2 proceedings (IS-1-2024-003889 and IS-1-2024-003743) relate specifically to protection orders requested by the applicant. She also requested the same protection orders in this application. I have provided reasons and granted protection orders in those other proceedings. So, I find the protection orders sought in this dispute are redundant, and I have not addressed them further in this decision.

### **ISSUE**

10. The issue in this dispute is whether the applicant is entitled to damages, and if so, how much?

### **BACKGROUND, EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicant must prove her application on a balance of probabilities, which means more likely than not.
12. As noted, the respondent has not participated in this proceeding. The applicant provided a May 7, 2024 text message from the respondent where they acknowledged receiving the applicant's notice of application. So, I find the respondent was properly served and failed to respond. By failing to file a response or otherwise participate in this proceeding, the respondent is in default. Generally, where a party is in default, liability is assumed against them. I discuss below how this applies to this dispute.

13. I turn to the circumstances leading to this claim for damages. Between 2019 and 2023, the applicant took various sexual images of herself, or her partner took photos of her. The images were taken while in her bedroom and were for personal purposes. The applicant says on February 24, 2024, she and the respondent were hanging out with a mutual friend. The parties had never met before. While at another person's apartment, the respondent asked the applicant if the respondent could use her phone to connect it to the TV to play music. While doing so, the respondent secretly accessed the applicant's iCloud account and sent themselves several images of the applicant nude, or nearly nude, and engaged in sexual acts. The respondent also sent 1 photo to an incorrect phone number while trying to send it to themselves.
14. Later that day, the applicant noticed the images were sent to 2 unknown numbers. She called the most used number and reached the respondent. In text messages between the parties, the respondent apologized for sending themselves the images without the applicant's consent. The respondent offered to reciprocate by sending the applicant intimate images of themselves. The respondent also said the applicant should take it as a "compliment" that they wanted the images, and that the images they sent to themselves could be used later in the respondent's "spank bank".
15. On February 26, 2024, the respondent text messaged the applicant and said if they heard anything else about the respondent "stealing" the applicant's pictures, they would "post your pictures all over social media".
16. In my reasons for decision and protection order in both IS-1-2024-003889 and IS-1-2024-003743, I set out the images in question. Those decisions are not published. I will not detail those images here, except to say that I adopt those findings. Namely, I find the 10 images the respondent obtained are "intimate images" as defined in IIPA section 1. I also find the respondent shared the images without the applicant's consent, and threatened to share them.
17. So, is the applicant entitled to damages? 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 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.

18. IIPA section 11 sets out defences available for respondents in a damages claim. As noted, the respondent elected not to participate in this dispute. Given the respondent's default status, I find they have not argued or proven any defence. I find the applicant is entitled to damages.
19. I turn then to the amount of damages the applicant is entitled to. The applicant says her privacy has been violated and she has suffered from sadness and depression as a result of the respondent's conduct. She says she has lost the motivation to socialize and instead isolates herself.
20. I find the respondent flagrantly ignored the applicant's right to personal privacy and autonomy in sharing her intimate images. I further find their behaviour after the applicant discovered the sharing was egregious, both in their offers for reciprocal intimate images and their explanation for their use of the photos. Finally, I find the respondent's behaviour in threatening to share the images further reprehensible.
21. As noted in prior CRT damages decisions under the IIPA, most Canadian court awards for non-pecuniary damages for the non-consensual disclosure of intimate images far exceed the CRT's small claims monetary limit of \$5,000. Here, I find the applicant is entitled to at least that amount, but I am bound by the limit. If not for the limit, I also would have found that the applicant is entitled to punitive damages to punish the respondent for their reprehensible and disgusting conduct, and to express society's disapproval of their actions. I order the respondent to pay the applicant \$5,000 in damages.
22. The applicant also provided receipts for counselling sessions she attended as a result of this incident. As I have already found the applicant is entitled to the \$5,000 monetary limit, I cannot award anything further for her counselling.

### ***Interest, Fees and Expenses***

23. The CRT's \$5,000 small claims monetary limit is exclusive of *Court Order Interest Act* interest, CRT fees, and dispute-related expenses. However, section 2 of the *Court Order Interest Act* says pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, which can include mental distress<sup>1</sup>. So, I make no award for pre-judgment interest.
24. Under section 49 of the CRTA and the CRT rules, a successful party is entitled to reimbursement of their tribunal fees and dispute-related expenses. The applicant was successful but did not pay any tribunal fees or claim any dispute-related expenses.

### **ORDERS**

25. Within 30 days of this decision, I order the respondent to pay the applicant \$5,000 in damages.
26. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*.
27. **Under the IIPA section 13, I order a ban on the publication of the applicant's name or anything that would identify her.**
28. I order the dispute records sealed. Only the applicant as the only participating party, her representative (if any), 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.

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<sup>1</sup> *Dhillon v. Jaffer*, 2013 BCSC 1595, rev'd in part on other grounds 2014 BCCA 215.

29. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's 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 that court.

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Andrea Ritchie, Vice Chair