



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *MLA v. Cogtong*, 2024 BCCRT 1194

Publication Ban Applies

BETWEEN:

M.L.A.

APPLICANT

AND:

MIGUEL LUIS COGTONG

RESPONDENT

REASONS FOR DECISION AND ORDER

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. The applicant, MLA, says the respondent, Miguel Luis Cogtong, has shared intimate images of her without her consent. The applicant claims \$5,000 in damages under section 6 of the *Intimate Images Protection Act* (IIPA).

2. The respondent denies distributing any intimate images of the applicant.
3. Both parties are adults, and are self-represented in this dispute.

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. 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 court.
7. IIPA section 5(9) says that an "individual" must not be named in a "determination or order" under section 5 (applications for protection orders), or a related CRT decision, 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, which I find is a decision related to a section 5 decision. However, I have named the applicant in my damages order, which I find is not covered by section 5(9), to ensure it is enforceable.
8. IIPA section 13(1) requires me to order a publication ban on the applicant's name, or anything that would identify her. So, I make that order, and have not used the applicant's name in this decision.

9. Because the applicant is an adult, she may apply to the CRT to lift the publication ban.
10. The respondent requested that the CRT anonymize his name to prevent damage to his reputation. The applicant opposes this request, and says the CRT should use the respondent's full name, even though it might identify her.
11. The open court principle applies to CRT proceedings, including intimate images claims. . Based on that principle, the CRT generally identifies parties in published decisions. This furthers the goal 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 IIPA section 13. However, since the respondent 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.
12. The Policy sets out 3 criteria to consider when deciding whether to anonymize a decision:
 - 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.
13. Having applied these criteria, I find it is not appropriate in the circumstances of this case to anonymize the respondent's name. The IIPA is specifically written so that an applicant's name is automatically subject to a publication ban, but the respondent's is not. This indicates that the purposes of the IIPA did not include keeping respondents' identities confidential in CRT proceedings. I place significant weight on the open court principle, as discussed by the BC Supreme Court.¹

¹ *de Wit v. Legacy Tax & Trust Lawyers*, 2024 BCSC 1792.

14. The Supreme Court of Canada has said the fact that court openness is embarrassing, distressing or prejudicial to individuals will not generally mean that the open court principle should be set aside.²
15. For these reasons, I am not persuaded that it is appropriate to anonymize the respondent's name, particularly since the applicant requested that it not be anonymized. I refuse the respondent's anonymization request.

ISSUE

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

BACKGROUND, EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, the applicant must prove her application on a balance of probabilities, which means more likely than not.
18. To establish her claim for damages, the applicant must first prove the respondent shared or threatened to share an "intimate image" depicting her, without her consent. The applicant must also prove she is entitled to the claimed damages.
19. The parties are former romantic partners. The applicant says the respondent posted intimate photos of her on Facebook.
20. On August 23, 2024, the CRT issued a decision granting the applicant a protection order. That decision was subject to a publication ban, so was not published. In the application for a protection order, the applicant did not name any respondent to the application, but said say the images were shared on Facebook by MC, who I find is the respondent named in this current application. The August 23 protection order was issued against "Any person who shared the applicant's images, including MC".

² *Sherman Estate v. Donovan*, 2021 SCC 25 at paragraph 63.

21. In the protection order decision, the tribunal member found that the images posted on Facebook were “intimate images”, as defined in IIPA, and that they were shared without her consent.
22. Under IIPA section 6(4), I am not bound by any of the tribunal member’s prior conclusions about the intimate image made in the protection order application. However, I find the tribunal member’s reasons persuasive and consistent with the evidence before me. So, I adopt those findings here. I find that the images at issue are intimate images as defined in IIPA section 1, because they show the applicant as nearly nude, in sexually suggestive poses, and the images depict a sexualized and private moment.
23. The respondent denies sharing the applicant’s images, on Facebook or elsewhere. Based on the evidence before me, I find the respondent did share the images, and did so without the applicant’s consent. I make this finding because the applicant provided 3 screen shots showing Facebook posts of her intimate images. Two of the 3 screen shots clearly show that the photos were posted on the respondent’s Facebook account, as the respondent’s name and Facebook profile show in the top left corner. Also, the applicant provided a copy of a text message the respondent sent her, with a copy of one of the same photos that was posted on Facebook.
24. Finally, the applicant provided a copy of a text chat with an unidentified friend, who said the respondent was posting photos of the applicant. The friend included copies of 2 of the photos posted on Facebook in her text chat with the applicant.
25. I find that this evidence proves that the respondent posted intimate images of the applicant on Facebook without her consent.
26. The respondent provided evidence showing that the applicant has posted negative things about him on social media. However, I find that does not disprove the applicant’s allegation that the respondent shared intimate images of her on Facebook. It also does not exempt him from the IIPA, which makes it illegal to share

intimate images without consent. So, I place no weight on this evidence about the applicant's social media posts.

27. The applicant says the images in question were taken about 9 years ago. This is before the IIPA's effective date of March 6, 2023. IIPA section 23 says the IIPA applies to an intimate image distributed on or after the March 6, 2023. The applicant says the respondent shared the images on Facebook most recently on August 16, 2024. Based on the evidence before me, I accept that is true. So, I find the IIPA applies.
28. I also find the applicant had a reasonable expectation of privacy when the images were taken, as they were taken in a private bedroom with only the applicant and the respondent present. The applicant says although she agreed to the respondent having the pictures, she never agreed to them being shared on social media, which I accept.
29. I turn to the question of 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.

Damages

30. As stated above, IIPA section 6(2) allows the CRT to award compensatory, aggravated, and punitive damages where a respondent has distributed an intimate image without the applicant's consent. Compensatory damages are intended to compensate the applicant for their losses, and can include pecuniary (that is, quantifiable) damages, or non-pecuniary damages (sometimes referred to as general damages, or pain and suffering damages).

31. Aggravated damages are awarded in rare cases, where a respondent's behaviour is particularly poor and causes intangible injuries such as mental distress and anxiety. Punitive damages are intended to punish respondents for malicious, oppressive, and high-handed conduct, and to deter similar conduct, if compensatory damages are insufficient to do so.
32. In this dispute, the applicant requests \$5,000 in damages. She says the respondent's actions in sharing her intimate images has caused her stress and anxiety, and has been difficult for her mental health. She says she has panic attacks, and that she is afraid to leave her house in case she sees the respondent.
33. The applicant says she has missed work due to her stress and anxiety arising from the respondent's conduct. However, she did not claim for lost wages, or other monetary loss, and provided no evidence of it. So, I do not order pecuniary damages.
34. However, I find non-pecuniary damages are appropriate in this case. I accept that the respondent's posting her intimate images on Facebook was distressing and upsetting. The 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 how many times the applicant's photos were viewed, copied, or shared.
35. 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.
36. 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. The applicant chose the CRT's faster and simpler process and in doing so limited her claim to the CRT's \$5,000 monetary limit. As explained above, the court precedents for non-

pecuniary damages far exceed the \$5,000 the applicant claims in this dispute. So, I have no difficulty concluding that the applicant would be entitled to more than \$5,000 in another forum.

37. For these reasons, I order the respondent to pay \$5,000 in non-pecuniary damages.

Interest, Fees and Expenses

38. The CRT's \$5,000 small claims monetary limit is exclusive of *Court Order Interest Act* (COIA) interest, CRT fees, and dispute-related expenses. However, COIA section 2 says pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, which can include mental distress³. So, I make no award for pre-judgment interest.

39. The parties paid no CRT fees and claimed no dispute-related expenses, so I order none.

ORDERS

40. I order that within 30 days of this decision, the respondent must pay the applicant \$5,000 in damages.

41. The applicant is entitled to post-judgment interest under the COIA, as applicable.

42. **Under IIPA section 13, I order a ban on publishing the applicant's name or anything that would identify her.**

43. I order the dispute records sealed. Only the parties, their representatives (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.

³ *Dhillon v. Jaffer*, 2013 BCSC 1595, rev'd in part on other grounds 2014 BCCA 215.

44. 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.

Kate Campbell, Vice Chair