



Civil Resolution Tribunal

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Category: Protection Order & Damages

Civil Resolution Tribunal

Indexed as: *MN v. OP*, 2025 BCCRT 750

Publication Ban Applies

BETWEEN:

MN

APPLICANT

AND:

OP

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. The applicant, who I will call MN, initially said the respondent, who I will call OP, shared her intimate image without her consent. However, as explained below, she now says OP threatened to share the image. MN asks the Civil Resolution Tribunal

(CRT) for a protection order under section 5 of the *Intimate Images Protection Act* (IIPA). She also claims \$5,000 in damages under IIPA section 6.

2. OP disputes MN's application for a protection order and her damages claim.
3. The parties are both adults, and each is self-represented.
4. MN and OP are not the parties' real initials. I have anonymized their names and initials in this decision to protect MN's privacy.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons.
6. 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 also has jurisdiction over this damages claim under CRTA section 118.
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.
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* (IIPR), 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 it considers relevant and appropriate, even if it would not be admissible in court. MN objects to OP's late submissions in both disputes. However, she was given the opportunity to

address them, and she did so. I find no prejudice arises in considering OP's late submissions, and I have taken them into account along with MN's final response.

10. IIPA section 5(9) says 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 MN is an "individual", so I have not named her in this decision.
11. IIPA section 13(1) requires me to order a publication ban on MN's name or anything that would identify her. Under IIPA section 13(2), I must also order a publication ban on OP's name or anything that would identify him if he was a minor at the time of the alleged distribution or threat of distribution, or if there are other reasons to protect his identity. Here, the parties are former intimate partners, and I find identifying OP may indirectly identify MN. **I order a ban on publishing the parties' names, or anything that would identify them.** As MN is an adult, she may ask the CRT to cancel the publication ban order.
12. 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.

ISSUES

13. The issues are:
 - a. Was the image at issue an intimate image of MN?
 - b. Did OP threaten to share MN's intimate image without her consent?
 - c. If so, is MN entitled to the protection order she requests under the IIPA?
 - d. Is MN entitled to damages?

EVIDENCE AND ANALYSIS

Applicable law

14. As the applicant in this civil proceeding, MN must prove her applications on the balance of probabilities, which means more likely than not.
15. MN must first prove OP shared or threatened to share an intimate image of her or depicting her, without her consent. If MN does so, then she must prove she is entitled to the claimed damages.
16. For the 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 MN engaging in a sexual act, nude or nearly nude, or exposing her genitals, anal region, or breasts, and
 - b. MN 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.

Relevant background

17. When MN applied for dispute resolution, she named two respondents, OP and a different ex-partner. She said her other ex-partner had taken a photo of the two of them engaged in sexual intercourse and shared it with OP, and possibly others. Neither of the individuals’ faces are visible in the photo. MN said OP sent her the photo to try and sextort her, by forcing her to meet him for sex.
18. During these proceedings, OP revealed that the photo in question was not of MN and her ex-partner. Instead, he said it was a screenshot of a couple from an adult film on Reddit. MN now agrees that the image is not of her, despite the couple’s strong resemblance to her and her ex-partner. With the help of a support worker, she says was able to trace the image’s source to a publicly available online adult video. Given this, MN amended both her Notice of Application for a protection order

and her Notice of Application for damages to remove her ex-partner as a respondent. MN pursued her application against OP as a threat to share her intimate image, and continued with her damages claim against him.

Was the image at issue an intimate image of MN?

19. As noted above, the test for whether an image is an “intimate image” has two parts.
20. First, the image must be of the individual or it must “depict” them. The parties now agree the image is not of MN. “Depict” in the IIPA means to represent in a recording of a still image, a recording of a moving image, or a simultaneous representation.
21. I have trouble concluding that the image “depicts” MN. The image existed as part of a publicly available adult video long before OP sent it to MN suggesting it was her and her ex-partner. So, I find the image did not represent MN then. Even after OP sent it to MN, I find it did not depict her. While MN initially said she was certain the image was of her because of an identifying birthmark, she later acknowledged it was not, and I find a birthmark very difficult to make out in the copies of the image provided. There is no suggestion or evidence OP altered the image in any way to make it look like MN, or shared it more broadly to represent the woman in the image as MN to others.
22. In *R. v. Sharpe*, the Supreme Court of Canada found that “depict”, as it appears in the *Criminal Code* at section 163.1(1), must be interpreted on an objective basis, and not on the basis of what was in the parties’ minds.¹ While *Sharpe* is a criminal case, I find the objective interpretation test equally applicable here. So, the question is “would a reasonable observer perceive the person in the representation as being MN?” On these facts, I find the answer is no.
23. I find the image fails the second part of the test as well. Under IIPA section 9, OP must prove MN did not have a reasonable expectation of privacy, and so the image is not an intimate image. In his submissions, OP denies MN had a reasonable

¹ See *R. v. Sharpe*, 2001 SCC 2 (CanLII) at paragraph 43

expectation of privacy when the image was taken or created because the woman in the video is not her. I agree in these circumstances. I find that since the image is not of MN and does not depict her, she cannot have had a reasonable expectation of privacy in it.

24. For the reasons above, I find MN has not proven the image at issue is an intimate image of her under the IIPA. So, I find MN's requests for both a protection order against OP under IIPA section 5 and damages under IIPA section 6 must fail.

25. I dismiss MN's claims.

26. Under section 49 of the CRTA and the CRT rules, a successful party is entitled to reimbursement of their CRT fees and dispute-related expenses. However, neither party paid CRT fees, and neither claims dispute-related expenses.

ORDERS

27. I dismiss MN's claims.

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

29. I order the dispute records sealed. Only the parties, their representatives (if any), and the CRT may have access to the dispute records. With MN'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.

30. This is a validated decision and order. Under CRTA section 58.1, 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.

Megan Stewart, Tribunal Member