Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *AQ v. BW*, 2025 BCCRT 907

Publication Ban Applies

B E T W E E N :

A.Q.

APPLICANT

A N D :

B.W.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr, Vice Chair

INTRODUCTION

1. The applicant, who I will call AQ, claims that the respondent, who I will call BW, shared an intimate image of her without her consent. These are not either party's

real initials. AQ claims $5,000 in damages under section 6 of the *Intimate Images Protection Act* (IIPA). AQ is an adult and is self-represented. She resides in BC.

2. AQ also applied for various intimate images protection orders under IIPA section 5. I have issued a separate decision for that application. I did not publish that decision because section 136.4(1)(c) of the *Civil Resolution Tribunal Act* (CRTA) exempts IIPA protection order decisions from the general requirement that the Civil Resolution Tribunal (CRT) publish all final decisions. As noted below, I have adopted certain conclusions from that decision without repeating the details. I took this approach to avoid inadvertently identifying AQ.

3. BW asks me to dismiss AQ's claims. They are an adult and are self-represented.

4. Both parties also claim compensation for their time spent on these disputes.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over this damages claim under CRTA section 118. IIPA section 6 creates a statutory tort for the non-consensual distribution or threatened distribution of intimate images. Under the IIPA, the CRT may order compensatory, aggravated, and punitive damages, up to the CRT's $5,000 monetary limit under its small claims jurisdiction.

6. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including whether it is an oral hearing or based on written materials. I explained in my protection order decision why I decided these disputes on the written materials before me, and I adopt that reasoning here without repeating it.

7. CRTA section 42 says the CRT may accept as evidence any information that it considers relevant, necessary, and appropriate, whether or not it would be admissible in court. This includes hearsay evidence.

8. 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".

So, I have not named AQ in the style of cause (title page) above because I find this is a decision related to the protection order decision.

9. IIPA section 13(1) requires me to order a publication ban on AQ's name or anything that would identify her. Section 13(3)(a) says that this publication ban may include all parties. I find this is appropriate here because BW's identity might indirectly identify AQ, given the frequency with which they have engaged online. **I order a ban on publishing AQ's or BW's names or anything that would identify either of them**. For the same reasons, I have used initials in place of BW's name in this decision even though IIPA section 5(9) allows me to use their full name. AQ is an adult, so she can ask the CRT to cancel the publication ban order.

10. However, I have used both parties' names in my damages order, which I find is not captured by IIPA section 5(9), to ensure it is enforceable.

11. I also order that the CRT's dispute file be sealed and only disclosed by order of the BC Supreme Court or the CRT.

BW's Pronouns

12. The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that policy, the CRT asks participants to identify their pronouns. If people do not respond, the CRT uses gender-neutral they/them pronouns.

13. BW did not identify pronouns or a title, answering the question with "none" and "N/A", respectively. BW argues that declining to use pronouns is a valid expression of gender identity. I have decided to use they/them pronouns for BW in this decision. There are three reasons for this. First, BW's submissions indicate that they have no objection to others using pronouns to refer to them, describing their "no pronoun" answer to be a form of expression and not a "prohibition imposed on others". Second, the use of they/them pronouns is a broadly accepted way to address someone without communicating anything about their gender. For CRT

decisions, they/them pronouns act as a default when people decline to respond to questions about which pronouns and title to use. I consider BW to have effectively declined to respond. Third, while it is technically possible to never use pronouns when writing in the third person, I consider it impossible to communicate clearly and effectively in a legal decision without using pronouns.

Late Evidence and Submissions

14. In the usual course, there are three rounds of submissions in a CRT dispute: the applicant's submissions, the respondent's submissions, and the applicant's reply. In this dispute, there were several more rounds of submissions, which sometimes included late evidence. BW objects to this process. I agree it is unfortunate that submissions unfolded as they did, but find no procedural unfairness ultimately resulted. The parties each fully argued their positions and had opportunities to respond to the other. I have therefore considered all the information before me.

Other Matters

15. The parties both raised many issues in their submissions. They each also sought a variety of directions, orders, declarations, and penalties aimed at the other. Many of these were about side issues unrelated to the non-consensual disclosure of intimate images. One example is a dispute about whether AQ made online orders under BW's name to a third party's address. Other issues the parties raised had no legal basis at all and appear to have been conjured by artificial intelligence. An example is that both parties rely on a hallucinated version of CRTA section 92. BW's submissions quote the entire fabricated section, setting out the circumstances where the CRT may award monetary penalties. There is no way a human being could read CRTA section 92 and make that error.

16. I have considered my obligation to give sufficient reasons. I do not consider that obligation to include responding to arguments concocted by artificial intelligence that have no basis in law. I accept that artificial intelligence can be a useful tool to help people find the right language to present their arguments, if used properly.

However, people who blindly use artificial intelligence often end up bombarding the CRT with endless legal arguments. They cannot reasonably expect the CRT to address them all. So, while I have reviewed all the parties' materials and considered all their arguments, I have decided against addressing many of the issues they raise. If I do not address a particular argument in this decision, it is because the argument lacks any merit, is about something plainly irrelevant, or both.

ISSUES

17. The issues in this dispute are:

    a. Does BW have a valid defence under IIPA section 11?

    b. If not, what are AQ's damages?

    c. Is either party entitled to compensation for the time they spent dealing with these disputes?

EVIDENCE AND ANALYSIS

18. In a civil claim such as this, AQ as the applicant must prove her claims on a balance of probabilities. This means more likely than not.

19. As I explained in my protection order decision, BW shared an intimate image of AQ by posting it on X twice. The image depicts a relatively closeup photo of AQ's groin and upper thigh. She is wearing underwear and a sanitary pad that does not entirely cover her pubic area. The photo appears to have been taken in bed. I concluded it depicted her nearly nude. The version of the photo BW shared included an arrow pointing to blemishes on AQ's skin and a scrawled message asserting the blemishes were evidence of a sexually transmitted infection (STI). One of the posts was just of the image, while the other included accompanying text.

20. IIPA section 11 includes two statutory defences to a damages claim for the non-consensual disclosure of intimate images. BW relies on both of them.

21. The first is in IIPA section 11(1)(a). It says a respondent is not liable if they had, or honestly and reasonably believed that they had, the individual's consent when they shared the intimate image. BW's argument about section 11(1)(a) is primarily based on their allegation that AQ publicly posted the image, and by doing so implicitly consented to essentially anyone sharing it further. I concluded that AQ had shared the image with someone online but had not shared it publicly. I do not accept that this decision to privately share the image could give anyone a reasonable and honest belief that they consented to anyone sharing it anywhere.

22. BW also argues that AQ posted medical records online that include a diagnosis of an STI. BW argues that by making her STI public, AQ implicitly consented to anyone sharing images depicting her STI. AQ disputes the authenticity of the medical records and that she has an STI, but I find it unnecessary to decide that. Even if it were true, it is preposterous to suggest that a person who discloses being diagnosed with an STI implicitly consents to anyone sharing images depicting it.

23. So, I find that BW did not reasonably and honestly believe that AQ had consented to BW posting the image publicly. Given that conclusion, I do not need to address BW's arguments about the revocation of consent.

24. The next defence BW relies on is in IIPA section 11(1)(b). It says that a respondent is not liable if the sharing was in the public interest. BW makes two arguments under this section.

25. First, BW alleges that the initial message where AQ shared the image with someone was directed at a minor, and was part of an effort to groom the minor. BW says their posts furthered the public interest by "raising awareness of alleged predatory conduct involving a vulnerable person" and was not about humiliating AQ. Leaving aside the fact that there is absolutely no evidence to support BW's serious allegation that AQ shared the image with a minor for the purposes of grooming, or even that the recipient was a minor at all, the text BW wrote to accompany the image betrays their real intentions. I will not quote BW to avoid making the post discoverable, but the main point of the text is to suggest that anyone receiving the

image would vomit. No serious person could read it and conclude it was aimed at protecting minors. Also, no message in the public interest would need to include the image itself. Finally, there are two instances of sharing and one of them included no accompanying text.

26. BW's second argument is that their purpose was to further "a broader public education initiative aimed at raising awareness" about STIs and how they physically present. This argument is so patently ridiculous I will say nothing more about it other than to reject it outright.

27. In summary, BW has not made out a defence under IIPA section 11. They are therefore liable for damages.

28. AQ claims general, aggravated and punitive damages. General damages compensate for the mental and emotional harm from the non-consensual sharing of an intimate image. The image is not as graphic as many, or even most, intimate images under the IIPA. It depicts AQ's pubic area but it is mostly covered, and AQ is not identifiable from the image itself. It appears that X has removed both posts, and they were not live for a long period of time. That said, any sharing of an intimate image is a serious invasion of privacy and autonomy. I accept that discovering the posts was a shocking and humiliating experience. I do not agree with BW that AQ requires medical evidence to prove that she suffered harm. I find that AQ is entitled to compensation.

29. I find that punitive damages are also warranted. Punitive damages punish respondents for conduct that is a stark departure from ordinary standards of decent behaviour. They are intended to denounce and deter egregious conduct. See *Whiten v. Pilot Insurance Co.*, 2002 SCC 18. In considering whether punitive damages are warranted, I find that I may consider the text scrawled on the image itself about the STI and the accompanying text in BW's post. Together, these modifications to the original image underscore BW's intent to humiliate and degrade AQ.

30. I find it unnecessary to assess the precise amount of general or punitive damages AQ is entitled to. I find that together the combined amount is over the maximum $5,000 I can award. Several CRT decisions have noted that every court award in Canada for the non-consensual disclosure of intimate images has resulted in compensation well in excess of the CRT's monetary limit. I order BW to pay AQ $5,000 in damages. I find it unnecessary to address AQ's entitlement to aggravated damages.

Compensation for Time Spent

31. Intimate Image Protection Order rule 11.4(3) and CRT standard rule 9.5(5) both say the CRT will not order a party to pay another party for time spent dealing with a dispute except in extraordinary circumstances. An award for dispute-related expenses, including compensation for time spent, is not subject to the $5,000 limit in the CRT's jurisdiction over IIPA damages claims. The parties both claim compensation for their time spent. I consider only their conduct specifically related to this dispute.

32. In *A.Q. v. B.T.,* 2025 BCCRT 398, I applied the law of special costs when deciding to award AQ compensation for that respondent's conduct, and I adopt the same approach here. In short, reprehensible conduct during the CRT's process is an extraordinary circumstance that can entitle a party to compensation. The concept of "reprehensibility" encompasses a broad range of misconduct, which can include persistent breaches of the applicable rules and pursuing meritless arguments with an improper motive. See *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352. However, the CRT is not limited by the law of special costs. I find that CRT rule 9.5(4)(c), which says the CRT may award legal fees if a party's conduct causes unnecessary delay or expense, equally applies to awarding compensation for time spent.

33. The parties each allege the other breached the CRT's Code of Conduct for CRT Participants. The CRT's rules require parties to comply with the code of conduct.

The code of conduct warns that breaching it could result in a costs award. Among other things, the code of conduct requires parties to:

a. Behave courteously and respectfully to other parties, CRT staff, and tribunal members.

b. Refrain from abusive behaviour towards other parties, which includes:

    i. Making inappropriate behaviour or comments that the person knows or reasonably should know would cause another person to be humiliated, offended, or intimidated, and

    ii. Deliberately refusing to use a person's indicated name, title, or pronoun.

34. The parties' arguments about the code of conduct focus on pronoun use. I start by emphasizing that making a mistake with pronouns is not by itself necessarily abusive, but it may be an indication of a pattern of abusive behaviour.

35. As noted above, BW declined to provide pronouns. It is true that AQ's reply submissions used he/him pronouns at times, but this was after BW's own submissions used those pronouns. AQ also used they/them pronouns at times. While AQ could have been more careful, BW's own position on pronouns was inconsistent and confusing. In that context, I find that AQ was not acting in an abusive manner.

36. AQ is a trans woman who uses she/her pronouns. BW consistently referred to her using they/them pronouns. AQ objects to this, as she considers it to be deliberate misgendering. I understand there to be differing views on the use of they/them to refer to trans people. Some consider it imperfect but tolerable, while others consider it invalidating and offensive. I agree it would have been preferable for BW to use she/her as requested, but I am not prepared to conclude that BW's use of they/them was abusive in the same way using the wrong gender would have been. So, I find that neither party's pronouns use breached the CRT's code of conduct.

37. I do, however, find that BW's conduct is deserving of rebuke. As noted above, they asserted two legal defences under IIPA section 11. I find that these defences were so manifestly deficient that the only explanation is that BW made them in bad faith and for an improper purpose. I do not accept that BW could have genuinely believed that their post was made in the public interest, especially in relation to purported STI awareness. BW also repeatedly and persistently accused AQ of using the image to groom a minor with no supporting evidence about who the recipient was. As the BC Court of Appeal said in *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2015 BCCA 424, allegations of misconduct are permissible but must be "measured, careful, and faithful to the evidence". BW's allegations fell far short of this standard.

38. Another issue relates to the volume and relevance of BW's evidence. They initially provided a link to a Google Drive account. The CRT does not generally accept evidence in this way because there is no way of knowing whether the CRT is viewing the same evidence that the parties did. So, through CRT staff, I asked BW to provide the evidence in the usual way by uploading it to the CRT's portal. In doing so, I cautioned them against providing irrelevant evidence. In response, BW uploaded a single screenshot and informed CRT staff that I could "ignore" the rest.

39. AQ says, and a screenshot confirms, that the Google Drive included 1.6 GB of evidence and almost 3,000 individual files. AQ says much of it was obviously irrelevant, such as emojis and photos of politicians. She says much of it was in an unreadable format. She provided screenshots of several of the drive's folders confirming this, and BW does not deny it. However, BW says the evidence was relevant because it related to a previous IIPA dispute involving AQ. I do not accept this explanation. First, it is inconsistent with the screenshots AQ provided, which show evidence that had nothing to do with AQ or any CRT dispute. Also, BW's own decision to limit themselves to a single piece of evidence shows they never truly believed all the evidence in the Google Drive was relevant. I find that BW knowingly provided a substantial amount of obviously irrelevant evidence.

40. I find that $1,000 is appropriate compensation for AQ's time spent in this dispute, based primarily on the sheer volume of irrelevant evidence AQ had to needlessly review.

41. The *Court Order Interest Act* applies to the CRT. Section 2(e) says that pre-judgment interest must not be awarded on non-pecuniary damages arising from personal injury, which I find applies to IIPA damages awards. AQ is entitled to post-judgment interest.

42. AQ did not pay any CRT fees or claim any dispute-related expenses, so I order none.

ORDERS

43. Within 30 days of this decision, I order BW to pay AQ a total of $6,000, broken down as follows:

    a. $5,000 in damages, and

    b. $1,000 in compensation for time spent on this dispute.

44. I dismiss the parties' remaining claims.

45. AQ is entitled to post-judgment interest under the *Court Order Interest Act*.

46. 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 the Provincial Court of British Columbia.

Eric Regehr, Vice Chair