



Cyber bullying and Sexting – Legal Responses and Practical Tips

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“Sexting” / Cyberbullying



Bill C-13

Protecting Canadians from Online Crime Act - Bill C-13 (In Force March 10, 2015)

- ▣ Result of a working group struck by the Federal government looking at the possibility of creating an offence of cyberbullying.
- ▣ Introduced after two high profile incidents of young women taking their own lives after intimate images of them had been shared without their consent.

The Then Minister of Justice, the Hon. Peter MacKay on Bill C-13

- ▣ “Cyberbullying is the use of the Internet to perpetrate what is commonly known as bullying, but it is of particular interest and concern of late. This interest is due in no small part to the number of teen suicides over the past few years in which cyberbullying was alleged to have played a part.”
- ▣ “It may be useful to better understand how this behaviour typically comes about. It usually begins, in some sense, with a non-criminal context of perfectly lawful, consensual recording of intimate images in a private setting. I specifically set aside any images depicting an underage youth. These images may be subsequently transmitted electronically to a partner, a practice commonly known as "sexting". Upon the breakdown of the relationship, however, one of the known partners may distribute these images to third parties without the consent of the person depicted in the image. It is now commonly known as "revenge porn.”

R. v. A.C., [2017] O.J. No. 2867

- ▣ 19 The provision captures a broad range of conduct that may constitute sharing. For example, it criminalizes the sending of a single image of an unidentifiable person by text message to a single recipient.⁷ It also prohibits sharing an image using a social media application with a limited audience capable of viewing the sharer's account. Finally, as in this case, it includes non-consensual uploading of photos and videos through a more generally accessible medium such as a website.
- ▣ 20 The provision protects privacy. At its core, privacy is about a person's ability to control access to something, whether it is private information or a private image. As in this case, someone like C.S. may agree to have private photographs or videos taken that will not be seen by anyone apart from a romantic partner. Where someone shares an intimate image without consent, he violates the depicted person's privacy because he has gone beyond that limited, consensual use. The more people to whom the image is exposed, the greater the invasion of privacy and the greater the harm caused to the victim.

Section 162.1(1)

(1) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct



Section 162.1(2)

(2) In this section, **intimate image** means a visual recording of a person made by any means including a photographic, film or video recording,

(a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;

(b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and

(c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

Section 162.1(3) and (4)

(3) No person shall be convicted of an offence under this section if the conduct that forms the subject-matter of the charge serves the public good and does not extend beyond what serves the public good.

(4) For the purposes of subsection (3),

(a) it is a question of law whether the conduct serves the public good and whether there is evidence that the conduct alleged goes beyond what serves the public good, but it is a question of fact whether the conduct does or does not extend beyond what serves the public good; and

(b) the motives of an accused are irrelevant.

Important Features

Elements:

1. That the accused published, distributed, transmitted, sold, made available, or advertised an image of the complainant;
2. That the image was an intimate image;
3. That the complainant did not give her or his consent to that conduct; and
4. That the accused knew or was reckless as to whether or not the complainant gave her or his consent.

Features:

- Defines “intimate image”
- “public good” defence like obscenity
- Reasonable expectation of privacy
- No age issues (as is the case with CP offences)

Sentencing

- ▣ No mandatory minimum sentence
- ▣ Maximum sentence:
 - 12 mos summary conviction
 - 5 years indictment
- ▣ No SOIRA order available
- ▣ No S.161 order available (however, use s.162.2(1) in order to achieve similar ends)
- ▣ Can have forfeiture of devices (s.164(2))
- ▣ Can have a restitution order for costs of removing images (s.738)

R. v. J.T.B., [2018] O.J. No. 2018

Section 162.1 of the Code is a relatively new offence that was created in response to growing concerns about violations of privacy and, in particular, the distribution of intimate images in a public forum without the consent of those depicted in them. It is beyond question that the non-consensual distribution of such intimate images carries with it the risk of psychological harm and embarrassment to the victims of such crimes. In notorious instances, those who have been the subject of such non-consensual publication of their intimate images on the internet have killed themselves. The inferred impact on victims accordingly is substantial, and the moral responsibility of such offenders generally will be high. Moreover, our courts recognize that distribution of such intimate images via the internet can result in the images being forever available.

R. v. Ly, [\[2016\] O.J. No. 7196](#) (O.C.J.), at paragraphs 32-34 and 44-45;

R. v. P.S.D., [\[2016\] B.C.J. No. 2653](#) (Prov.Ct.), at paragraphs 9-10;

R. v. A.C., [\[2017\] O.J. No. 2867](#) (O.C.J.), at paragraphs 17-20 and 65;

R. v. Agoston, [\[2017\] O.J. No. 3207](#) (S.C.J.), at paragraphs 16-17; and

R. v. J.S., [\[2018\] O.J. No. 653](#) (S.C.J.), at paragraphs 20 and 32-34.

R. v. J.T.B., [2018] O.J. No. 2018

While other sentencing goals such as rehabilitation of an offender obviously must not be forgotten, **denunciation and general deterrence accordingly are the paramount sentencing goals in relation to s.162.1 crimes.**

R. v. Calpito, [\[2017\] O.J. No. 1171](#) (O.C.J.), at paragraphs 77 and 99;

R. v. A.C., *supra*, at paragraphs 53 and 54; and

R. v. J.S., *supra*, at paragraph 20.

Victim Impact Statement

- ▣ She is painfully aware of the reality that she has reason to fear not only Mr B., but all of the strangers who have accessed and unfortunately continue to access her intimate images and personal information online, in a manner which has enabled them to seek her out and contact her anticipating a sexual encounter -- with each new contact making her terrified and traumatized all over again. As she put it, her "online presence cannot be controlled". She is "out there, and there is no coming back from that". It is "something that will follow [her] for the rest of [her] life".
- ▣ Discovery of her ongoing and seemingly intractable "online presence", created by Mr B., has been especially devastating to Ms B.'s sense of personal dignity and self-esteem. The realization that complete strangers continue to view and rate her naked images, while posting hideous comments about her, has made her hate herself and her own body. She feels extremely exposed and violated. She wants to "disappear" and "become invisible". She cannot see anyone without wondering if they too have viewed the images.

R. v. J.T.B., [2018] O.J. No. 2018

Finally, there is the reality that the invasion of Ms B.'s privacy created by Mr B.'s machinations, (in terms of publishing her intimate images, identify and otherwise private information), **is not only ongoing but likely to be permanent.** As noted above, the website postings Mr B. created to attract and recruit strangers, to implement his horrible scheme, apparently cannot be eradicated. Moreover, even if they could, **there is simply no way to prevent the possibility that one of the many viewers of those postings has downloaded** the images and information, enabling it be quickly uploaded and shared again at any time. In short, **the extent to which Ms B.'s privacy has been invaded is profound, extensive and unending.**

Section 162.2 Prohibition

- ▣ Sample from *R. v. J.T.B., supra*:
 - ▣ pursuant to s.162.2 of the Code, an order shall go, for the next 20 years or such shorter period as may be directed by further order of the court, prohibiting you from using the Internet or other digital network, except in accordance with the following conditions:
 - * any internet or email address used by you, any website created by you, and all messages, photographs, videos, advertisements or other content you directly or indirectly send or post to or through any website, internet service or digital network, must include your proper legal first name and surnames together in full, (i.e., "J.B.");
 - * at no time and under no circumstances shall you save, send, share, distribute, post or upload, through or to the internet or any other digital network, in any manner whatsoever, any photograph of L.B., any vehicle belonging to L.B., or any known place of residence, employment or education of L.B.; and
 - * unless required to do so in relation to a government filing, at no time and under no circumstances shall you send, share, distribute, post or upload, through or to the internet or any other digital network, any message or other content containing the name "L.B.", or otherwise making reference to L.B..

Psychological Effect – R. v. Jonat [2019] O.J. No. 1342

Para 29 – “Once images or videos are circulated, the degradation of these children becomes both permanent and global. Images once disrupted through this informal network can never be truly eliminated from circulation. The harm is both acute and perpetual. The growing number of victims – most unidentified – suffer from wounds that are continually re-opened and harm that can manifest itself over decades.”



New Trend: Community Impact Statements

Section 722.2(1) of the Criminal Code permits a statement made by an individual on a community's behalf to be filed with the court describing the harm or loss suffered by the community as a result of the commission of the offence and its impact upon the community

Jonat, supra, at para. 52 – “these statements provide a means of gaining a deeper understanding of the deep and lasting impact upon such victims that his behaviour has contributed to inflicting.”



Self/Peer Exploitation

Sexting (Self/Peer Exploitation)

- ▣ Defined as youth creating, sending or sharing images and /or videos with peers via the Internet and/or electronic devices

Sextortion

- ▣ Defined as involving someone who threatens to send a sexual image or video of their victim to other people if they don't pay them or provide more sexual content.



Cyberbullying

Cyberbullying

- ▣ Defined as a form of extreme bullying among youth via technology. It is abusive, targeted, deliberate and repeated behaviour that is intended to damage and harm another young person. For youth, it is often **combined** with the sharing of a sexual image.



Why is This Happening?

3 Main Reasons:

1. Romantic relationships & sexual experimentation
2. Attention seeking behavior
3. Coercive circumstances



Why is This Happening?

1. Romantic Relationships/Sexual Experimentation

- ▣ Flirting—To initiate a relationship
- ▣ In lieu of sexual activity (avert pregnancy, losing virginity or getting STIs.)
- ▣ For sexually active youth, as proof of trust and intimacy
- ▣ “Truth or Dare” game
- ▣ After the breakdown of a relationship, images/videos may be shared with others impulsively or with malicious intent (e.g. to embarrass the ex-partner or ex-friend).



Why is This Happening?

2. Attention-Seeking Behaviour

- ▣ Adolescents may produce and share images/videos among friends as a joke (for a laugh), a dare or a challenge (ie. Change room at school, in a bathroom, etc.). These images/videos may be circulated to others with or without the knowledge of the affected youth.
- ▣ Images/videos may be produced, shared or posted publicly (e.g. Kik, YouTube, Snapchat) in an attempt to gain acceptance or popularity.



Why is This Happening?

3. Coercive Circumstances

- ▣ Peers, romantic partners or online acquaintances may demand images/videos through coercion. This could involve threats to release information, chat logs or other images/videos if the adolescent does not comply with the demands. This behaviour may be sexual in nature and/or for controlling purposes. (**SEXTORTION**)
- ▣ Images/videos may be produced during circumstances where the adolescent is unaware, unwilling or in a compromised position (e.g. images taken at a party, intoxicated, school locker room etc.) and posted on a social networking site.



Definition of Child Pornography in Canada



Child Pornography as defined by section 163.1(1) of the Criminal Code means:

- a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
 - i.) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or depicted as engaged in explicit sexual activity; or
 - ii.) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years; or

Definition of Luring a Child in Canada

Luring a Child is outlined by section 172.1(1) of the Canadian Criminal Code as: Every person commits an offence who, by means of telecommunication, communicates with

a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence with respect to that person

i.e. Sexual Exploitation, Child Pornography



Definition of Luring a Child in Canada (Cont'd)

Luring a Child is outlined by section 172.1(1) of the Canadian Criminal Code as: Every person commits an offence who, by means of telecommunication, communicates with

- b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence
i.e. Sexual Interference, Indecent Act



Definition of Luring a Child in Canada (Cont'd)

Luring a Child is outlined by section 172.1(1) of the Canadian Criminal Code as: Every person commits an offence who, by means of telecommunication, communicates with

c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person. (non-parental abduction)



TPS Approach to Sexting

- 1.NATURE:** Degree of sexual explicitness
(Bra/underwear vs. sexual act)
- 2.INTENT:** Impulsive vs. malicious intent
(Was the cause immaturity, poor emotional control, coercion, bullying, pressure, sexual harassment, dating violence)
- 3.EXTENT:** Range of Distribution
(Within a peer circle or broadly available to large audience)



TPS Approach to Sexting (Cont'd)

- Distinguish foolishness from malice (revenge porn? **sextortion?**)
- Educate and/or caution child/family
- Ensure images are deleted (if no police investigation)
- TPS report submitted
- Offer counselling to child and parent (BOOST; SCAN Unit at Sick Kids)
- Minimum sentences don't apply to youths
- Each incident is unique and assessed/investigated differently



No Charge of "Cyberbullying" or "Sexting" but:

- ▣ Child Pornography
- ▣ Extortion (Blackmail)
- ▣ Criminal Harassment
- ▣ Intimidation/Threatening
- ▣ Luring
- ▣ Voyeurism
- ▣ Distribute Intimate Images Without Consent
- ▣ Identity Theft/Fraud
- ▣ Impersonation
- ▣ Unauthorized Use of Computer
- ▣ Counselling Suicide
- ▣ Defamatory Libel
- ▣ Hate Propaganda, Incitement of Hatred
- ▣ Mischief in relation to data
- ▣ False Message
- ▣ Indecent Act



Tips for Safe Posting

- ✓ No identifiers (face, name, DOB, address, etc.)
- ✓ Use highest security settings
- ✓ Ensure friends/followers are people they know in real life (before their online relationship)
- ✓ Teachers/Families/Police discuss the implications of posting inappropriate pictures or chats; they are FOREVER (can harm their reputation (socially/academically/family))
- ✓ Live video streaming can be saved
- ✓ Geotagging

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- ▣ Mischief in relation to data
- ▣ False Message
- ▣ Indecent Act



Online Resources

<http://www.rcmp-grc.gc.ca/cycp-cpcj/is-si/isres-ressi-eng.htm>

<https://www.protectchildren.ca/en/>

<https://protectkidsonline.ca/app/en/>

https://needhelpnow.ca/app/en/parent_info-talking_tips

<http://www.cyberbullying.ca/>

SELF/PEER EXPLOITATION RESOURCE GUIDE



CANADIAN CENTRE FOR CHILD PROTECTION
It's Not OK. Preventing Abuse.

SELF/PEER
EXPLOITATION
IT'S NOT OK

**SCHOOL AND FAMILY
APPROACHES TO
INTERVENTION AND
PREVENTION**

ADDRESSING SELF/PEER EXPLOITATION

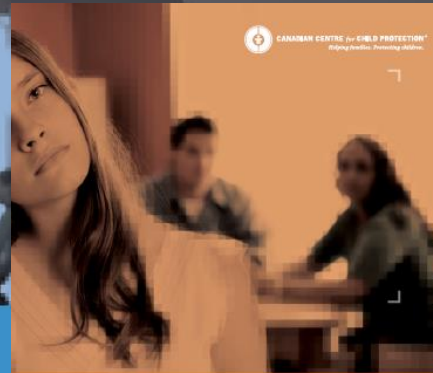


CANADIAN CENTRE FOR CHILD PROTECTION
It's Not OK. Preventing Abuse.

SELF/PEER
EXPLOITATION
IT'S NOT OK

**A RESOURCE GUIDE
FOR SCHOOLS**

ADDRESSING SELF/PEER EXPLOITATION



CANADIAN CENTRE FOR CHILD PROTECTION
It's Not OK. Preventing Abuse.

SELF/PEER
EXPLOITATION
IT'S NOT OK

**A RESOURCE GUIDE
FOR FAMILIES**

ADDRESSING SELF/PEER EXPLOITATION



SELF/PEER
EXPLOITATION
IT'S NOT OK

**ADDITIONAL
RESOURCES**



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Self/Peer Exploitation

Supported By:



[Order the Resource Guide Here](#)

The issue of *self/peer exploitation* has become a growing concern for parents and school personnel. Coined in the media as “sexting”, this behaviour is generally defined as youth creating, sending or sharing sexual images and/or videos with peers via the Internet and/or electronic devices. It usually involves exchanging images/videos through cell phone picture/video messaging, messaging apps (on iPhones, Blackberries, Androids), social networking sites, etc.

The [Canadian Centre for Child Protection](#) (through our Cybertip.ca program) has created a *Resource Guide for Families* to assist parents in adequately responding to these types of incidents. If a sexual image/video of your child has been created and shared

Sign up to receive
Cybertip.ca
ALERTS




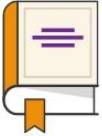




Do you provide an
Internet Service?
REPORT HERE

**Concerned about
a sexual (or nude)**



LEARN MORE ABOUT:

NeedHelpNow.ca helps teens stop the spread of sexual pictures or videos and provides support along the way. If you or someone you know has been negatively impacted by a self/peer exploitation incident, we are here to help offer guidance on the steps you can take to get through it and #ChangeTheStory.

 <p>REMOVING PICTURES/VIDEOS</p>	 <p>DEALING WITH PEERS</p>	 <p>GETTING EMOTIONAL SUPPORT</p>	 <p>THE LAW AND REPORTING</p>
 <p>FAQS</p>	 <p>INFORMATION FOR PARENTS</p>	 <p>HELPING A FRIEND</p>	 <p>RESPONDING TO YOUTH IN CRISIS</p>

[VIEW DOWNLOADABLE RESOURCES](#) ↓



“When everything seems to be going against you, remember that the airplane takes off against

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