

Intimate Photos Taken In The Workplace: Is There An Expectation Of Privacy?



In *MR v. SS*, 2025 BCCRT 851, the BC Civil Resolution Tribunal (the “**Tribunal**”) examined the question of whether intimate photos taken by an employee in the workplace attract a reasonable expectation of privacy.

Background

The Applicant and the Respondent are former romantic partners. Over the course of their relationship, the Applicant sent the Respondent photos and videos of a sexual nature. Those images were taken while the Applicant was at work during regular business hours.

After their relationship ended, the Respondent sent images of the Applicant to her employer. The Respondent claimed he shared the photos to alert the employer to her “workplace misconduct”. The Applicant claimed the Respondent acted with malicious intent to get her in trouble and cause her embarrassment and reputational harm.

The Tribunal has authority under BC’s *Intimate Images Protection Act* (the “**IIPA**”) to resolve claims about the non-consensual sharing of intimate images. The Applicant claimed damages under the *IIPA*.

Legislation

The *IIPA* creates a statutory tort for the non-consensual sharing or threatened sharing of intimate images. Under the *IIPA*, an intimate image is defined as a visual recording or visual simultaneous representation of an individual, whether or not the individual is identifiable and whether or not the image has been altered in any way, in which the individual is or is depicted as: (a) engaging in a sexual act; (b) nude or nearly nude; or (c) exposing the individual’s genital organs, anal region or breasts, and in relation to which the individual had a reasonable expectation of privacy at the time the recording was made, the time of distribution or the time the simultaneous representation occurred.

If an applicant is able to prove that a respondent shared, or threatened to share, an intimate image, and the applicant had a reasonable expectation of privacy in the images, the decision-maker may make any determinations it deems necessary or appropriate such as: (a) deleting or destroying the intimate image or images; (b) removing the intimate image or images from any platform; and (c) de-indexing the

intimate image or images from any search engine. The decision-maker may also order the respondent to pay damages.

Decision

The Tribunal found that most of the images shared met the first part of the definition of “intimate image” under the *IIPA*. However, the Tribunal found that the Applicant did not have a reasonable expectation of privacy in relation to the images in the circumstances of the dispute. The images had been taken during work in public parts of the office or areas accessible to other employees.

While the Tribunal agreed that the Applicant had a reasonable expectation that her romantic partner would not share the intimate images with the public generally – e.g. by posting the intimate images online or distributing the intimate images to friends – the Tribunal found that the reasonable expectation of privacy with respect to intimate images taken in the workplace did not extend to the Applicant’s employer for the purpose of investigating alleged misconduct. This was irrespective of the Respondent’s motivations.

The Tribunal also noted that even if the Applicant did have a reasonable expectation of privacy in relation to the intimate images, the public interest defence established by section 11 of the *IIPA* would have applied. It was in the public interest for the Applicant’s images to be shared with her employer because the photos had been taken at work. They had been taken during business hours, on the employer’s property, and in locations that were not always secure and private but public, including the front counter of the workplace.

The Applicant’s claim was dismissed.

Takeaways

While there is a general expectation of privacy in relation to intimate images, including intimate images taken in the workplace, but that expectation will not always extend to employers for purpose of the *IIPA*.

Where the intimate images are taken at work, on work time and in public and accessible locations of the workplace, employers can investigate workplace misconduct without running afoul of the *IIPA*. If faced with an investigation involving intimate images, employer should be mindful of privacy obligations under PIPA and FIPPA (as applicable) and ensure collection of information, including intimate images, complies with those statutes.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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