Revenge Porn – Know The Laws Of Your Province



Most provinces have either adopted or soon will adopt revenge porn legislation

Posting intimate images of a person without their consent, typically referred to as revenge porn because it often occurs after a relationship breaks up by one partner trying to get back at another, is a crime carrying a maximum prison sentence of 5 years. In addition to the prohibitions of the Canadian *Criminal Code*, which apply in all parts of the country, 8 provinces have or are considering passing legislation that makes revenge porn a tort. **Translation:** Victims can sue persons who target them for revenge porn for money damages.

Nova Scotia, which was the first province to adopt revenge porn legislation, provides the broadest protection. By contrast, there's no tort law protection in BC, New Brunswick, Saskatchewan, Québec or the 3 territories–although efforts to pass legislation are underway in the first 3 listed. While there's no revenge porn legislation in Ontario, there are court cases recognizing an internet harassment victim's tort right to sue for damages. Here's a summary of the revenge porn laws in each part of Canada.

Revenge Porn Laws Across Canada

FEDERAL

(a) It's a crime carrying up to 5 years in prison to knowingly publish, distribute, transmit, sell, make available or advertise an intimate image of a person knowing the person didn't consent or being reckless about whether the person consented; (b) "Intimate image" means a visual recording of a person made by any means including a photographic, film or video recording: (i) in which the person is nude, exposing genital organs or anal region or breasts or is engaged in explicit sexual activity, (ii) at the time of the recording, there were circumstances giving rise to a reasonable expectation of privacy, and (iii) the person depicted retains a reasonable expectation of privacy at the time the offence is committed; and (c) Defence if conduct serves the public good and doesn't extend beyond what serves the public good (*Criminal Code*, Sec. 162.1)

ALBERTA

(a) Persons can be sued for damages if they knowingly publish, transmit, sell,

advertise or otherwise make an intimate image available to a person other than the one depicted in the image knowing that or being reckless with regard to whether that person gave consent; (b) “intimate image” means a visual recording of a person made by any means, including a photograph or video recording: (i) in which the person depicted in the image is nude, or exposing his/her genital organs or anal region or breasts, or engaged in explicit sexual activity, (ii) which was recorded in circumstances that gave rise to a reasonable expectation of privacy, and (iii) the person depicted in the image retained a reasonable expectation of privacy when it was distributed; and (c) Defence if conduct serves the public good and doesn’t extend beyond what serves the public good (*Protecting Victims of Non-consensual Distribution of Intimate Images Act*)

BRITISH COLUMBIA

Currently no revenge porn laws but public consultations on legislation banning nonconsensual publication of intimate images held in June 2021

MANITOBA

(a) Persons can be sued for damages if they distribute an intimate image of another person knowing that the person depicted didn’t consent or are reckless about whether that person consented to the distribution; (b) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording: (i) in which the person depicted in the image is nude, or exposing his/her genital organs or anal region or breasts, or engaged in explicit sexual activity, (ii) which was recorded in circumstances that gave rise to a reasonable expectation of privacy, and (iii) the person depicted in the image retained a reasonable expectation of privacy when it was distributed; and (c) Defence if conduct serves the public good and doesn’t extend beyond what serves the public good (*Intimate Image Protection Act*)

NEW BRUNSWICK

Currently no law, but government Bill 69, the *Intimate Images Unlawful Distribution Act,* patterned on legislation in other provinces, is through Second Reading and is expected to pass the New Brunswick Assembly in Spring 2022

NEWFOUNDLAND

(a) Persons can be sued for damages if they publish, transmit, sell, advertise or otherwise make an intimate image available to a person other than the person depicted in the intimate image knowing that the person depicted didn’t consent or are reckless about whether that person consented to the distribution; (b) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording: (i) in which the person depicted in the image is nude, or exposing his/her genital organs or anal region or breasts, or engaged in explicit sexual activity, (ii) which was recorded in circumstances that gave rise to a reasonable expectation of privacy, and (iii) the person depicted in the image retained a reasonable expectation of privacy when it was distributed; and (c) Defence if conduct serves the public good and doesn’t extend beyond what serves the public good (*Intimate Images Protection Act*)

NOVA SCOTIA

(a) Persons can be sued for damages if they publish, transmit, sell, advertise or otherwise make an intimate image available to a person other than the person depicted in the intimate image knowing that the person depicted didn’t consent or are reckless

about whether that person consented to the distribution; (b) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording: (i) in which the person depicted in the image is nude, or exposing his/her genital organs or anal region or breasts, or is engaged in explicit sexual activity, (ii) which was recorded in circumstances that gave rise to a reasonable expectation of privacy, and (iii) the person depicted in the image retained a reasonable expectation of privacy when it was distributed; (c) Defence if conduct serves the public good and doesn’t extend beyond what serves the public good; and (d) Law also provides protection against “cyber-bullying,” defined as an electronic communication, director indirect, that causes or is likely to cause harm to another individual’s health or well-being where the person responsible for the communication maliciously intended to or reckless to the risk of causing cause harm to another individual’s health or wellbeing, including: (i) creating a web page, blog or profile in which the creator assumes the identity of another person, (ii) impersonating another person as the author of content or a message, (iii) disclosure of sensitive personal facts or breach of confidence, (iv) threats, intimidation or menacing conduct, (v) communications that are grossly offensive, indecent, or obscene, (vi) communications that are harassment, (vii) making a false allegation, (viii) communications that incite or encourage another person to commit suicide, (ix) communications that denigrate another person because of any prohibited ground of discrimination listed in the *Human Rights Act*, or (x) communications that incite or encourage another person to do any of the above (*Intimate Images and Cyber-protection Act*)

ONTARIO

Currently no revenge porn laws but could be basis for money damages lawsuit under 2021 Ontario Superior Court case recognizing a new internet harassment tort for victims of conduct that goes “beyond all possible bounds of decency and tolerance” [*Caplan v. Atas*, 2021 ONSC 670 (CanLII), January 28, 2021]

PRINCE EDWARD ISLAND

(a) Persons can be sued for damages if they publish, transmit or otherwise make accessible an intimate image to a person other than the person depicted in the intimate image knowing that the person depicted didn’t consent or are reckless about whether that person consented to the distribution; (b) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording: (i) in which the person depicted in the image is nude or nearly nude, or exposing his/her genital organs or anal region or breasts, or engaged in explicit sexual activity, (ii) which was recorded in circumstances that gave rise to a reasonable expectation of privacy, and (iii) the person depicted in the image retained a reasonable expectation of privacy when it was distributed; and (c) Defences: (i) the person didn’t intend to distribute the intimate image, (ii) the person had, or honestly and reasonably believed that the person had, the depicted person’s consent to distribute the image, or (iii) the distribution was made in the public interest and didn’t extend beyond what was in the public interest (*Intimate Images Protection Act*)

QUÉBEC

Currently no revenge porn law but *Civil Code of Quebec* and *Charter of human rights and freedoms* provide broad protections to the right to privacy, dignity, honour and reputation

SASKATCHEWAN

Currently no revenge porn law, but government Bill 51, *The Privacy (Intimate Images—Additional Remedies) Amendment Act, 2021,* patterned on legislation in other provinces, passed First Reading in November 2021 and may pass the Saskatchewan Assembly as early as Spring 2022

TERRITORIES

There are no current or proposed revenge porn laws in Northwest Territories, Nunavut or Yukon