HOW TO FILE AN INTIMATE IMAGES APPLICATION (ADULT) IN THE SUPREME COURT OF NOVA SCOTIA

1. Practice Memorandum No. 13 (PM No.13) allows a person who is the victim of unlawful electronic distribution of intimate images to apply for a cyber-protection order against this distribution of intimate images.
Alternate Resolution: The complaint may not need to go to court. **CyberSCAN can help to resolve the issues.** A person who wishes to start an Intimate Images proceeding in court should contact **CyberSCAN** if they have not already done so. They can be reached at https://novascotia.ca/cyberscan/ or call 1-855-702-8324.

2. A person seeking a cyber-protection order must open a court file by filing a Notice of Application in Chambers (Intimate Images) [Notice of Application Form is found in PM No.13]. The filing fee is $218.05.

3. An Applicant who is an adult must be identified by name in the Notice of Application in Chambers (Intimate Images). The adult applicant may make a motion to the court for a declaration that s. 9 of the Act applies and for the approval of a pseudonym. A motion of that kind must be made with notice to the other parties and to the press, unless the court orders otherwise. Notice can be given to the press through Online Form Notice to Media Application for Publication Ban May 2023.pdf.

4. Section 8 of the *Intimate Images and Cyber-protection Act* (the *Act*) provides an **automatic publication ban** for any proceeding involving a child including a **child respondent.**

a) A child who is, or is to be, a Respondent, and who wishes to go by a pseudonym in the court may deliver a letter to the Prothonotary giving the child's

1. true name,
2. proof of age,
3. suggested pseudonym,
4. address and other contact information, and
5. a proposed method of receiving notice and documents.

b) If the child is not identified by a pseudonym in the application documents, the Court is still required to identify the child by pseudonym in the course of the proceeding under subsection 8(2) of the *Act*.

c) The Applicant may name a parent or guardian as Respondent of a child who the Applicant claims has distributed an intimate image without consent [refer to page 2 of the Notice of Application in Chambers (Intimate Images) in PM No.13].

5. The Applicant must take reasonable steps to select a time for the court hearing in Regular Chambers that is convenient for each Respondent's counsel and each Respondent who acts on their own, in accordance with PM No.13 and Civil Procedure Rule 5.05(3).

6. An Applicant must file the following documents **no less than 10 days*** before the day the application is to be heard in accordance with Civil Procedure Rule 5.06(2):

a) Notice of Application in Chambers (Intimate Images) [Notice of Application Form is found in PM No.13].

b) Affidavit in support of application (Form 39.08 is found in PM No.13)

c) Draft Order (Form 78.05) - no less than 3 copies of draft, providing for the order of any of the following actions that are appliable:

1. declaring that an image is an intimate image;
2. prohibiting a Respondent from distributing the intimate image;
3. prohibiting a Respondent from contact with the Applicant or another person;
4. requiring a Respondent to take down or disable access to the intimate image;
5. requiring a Respondent to pay damages to the victim depicted in the intimate image and account for profits;
6. referring the matter to dispute-resolution services provided by CyberSCAN or otherwise;
7. requiring a Respondent to pay costs of the proceeding; and
8. setting out specifics of other order provisions that are found in s. 6 of the Act and any other order provisions that are just and reasonable.

7. A copy of the Notice of Application in Chambers (Intimate Images) must be personally served (notified in accordance with Civil Procedure Rule 31.02) to each of the Respondents as soon as possible and **no less than 10 days*** before the day the application is to be heard in accordance with Civil Procedure Rule 5.06(1). [Affidavit of Service is found in PM No.13].

a) Additionally, a copy of the affidavit and draft order outlined in **6** above must be delivered to each of the Respondents in the same timeframe, in accordance with Civil Procedure Rule 31.15.

b) Personal service must be done by a literate person who is not a party in the proceeding, in accordance with Civil Procedure Rule 31.04.

8. An Applicant must file a Brief of Law (2 copies) and deliver a copy to each of the Respondents, **no less than 3 days*** before the day the application is to be heard in accordance with Civil Procedure Rules 5.06(2) and 31.15.

9. If the Respondent does not file a document in response, the Applicant must either:

a) file an affidavit of service proving required notice (personal service) was done no less than 10 days before the day the application is heard and in accordance with Civil Procedure Rule 31 – Notice, or

b) advise the prothonotary that notice has not been given.

which must be done **no less than 2 days*** before the day the application is to be heard in accordance with Civil Procedure Rule 5.06(3).

*** NOTE:** Days are calculated in accordance with Civil Procedure Rule 94 – the days counted are those between the two events and the following days are ***not included*** in the period of days: the day of service or delivery, the day of the hearing, Saturdays, Sundays or any weekday that the Prothonotary's office is closed.

Further information is available on

- the **CyberScan** Website: https://novascotia.ca/cyberscan/
- Booklet: What you need to know about the *Intimate Images & Cyber-Protection Act* https://novascotia.ca/cyberscan/documents/What%20You%20Need%20To%20Know%20about%20the%20Intimate%20Images%20and%20Cyber-Protection%20Act.pdf
- Nova Scotia Supreme Court Practice Memorandum No. 13 https://www.courts.ns.ca/sites/default/files/courts/NSSC%20Practice%20Memos/NSSC_PM13_Cyber_Protection_June_22_2018.pdf