HOW TO FILE A PRODUCTION OR TAKE-DOWN 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 or a victim of cyber-bullying to apply for a cyber-protection order for production of information or to take down or disable access to an intimate image or cyber-bullying communication.

Alternate Resolution: The complaint may not need to go to court. **CyberSCAN can help to resolve the issues.** A person who wishes to start a cyber-bullying 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 (Production or Take-Down) [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 (Production or Take-Down).

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*.

5. The Applicant must take reasonable steps to select a time for the court hearing that is convenient for each Respondent's counsel and each Respondent who acts on their own, in accordance with 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 (Production or Take-Down) [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. requiring a Respondent to provide any information in their possession that may help identify a person who may have used an internet protocol address, website, electronic username or account, electronic-mail address or other unique identifier that may have been used to distribute an intimate image without consent or for cyber-bullying;
2. requiring a Respondent to take down or disable access to an intimate image or cyber-bullying communication;
3. requiring a Respondent to pay costs of the proceeding; and
4. 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 (Production or Take-Down) 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