

# Supreme Court of Nova Scotia Practice Memorandum No. 13

## #13 Intimate Images and Cyber-Protection

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### **Alternate Resolution**

1. A small number of complaints under the 2013 *Cyber-Safety Act* went to court. Most were resolved with the help of the CyberSCAN unit at the Department of Justice . We can expect the same with the 2017 *Intimate Images and Cyber-protection Act*.
2. A person who wishes to start a proceeding in court under this statute should contact CyberSCAN if they have not already done so. They can be reached at <https://cyberscan.novascotia.ca/> or (855) 702-8324.

### **Main Subjects of the 2017 Act**

3. The Act permits proceedings to be started for orders of the court against unlawful electronic distribution of intimate images, against cyber-bullying, for information that may help identify the source of the distribution or cyber-bullying , or for taking down or disabling a source. The court also has power to provide other orders that are just and reasonable. Sees. 5 and 6 of *Intimate Images and Cyber-protection Act*.

### **Applicant as Named Party**

4. An applicant who is an adult must be identified by name. The adult may make a motion to the court for a declaration that s. 9 to 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 [http://www.courts.ns.ca/Publication\\_Ban\\_Notice/pubban\\_form.htm](http://www.courts.ns.ca/Publication_Ban_Notice/pubban_form.htm)
5. Sees. 9 of the Act and Rule 85 - Access to Court Records. (There are constitutional limits on how far the court can go with confidentiality orders.)
6. The Act provides an automatic publication ban for minors. See, s. 8. Also, the application may be made by a child's parent or guardian.

7. Subsection 5(2) requires the court to identify the child by pseudonym. An applicant who is a child, and who wishes to go by a pseudonym in the documents that start the proceeding, may deliver a letter to the prothonotary giving the child's true name, proof of age, suggested pseudonym, address, other contact information, and a proposed method of receiving notice. A judge may direct the use of the pseudonym in the application and how other parties are to give notice to the child.

8. The prothonotary will keep the letter separate from public records, unless a judge directs otherwise.

### **Respondent as Named Party**

1. The Act requires the applicant to name certain respondents. In summary, they are:

- the alleged distributor or distributors of an intimate image or the alleged cyber-bully,
- the owner of an electronic device identified as having been used for the distribution or cyber-bullying,
- the person in control of an internet protocol address used for these purpose, the person responsible for a website, user name, or e-mail address so used,
- the parent or guardian of any of the above who is a minor,
- any other person against whom an order is sought, which would include persons from whom the applicant seeks information identifying a source or against whom the applicant requests an order to take down or disable a source,
- others as the court directs.

See, s. 5.

### **Respondents who are Under age**

10. Section 8 of the Act also protects minor respondents. There is the same

publication ban, and the same requirement that the court use a pseudonym.

11. A child who is, or is to be, a respondent, and who wishes to go by a pseudonym in the court documents may deliver a letter to the prothonotary requesting that all court documents, or all future court documents, refer to the child by a pseudonym.

12. The letter must give proof of age, the child's true name, the suggested pseudonym, address, other contact information, and a proposed method of receiving notice. A judge may direct the use of the pseudonym in future, redaction of the child's true name from present court documents, and how other parties are to give notice to the child.

13. The prothonotary will keep the letter separate from public records, unless a judge directs otherwise.

### **Use of Regular Chambers**

14. The judges accept that these applications are to be scheduled by the applicant for regular chambers, notwithstanding Rule 5.05(1). The applicant must take reasonable steps to select a time convenient for each respondent: Rule 5.05(5).

15. The chambers judge will either hear the application there and then, or give directions for preparation for a hearing and set a date. A judge who is satisfied there is an emergency will try to find time for a quick hearing. If evidence supports it, the judge may grant an interim order under s. 6(5) of the Act or Rule 41 - Interlocutory Injunction and Receivership. The interim order will be in place until the hearing or such other time as the court orders.

### **Forms**

16. Attached are forms for

- Intimate Images Application
- Cyber-bullying Application
- Production or Take-down Application Affidavit of Service
- Motion to Extend, Vary, or Terminate Affidavit
- Notice of Contest
- Order.

These forms were developed with the assistance of the provincial Department of Justice and the Registry of Regulations. They are to assist applicants and respondents who act on their own. Lawyers are free to use these forms, follow *Civil Procedure Rules* Part 22 - Forms, or use their own precedents.

Adopted by the court on June 22, 2018.

Joseph P. Kennedy  
Chief Justice of the Supreme Court of Nova Scotia