

Sharing Intimate Images Without Consent

“Revenge porn” is a bad idea. In fact, it’s illegal.

What is revenge porn?

Revenge porn is what we sometimes call the posting of intimate images of someone else online without that person’s consent. Sometimes the motive is revenge for something, such as the end of the relationship. But revenge porn – or sharing intimate images of someone without their consent – is illegal.

What does the law say?

Section 162.1 of Canada’s *Criminal Code* describes the criminal offence someone commits when they share intimate images of someone else without that person’s consent.

To **share** means to knowingly publish, distribute, send, sell, make available or advertise.

An **intimate image** means a visual recording of a person, including a photo, film, or video recording. The intimate image must show the person nude, exposing their genitals or anal region or breasts, or engaged in explicit sexual activity. The circumstances of the recording must have created a reasonable expectation of privacy. For example, the person shown recorded the image or video for only their partner to view, not the whole world. And finally, the person shown must still have a reasonable expectation of privacy when the offence was committed. For example, if the person shown has already shared the video with others, then the video may no longer be private.

Without consent means the person shown did not agree to sharing the image. It can also include being reckless as to whether the person shown gave their consent.

What is the punishment?

A person who shares intimate images may be guilty of an indictable offence (serious offence) or an offence punishable on summary conviction. If convicted of an indictable offence of sharing intimate images, they may go to jail for up to five years. If convicted of an offence punishable on summary conviction, they may go to jail for up to two years less a day or be fined up to \$5000, or both.

If the sharing happens at work or school, these places may have policies setting out further consequences for the person who shared the images.

Can someone defend against the charges?

If someone is charged with sharing intimate images, they have one defence: sharing the image serves the public good. However, the sharing cannot go beyond the public good. The accused’s motives are not relevant.

What options does the person shown have?

Restitution may be available to the person shown (the person who experienced the harm) if the accused is found guilty. At the time of sentencing, the judge can order the accused to pay to the person shown any expenses they incur to remove the image from the Internet or other digital network. The amount asked for must be reasonable and not more than the actual amount the person had to pay.

The person shown may also access services available to people who have experienced sexual violence.

TIP

Alberta's **One-Line for Sexual Violence** can connect you with local supports. Call or text 1.866.403.8000 or chat online at www.aasas.ca

What about sexting?

Sexting is one way of sharing intimate images. Usually, sexting is between two people who are willing and consent to the activity, and understand the images are only for each other.

Sexting becomes illegal if:

- the person is not willingly sending the images
- the person shown does not consent to the image being created or shared
- someone is sharing an image of another person without consent

The person demanding or sharing the photos may have committed several crimes, including sexual assault, sexual harassment, voyeurism or sharing intimate images, depending on the situation.

If the "sexters" are under 18, sexting is also illegal. It is illegal to take or send sexual photos or videos of anyone who is, or is shown to be, under 18 years of age. This is **child pornography**. There is a defence to the charge of child pornography – the 'private use exception'. That is, the sexual activity recorded was lawful, the person consented to being recorded, and the recording was intended for private use between the creator and the person shown. This exception does NOT apply to images someone takes of themselves and sends to another, as the recipient is neither the creator nor the person shown.

TIP

Read our LawNow article about sexting to learn more:
www.lawnow.org/sexting-whats-the-big-deal/