

Intimate Images Legislation

Women Lawyers' Forum Panel

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Winnipeg, Manitoba (webinar)

Canadian Centre for Child Protection –
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1. Terminology

- Sexting
- Revenge porn
- Non-consensual pornography
- Intimate image
- Child pornography
- Self-peer exploitation
- Sextortion (*primarily male victims)

2. Background Issues

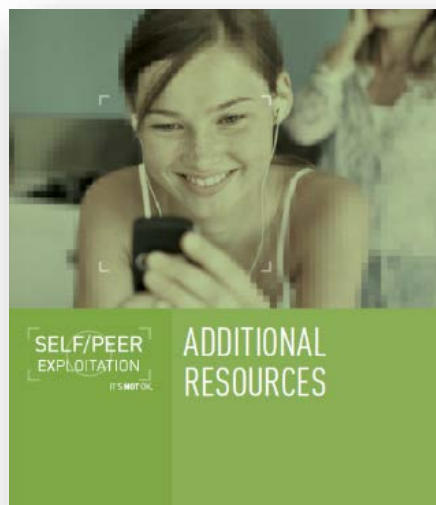
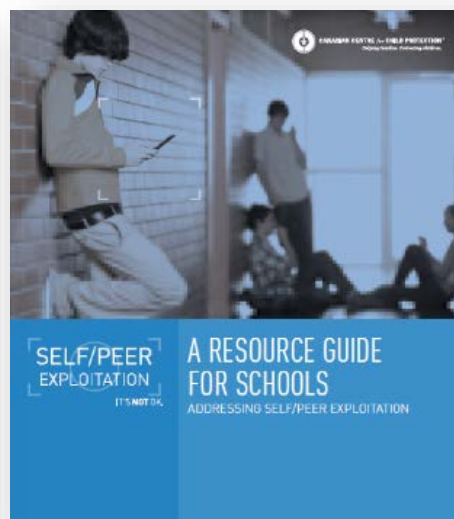
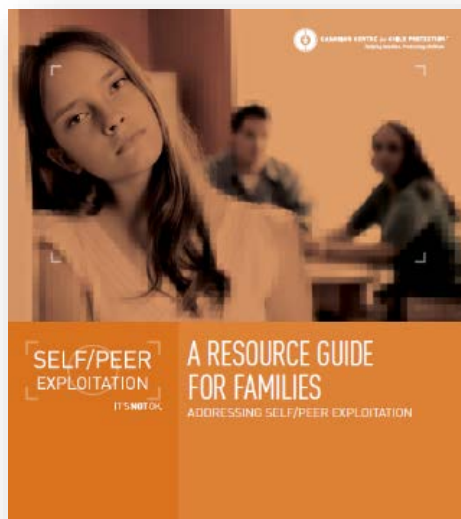
- Before Introduction of “Intimate Image” Offence (s. 162.1 of the *Criminal Code*)
 - Increase of Offence
 - No clear recourse for victims
 - Dissemination out of control very quickly
 - Proliferation of websites dedicated to this content - mainly based in the U.S. (thedirty.com)
 - U.S.
 - Free speech issue
 - Patchwork of legislation
 - Canada
 - Other charges
 - E.g., criminal harassment (s. 246), extortion (s. 346), voyeurism (s. 162), “child pornography” (s. 163.1), Mischief (s. 430 (1.1))

3. Leading up to Introduction of NCDII Offence in Canada

- Amanda Todd (October 2012)
 - Adult luring case, not revenge porn
 - Tied to cyberbullying AFTER the image was created/distributed
- “The Girl from Nova Scotia” (publication ban – died April, 2013)
 - Youth suicide and cyberbullying a huge issue in Nova Scotia
 - *Cyber-Safety Act*, replaced by the *Intimate Images and Cyber-Protection Act*
- CCSO Cyber-crime Working Group: “**Cyberbullying and the Non-consensual Distribution of Intimate Images**” (Report to the FPT Ministers) - *released July 2013*
 - Add new offence - NCDII
 - Maintain prosecutorial flexibility regarding “child pornography” offence
 - Address seizure, forfeiture, restitution, prevention (peace bonds)

Resource Guide (Schools/Families)

School and Family Approaches to Intervention and Prevention: Addressing Self/peer Exploitation (SPEX)



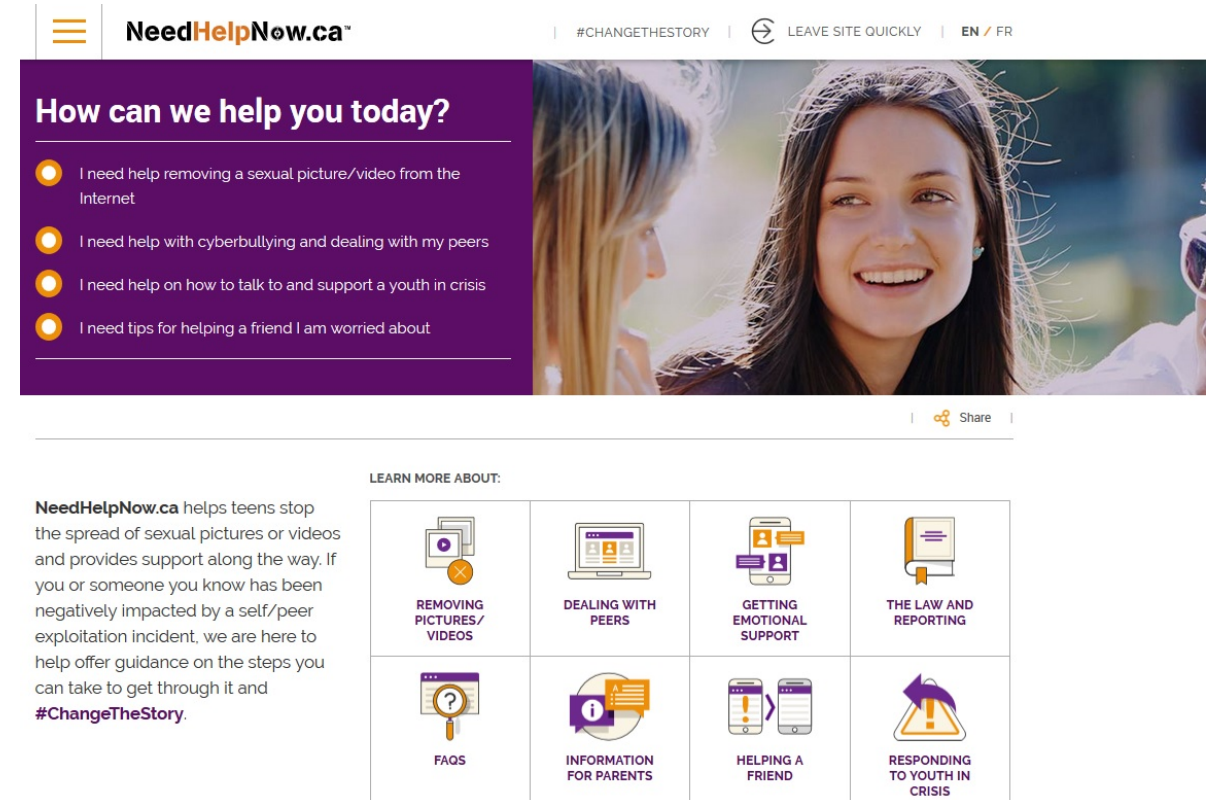
Introduced in 2012 - In the 2019/20 fiscal year:

- Over 1000 family guides distributed in Manitoba
- Approx. 675 school guides distributed in Manitoba

NeedHelpNow.ca – launched in 2013

A website to help youth who have been negatively impacted by a sexual picture online

Close to **46,000 visits** to this website in in the 2019/20 fiscal year **ALSO SEE: dontgetsexorted.ca



4. Non-consensual distribution of an intimate image offence (via Bill C-13, in force March, 2015)

Publication, etc., of an intimate image without consent

162.1 (1) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty

- (a) of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) of an offence punishable on summary conviction.

Definition of intimate image

(2) In this section, intimate image means a visual recording of a person made by any means including a photographic, film or video recording,

- (a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;
- (b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and
- (c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

5. Prevalence since introduction of offence

- **Incident-based crime statistics (Canada)**
- Statistics Canada. Available online at:
<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701>
- First year of offence (2015) – **340** police-reported incidents (**47** charges)
- Latest publicly available stats (2018) – **1,460** police-reported incidents (**274** charges)

6. Intimate Image Protection Act

Only Manitoba's act:

provides for **Victim Supports** (s. 2(2)(a), 3(1) and 3(2))

designates an agency to provide information and assistance to victims (s. 4(1)-4(3), 6(1)-6(2), and 7(1)-7(3))

designates an agency to send notices to those in possession of an intimate image (ss 8-10)

C3P is designated in the *Intimate Image Protection Regulation* to provide information and assistance (s. 4 of the *IIPA*).

Enumerated supports:

(a) *receiving requests for assistance;*

(b) *providing information or assistance to enable a person to have their intimate images returned, destroyed, deleted or removed from the Internet or any other place where they be viewed by others;*

(c) *providing information or assistance that may facilitate the resolution of a dispute between a person depicted in an intimate image and a person who may be in possession of the image or who may have distributed the image;*

(d) *providing information about legal remedies and protections available when there has been a non-consensual distribution of an intimate image or where there is a concern that an intimate image is about to be distributed without consent.*

Public Awareness & Education



**WHAT IF IT WAS
YOUR CHILD'S IMAGE
BEING SHARED?**

Talk to your teens about the harm
of sharing others' nudes.

LEARN MORE AT
cybertip!ca

SUPPORTED BY:
Manitoba 

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7(A). Assistance Available for Manitobans

Assistance related to image containment/takedown:

- Instructions about contacting website for removal (see *NeedHelpNow.ca* or contact Cybertip.ca)
- Send notification to the service provider for where the image(s) is posted

Challenges:

- The imagery is in the hands of a **third party** or parties – no reliable way to track who has it
- Company hosting the material is often **outside Canada** (jurisdictional hurdles)
- Some companies are **responsive** to removal requests, some are **not responsive** (ignore requests)
- The image/video, once removed, can simply be **re-posted**, at any time, and on any platform
- “**Consensual**” **adult pornography** is rampant on the internet – default setting is to leave adult pornography online

Case example (for challenges):

- *R v OK*, 2019 ONCJ 804 – video of complainant posted on Pornhub – judgment reproduces her correspondence with Pornhub – note **delay** in removal (every moment counts), inability to prevent reupload

See next slide for how individuals can access assistance from Cybertip.ca.

7(B). Assistance Available for Manitobans

Dependent on the information provided by the individual, the following direction/assistance may be provided:

- Encouragement re identifying supports and importance of self-care (under 18 – involving a safe adult)
- General information about options: tort option, prevention orders, etc.
- Information about setting privacy/security options online
- Assist with referral to police
- Other referrals: victims services, community support groups (e.g., The Shameless Circle – <https://theshamelesscircle.org/>)

Accessing assistance: <https://www.cybertip.ca> or call 1-866-658-9022

Note: some guidance will also be provided to adults outside of Manitoba, but Cybertip.ca does not take an active role in assisting adults outside of Manitoba

8. Assistance provided in 2019/20

- In 2019/20, Cybertip.ca received **630+ reports** (from across Canada) under the reporting category of NCDII:
 - **39%** pertained to concerns of images/videos of a **youth** being distributed
 - **62%** pertained to concerns of images/videos of an **adult** being distributed.
 - **78%** of the time the reporting person is the person **in the image/video**.
 - **65%** of the incidents involved **threats** to the victim.
- The 630+ reports in 2019/20 is a **36%** increase over 2018/19

Part 2 – Considerations for children/youth



1. Intersection of NCDII & “Child Pornography”

- “Intimate image” in s. 162.1 of the *Criminal Code* captures images of **adults** (18+) as well as images of **children/youth**
- Sexual images of a child/youth may also meet the definition of “child pornography” (s. 163.1 of the *Criminal Code*) – but note the NCDII definition is actually broader as it includes **nudity**
- The overlap has implications both for:
 - Victim support – especially image containment
 - The role and response of the criminal justice system



2. Considerations for impacted youth

- The #1 thing youth express to Cybertip.ca: **desperate to get images down**
- Do not want their parents to know
- Often will not seek help until the situation has reach a **crisis level**
- TIP: when making removal requests - including victim's age will expedite removal - reputable providers do NOT want to host content of children
- Also, consider that Project Arachnid has uncovered:
 - a large volume of **known adolescent content** on adult pornography sites
 - Images/videos of children who are pubescent/post-pubescent (age 11-17) are **less likely** to be removed (lack of oversight & transparency in age assessments, interpretation of legal definitions)



3. Considerations for acting-out youth

- Self/peer exploitation dimensions (from SPEX guides):
 - **NATURE** – degree of sexual explicitness
 - **INTENT** – impulsive vs. malicious
 - **EXTENT** – range of distribution
- For incidents between peers:
 - NCDII is generally the preferred charge (“child pornography” laws are often not a good fit when the activity is occurring amongst peers)
 - Consider an educative approach when possible (e.g., diversion program)
 - Schools play a key role in educating on issues such as boundaries, healthy relationships, responsible use of technology

