
What you need to know about the Intimate Images & Cyber-Protection Act



What is the Intimate Images and Cyber-Protection Act?

This law and its regulations let you apply to the Supreme Court of Nova Scotia for a court order if you have been the victim of cyberbullying or if intimate images of you have been shared electronically without your consent. This is called a cyber-protection order. An application for a cyber-protection order is the beginning of a court process for private legal disputes. It is not a criminal process. You decide if you want to apply for the order.

The goal of the *Intimate Images and Cyber-Protection Act* is to discourage people from bullying others online or through email or text messages, or sharing their intimate images without their consent. The law gives you a way to respond if these things happen.

If you don't know the source of the cyberbullying or who shared the intimate images you can apply for a court order to demand that someone who appears to be connected to these things provide information that may help to identify that person.

Supreme Court of Nova Scotia Practice Memorandum No. 13 attaches some of the forms you will need for a court application or memo.

- Intimate Images Application
- Cyberbullying Application
- Production or Take-down Application
- Affidavit of Service
- Motion to Extend, Vary or Terminate (a Cyber-Protection order)
- Affidavit
- Notice of Contest (Chambers Application)
- Order (to Extend, Vary or Terminate a Cyber-Protection order)

What is cyberbullying?

There are several factors that qualify a communication as cyberbullying:

- the communication is carried out electronically, that is by email, text message, or online such as through social media
- and
- the communication causes, or is likely to cause harm to another person's health or well-being
- and
- the person responsible for the communication maliciously intended to cause harm to another individual's health or well-being
- or
- the person responsible for the communication was reckless, that is, didn't think about or care if the communication might cause harm to another person's health or well-being

For a communication to qualify as cyberbullying, it can either be directed *to* the person being harmed or it may be *about* that person.

These are some examples of cyberbullying:

- revealing sensitive personal facts or confidential information
- threatening or intimidating another person
- communicating in a way that is grossly offensive, indecent, or obscene
- harassing another person
- making a false accusation
- assuming the online identity of another person
- encouraging another person to commit suicide
- criticizing or disparaging another person because of a prohibited ground of discrimination
- encouraging another person to do any of the above

What is an intimate image?

There are several factors that make up the definition of an intimate image:

- It is a visual recording of a person such as a photograph, film, video, or any other kind of visual recording.

and

- The person in the image had a reasonable expectation of privacy when the image was recorded.

and

- The person in the image is
 - nude
 - exposing their genitals or anal region
 - exposing her breasts
 - engaged in explicit sexual activity

and

- When the image was first shared, the person in the image had a reasonable expectation of privacy, that is, they expected the image to be shared only among people of their choosing.

What does it mean “to share without consent”?

To share without consent means to make the image available to anyone other than the person in the image under one of two conditions:

- The person sharing the image knew that the person in the image did not consent to its distribution.
- The person sharing the image was reckless, that is didn't care to find out if the person in the image had consented to its distribution.

Sharing includes publishing, advertising, selling, transmitting, or sharing the image in any way.

Where can I go for help?

Contact CyberScan

Phone: 902-424-6990 within the Halifax Regional Municipality (HRM)
855-702-8324 toll free

Website: cyberscan.novascotia.ca

CyberScan staff are members of the Public Safety Division of the Nova Scotia Department of Justice. They can help you to find a solution to a dispute involving cyberbullying or the sharing of intimate images.

CyberScan staff can contact the person who distributed the intimate images without consent or who engaged in cyberbullying to explain the process and try to solve the matter informally using restorative practices or other approaches. They can also help you to navigate the justice system, help you understand your options, offer you support, and try to solve the matter informally using restorative practices or other approaches.

Who can apply for a cyber-protection order?

You can apply for a cyber-protection order about an intimate image if you meet one of these conditions:

- Your intimate image was shared without your consent.
- You are the parent or guardian of a person who is younger than 19 whose intimate image was shared without consent.

You can apply for a cyber-protection order about cyberbullying if you meet one of these conditions:

- You are a victim of cyberbullying.
- You are the parent or guardian of a victim of cyberbullying who is younger than 19.

The person who applies for the order is called the “applicant.”

Does it cost anything to apply for a cyber-protection order?

Yes. The fee to file an application is \$218.05. You must also get a law stamp from the Court Administration Office for \$25.00 + HST.

If your income is below a certain amount, you may apply to have the court fees waived, that means you won't have to pay them. To do this, you will have to complete a Waiver of Fees Application and file it with the Court Administration Office.

Court Administration Offices: courts.ns.ca/Courthouse_Locations/HRM_Courthouses.htm

Will my identity be published?

That depends on your age and whether you ask that your identity be protected.

Publication bans and use of a pseudonym for persons younger than 19

If you are younger than 19, your identity is protected by law. Even after you turn 19, you still cannot be identified. The court must use a made-up name when referring to you. This is true for the person you want to get a cyber-protection order against as well.

The process:

An applicant under 19, and who wishes to go by a pseudonym in the documents that start the proceeding, may deliver a letter to the prothonotary giving their true name, proof of age, suggested pseudonym, address, other contact information, and a proposed method of receiving notice.

A respondent or prospective respondent who is under 19 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 them by a pseudonym. The letter must give proof of age, their true name, the suggested pseudonym, address, other contact information, and a proposed method of receiving notice.

Publication bans and use of a pseudonym for persons 19 or older

If you are 19 or older and apply to court using a Notice of Application in Chambers (Intimate Images), you may ask to have your identity protected. To do this, check off the request box on the notice form. There is also a place on the notice form for you to ask that the court refer to you using a made-up name—a pseudonym.

An adult applicant, by default, must be identified by name. However, they may bring a motion to the court to seal a court document or an exhibit, ban publication and permit them to be identified by a pseudonym.

The process:

To bring a motion for a publication ban, the applicant must:

1. file a Notice of Motion, Affidavit and draft Order;
2. unless the Court orders otherwise, provide notice of the motion to other parties;
3. unless the Court orders otherwise, provide notice of the motion to the media by completing and submitting electronically a Notice of an Application for a Publication Ban form. Once submitted, the notice is sent out automatically to the media. The form can be found at courts.ns.ca/Publication_Ban_Notice/pubbanform.htm.

The courts' website includes an explanation of the procedure to provide notice to the media: courts.ns.ca/Publication_Ban_Notice/documents/how_to_give_pub_ban_notice_16_12_21.pdf.

How would my identity be protected?

If you are under 19, or a person 19 or older who obtained an order providing a publication ban, no one would be allowed to publish or broadcast your name or any information that could identify you. The same protections continue in any later motion. You make a motion any time you ask the court to make a ruling.

Who do I get a cyber-protection order against?

The person named in your cyber-protection application is called a “respondent”. You may name more than one respondent. These are the people you can name as a respondent in your application:

- the person who shared your intimate image without your consent or engaged in cyberbullying
- the parent or guardian of the person described above if they are younger than 19
- the person who may know who is behind the cyberbullying or who shared the intimate image because
 - their IP address was used
 - their website was used
 - their electronic user name or account was used
 - their email address or other unique identifier was used
- the parent or guardian of any of the people described above if they are younger than 19.

What can I ask the court to order if my intimate image, or that of my child, has been shared?

You can ask the court to rule that the image in question is, indeed, an intimate image. You can also ask the court to do one or more of the following:

- forbid the respondent from sharing the intimate image
- forbid the respondent from contacting you or another person, such as your child in the future
- order the respondent to take down or disable access to the intimate image
- order the respondent to pay damages to the person in the intimate image. You may ask for a specific amount
- order the respondent to account for profits from the sharing of the intimate image
- order the referral of the matter to dispute-resolution services provided by CyberScan or otherwise

Damages are an amount of money the court orders a person to pay for causing harm to another person.

These things may also be part of the order:

- the date when the order is no longer in effect
- that the respondent must pay the costs of the proceedings to you. The court will determine how much the respondent must pay.
- any other order that the court decides is just and reasonable

What can I ask the court to order if I, or my child, was the victim of cyberbullying?

You can ask the court to rule that the communication is, indeed, cyberbullying. You can also ask the court to order the respondent to do one or more of the following:

- not communicate in a way that would qualify as cyberbullying
- not contact you or another person, such as your child in the future
- take down or disable access to the communication that is cyberbullying
- order the respondent to pay damages to the victim. You may ask for a specific amount
- order the respondent to account for profits from the cyberbullying
- order the referral of the matter to dispute-resolution services provided by CyberScan or otherwise

These things may also be part of the order:

- the date when the order is no longer in effect
- that the respondent must pay costs of the proceedings to you. The court will determine how much the respondent must pay
- any other order that the court decides is just and reasonable

What if I don't know who shared the intimate image or who was behind the cyberbullying?

You can ask the court to order the respondent to give you any information they have that may help identify the person who may have used any of the following:

- their IP address
- their website
- their electronic user name or account
- their email address or other unique identifier that may have been used to distribute an intimate image without consent or for cyberbullying

Once you have this information, you can then make an application against the person who is identified.

You can also ask the court to order the respondent to take down or disable access to the intimate image or cyberbullying communication.

Finally, the court may make any other order that it decides is just and reasonable.

Are there rules for court?

Yes. [The Civil Procedure Rules](#) apply.

This is a list of the rules that apply:

- Rule 1 Purpose
- Rule 2 General
- Rule 5 Applications
- Rule 23 Motions
- Rule 34 Acting on One's Own
- Rule 38 Pleading
- Rule 39 Affidavit
- Rule 40 Brief
- Rule 78 Order
- Rule 94 Interpretation

NOTE: The rules set out deadlines for delivering documents. This is usually expressed as a number of days. The number of days set out in a rule does not include the following:

- the day the period begins, for example, if the period described is “within 10 days after notification” the period does not include the day you were notified
- weekends
- any day the prothonotary's office in Halifax is closed
- the day on which a thing must be done, for example, if the period described is “at least 25 days before the hearing,” the period does not include the 25th day before the hearing

What are the steps I need to follow to apply for a cyber-protection order?

Before you get to court

1. Contact CyberScan

Phone: 902-424-6990 within the Halifax Regional Municipality (HRM) **Website:** cyberscan.novascotia.ca
855-702-8324 toll free

They may be able to help you to resolve your issue without having to go to court.

2. Choose a Supreme Court of Nova Scotia location.

courts.ns.ca/Courthouse_Locations/Courthouse_Locations_Map.htm

3. Contact the Court Administration Office at your chosen court location and ask what dates and times would be available to make an application in regular chambers.

Important: There are deadlines by which you must deliver the following documents:

- **At least 10 days before your hearing**, you must deliver a Notice of Application and Affidavits to the Administration Office and to the respondents.
- **At least 3 days before your hearing**, you must deliver a Brief (see page 13) to the Administration Office and to the respondents.

Keep these deadlines in mind when you contact the Court Administration Office and ask for available dates and times. Give yourself plenty of time to prepare your documents and deliver them by the deadlines.

4. **Complete the Notice of Application** and prepare your Affidavits and Brief. Make 2 copies for the court and a copy for each respondent and yourself.

These are the documents you will need to prepare:

- **For the sharing of intimate images without consent**
Notice of Application in Chambers (Intimate Images), see Form attached to *Practice Memorandum Affidavit*, see Form attached to *Practice Memorandum*, and sample and information on page 10
Brief, see sample on page 13.
- **For cyberbullying**
Notice of Application in Chambers (Cyberbullying), see Form attached to *Practice Memorandum Affidavit*, see Form attached to *Practice Memorandum*, and sample and information on page 10
Brief, see sample on page 13.
- **To get information to help identify another person or to take down intimate images or cyberbullying communication**
Notice of Application in Chambers (Production or Take Down), see Form attached to *Practice Memorandum Affidavit*, see Form attached to *Practice Memorandum*, and sample and information on page 10
Brief, see sample on page 13.

5. **File 2 copies of the documents at the Court Administration Office** and get a date stamped copy for each respondent and yourself.

6. **Have someone else hand deliver a copy of the filed documents to each respondent.** You cannot make delivery yourself. You need a person who is not a party to do it. Prepare an Affidavit of Service, see Form attached to Practice Memorandum, confirming the delivery.

7. **Review any documents filed by a respondent.**

Important: Respondents have deadlines by which they must deliver the following documents:

- **Within 5 days after they were notified**, the respondent must file a Notice of Contest, see Form attached to Practice Memorandum, and Affidavit, see Form attached to Practice Memorandum, and sample and information on page 10, with the Court Administration Office and deliver a copy of each to you.
- **At least 3 days before your hearing**, the respondent must notify you in writing if they intend to question anyone who filed an Affidavit on your behalf.
- **At least 2 days before your hearing**, the respondent must file a Brief, see sample on page 13, at the Court Administration Office and deliver a copy to you.

8. **Prepare for the hearing.** You may provide the following 2 documents. Pay attention to the deadlines.

- **Within 2 days after you received the respondent's Affidavit**, you may provide a rebuttal Affidavit, see Form attached to Practice Memorandum, and sample and information on page 10.
- **One day before date of hearing**, you may provide a reply Brief, see sample on page 13.

On your court date

1. **Be at court at the scheduled day and time.** The court may postpone or conduct the hearing as scheduled.
2. **Make sure the court has all your information and ask for information you need:**
 - Give the court a copy of the Affidavit of Service confirming that your documents were delivered to the respondent.
 - Confirm that the court has the documents you filed.
 - Ask for a copy of any other documents the court has that you don't.
 - Give the court any additional information, testimony, or answer questions about the facts that you have not already given.
3. **Ask the respondent questions about their Affidavit if you wish.**
4. **Explain why an order should be granted.** The respondent will be given an opportunity to explain why an order should not be granted.

What happens at the end of the hearing?

1. The court may make a decision at the end of the hearing or adjourn to deliver the decision at another time.
2. If the court rules in your favour, ask if you should prepare a draft court order for the court's consideration. If you will be preparing the order, ask the court what it should look like and what information it should contain. Make copies of the draft order to be certified by the Court Administration Office.
3. Have someone hand deliver a certified copy of the order to the respondent. Prepare an Affidavit of Service, see Form attached to Practice Memorandum, confirming the delivery. You may file the Affidavit at the Court Administration Office.
4. Tell the police if the respondent disobeys the order. You only need to do this if you want to but it is the only way to ensure the order is enforced.

Costs

The courts may order the respondent to pay you "costs", or you may be ordered to pay "costs" to the respondent. Costs reimburse you for the expenses you paid to go to court. Be prepared to give information and documents, such as receipts, that explain to the court what it cost you to bring the matter to court. Costs awarded by the courts are within the discretion of the courts.

Can I ask to extend, change or end a cyber-protection order?

Yes. You may make a motion to extend, vary or terminate a cyber-protection order. You can do this whether you obtained the order or the order was made against you.

Contact the [Court Administration Office](#) at the selected Court location and ask what dates and times would be available in chambers for you to bring your motion for a hearing in a half-hour or less. This could be at another location. A court can retrieve files from other court locations.

To prepare for your motion, you must complete a Notice of Motion and prepare an Affidavit, a draft order and a Brief. You may have more than one Affidavit. You must file your notice, Affidavit, draft order, and Brief at the Court Administration Office and deliver copies to the other party **at least 5 days before your hearing**. These are the documents you will need:

Notice of Motion to Extend, Vary or Terminate, see Form attached to Practice Memorandum

Affidavit, see Form attached to Practice Memorandum, and sample and information on page 10

Draft Order to Extend, Vary or Terminate, see Form attached to Practice Memorandum

Brief, see sample on page 13

Other party

If you were the person who obtained the order, the **other party** is the respondent. If you were the person the order was made against, the **other party** is the person who obtained the order.

How do I oppose (contest/dispute) a motion to extend, vary or terminate an order?

To oppose a motion, you must file an Affidavit, see Form attached to Practice Memorandum, and sample and information on page 10, and a Brief, see sample on page 13, at the Court Administration Office and deliver copies to the applicant **at least 2 days before the hearing**. Your Brief should take the form of a letter in which you explain to the court why it should not grant the order.

You must notify the applicant in writing if you intend to question anyone who provided an Affidavit. This will likely result in rescheduling of the hearing.

What is an Affidavit?

An Affidavit is a statement of facts that a person must swear or affirm to be true. This is done in the presence of a commissioner of oaths either at the Court Administration Office or by CyberScan staff.

Number each of the sentences in your Affidavit. Include all necessary facts to support your application or opposition.

Sample Affidavit

Here is sample Affidavit for an applicant applying for an order respecting cyberbullying:

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No. _____

Supreme Court of Nova Scotia

Between:

XX

Applicant

and

John Doe

Respondent

Affidavit of XX sworn on January 30, 2018

I, XX, make oath and give evidence as follows:

1. I am XX, the applicant.
2. I have personal knowledge of the evidence sworn to in this Affidavit except where otherwise stated to be based on information and belief.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. I live in Centretown, Nova Scotia and have been employed at ABC Company as a payroll officer for three years.
5. My place of work is Office Plaza, 123 Main Street, Centretown, Nova Scotia.
6. I do not know John Doe and have never spoken to him.
7. YY is the Assistant Manager at ABC Company and my supervisor.
8. I am advised by YY and do believe that John Doe works for XYZ Inc., a company located in Office Plaza on the third floor.
9. I am advised by YY and do believe that ABC Company has no business dealings with XYZ Inc. or John Doe.
10. I am advised by YY and do believe that she received emails from John Doe on December 24, 2017 and January 24, 2018.
11. Attached hereto and marked as Exhibit I is a copy of the email sent to YY from John Doe@XYZ.ca, dated December 24, 2017, which states:

Dear YY:

XX is a thief and is messing with the ABC books. He should be fired and jailed.

John Doe

What is a Brief?

A Brief is a written explanation why the court should grant the order you are seeking. Often, it looks like a letter.

Here is sample Brief for an applicant applying for an order respecting cyberbullying:

Dear Justice in Chambers:

RE: XX v. Doe
Application: for a Cyber-Protection order
Hearing: March 30, 2018 @ 11:00AM
Court no.: Hfx. No. 123456

1. Introduction

I am the applicant seeking a Cyber-Protection order.

2. Law

This application is being made pursuant to section 5 of the *Intimate Images and Cyber-Protection Act*; which states:

5 (1) *[insert text]*

Section 3 defines cyberbullying:

(c) *[insert text]*

Section 6 (1) of the Act authorizes the Court to make one or more of the following orders, including:

[insert text]

[Refer to any cases you are relying on and include a copy in a Book of Authorities.]

3. Evidence

I rely on my Affidavit sworn on January 30, 2018, a copy of which is attached. The evidence shows:

I am employed at ABC Company as a payroll officer. I have never spoken to the respondent, John Doe, but believe that he works for a different company in the same building. Over the past months, my supervisor, YY, has received emails from John Doe which include false allegations of me committing financial wrongdoing at work.

In one email, a copy of which I attach to my Affidavit as Exhibit 2, Mr. Doe states, "I see that XX is still working for you. He is a thief and a liar. I know he is stealing from ABC Company. I am going to keep emailing you until you fire him."

This communication causes me harm; which is described in my Affidavit. It is clearly being done to cause that harm.

4. Argument

The communication from John Doe is cyberbullying.

5. Relief sought

I ask the Court to grant a Cyber-Protection order that includes the following terms:

1. The communication is cyberbullying.
2. The Respondent must not make communications that would be cyberbullying.
3. The Respondent must not have future contact with the Applicant or YY.
4. The date on which this order ceases to be in effect is March 30, 2019.
5. The Respondent must pay costs of the proceedings to the Applicant in the amount of \$_____

Yours truly,

XX

