



February 26, 2021

House of Commons Standing Committee on Justice and Human Rights

Re: Study on controlling or coercive conduct within intimate relationships

Ms. Chairperson and distinguished members of the Committee, thank you for initiating a study about controlling or coercive conduct within intimate relationships. The Canadian Centre for Child Protection Inc. is pleased to contribute information, and provide examples of the type of issues our organization has been dealing with, to assist the Committee with this important topic. Our comments will focus on the increased role of technology in facilitating controlling or coercive conduct within intimate relationships.

About the Canadian Centre for Child Protection Inc. (“C3P”)

The Canadian Centre for Child Protection Inc. is a registered Canadian charity dedicated to the personal safety and protection of all children. We have been operating for 35 years, and our goal is to reduce the sexual abuse and exploitation of children, assist in the location of missing children, and prevent child victimization through a number of programs, services, and resources for Canadian families, educators, child-serving organizations, law enforcement, and other parties.

About Cybertip.ca, Canada’s tipline to report the online sexual exploitation of children

One of the most well-known programs operated by C3P is Cybertip.ca, Canada’s national tipline to report the online sexual exploitation of children. The tipline has been in operation since September 26, 2002 and was adopted under the Government of Canada’s *National Strategy for the Protection of Children from Sexual Exploitation on the Internet* in May 2004. C3P is also the designated reporting entity under the *Child Pornography Reporting Regulation (Manitoba)*¹ and the federal *Internet Child Pornography Reporting Regulations*². Further, upon the proclamation of Manitoba’s *Intimate Image Protection Act*³ (IIPA), C3P became designated as an authorized agency to receive requests for assistance, and to provide supports to persons who have been, or who believe they might be, impacted by the non-consensual distribution of an intimate/sexual image.

It is through the work of Cybertip.ca that we have witnessed an alarming increase in offences related to child sexual abuse material⁴, as well as image based sexual offences that can be committed against both children and adults, such as non-consensual creation and/or distribution of intimate images, and voyeurism. We work directly with children and adults who have been the target of such offences, which provides us with an important lens into

¹ The *Child Pornography Reporting Regulation*, Reg. 79/2009 is made pursuant to *The Child and Family Services Act (Manitoba)*, C.C.S.M. c. C80 and pertains to the reporting obligation set out in section 18(1.0.1) of *The Child and Family Services Act (Manitoba)*.

² *Internet Child Pornography Reporting Regulations*, SOR/2011-292. Pursuant to section 2 of *An Act Respecting the Mandatory Reporting of Internet Child Pornography by Persons who Provide an Internet Service*, S.C. 2011, c. 4.

³ C.C.S.M. c. 187. Proclamation occurred on January 15th, 2016. The Canadian Centre for Child Protection is designated as an Authorized Agency under section 2 of the *Intimate Image Protection Regulation*.

⁴ The term used in the *Criminal Code* is “child pornography”.



the various ways in which such imagery is used to threaten, silence, and control victims. We believe that the role of sexualized imagery and its distribution must be part of the consideration into this issue, and contribute the following information to assist in that regard.

Image based sexual offences

It has been the experience of our organization that sexualized imagery is created, held and released in a number of contexts. For example:

- **Consensual creation, non-consensual distribution.** An intimate partner obtains or creates this imagery in the context of a consensual relationship and then either refuses to destroy it at the end of the relationship – thus causing the person in the imagery to live with a continuing fear that it will be distributed at some point - or the partner is told it is destroyed when it has not. The imagery is then released at a future date through any one of a number of sites that exist precisely to host this type of content.
- **Coerced creation, followed by extortion/threats.** An intimate partner uses coercion to obtain the imagery. The coercion might take a number of forms and can include threats to break up if imagery is not supplied and threats to reveal embarrassing information to others if imagery is not provided or the person does not participate in the creation of the imagery. The imagery itself may involve coerced acts (such as forcing the person to engage in acts they do not wish to engage, or that they do not wish to be recorded while engaging in them), or forcing the person to feign enjoyment, thus reducing the likelihood the person will ever come forward as the person appears complicit in the imagery. The imagery, once obtained, may then be retained and used as an overarching threat against the person depicted to ensure that person's agreement to other things, such as engaging in additional sex acts, participating in the creation of additional recordings, or whatever else the image holder might desire.
- **Voyeuristic recordings.** An intimate partner may also secretly record their partner to obtain the imagery. The recording might occur "in person", such as recording and "posing" their partner while the partner is asleep, or the recording might occur when the person being recorded is alone, such as through a hidden camera or cameras within their own home. Once obtained, the imagery is then either used to threaten, or it is released online. Due to its secretive nature, voyeuristic recordings can induce intense fear in the person who was recorded as the recording often occurs within their own home, a place where they should be entitled to feel safe.

Victim impact

It is not an exaggeration to say that victims of image based sexual offences are impacted in profound ways by the distribution – or threat of distribution - of images and/or videos depicting their most private moments. With the emergence of technology, it has become increasingly difficult to confine the rapid proliferation and the distribution of image based sexual material. This is especially the case when the material depicts an adult or a person who appears to be an adult, given the legality and ubiquity of "adult pornography" and its non-consensual counterpart, "intimate imagery".

Once an intimate image has been shared with even one person through electronic means, its permanent destruction is incredibly difficult, as it is nearly impossible to know all the spaces (such as pornography websites,



chat sites and online forums, etc.) where the intimate image and/or video may have ended up. Even in cases where the offending individual has shared or sent the image to just one person, the victim effectively loses control over her/his sexual integrity and of the image, their privacy and their dignity is violated, and their trust is betrayed. Depending on who received the image, and how it was shared, there may be no way for the victim to know if or when the photo will be distributed further, and if or when it may turn up and impact their life.

Our organization is aware that there are countless victims of image based sexual abuse who choose not to participate in the court process. There are victims who wish to, but simply cannot, express the profound impact this type of crime has had on their life. Furthermore, there are individuals in the community who have not had their content distributed, but who live in constant fear that it may be distributed when they least expect it. Through our direct interactions with victims of this crime, and individuals who believe they are at risk of being victims of this crime, we know that individual experiences are unique, but what victims of these types of offences have in common is a profound sense of shame and powerlessness.

There are some egregious Canadian examples of distribution that are particularly shocking (for example, *R v JTB*⁵ where the offender actually impersonated the victim on social media and encouraged others to rape her), and examples where the victim died by suicide following distribution.⁶ While not all cases will rise to the level of these examples, the individuals whose sexual imagery is currently in the possession of a former intimate partner are no doubt aware that these types of extreme examples exist. The bottom line is, both the non-consensual creation, and the non-consensual distribution of sexual imagery, are digital forms of domestic violence that are being committed against current and former intimate partners at an increasing rate. This has to be recognized, and it has to be addressed. The fact that these types of crimes are not physical in nature does not make them any less harmful, and in fact, the long lasting impact they can have due to their digital nature makes them all the more concerning. At the click of a mouse, an image of a person can be released online and because of that, these images can be used to terrorize and marginalize people into subservience. Once released online, the damage is incalculable. Consider the following case excerpt from *R v JTB*:

In short, while Ms B. thankfully was not the subject of a sexual assault that proceeded to forced sexual intercourse, or the infliction of lasting physical scars, the profound emotional and psychological impact upon her clearly has been devastating, and seems likely to be permanent. In that regard, it should be recognized and emphasized again that her torment is not over. Nor does it seem likely to end. **Her intimate images and personal**

⁵ *R v JTB*, 2018 ONSC 2422 - In this particularly egregious case, an offender used intimate photos of a previous partner to impersonate her on social media and to suggest that she had an interest in enacting a violent rape scenario, going so far as to include details about where she lived. In the process of this impersonation, the offender duped an unwitting male (who believed that he was arranging a consensual sexual encounter with the victim) into an attempted violent sexual assault on the victim. This victim was completely unaware that she had been impersonated or that anyone had seen her imagery online, when she was attacked in her own yard. See also: *R v NN*, 2019 ONCJ 512, where the victim stated she had been recognized by multiple people and had been contacted (para 146).

⁶ For example, *R c Gosselin* (2020 QCCQ 2653), a case which involved a 56 year old man who died by suicide after short relationship with 58 year old woman who distributed intimate images of him without his consent. The impact on the victim is described in paras 13, 15, 29-32 of the decision. In addition, there are numerous high profile cases involving Canadian youth who died by suicide after sexual images were released online (e.g., Amanda Todd, and Rehtaeh Parsons).



information remain online and available to strangers, along with indications that she would welcome a sexual assault. She correspondingly is obliged to live in a state of constant humiliation, exposure and understandable anxiety related to the realistic possibility of further sexual violence by strangers unknown and unknowable. (para 97)

Civil remedies

In recognition of the growing problem of non-consensual distribution of intimate images, several provinces have enacted legislation designed to assist victims in pursuing civil remedies. These provinces include Alberta⁷, Saskatchewan⁸, Manitoba⁹, Nova Scotia¹⁰, Prince Edward Island¹¹, and Newfoundland & Labrador¹². Ontario has yet to enact legislation to deal with this problem and has instead relied on developments in the common law. Regardless of whether the remedy is available by statute or common law, a civil remedy is unfortunately out of reach for most victims and in any event, damages are not real remedies for the nature of the damage that is caused by the release of such imagery.

Of note, in January 2021, the Ontario Superior Court released its decision in *Caplan v Atlas*¹³, recognizing a new civil tort of internet harassment in Ontario. The decision involved four lawsuits against a woman for defamation, harassment and other related claims in what the court called “extraordinary campaigns of malicious harassment and defamation carried out unchecked, for many years, as unlawful acts of reprisal.”¹⁴ While this case did not involve intimate images, this development could potentially be applied to assist victims who are impacted by such campaigns. However, as noted above, cost will always be a barrier.

Preventing non-consensual distribution of an intimate image

Added to the above is the depressing reality that there are very few effective remedies available for individuals to *prevent* their intimate images from being distributed without their consent. For example, when the federal government introduced section 162.1 into the *Criminal Code*, it also expanded the criteria that enabled a person to obtain a “peace bond” under section 810 of the Criminal Code. This addition was intended to provide individuals with a way to “prevent” an image distribution offence they feared might occur. However, nearly 6 years after section 810 was amended, it is clear that the process is ill suited for the types of scenarios we know are unfolding across this country on a regular basis.

The process of obtaining a peace bond requires that the person who fears distribution (the “Complainant”) file an information, which is then served upon the person who the Complainant fears will distribute the material (the “Imagery Holder”). Both parties are then required to appear in court to put forward their respective positions. Not only is this time consuming and an incredible burden on the Complainant (who must largely drive this process

⁷ *Protecting Victims of Non-consensual Distribution of Intimate Images Act*, RSA 2017, c P-26.9

⁸ *The Privacy Act*, (Amended by *The Privacy Amendment Act, 2017*), RSS 1978, c P-24

⁹ *The Intimate Image Protection Act*, CCSM c 187

¹⁰ *Intimate Images and Cyber-protection Act*, SNS 2017, c 7

¹¹ *Intimate Images Protection Act*, RSPEI 1988, c I-9.1

¹² *Intimate Images Protection Act*, RSNL 2018, c I-22

¹³ *Caplan v Atlas*, 2021 ONSC 670

¹⁴ *Ibid*, para 1.



on their own), but even if the Complainant is successful in getting the order, it will only last one year, so she must keep having it renewed. Throughout, the Complainant remains at the mercy of the Image Holder not to do the unthinkable and release the content. Moreover, the very mechanics of the process mean that the Imagery Holder will have ample warning that the Complainant is attempting to assert their rights over the imagery and can easily subvert the process by placing the imagery of concern in a location that cannot be accessed by police (e.g., hiding it in an inaccessible physical location or electronic location through the use of encryption, etc.). This is not at all as protective as the ordinary criminal process, whereby individuals generally do not have advance warning before police issue a search warrant and seize materials.

The process is also not entirely effective as it may not include an enforceable destruction order against the Imagery Holder. Given that the number one desire that individuals our organization hears from have is permanent destruction of the imagery, this is a major gap. A victim needs an accessible and enforceable way to have the person in possession of the material to be ordered to destroy the content and to be ordered not to post it or share it or distribute it to anyone else. While these remedies are theoretically available through the peace bond process, it does not appear that this process is resulting in such remedies being provided. Moreover, pursuing a civil law process (such as an injunction, and potentially the private search warrant process), is generally out of reach for most individuals due to its enormous cost.

The role of industry

A submission on this topic is not complete without mentioning the role that industry plays in facilitating these offences. There are numerous websites exist that facilitate, and in some instances, encourage the posting of clearly intimate imagery, or imagery depicting a criminal act (such as the recording of a sexual assault, or surreptitious recording of a period in a public facility or even their own bedroom). These types of sites have been operating with impunity for years, largely within other countries, and time and time again we hear from victims who are unable to have these companies remove the content from public view – especially when the victim is an adult. For the safety of all Canadians, there must be a way to address these types of sites and end the practice of allowing anything and everything to be posted, and leaving it up to victims to figure out where the content is and plead with providers to have it removed.

Recommendations related to Bill C-247

We have had a chance to review Bill C-247 which we understand is a private members bill tied to this issue. We are in support of looking at new ways to address controlling or coercive conduct in the context of an intimate relationship. However, we believe that if a new criminal offence is to be enacted, it must recognize the significant – and increasing – role that technology plays in this type of conduct. To that end, we wish to make the following recommendations with respect to the Bill, for consideration by the Committee in the context of its study.

Recommendation #1

Under the proposed s. 264.01(2)(a), controlling or coercive conduct is said to have a significant impact on a person if “it causes the person to fear, on reasonable grounds, on more than one occasion, that violence will be used against them”. The Bill does not include a definition of “violence”, which we believe will leave it open to being



interpreted in different ways by different courts. In our view, the Bill should include a definition of “violence”, one that recognizes and includes less obvious forms of violence, such as violence through the use of technology. Through the work of our organization, we are well aware of the various ways in which technology is weaponized against victims, often without the use or even threat of physical violence. The use of technology as a weapon should be addressed in the Bill.

Recommendation #2

Under the proposed s. 264.01(1), controlling or coercive conduct must be “repeatedly or continuously” engaged in to meet the required threshold of the offence and the proposed s. 264.01(2)(a) states that the controlling or coercive conduct must cause the person to fear violence “on more than one occasion” in order for the controlling or coercive conduct to have a significant impact on them. While it may seem appropriate to use the words “repeatedly or continuously” and “on more than one occasion”, the reality is it that it only takes one credible threat or action to cause a significant impact on a victim. In our view, the inclusion of the words “repeatedly or continuously” and “on more than one occasion” is likely to lead to litigation over the meaning of those words with the result being that many victims will end up unprotected.

Recommendation #3

The proposed s. 264.01(3) outlines the circumstances in which two people are deemed to be “connected” to meet the required threshold of the offence. While the circumstances outlined in s. 264.01(3)(a) and (b) are important to include, they are, in our view, too restrictive to capture many situations involving victims of NCDII. Through our work operating Cybertip.ca and working directly with victims, our organization is aware that not all intimate image offences involve people in intimate relationships or who have never lived together.

Recommendation #4

The proposed sentence is a term of not more than five years. This sentence length is the same as the maximum sentence for the non-consensual distribution of an intimate image offence. Our organization monitors case law across the country and we have observed that offences (such as NCDII) that have a small sentencing range (such as five years) fail to deal appropriately with extreme cases, resulting in sentences that are not long enough, because judges are often loathe to give any offender the maximum sentence.

We thank you for allowing us to contribute views to this important study.