

2018

CHAPTER 28

An Act to amend *The Privacy Act*

(Assented to May 9, 2018)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Privacy Amendment Act, 2018*.

RSS 1978, c P-24 amended

2 *The Privacy Act* is amended in the manner set forth in this Act.

New heading – Part 1

3 **The following heading is added before section 1:**

“PART 1
Violation of Privacy”.

Section 5 repealed

4 **Section 5 is repealed.**

New Part 2

5 **The following Part is added after section 7:**

“PART 2
Privacy of Intimate Images

“Definitions for Part

7.1 In this Part, ‘**intimate image**’ means a visual recording of a person made by any means, including a photograph, film or video recording:

- (a) in which the person depicted in the image:
 - (i) is nude, or is exposing his or her genital organs or anal region or her breasts; or
 - (ii) is engaged in explicit sexual activity;
- (b) that was recorded in circumstances that gave rise to a reasonable expectation of privacy with respect to the image; and
- (c) if the image has been distributed, in which the person depicted in the image retained a reasonable expectation of privacy at the time it was distributed.

“Interpretation – distribution of intimate images

7.2 For the purpose of this Part and subsection 8(2), a person distributes an intimate image if he or she publishes, transmits, sells, advertises or otherwise distributes the image, or makes it available, to a person other than the person depicted in the image.

“Non-consensual distribution of intimate images

7.3(1) It is a tort for a person to distribute an intimate image of another person without that other person’s consent.

(2) A person who distributes an intimate image commits the tort mentioned in subsection (1) against the person depicted in the image in any of the following circumstances:

(a) the person knows that the person depicted in the image did not consent to the distribution;

(b) the person is reckless as to whether or not the person depicted in the image consented to the distribution.

(3) An action for the non-consensual distribution of an intimate image may be commenced, in the form and manner prescribed in the regulations, without proof of damage.

“When expectation of privacy not lost

7.4 Notwithstanding section 4, for the purposes of an action for the non-consensual distribution of an intimate image, the person depicted in the image does not lose his or her expectation of privacy with respect to the image:

(a) if he or she:

(i) consented to another person recording the image; or

(ii) provided the image to another person; and

(b) in circumstances where the other person mentioned in subclause (a)(i) or (ii) knew or ought reasonably to have known that the image was not to be distributed to any other person.

“Reverse onus

7.5(1) If an action for the non-consensual distribution of an intimate image has been commenced, that distribution is presumed not to have been made with the consent of the person depicted in the image.

(2) If an action for the non-consensual distribution of an intimate image has been commenced, the defendant must establish that he or she had reasonable grounds to believe that he or she had ongoing consent for distribution of that intimate image.

“Defence – public interest

7.6 It is a defence to an action for the non-consensual distribution of an intimate image if the distribution of the intimate image is in the public interest and does not extend beyond what is in the public interest.

“Remedies

7.7(1) In an action for the non-consensual distribution of an intimate image, the court may:

- (a) award damages to the plaintiff, including general, special, aggravated and punitive damages;
- (b) with respect to any profits that have accrued to the defendant as a result of the non-consensual distribution of the intimate image:
 - (i) order the defendant to account to the plaintiff for those profits; and
 - (ii) make an order in favour of the plaintiff with respect to the recovery of those profits from the defendant;
- (c) issue an injunction on any terms and with any conditions that the court determines to be appropriate in the circumstances; and
- (d) make any other order that the court considers just and reasonable in the circumstances.

(2) In awarding damages in an action for the non-consensual distribution of an intimate image, the court must not have regard to any order made pursuant to clause (1)(b).

“Publication ban

7.8 In an action for the non-consensual distribution of an intimate image, the court may make an order prohibiting the publication of the name of any party to the action or any information likely to identify a party if it considers the making of the order to be in the interests of justice”.

New heading – Part 3

6 The following heading is added before section 8:

**“PART 3
General”.**

Section 8 amended

7(1) Subsection 8(1) is amended by adding “or the non-consensual distribution of an intimate image” after “privacy”.

(2) Subsection 8(2) is repealed and the following substituted:

“(2) This section shall not be construed as requiring any damages awarded in an action for violation of privacy or the non-consensual distribution of an intimate image to be disregarded in assessing damages in any other proceedings arising out of the same act, conduct or publication or distribution constituting the violation of privacy or non-consensual distribution of an intimate image”.

Section 10 amended

8 Section 10 is amended by adding “pursuant to Part 1” after “violation of privacy”.

New Part 4

9 The following Part is added after section 11:

**“PART 4
Regulations**

“Regulations

12 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) providing support for plaintiffs commencing an action pursuant to Part 2;
- (c) prescribing the form and manner in which an action for the non-consensual distribution of an intimate image may be commenced;
- (d) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (e) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act”.

Coming into force

10 This Act comes into force on proclamation.