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BILL 12

INTIMATE IMAGES PROTECTION ACT

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Explanatory Note

This Bill

- creates a scheme for civil redress for the unlawful distribution, or threat of distribution, of intimate images, and
- makes consequential amendments to the *Civil Resolution Tribunal Act* and the *Sexual Violence and Misconduct Policy Act*.

BILL 12 – 2023

INTIMATE IMAGES PROTECTION ACT

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HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1 – DEFINITIONS

Definitions

1 In this Act:

“**applicant**” means an individual depicted in an intimate image who makes an application under section 5 [*application for expedited intimate image protection order*];

“**claimant**” means an individual depicted in an intimate image who makes a claim under section 6 [*claim for damages*];

“**decision maker**” means

(a) respecting an application made under section 5, including any related matters,

(i) the tribunal, or

(ii) the Supreme Court, and

(b) respecting a claim made under section 6, including any related matters,

(i) the tribunal if the amount claimed is within the jurisdiction of the tribunal under Division 3 [*Tribunal Small Claims*] of Part 10 of the *Civil Resolution Tribunal Act*,

(ii) the Provincial Court, within the meaning of the *Small Claims Act*, if the amount claimed is within the jurisdiction of that court, or

(iii) the Supreme Court if that court is hearing the claim;

“**depict**” means to represent in

(a) a recording of a still image,

(b) a recording of a moving image, or

(c) a simultaneous representation;

“**distribute**” means to transmit, publish or otherwise make available;

“**internet intermediary**” means an organization that hosts or indexes third party content through an online platform;

“**intimate image**” means a visual recording or visual simultaneous representation of an individual, whether or not the individual is identifiable and whether or not the image has been altered in any way, in which the individual is or is depicted as

(a) engaging in a sexual act,

(b) nude or nearly nude, or

- (c) exposing the individual’s genital organs, anal region or breasts, and in relation to which the individual had a reasonable expectation of privacy at,
- (d) in the case of a recording, the time the recording was made and, if distributed, the time of the distribution, and
- (e) in the case of a simultaneous representation, the time the simultaneous representation occurred;

“**recording**” includes a recording of a still image and a recording of a moving image;

“**related matters**” means any applications, determinations or orders made, under any section of this Act, in relation to an application under section 5 or a claim under section 6;

“**respondent**” means a person named as a respondent to an application made under section 5 or to a claim made under section 6, as applicable;

“**simultaneous representation**” means an image distributed through live transmission, whether or not the image is recorded;

“**tribunal**” means the Civil Resolution Tribunal established under the *Civil Resolution Tribunal Act*.

PART 2 – PRIVACY AND CONSENT

Reasonable expectation of privacy

- 2 For certainty,
 - (a) an individual may have a reasonable expectation of privacy in
 - (i) an intimate image that has been altered, and
 - (ii) an intimate image in which the individual is not identifiable, and
 - (b) a reasonable expectation of privacy in an intimate image is not lost only by reason of
 - (i) distribution of the image by the individual,
 - (ii) consent of the individual to the image’s distribution by a person other than the individual, at the time and to the extent of that consent, or
 - (iii) death of the individual.

Distribution without consent and threat of distribution

- 3 (1) Subject to subsection (2), a person commits an unlawful act that is actionable without proof of damage if the person
 - (a) distributes an intimate image depicting an individual, without the consent of the individual, or

- (b) threatens to distribute an intimate image depicting an individual.
- (2) Distribution of an intimate image without the consent of the individual is lawful if
 - (a) it is impracticable in the circumstances to obtain the consent of the individual, and
 - (b) the distribution is for the purposes of
 - (i) a law enforcement investigation,
 - (ii) a court proceeding or a tribunal proceeding, or
 - (iii) activities that are necessarily incidental to an investigation referred to in subparagraph (i) or a proceeding referred to in subparagraph (ii).

Consent revocable

- 4 (1) An individual who consented to the distribution of an intimate image depicting the individual may revoke consent to that distribution at any time.
- (2) If an individual depicted in an intimate image
 - (a) consented to the distribution of the intimate image,
 - (b) later revokes that consent, and
 - (c) communicates that revocation to a person who distributed the intimate image,the person who distributed the intimate image must make every reasonable effort to make the intimate image unavailable to others.
- (3) The person who distributed the intimate image commits an unlawful act under section 3 if the person does not make the efforts described in subsection (2) within a period of time that is reasonable in the circumstances.

PART 3 – APPLICATIONS AND CLAIMS

Application for expedited intimate image protection order

- 5 (1) An individual who is depicted in an intimate image that has been distributed by another person without the individual's consent, or who is depicted in an intimate image and is threatened with the distribution of the intimate image, may apply for relief under this section.
- (2) In an application under subsection (1), if the applicant satisfies the decision maker that the image is an intimate image depicting the applicant and that a person other than the applicant and who is not a respondent distributed the intimate image without the applicant's consent, the decision maker, after considering any prescribed factors, may do any or all of the following:
 - (a) determine that the intimate image was distributed without the applicant's consent;

- (b) order the person who distributed the intimate image to
 - (i) delete or destroy all copies of the intimate image in the person's possession or control, and
 - (ii) make every reasonable effort to make the intimate image unavailable to others, including by
 - (A) having the intimate image removed from any platform operated by an internet intermediary and from any other electronic form of application, software, database and communication method, and
 - (B) having the intimate image de-indexed from any search engine;
 - (c) order an internet intermediary or other person or organization to
 - (i) remove the intimate image from any platform operated by the internet intermediary and from any other electronic form of application, software, database or communication method,
 - (ii) delete or destroy the intimate image, and
 - (iii) de-index the intimate image from any search engine;
 - (d) order a person to provide any information the decision maker considers necessary to further the objectives of removal, deletion, destruction or de-indexing of the intimate image;
 - (e) make any other order the decision maker considers just and reasonable in the circumstances.
- (3) In an application under subsection (1), if the applicant satisfies the decision maker that the image is an intimate image depicting the applicant and that a respondent distributed the intimate image without the applicant's consent, the decision maker, after considering any prescribed factors, may do either or both of the following:
- (a) determine that the distribution was unlawful;
 - (b) subject to any regulations, make any determination or order that the decision maker may make under subsection (2).
- (4) In an application under subsection (1), if the applicant satisfies the decision maker that the image is an intimate image depicting the applicant and that a person other than the applicant and who is not a respondent threatened to distribute the intimate image, the decision maker, after considering any prescribed factors, may do any or all of the following:
- (a) determine that the threat was made;
 - (b) order the person who threatened to distribute the intimate image to refrain from distributing the intimate image;

- (c) order the person who threatened to distribute the intimate image to delete or destroy all copies of the intimate image in the person's possession or control;
 - (d) make any other order the decision maker considers just and reasonable in the circumstances.
- (5) In an application under subsection (1), if the applicant satisfies the decision maker that the image is an intimate image depicting the applicant and that a respondent threatened to distribute the intimate image, the decision maker, after considering any prescribed factors, may do either or both of the following:
- (a) determine that the threat was unlawful;
 - (b) subject to any regulations, make any determination or order that the decision maker may make under subsection (4).
- (6) An application under subsection (1) may be made without notice.
- (7) A party or other person affected by a determination or order made under this section may ask the decision maker that made the determination or order to cancel the determination or order.
- (8) A party or other person who makes a request under subsection (7) is to be considered a respondent for the purposes of sections 9 [*burden of proof*] and 10 [*defence to application for expedited intimate image protection order*].
- (9) A determination or order made under this section, or a related decision of the tribunal, must not include the name of an individual unless the individual was a respondent to the application.

Claim for damages

- 6 (1) An individual who is depicted in an intimate image that has been distributed by another person without the individual's consent or who is depicted in an intimate image and is threatened with the distribution of the intimate image may claim relief under this section.
- (2) In a claim under subsection (1), if the claimant satisfies the decision maker that the image is an intimate image depicting the claimant and that a respondent distributed the intimate image without the claimant's consent, the decision maker may do either or both of the following:
- (a) subject to any regulations, make any determination or order that the decision maker may make under section 5;
 - (b) order the respondent to pay damages, including compensatory, aggravated and punitive damages and any prescribed damages, in accordance with any regulations.

- (3) In a claim under subsection (1), if the claimant satisfies the decision maker that the image is an intimate image depicting the claimant and that a respondent threatened to distribute the intimate image, the decision maker may do either or both of the following:
 - (a) subject to any regulations, make any determination or order that the decision maker may make under section 5;
 - (b) order the respondent to pay damages, including compensatory, aggravated and punitive damages and any prescribed damages, in accordance with any regulations;
- (4) In making a determination or order under subsection (2) or (3), the decision maker is not bound by any determination or order made in an application under section 5 arising from the same facts.

Applications on behalf of deceased

- 7 (1) A person in a prescribed class may, in accordance with any regulations, make an application under section 5 on behalf of a deceased individual respecting an intimate image in which the individual is depicted.
- (2) In an application made on behalf of a deceased individual, the decision maker must apply the following presumptions:
 - (a) that the deceased individual did not consent to the distribution, if any, of the intimate image;
 - (b) that the deceased individual would not have made a request under section 13 (1) (b) [*publication ban*].

Applications respecting minors and others

- 8 (1) Subject to any regulations, a minor who has reached the age prescribed under section 21 (2) (g) [*regulations of the Lieutenant Governor in Council*] may make an application under section 5 to the tribunal respecting an intimate image in which the minor is depicted.
- (2) A person in a prescribed class may, if authorized by the individual depicted in an intimate image, and in accordance with any regulations, make an application to the tribunal under section 5 on behalf of
 - (a) a minor who is depicted in the intimate image and has reached the age prescribed under section 21 (2) (i), and
 - (b) an adult who is depicted in the intimate image.

Burden of proof

- 9 Under sections 5 and 6, a respondent has the burden of proving that the image is not an intimate image because the individual depicted in the image did not have a reasonable expectation of privacy in the image at the following times, as applicable:
- (a) if the image is a recording, at the time it was recorded, and, if distributed, at the time of the distribution;
 - (b) if the image is a simultaneous representation, at the time the simultaneous representation occurred.

Defence to application for expedited intimate image protection order

- 10 A respondent is not liable under section 5 if the respondent proves that the respondent had the consent of the individual depicted in the intimate image to distribute the intimate image, at the time when and to the extent that the intimate image was distributed by the respondent.

Defence to claim for damages

- 11 (1) A respondent is not liable under section 6 if the respondent proves that, as applicable,
- (a) the respondent had, or honestly and reasonably believed that the respondent had, the consent of the individual depicted in the intimate image to distribute the intimate image, at the time when and to the extent that the intimate image was distributed by the respondent, or
 - (b) the distribution was in the public interest and did not extend beyond what was in the public interest.
- (2) For certainty, a distribution is not in the public interest solely because the individual depicted in the intimate image is a public figure.

Liability of internet intermediaries limited

- 12 An internet intermediary is not liable under section 5 or 6 if the internet intermediary has taken reasonable steps to address the unlawful distribution of intimate images in the use of its services.

Publication ban

- 13 (1) In an application under section 5, a claim under section 6 or an application under section 15 [*application to Supreme Court for injunctive relief*], as applicable, the decision maker must order a ban on publication of the name of the applicant or claimant, as applicable, or other information likely to identify the applicant or claimant, unless
- (a) the applicant or claimant was an adult at the time of the distribution or threat of distribution,

- (b) the applicant or claimant requests that there not be a publication ban, and
 - (c) there are no other reasons to protect the identity of the applicant or claimant.
- (2) In an application under section 5 or a claim under section 6, as applicable, the decision maker must order a ban on publication of the name of a respondent, or other information likely to identify the respondent, if
- (a) the respondent was a minor at the time of the distribution or threat of distribution, or
 - (b) there are other reasons to protect the identity of the respondent.
- (3) A publication ban ordered under subsection (1) or (2)
- (a) may protect the identities of all of the parties,
 - (b) must, in the case of an applicant or claimant, as applicable, or respondent, who was a minor at the time of the distribution or threat of distribution, and subject to any regulations, continue once the applicant or claimant or respondent is no longer a minor, and
 - (c) may otherwise be in effect for a period of time determined by the decision maker.
- (4) In making a decision under subsection (1) that a publication ban will not be ordered in a claim under section 6, the decision maker is not bound by any publication ban ordered in an application under section 5 arising from the same facts.
- (5) An individual who
- (a) is an adult and was an applicant or a claimant, or
 - (b) made an application on behalf of a deceased individual
- may, at any time, in accordance with any regulations, ask the decision maker that ordered the publication ban to cancel the order.
- (6) In an application under subsection (5), the decision maker hearing the application must consider any prescribed factors.

Enforcement of tribunal orders

- 14** If the tribunal has made an order under section 5 against a respondent, the order may be filed in the Supreme Court, and the filed order is enforceable as if it were an order of the Supreme Court.

Application to Supreme Court for injunctive relief

- 15** (1) On application by any person, the Supreme Court may grant an injunction restraining a person from contravening an order made under section 5 if the court is satisfied that there are reasonable grounds to believe that a person has contravened or is likely to contravene an order made under section 5.

- (2) An application under this section may be made without notice.
- (3) The Supreme Court may grant an interim injunction until the disposition of an application under this section.

PART 4 – ADMINISTRATIVE PENALTIES

Tribunal may order administrative penalty

- 16** The tribunal may order a person to pay an administrative penalty if
- (a) the tribunal determines that the person has failed to comply with an order made under section 5, and
 - (b) the person is given an opportunity to be heard in relation to the administrative penalty before the administrative penalty is ordered.

Amount of administrative penalty

- 17** An administrative penalty for a failure to comply referred to in section 16 must not exceed the prescribed amount.

Payment of administrative penalty

- 18** (1) A person who is ordered to pay an administrative penalty must pay the administrative penalty to the government in accordance with the regulations.
- (2) On the date that an administrative penalty is payable under subsection (1), the penalty constitutes a debt payable to the government by the person ordered to pay the administrative penalty.

Relationship to other proceedings

- 19** A person may be ordered to pay an administrative penalty regardless of whether there is or has been a civil or criminal proceeding arising from the same contravention.

Time limit for ordering administrative penalty

- 20** An administrative penalty under this Part must not be ordered more than 2 years after the date the contravention of the order made under section 5 is alleged to have occurred.

PART 5 – REGULATIONS

Regulations of the Lieutenant Governor in Council

- 21** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) restricting
 - (i) the remedies available under section 5 (2) that may be awarded under section 5 (3),
 - (ii) the remedies available under section 5 (4) that may be awarded under section 5 (5), and
 - (iii) the remedies available for an application under section 5 that may be awarded in a claim under section 6;
 - (b) prescribing the factors the tribunal must consider in determining an application under section 5;
 - (c) prescribing the factors the Supreme Court must consider in determining an application under section 5;
 - (d) prescribing the factors a decision maker must consider in determining a claim under section 6;
 - (e) prescribing additional types of damages that may be ordered under section 6;
 - (f) prescribing the methods by which each type of damages that may be ordered under section 6 is to be calculated, with power to prescribe different methods for different types;
 - (g) prescribing the age at which a minor may make an application under section 5 on the minor's own behalf;
 - (h) restricting the circumstances in which a minor who has reached the age prescribed under paragraph (g) may make an application under section 5 on the minor's own behalf;
 - (i) prescribing the age at which a minor may authorize a person in a prescribed class to make an application under section 5 on the minor's behalf;
 - (j) restricting the circumstances in which a minor who has reached the age prescribed under paragraph (i) may authorize a person in a prescribed class to make an application under section 5 on the minor's behalf;
 - (k) prescribing the classes of persons who, if authorized, may make an application under section 5 on behalf of a minor who has reached the prescribed age;
 - (l) prescribing the classes of persons who, if authorized, may make an application under section 5 on behalf of an adult;
 - (m) prescribing the classes of persons who may make an application under section 5 on behalf of a deceased individual;

- (n) prescribing procedures and practices relating to applications under section 5 made on behalf of minors, with power to prescribe different practices and procedures for different ages of minors and different circumstances;
- (o) prescribing procedures and practices relating to applications under section 5 made on behalf of adults;
- (p) prescribing procedures and practices relating to applications under section 5 made on behalf of deceased individuals;
- (q) prescribing procedures and practices relating to cancellations of publication bans;
- (r) establishing the circumstances in which a publication ban is not required to remain in effect after a respondent is no longer a minor;
- (s) prescribing the factors the tribunal must consider in determining whether to cancel a publication ban;
- (t) prescribing the factors the Provincial Court, within the meaning of the *Small Claims Act*, must consider in determining whether to cancel a publication ban;
- (u) prescribing the factors the Supreme Court must consider in determining whether to cancel a publication ban;
- (v) prescribing, respecting administrative penalties,
 - (i) the maximum amounts of administrative penalties the tribunal may order, with power to prescribe different amounts for first contraventions and subsequent contraventions and with power to prescribe different amounts for contraventions by individuals and contraventions by internet intermediaries and other persons and organizations,
 - (ii) the processes, forms and timelines relating to applications to order or cancel administrative penalties,
 - (iii) the factors the tribunal must consider in determining
 - (A) whether to order an administrative penalty, and
 - (B) the amount of an administrative penalty that may be ordered,
 - (iv) the time period in which an administrative penalty is due and payable, and
 - (v) the methods by which an administrative penalty is payable.

PART 6 – GENERAL

Rights and remedies not limited

- 22** The rights and remedies under this Act are in addition to any other right or remedy that may be available to an applicant, a claimant or a respondent.

Retroactive application

- 23** On the date this Act is brought into force, this Act applies to the following that occur on or after the date this Act receives First Reading in the Legislative Assembly:
- (a) a distribution of an intimate image depicting an individual, without the individual’s consent;
 - (b) a threat to distribute an intimate image depicting an individual.

Consequential Amendments

Civil Resolution Tribunal Act

- 24** *Section 1 (1) of the Civil Resolution Tribunal Act, S.B.C. 2012, c. 25, is amended by adding the following definition:*

“intimate image protection claim” means a claim over which the tribunal has jurisdiction under Division 8 [*Intimate Image Protection Claims*] of Part 10 [*Tribunal Jurisdiction*]; .

- 25** *Section 2.1 is amended by adding the following paragraph:*

(g) claims in relation to the *Intimate Images Protection Act*, under Division 8 [*Intimate Image Protection Claims*] of Part 10.

- 26** *Section 16.4 (2) is amended*

(a) by striking out “as an action in the Supreme Court” and substituting “as a proceeding in the Supreme Court”, and

(b) by adding the following paragraph:

(c) an intimate image protection claim.

- 27** *Section 20.1 is amended by striking out “an accident claim” and substituting “an accident claim or an intimate image protection claim”.*

- 28** *Section 62 (2) (d) is amended by striking out “and” at the end of subparagraph (iv), by adding “, and” at the end of subparagraph (v) and by adding the following subparagraph:*

(vi) respecting procedures and processes that apply to a claim that is an application made under section 5 of the *Intimate Images Protection Act*, including all related matters; .

29 The following Division is added to Part 10:

Division 8 – Intimate Image Protection Claims

Meaning of words and expressions in Division – intimate image protection claims

136.1 In this Division, words and expressions have the same meaning as in the *Intimate Images Protection Act* and the regulations under that Act, with the exception that “claim” means an application, rather than a claim, as used in that Act and the regulations under that Act.

Claims within jurisdiction of tribunal for intimate image protection claims

- 136.2** (1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction over a claim that is an application made under section 5 [*application for expedited intimate image protection order*] of the *Intimate Images Protection Act*, including all related matters.
- (2) For the purposes of this Act, the tribunal is to be considered to have specialized expertise in respect of claims within the jurisdiction of the tribunal under this Division.

Orders available in intimate image protection claims

136.3 In resolving an intimate image protection claim, including all related matters, and whether or not the tribunal has made or cancelled other orders relating to the same intimate image, the tribunal may make or cancel one or more of the orders referred to in section 5 of the *Intimate Images Protection Act*.

Disapplication and modification of certain provisions

- 136.4** (1) The following provisions of this Act do not apply respecting a claim under this Division:
- (a) section 2 (3) (a) [*encouragement of resolution by agreement between parties*];
 - (b) section 7 (1) [*giving initiating notice*];
 - (c) section 85 (1) (d) [*publication of tribunal orders and other information*].
- (2) For the purposes of a claim that is an application made under section 5 [*application for expedited intimate image protection order*] of the *Intimate Images Protection Act*, including all related matters,
- (a) section 17 (1) is to be read as requiring case management, at the discretion of the tribunal, subject to this Act and the rules, and
 - (b) section 17 (2) does not apply.

Sexual Violence and Misconduct Policy Act

30 *Section 1 of the Sexual Violence and Misconduct Policy Act, S.B.C. 2016, c. 23, is amended in the definition of “sexual misconduct” by repealing paragraph (g) and substituting the following:*

- (g) the distribution of an intimate image, within the meaning of the *Intimate Images Protection Act*, without the consent of the individual depicted in the image; .

Commencement

31 This Act comes into force by regulation of the Lieutenant Governor in Council.