

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *A.T. v A.S.*, 2026 NSSC 66

**Date:** 20260223

**Docket:** Syd No. 547295

**Registry:** Sydney

**Between:**

A.T.

*Applicant*

v.

A.S.

*Respondent*

**Restriction on Publication: *Intimate Images and Cyber-protection Act, S.N.S.*  
2017, c. 7, s. 9**

**Judge:** The Honourable Justice Scott R. Campbell

**Heard:** February 13, 2026, in Sydney, Nova Scotia

**Decision:** February 23, 2026

**Counsel:** A.T, self-represented Applicant  
Maria Rizzetto, for the Respondent

## **Publication ban where intimate image distributed**

- 9(1)** Subject to the regulations, where an application is made under Section 5 respecting the distribution of an intimate image without consent and the applicant so requests, no person shall publish or broadcast the name of the applicant or any information likely to identify the applicant.
  
- (2)** In a proceeding to which subsection (1) applies, the Court shall identify the applicant by a pseudonym if the applicant requests to be so identified. 2017, c.7, c.9.

**By the Court:**

[1] The Applicant, A.T., brings this application pursuant to the *Intimate Images and Cyber-protection Act*, S.N.S. 2017, c. 7 (the “*Act*”). She says that the Respondent, A.S., distributed intimate images of her without her consent when he provided a series of text messages to his lawyer (the “**Text Messages**”).

[2] A.T. also asserts a statutory claim by reference to a statement made by A.S. in an affidavit filed in proceedings before the Supreme Court Family Division. In that affidavit, A.S. refers to the Text Messages and states that he may enter them into evidence before the Family Division.

[3] A.T. seeks various remedies as available under the *Act*. By her written submissions, she also seeks relief pursuant to the *Criminal Code*, R.S.C. 1985, c. C-46, including a declaration that the introduction or attempted introduction of these Text Messages into evidence constitutes an offence contrary to section 162.1. During the hearing of this application, I advised A.T. that I have no authority under the *Act* to make *Criminal Code* findings or to issue related relief.

[4] In response to this application, the Respondent states there has been no distribution of intimate images. When he sent the Text Messages to his lawyer, he

says that the intimate images from A.T. became only a small icon “where you could not see the explicit material”.

[5] In any event, the Respondent also relies upon the statutory defence provided by section 7 of the *Act*. He says that any statements within the ongoing Family Division proceeding, including any communications to his lawyer in relation to that proceeding, have been made in the public interest and are protected by the doctrine of absolute privilege.

### **Statutory Framework**

[6] At the outset of the hearing of this application, the Applicant confirmed that she was not advancing a claim of cyber-bullying. Her case is focused on what she says is an unlawful distribution of her intimate images by the Respondent.

[7] In which case, I must consider the following provisions of the *Act*.

[8] Subsection 5(1) is the starting point and provides as follows:

#### **Application to the Court**

5(1) An individual whose intimate image was distributed without consent ... may apply to the Court for an order under Section 6.

[9] From there, the phrase “intimate image” is defined in subsection 3(f):

(f) “intimate image” means a visual recording of a person made by any means, including a photograph, film or video recording,

- (i) in which a person depicted in the image is nude, is exposing the person's genital organs, anal region or her breasts, or is engaged in explicit sexual activity,
- (ii) that was recorded in circumstances that gave rise to a reasonable expectation of privacy in respect of the image, and
- (iii) where 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;

[10] And the phrase “distribute without consent” is defined broadly in subsection 3(d) as follows:

- (d) “**distribute without consent**”, in respect of an intimate image, means to publish, transmit, sell, advertise or otherwise distribute the image to or make the image available to a person other than the person depicted in the image while
  - (i) knowing that the person in the image did not consent to the distribution, or
  - (ii) being reckless as to whether that person consented to the distribution;

[11] Importantly, section 4 confirms that one does not necessarily lose any reasonable expectation of privacy over an intimate image by sharing that image with another person. Specifically, subsection 4(2) provides as follows:

- 4 (2) A person depicted in an intimate image does not lose the person's expectation of privacy in respect of the image if the person provided the image to another person in circumstances where the other person knew or ought reasonably to have known that the image was not to be distributed to any other person.

[12] With these provisions in mind, an applicant has the burden to establish a *prima facie* case on a balance of probabilities: see *e.g. Candelora v Feser*, 2019 NSSC 370 at paragraph 46.

[13] If and when an applicant establishes a *prima facie* case under the *Act*, section 7 of provides for a series of defences. However, and where the matter is in relation

to the distribution of an intimate image, there is only one available defence: a public interest defence.

[14] That defence is provided by subsection 7(1) as follows:

**Defences**

7(1) In an application for an order respecting the distribution of an intimate image without consent ... it is a defence for the respondent to show that the distribution of an intimate image without consent or communication is in the public interest and that the distribution or communication did not extend beyond what is in the public interest.

[15] If a respondent is unable to establish a defence, section 6 provides the Court with broad remedial authority. This includes the ability to award general damages, aggravated damages and punitive damages, along with ancillary relief in the nature of a mandatory or prohibitory order: see *Williams v Lester*, 2025 NSSC 15.

**Issues**

[16] There are three issues for consideration:

1. Did the Respondent distribute an intimate image of the Applicant without her consent when he shared the Text Messages with his lawyer?
2. What about when he referred to the Text Messages in an affidavit he filed in the Supreme Court Family Division?

3. If the answer to Issue One and/or Issue Two is yes, what is the appropriate remedy under section 6 of the *Act*?

### **Issue One**

[17] In this case, there is no suggestion by the Respondent that he had A.T.’s consent to share the Text Messages with his lawyer. There is also no suggestion by the Respondent that A.T. has lost a reasonable expectation of privacy in respect of any intimate images contained within the Text Messages.

[18] The question thus becomes: when the Respondent shared the Text Messages with his lawyer, did he *distribute* an *intimate image* of A.T.?

[19] As noted by the Respondent’s counsel, the reported decisions under the *Act* have not involved the sharing of images or information with legal counsel: see *e.g.* *Candelora v Feser*, *supra*; *Fraser v Crossman*, 2022 NSSC 8; *Benoit v Langille (Facebook Group “Stop Gail Benoit”)*, 2022 NSSC 374; *Jamieson v Duchesneau*, 2024 NSSC 110; *Williams v Lester*, 2024 NSSC 168; *J.F. v B.A.*, 2024 NSSC 275; and *Gasparetto v Bradley, Jr.*, 2025 NSSC 167.

[20] That said, I observe that the statutory definition of “distribute without consent” is quite broad and could easily capture the sharing of an “intimate image” by someone with their lawyer. Public distribution is not required.

[21] The challenge in this case is that the Text Messages were not included in the evidence before me on this application. The Respondent described the sharing of the Text Messages as follows in his affidavit:

10. I spoke with my counsel about this, who advised the text messages themselves where I told [A.T.] to stop messaging me and stop sending me those unwanted photos could be useful if this matter proceeded to a hearing. She instructed me to provide her the text messages and then delete the photos from my phone to be safe. This is exactly what I did.
11. My responses to each photo were the intended evidence to be admitted if necessary. For further clarity, when I responded to each of the explicit photos, the photo then became a small icon where you could not see the explicit material.
- ...
27. I do verily believe, based on discussions with my counsel, these text messages may be relevant in a cross-examination of [A.T.] for impeachment purposes if the matter proceeds to a hearing in the Supreme Court Family Division.

[22] The Respondent was not cross-examined on his affidavit. In which case, I am left with his uncontroverted evidence that “the photo then became a small icon where you could not see the explicit material”. And that this “small icon” was then included within the Text Messages that the Respondent sent to his lawyer.

[23] Ultimately, I do not need to conclusively determine whether distribution of the Text Messages to the Respondent’s lawyer establishes a *prima facie* case under the *Act*. This is because, no matter what, I find that the Respondent can rely upon the public interest defence as provided by subsection 7(1).

[24] To refresh, subsection 7(1) provides as follows:

- 7(1) In an application for an order respecting the distribution of an intimate image without consent ... it is a defence for the respondent to show that the distribution of an intimate image without consent or communication is in the public interest and that the distribution or communication did not extend beyond what is in the public interest.

[25] The “public interest” is not defined, and there are no reported decisions specifically on point. The Respondent relies on the doctrine of absolute privilege and submits that this provides him with a public interest defence in the circumstances.

[26] I disagree. The doctrine of absolute privilege does not protect the sharing of information by the Respondent with his counsel. Instead, it applies to statements that are made *in the course of* legal proceedings: see *e.g. Salasel v Cuthbertson*, 2015 ONCA 115 at paragraph 35.

[27] Absolute privilege is commonly raised as a defence to a claim in defamation for statements made to the court by parties, lawyers or witnesses. The doctrine provides a defence in this context, thus allowing for complete candour in the fact-finding process. To quote Cronk J.A. in *Amato v Welsh*, 2013 ONCA 258 at paragraphs 36 – 38:

- [36] Historically, public policy considerations, including the need to foster confidence in the administration of justice, have been viewed as justifying an absolute privilege **protecting counsel and others from suits based on what is said by them in court.** There is authority for the proposition that the justification for absolute privilege is acute in cases involving statements made by counsel ...

- [37] **Protection of the integrity of the justice system lies at the core of the public policy rationales for absolute privilege.** As explained by the majority of the High Court of Australia in *Mann v. O'Neill*, [1997] H.C.A. 28, 71 A.L.J.R. 903, at 907:

*[A]bsolute privilege attaches to statements made in the course of judicial proceedings because it is an indispensable attribute of the judicial process. It is necessary that persons involved in judicial proceedings, whether judge, jury, parties, witnesses or legal representatives, be able to discharge their duties **freely and without fear of civil action for anything said by them in the course of the proceedings.** Were civil liability to attach or be capable of attaching, it would impede inquiry as to the truth and justice of the matter and jeopardise the “safe administration of justice”*

...

- [38] Thus, where applicable, the **doctrine of absolute privilege affords complete immunity to advocates and others for statements made by them in the course of judicial or quasi-judicial proceedings.** This extraordinary protection operates to bar a cause of action otherwise available at law ... For this reason, the High Court of Australia has warned that any extension of the privilege is “viewed with the most jealous suspicion, and resisted, unless its necessity is demonstrated” ... I would echo these words of caution.

*[emphasis in original; **emphasis added**]*

[28] Although I disagree with the Respondent’s assertion of absolute privilege, he may still resort to a public interest defence in the circumstances of this case.

[29] There is a public interest in allowing the Respondent the opportunity to have full and candid communications with his legal counsel about the impact (if any) of the Text Messages on the ongoing proceedings in the Family Division. Indeed, this public interest is embedded into the rationale for and the sanctity of solicitor-client privilege. Similar to the reasons for absolute privilege, it is a public interest anchored in the integrity and operation of the administration of justice.

[30] As noted in R.W. Hubbard & K. Doherty, *Law of Privilege in Canada* (Thomson Reuters Canada, 2025) at §11:5:

The solicitor-client relationship has been defined as one that requires absolute candour. Without the privilege, people would not feel free to make full and frank disclosure to their lawyer, thus affecting the accuracy of legal advice obtained ... At the heart of the privilege lies the concept that people must be able to speak candidly with their lawyers and so enable their interests to be fully represented.

...

The unique role of lawyers and the complexity of the law requires that the lawyer know all of the facts of the client's position. The free and candid communication between lawyer and client protects the legal rights of the citizen. The existence of a fundamental right to privilege encourages full disclosure within the confines of the relationship. **The integrity of the administration of justice depends on this unique role of the solicitor providing legal advice to clients within a complex system.**

[emphasis added]

[31] When the Respondent shared the Text Messages with his lawyer, it was for the specific purpose of seeking guidance and legal advice in the context of an ongoing parenting dispute in the Family Division. In doing so, the Respondent did not share "explicit photos" with his lawyer; his lawyer received only a "small icon" of those photos so that "you could not see the explicit material".

[32] If this could constitute a distribution of an "intimate image" as contemplated by the *Act*, I nevertheless find that the Respondent can avail himself of the statutory defence provided by subsection 7(1). It was in the public interest for him to share the Text Messages with his lawyer, and his distribution was limited and did not extend beyond the public interest.

## Issue Two

[33] Did the Respondent distribute an intimate image of the Applicant without her consent when he referred to the Text Messages in an affidavit?

[34] The answer is no.

[35] The Applicant points to the following affidavit statement from the Respondent:

The only thing I can think of which could be motivating [A.T.] is she cannot accept the fact our relationship is truly over. This is supported by the fact [A.T.] has continued to make advancements towards me since I began dating someone new and despite the fact [*sic*] also has a new partner. These included sending me explicit pictures recently. I do not want to include these in an affidavit as to not embarrass [A.T.], but I will include them as evidence if it becomes necessary.

[36] This affidavit statement does not “distribute without consent” an “intimate image” of the Applicant. There is no “intimate image”. I therefore find it cannot constitute a breach of the *Act*.

[37] To the Applicant, it was inappropriate for the Respondent to threaten the filing of her intimate images as evidence with the Family Division. She questions whether a litigant should be entitled to gain leverage in a legal proceeding in such a manner.

[38] In her submissions on this application, A.T. was articulate and compelling in her expression of concern. For example, she wrote:

1. ... This application is not merely procedural. It is necessary to protect the Applicant from ongoing abuse, intimidation, and re-victimization through the misuse of the court process.
2. The Respondent seeks to introduce intimate images of the Applicant, asserting that they are relevant to her character, credibility, and parenting ability. However, the Respondent's own sworn evidence demonstrates that his purpose in doing so is to expose, intimidate, and humiliate the Applicant rather than to advance any legitimate family law issue.
3. ... an egregious abuse of the court's process, the introduction of irrelevant and overwhelmingly prejudicial material lacking probative value, and a profound violation of the Applicant's privacy, dignity, and security of the person.

[39] I understand and can appreciate the Applicant's concerns. In my view, however, they are more appropriately raised with the Family Division. This is because the Family Division controls its own process and makes evidentiary rulings in the matters before it. In the circumstances of this case, I have no jurisdiction or authority to interfere with that process or those proceedings in a parallel court.

### **Issue Three**

[40] Given my findings on the first two issues, it is unnecessary to address the question of appropriate remedy.

### **Conclusion**

[41] For all the foregoing reasons, this application is dismissed. I ask the Respondent's counsel to prepare the draft form of Order.

[42] If the parties cannot reach an agreement on costs, I will accept submissions and supporting evidence within 30 calendar days of the date of this decision.

Campbell, Scott J.