

The Private Use Exception Rule and the Sharing of Intimate Images

Knowing what is and isn't legal when it comes to sharing nude or seminude images can be challenging. There are many different laws and information about sharing intimate images and videos online especially when they are shared without your consent. But what about when you do consent and your image hasn't been shared? Is it still considered child pornography? Online sexual exploitation? This handout shares information about the Private Use Exception Rule (PUER) as it applies to shared intimate images.

What is the Private Use Exception Rule (PUER)?

In 2001, the Supreme Court of Canada created the PUER. PUER states that it is not illegal for two consenting people (including those under the age of 18) to possess or carry a naked/nude photo of one another. The image has to have been shared consensually, lawfully and not exploitative.

The following cases are examples of when the PUER has been used.

- In *R v Sharpe*, 2001, the Supreme Court of Canada created the PUER, which is defined as a defence to the possession and creation of child-pornography¹.
- In *R v Barabash*, 2015, the SCC stated that the PUER protects you if you are in possession of a visual recording or intimate pictures sent to you by another person for private use only².

¹ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do>

² <https://www.canlii.org/en/ca/scc/doc/2015/2015scc29/2015scc29.html?autocompleteStr=R.%20v.%20Barabash%2C%202015%20SCC%2029&autocompletePos=1>

What is the Distribution of Non-Consensual Images?

The PUER does not apply if an intimate image is shared without consent when you expected the image to be kept private.

An intimate image is one where a person is nude, or exposing their breasts, genitals, or anal region, or is engaged in sexual activity. It can be any visual recording, including a photograph, film, or video recording³.

Breaking Down What is legal vs illegal? (*R v Barabash*)

- It is **LEGAL** in Canada for two consenting teenagers under the age of 18 to possess or carry a naked/nude photo of one another.
 - PUER applies to private recordings if the sexual activity recorded is consensual.
 - A minor ...
 - 1. must consent to any sexual activity displayed in the recording (*Criminal Code*, ss 150.1(2) and
 - 2. cannot be sexually exploited (*Criminal Code*, ss 150.1(1)-2.1 and 153).
- It is **ILLEGAL** to distribute it beyond your relationship.
 - **Section 162. (1)** of the Criminal Code of Canada states that “Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty:
(a) of an indictable offence and liable to imprisonment for a term of not more than five years; or
(b) of an offence punishable on summary conviction”⁴.

Sending an intimate image or video of yourself is also **illegal** if the relationship of the person you’re sending it to is someone who is:

1. In a position of trust or authority;
2. dependency; or
3. is exploitative.

Before Sending a Nude of Semi Nude Image to Someone:

³

<https://bcsth.ca/techsafetytoolkit/technology-safety-for-women-and-children-legal-remedies-for-the-distribution-of-non-consensual-images-revenge-porn/>

⁴ <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-162.1.html>

If you're thinking about sending intimate images of yourself to another person, here are some useful tips that may help to maintain your privacy:

- Use Apps that provide encrypted services when sending images;
- Lock your phone and apps with a hard to guess password;
- Do not back up your nude image/video to the cloud as they can be hacked;
- Don't capture your face, scars, tattoos, etc.;
- Avoid wearing identifying clothing such as a school or sports team sweatshirt;
- Have a neutral background;
- Turn off your location before you take the photo or video;
- Turn off automatic backups;
- Have TRUST and CONSENT

Need Help?

If you are in danger, it's important to get help. You can do that in a way that feels right to you. Here are some options:

- Talk to an adult you trust.
- **Contact Kids Help Phone** for free listening and crisis support for youth and kids across Canada. This service is available at all times. You don't have to give your name. You can talk about anything. Phone 1-800-668-6868. Or text CONNECT to 686868.
- **Contact VictimLinkBC** for free crisis support and information about services for victims of crime anywhere in BC or Yukon. VictimLinkBC is available at all times and in about 150 languages. Phone or text 1-800-563-0808. Or email VictimLinkBC@bc211.ca. VictimLinkBC can connect you with a [community-based victim services worker](#) or a **transition house** near you.
- You don't have to talk to police to get help from a **community-based victim services worker**. This type of worker can offer:
 - Safety planning
 - Emotional and practical support
 - Information about the criminal justice system
 - Connections to other services and support

A [transition house](#) can provide a safe, temporary place to stay for youth who have faced violence or who are at risk of violence. A transition house also offers support services and safety planning.

Contact a PEACE Program for children and youth experiencing violence, (formerly the Children Who Witness Abuse program). It is a free, confidential program across BC for children and youth aged 3 to 18 who have experienced domestic violence. There are 86 programs across BC.

Spark Teen Digital Dating Violence Project

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