

Cyber-Flashing & Criminal Offenses Involving Unsolicited Pictures

Technology is an expansive tool for learning, exploring, and connecting with other people. It can also be misused to harm and make others uncomfortable as technology also allows perpetrators who send disturbing unsolicited messages, images or videos to appear as anonymous senders, which can be alarming. An increasingly common form of technology-facilitated gender based violence is the receipt of an unsolicited image of another person's genitals, also known in lay terms as cyber-flashing.

This information sheet discusses when sending an unsolicited explicit picture can be prosecuted as a crime and what supports are available for the victims of this crime. The list below provides examples of legal offences a person that sends you unsolicited pictures may be found guilty of committing. This is not meant to be a complete list, but to provide you with an understanding of some common criminal actions that can be taken in response to someone sending you an unsolicited picture.

List of Potential Criminal Code Offenses

Indecent Exposure

Under the Canadian Criminal Code, unsolicited images sent to you by someone could be the offense of an indecent act or exposure under section 173 of the Criminal Code¹. A person may be charged for indecent exposure when they expose themselves, for a sexual purpose, to anyone under the age of 16 years old. This can be in person, but also includes exposing oneself over an electronic device such as through text messaging on the phone or on social media. For example, in the case of *R v. Wolff*, 2020, the British Columbia Provincial Court found the accused guilty of indecent exposure for sending three photographs of his genitalia to a 13-year-old victim over snapchat².

Indecent Act

¹ <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-173.html>

² <https://www.canlii.org/en/bc/bcpc/doc/2020/2020bcpc174/2020bcpc174.html>

An indecent act, which can include exposing oneself, is an act done with the intent to offend or insult one or more persons of any age and may be committed in any place. Unlike indecent exposure, this crime does not require a sexual component to it, although sending unsolicited pictures often will. In the case of *R v Alicandro*, 2009, the Court of Appeal for Ontario clarified that the meaning of “any place” included the perpetrator and victim being in two separate physical locations³. This court concluded the crime includes communication sent electronically. A perpetrator can be found committing an indecent act when they expose themselves, take a picture in any place, and send it to the victim by phone or computer.

Additional Potential Criminal Code Offenses for Adult Perpetrators

Making Sexually Explicit Material Available to Children

If the person sending unsolicited pictures is an adult, they may be found guilty of committing an indecent act or exposure in addition to other crimes. One such crime is making sexually explicit material available to a child. If you are under the age of 16 and an adult sends you sexual images, including of themselves, they may be found guilty of making sexually explicit material available to a child contrary to section 171.1(1) (b) of the Canadian Criminal Code⁴. Sexually explicit material includes a picture of genitalia, but an adult may also be found guilty of this offense if they send you any image, video, written material, or audio recording that is sexually explicit in nature.

In *R v Harris*, 2016, the Ontario Superior Court of Justice found the perpetrator guilty of this offense after he sent sexually explicit text messages to someone he believed to be younger than 16 years old⁵.

Luring a Child

Another crime an adult may be found guilty of, in addition to indecent act or exposure, is luring a child under section 172.1(1) (b) of the Canadian Criminal Code⁶. For the perpetrator to be found guilty of this crime they must have used a device, like a computer or phone, to communicate with you for the purpose of trying to commit another offense such as exposing themselves to you. Luring is typically done as a form of grooming, often over a period of time to gain trust and engage in sexual behaviour.

³ <https://www.canlii.org/en/on/onca/doc/2009/2009onca133/2009onca133.html>

⁴ <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-24.html#docCont>

⁵ <https://www.canlii.org/en/on/onsc/doc/2016/2016onsc6283/2016onsc6283.html>

⁶ <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-25.html#h-118604>

This sexual behaviour may involve having a victim send pictures or videos of themselves to the perpetrator, or meeting in person for sexual contact. In *R v Wolff* the court found that luring via telecommunication often involves grooming behaviours to gain a victim's trust, such as telling the victim they love her, or that they want to marry her⁷. In *R v Legastra*, 2009, the Supreme Court of Canada clarified that for an individual to be found guilty of luring an underage person, the messages do not have to be sexual in nature, rather they have to serve the purpose of intending to 'groom' or 'lure' them for certain criminal purposes, including to engage in sexual behaviour with someone underage⁸.

A legal requirement for these two crimes, is that the perpetrator must have reasonably known that the victim was 16 years of age or younger when they exposed themselves. Meaning they either knew the age, or had reason to believe the victim was 16 years old or younger. Even if you are on a site that requires verification of being at least 18 years old and you are actually underage, if an adult communicates with you and you tell them your real age the perpetrator may still be charged with these crimes.

This was demonstrated in *R v Harris* where the court found the perpetrator guilty of internet luring of a child and making sexually explicit material available to a child⁹. The perpetrator argued that the site he used to begin communication with the victim was supposed to be restricted to those 18 years or older; however, during the course of conversation the perpetrator was repeatedly told he was speaking with someone younger than 16 years old. As a result, the court found that given the easy access with which someone can lie about their age to access the website, and that the perpetrator was told and seemed to accept that the person he was speaking with was younger than 16 he was found guilty of these crimes.

What to do if Someone Sends You Unsolicited Pictures?

It is important to know that someone sending you an unsolicited, inappropriate image can be committing a criminal act. If this situation happens to you, here are some steps you can take depending on circumstances:

- [Screenshot](#) your communications with this individual;
- Block the person's texts and social media accounts after you [preserve the evidence](#);
- Temporarily turn off your phone and disable your [social media](#) account ;
- If sent on [social media](#), report the communication to the platform;
- Communicate with a trusted adult or support person about what is going on;

⁷ <https://www.canlii.org/en/bc/bcpc/doc/2020/2020bcpc174/2020bcpc174.html>

⁸ <https://www.canlii.org/en/ca/scc/doc/2009/2009scc56/2009scc56.html>

⁹ <https://www.canlii.org/en/on/onsc/doc/2016/2016onsc6283/2016onsc6283.html>

- Talk with a legal advocate and file a police complaint.

If you or someone you know is or might be experiencing online harassment or dating violence, chat with a trusted adult or seek help from one of the organizations listed below. Often one form of dating violence is part of a continuum of gender-based violence that can be both online and in person.

You are not alone and there are confidential safe support services available.

- [PEACE Program for Children and Youth is counselling program for children and youth experiencing violence.](#)
- [Kid Help Phone crisis line is available 24/7 by call or text.](#)
- [KUU-US Crisis Line Society is a crisis phone line for Indigenous Youth.](#)
- [VictimLink BC is a referral and information service for victims of crime.](#)
- [Society for Children and Youth BC's Child and Youth Legal Centre provides legal support for children and youth.](#)

Spark Teen Digital Dating Violence Project

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