

SUPREME COURT OF NOVA SCOTIA
Citation: *Williams v. Lester*, 2024 NSSC 168

Date: 20240605
Docket: 530175
Registry: Halifax

Between:

Larissa Williams

v.

Cory Lester

**DECISION ON LIABILITY - *INTIMATE IMAGES AND CYBER-
PROTECTION ACT***

Judge: The Honourable Justice Joshua Arnold

Heard: May 6, 2024, in Halifax, Nova Scotia

Written Decision: June 5, 2024

Counsel: Emma Arnold and Jessica Rose, for Larissa Williams
(Applicant)
Cory Lester, self-represented (Respondent)

Overview

[1] This is an application for an order under the *Intimate Images and Cyber-protection Act*, S.N.S. 2017, c. 7. Larissa Williams and Cory Lester had a romantic relationship, during which they exchanged intimate images electronically. After they broke up, they agreed to destroy any intimate images they had of each other. Later, one of the images Ms. Williams had sent to Mr. Lester appeared on a website advertising Ms. Williams for sex work. Ms. Williams did not post the ad or give anyone permission to do so. She received communications from several individuals inquiring about her availability as a sex worker. Mr. Lester denies that he is responsible for posting the image and the ad.

[2] Additionally, Ms. Williams says that Mr. Lester implied that she was sex worker on a Judy Anne Court community Facebook page. Mr. Lester agreed that he made the Facebook posts, but says they were misinterpreted by Ms. Williams.

[3] For the reasons that follow, I find that Mr. Lester is liable for posting the sex worker ad but is not liable in relation to the Facebook postings.

Facts

[4] The evidence was provided to the court by way of affidavit. Larissa Williams was represented by counsel. Cory Lester opted to represent himself in court but obtained legal advice in preparing for the hearing. The affidavits of the parties, as well as Scott MacMillan (a mutual neighbour and former friend of Mr. Lester), and Peter Adamski (a constable with the Halifax Regional Police Service, who filed two affidavits), were filed as exhibits. Mr. Lester was cross-examined on his affidavit at the hearing. Mr. Lester waived his right to cross-examine any of the affiants.

[5] Ms. Williams is single mother of an eight-year-old boy. She is currently on Workers Compensation Benefits from her job as a paramedic and medical communications officer. Mr. Lester works in Human Resources Management. They were in an on-and-off relationship between June 2020 and February 2021. They lived together in Mr. Lester's home from December 2020 to February 2021. During their relationship, they shared intimate images with each other. The intimate image that is the focus of this application is a topless photo of Ms. Williams in which she is only wearing underpants, showing her from neck to torso. Ms. Williams says this image was shared exclusively with Mr. Lester. Mr. Lester

chose not to cross-examine Ms. Williams. Her evidence about this stands unchallenged.

[6] Mr. Lester said that one evening when Ms. Williams was away from the home he found her son's iPad, looked through it, found some of her archived messages, and "one thing led to another and I seen all these messages and I told her at that time, I sent her messages saying, like, this is it, we're done, not okay, not who you represent yourself as. And that was it." He agreed that he did not have her consent to search her messages.

[7] When asked on cross-examination about the reason for the breakup and any possible acrimony of his behalf, Mr. Lester stated that he ended their relationship when he read the archived messages and became suspicious that Ms. Williams had been a sex worker and was manipulating men for money, which he said was "disappointing" to him:

- A. I...I learned some things on her...on her cell phone. When she had look...looked through my cell phone earlier that same day and, uh, there were a number of messages between her and numerous men and a lot of images, explicit images, and conversation back and forth about activity in exchange for compensation in lieu of time, I guess, or in exchange for time. And I confronted her on those things and told her that I was not okay with them, not within my values, and it was over. And she was not very happy. She left and went over to her parents' place and I...couple of days later, I left my house and she stayed there for a couple of months without me while she could transition into her own place, and that was the end of it.
- Q. Okay, and you...through all that you also came to the conclusion, or your conclusion that she was with you for financial purposes?
- A. Um...
- Q. At least in part?
- A. It appeared that way.
- Q. And that's because you thought she was a sex worker?
- A. Um, well it's just that she didn't...like I said, you introduced it, we got to know each other, shared a lot of things over those few years, and that's one item that was left out. Some of the relationships...arrangements she had in place, so.
- Q. But you did think she was a sex worker?
- A. It did appear that way, yeah.

Q. And you told multiple people of your thoughts that she was a sex worker?

A. Um, people close to me.

Q. Right, so, for example, your siblings?

A. My brother, sister, mom, dad, my partner Sarah, and Scott MacMillan were the only people that I talked to about that as close people.

Q. The only people?

A. The only people.

[8] On March 6, 2021, shortly after the end of their relationship, Ms. Williams sent a text to Mr. Lester requesting that he delete all intimate images of her. Mr. Lester made a reciprocal request of Ms. Williams.

[9] In November 2021 Ms. Williams made a complaint to the R.C.M.P. alleging that Mr. Lester was harassing her. He was arrested, released on conditions to have no contact with Ms. Williams, and charged with criminal harassment. In December 2021, the charges were withdrawn. Mr. Lester subsequently filed a police complaint.

[10] In December 2021, Ms. Williams and Mr. Lester filed peace bond applications against each other. Both sets of allegations were withdrawn in June 2022. Mr. Lester stated on cross-examination that the legal processes in 2021-2022 involving Ms. Williams were frustrating to him:

Q. And it's fair to say that you were frustrated by the charges and the peace bond hearings, all the legal procedures Ms. Williams was undertaking?

A. Yeah, it was...well, that last one got pretty expensive just waiting for disclosure, so, it was almost \$20,000 in court appearances, just to, you know, be put off another few weeks waiting for disclosure,

[11] In July 2022, Ms. Williams received a text message from a New Brunswick telephone number asking if she was taking more clients. The texter advised Ms. Williams that he had seen her ad on a website called "lyla.ca", using her name, and was given her telephone number by someone with the username of "Lawguy2387". This text message confused and scared Ms. Williams.

[12] Therefore, Ms. Williams conducted an internet search of the username "Lawguy2387" and was directed by to a link titled "Larissa in Lower Sackville". When she clicked on that link, she was directed to a discussion board on a website that advertises the sale of sexual services called lyla.ch. She saw an image of

herself which had been posted by Lawguy2387 on July 7, 2022. Some of the comments posted on this ad by Lawguy2387 include:

Lawguy2387

Posted July 7

Has anyone seen her recently? She used to be quite active but was out of the game she told me last year. Apparently she's back but I can't find her contact info. Anyone been in touch with her recently? She's got the playboy tat on her hip and some decent ink on her back and other areas. She used to host out of her home and was a great provider.

...

Lawguy2387

Posted Wednesday at 09:14 AM

She's back taking clients again!!
she was working as a paramedic or something for a bit apparently but is back in the game

[13] On August 13, 2022, Ms. Williams was contacted on her personal Facebook account by a person who called himself "Tim Collins", who told her that he had placed an advertisement on Craigslist looking for "Larissa in Lower Sackville" because he wanted to find her after seeing a review on lyla.ch.

[14] On October 5, 2022, Ms. Williams received a friend request on a Facebook account she had created using a pseudonym, Jules Barlow, from a Yolanda Muffer. Ms. Williams did not recognize the name, so she sent the person a direct message asking if she knew them. Yolanda Muffer replied indicating that they'd left a 'surprise' under Ms. Williams' SUV and referred to Ms. Williams as a prostitute.

Facebook exchanges

[15] On August 29, 2022, Ms. Williams' friend and neighbour, Claire Harmon, told her that Mr. Lester was posting about Ms. Williams and her home on community Facebook page, where residents discuss matters related to their neighbourhood. At the time, Ms. Williams' personal Facebook profile had a picture of her and her son as the profile image. Ms. Williams therefore utilized a secondary Facebook account, Gracie's Creations, that she had originally made for business purposes. She changed the account name to Jules Barlow before viewing any of Mr. Lester's posts. Unlike her personal Facebook page, the Jules Barlow Facebook account did not have Mr. Lester blocked. Ms. Williams introduced into

evidence Facebook posts by Mr. Lester about the police visiting their street. Mr. Lester explained:

- Q. You made a post, as we discussed, about your concern for the Airbnb on Judy Anne Court, and that was with reference to Ms. Williams' Airbnb that she was operating?
- A. Yeah, it was the...the police had been called. It was the second time within a matter of weeks, or maybe a month or so, that the police were there. There was, you know, disruption, I guess, on the street because of it. The first time the police were called they didn't do anything. There was, you know, the day before, I think, that the first time the police were called, there was someone out, I get up early in the morning to go out with my dog, there was someone passed out on the bench in the park next to my house. It was, you know, a person from the Airbnb. I didn't do anything the first time. The second time the police were there, there was a quite a commotion on the street – a lot of yelling and screaming and, you know, the kids are all in the park playing. It's just not conducive to what you'd say a safe environment for kids to play. So, I took a picture of the police car and said "Second time the police were on the street for an Airbnb. It's not safe, not okay."
- Q. And, as far as you knew, Ms. Williams was the only one operating Airbnb on the street at that time?
- A. Correct. Well, I don't know if there was more up the street, but there was...I knew about hers, yes.
- Q. As far as you knew, that would...
- A. I didn't know if there was other ones or not.
- Q. Right, but as far as you knew, you only knew about hers?
- A. Yeah.

[16] Mr. Lester's Facebook posts also referenced condoms being found at a park adjacent to their street. In the comments section of the post, he wrote:

Stay Classy Sackville [with a facepalm emoji] Maybe the new additions to the park from the city will be beds that can be rented out by the hour...another Airbnb on the street [with an eyeroll emoji].

[17] On cross-examination, Mr. Lester denied that his implication about "additions" being used for sexual services, and his subsequent reference to the Airbnb, could lead to the inference that Ms. Williams' Airbnb was being used for sexual services. He then agreed that "you can read all that that way, I guess..." His cross-examination continued:

- Q. If you turn to the last page of that same exhibit, in your comment you mentioned that they'd be rented out by the hour. So, you did reference that they could be rented out.
- A. This is banter on a Facebook page. It means nothing more than that.
- Q. Okay, and do you agree how...or would you agree that reference to beds being rented out by the hour, um, implies provision of sexual services?
- A. I didn't see people having sex on the bench down there. I seen a guy asleep on the park bench.
- Q. Right, I...I'm not asking what you saw.
- A. That's what I was talking about.
- Q. But do you agree that reference to beds or rooms or anything being rented out by the hour implies being rented out for the provision of sexual services?
- A. It could be applied that way if you wanted to spin it that way, or it could be applied the way that I meant it – that I seen someone asleep on it and that's...that's what I observed and then this came along, so, but I appreciate your view of it.

[18] Mr. Lester made further comments and posts on the Facebook Page that Ms. Williams says suggest “that my Airbnb was unsafe and being used for sex work”. The Facebook posts in question state:

I think I've seen enough of the AirBnB on our street. 2nd time this summer the police have been here to deal with it and I'm not ok with it continuing. The safety of our children and homes is not worth compromising.

Lisa Doucette

I didn't even know there was an air B and B on the street

Claire Vanessa

Fuck off cory

...

Claire Vanessa

Fear mongering

Cory James

There is process through Airbnb to have these things addressed if there are concerns and they will review the situation and determine if it can continue.

...

Claire Vanessa

Cory James there is no safety issues.

Cory James

Claire, with all due respect, despite the lack of it you displayed above, let people make up their own minds.

[19] Ms. Williams complains that Mr. Lester inferred that she was a sex worker by way of those Facebook posts.

[20] A mutual neighbour of Ms. Williams and Mr. Lester, Scott MacMillan, told Ms. Williams that Mr. Lester had sent him a screenshot of a post containing an intimate image of her on lyla.ch.

[21] In his affidavit, Mr. MacMillan said Mr. Lester suggested to him that Ms. Williams was a sex worker:

- 17 From February 2022 until October 2022, I received multiple Facebook messages from Cory which I understood to suggest Larissa was a prostitute or escort. Some examples are:
 - a. On February 18, 2022, I received a message from Cory telling me that he met a man who used to pay \$250.00 per hour to date ‘her’. I understood ‘her’ to be Larissa. See Exhibit “1” at page 78.
 - b. On May 4, 2022, I received another message from Cory telling me that our friend had an ad published to book daytime appointments. I understood this message to mean that Larissa had an advertisement up advertising her availability to book daytime appointments in relation to her sex work. See Exhibit “1” at page 56.
 - c. During that same conversation on May 4, 2022, Cory told me that she, who I understood to be Larissa, called herself “Kitty the dick whisper”. He also told me that, when they first met, Larissa had told him that people may say they’ve seen a lot of men coming and going from her house because she had a lot of guy friends. See Exhibit ‘1’ at pages 77, 55.
- 18 On July 21, 2022, Cory sent me a screenshot of what looked to be a post on a website with a topless image of Larissa (the “Screenshot”). Cory claimed to have received the Screenshot from Toby. Again, Cory indicated that Larissa was taking new clients. See Exhibit “1” at pages 33-34.

- 19 Cory followed up by recommending I delete the Screenshot which I proceeded to do. I no longer have any digital or physical copies of the Screenshot. See Exhibit “1” at page 33.

[22] Mr. MacMillan also said that Mr. Lester talked about wanting an apology from Ms. Williams:

- 25 Throughout our conversations, Cory made multiple references to wanting an acknowledgement and apology from Larissa and Claire. For example, on May 15, 2022, Cory told me that he was in the process of filing a libel lawsuit against Larissa but that he wasn’t looking for money, just for her to acknowledge her slander and to apologize to the RCMP officer to whom she reported Cory...
- 26 The next month, on June 7, 2022, Cory reiterated that the libel suit he was pursuing against Larissa was to get an apology...
- 27 On September 13, 2022, Cory updated me that he was still waiting for an apology from Claire...

Lyla.ca Exchanges

[23] Ms. Williams went to lyla.ch to look at the post and confirmed it was an intimate image of herself that she had exclusively shared with Mr. Lester and had asked him to destroy when their relationship ended. Eventually, she created an account with the username Funtime12345 on lyla.ch to see what she could learn about Lawguy2387. Ms. Williams then initiated a private conversation with Lawguy2387, and their exchange included:

Funtime12345

Started conversation: September 10, 2022

I’m not sure what happened to the post but I remember it...about Larissa. I can’t find it now and I’d really like to get in touch with her. do you have her contact info?

Lawguy2387

Replied: October 8, 2022

I really wouldn’t recommend. She’s a real piece of work. You can have her number if you want, but not worth the money.

Funtime12345

Replied: October 8, 2022

Piece of work how?

I’ll definitely take her number!

Lawguy2387

Replied: October 8, 2022

Just an obviously imbalanced and self absorbed sociopath. Seriously don't waste your time.

Lawguy2387

Replied: October 8, 2022

Money hungry whore, like many in this line of work I suppose. But at least some can hide it.

Funtime12345

Replied: October 8, 2022

Damn man.

I just want her number if you got it.

Lawguy2387

Replied: October 8, 2022

Ok see for yourself bro [REDACTED]

Lawguy2387

Replied: October 8, 2022

I wish you all the best – if you have a better experience let me know

[Emphasis Added]

[24] Ms. Williams also says that certain comments made by Lawguy2387 in response to her personal Facebook posts further help to identify Mr. Lester as being Lawguy2387. On October 6, 2022, she shared an image on Facebook with a quote reading:

Letting someone create a false narrative of you is a small price to pay for having rid yourself of their toxicity and drama. Let them say what they want, your life will flourish and their lies and bitterness will rot theirs.

[Emphasis Added]

[25] Following the making of these comments, in the private exchange with Funtime12345, Lawguy2387 stated:

Lawguy2387

Replied: October 8, 2022

Having someone create a false narrative of you is a consequence of the narrative being the truth [Emphasis Added]

[26] Lawguy2387 sent the message detailed above on the night of October 8. On the morning of October 9, Ms. Williams drove past Mr. Lester who was driving in

the opposite direction. When she returned home, she saw Mr. Lester bring a chair to his front lawn and sit down.

[27] More of the messages were posted on October 9:

Lawguy2387

Replied: October 9, 2022

You make it very easy to put the pieces together. Justification for the outcome you'll be subjected to for impacting someone's good name.

Have a nice day.

Lawguy2387

Replied: October 9, 2022

Be interesting to see if you hide all day or make a conscious effort try to act normal and be seen. It's very interesting to observe the actions of a sociopath.

Lawguy2387

Replied: October 9, 2022

This can all stop, all it takes is an apology. To show ownership and take some responsibility here. I don't want to press charges, the drama and hurt and emotional cost of that is not something I'm looking forward to. A simple apology saying you're sorry. That you were not honest with me. I don't care about the details, they mean nothing at this point. Also an apology from your friend across the street for making that ignorant public comment on social media, based on what you've been telling her no doubt. Her comment is all the proof my legal counsel needed as proof my reputation has suffered damage because of your actions. Read up on defamation and slander, the test has been satisfied for both. The rookie cop is in trouble because of everything last year. She just wanted to help, but now she's got a pretty significant ding on her record, and it's not over yet as the investigation is not yet complete.

I will see this through, that I do promise. It's in me to seek truth and I'll continue until I'm satisfied the truth is known, or alternatively, you show ownership and accountability, and maybe, just maybe you've learned something.

My ex wife took almost 3 years to do this, but she did it. And although it did not repair anything, I respect that she finally did it. The ball is in your court.

Lawguy2387

Replied: October 9, 2022

I'm offering you forgiveness. I know life hasn't exactly been ideal for you. But to continue to point blame on others is not going to make your future any brighter.

Im right here. All it takes is to walk up, say I'm sorry...and I say in [sic] understand and thank you...and it's all over. That's it.

[28] As a result of these events, Ms. Williams became afraid for the safety of herself and her son and decided to go to her parents' home. As she was pulling out of her driveway, Mr. Lester was still sitting near the side of the road. Lawguy2387 shortly thereafter sent a message that was received while Ms. Williams was driving to her parent's home:

Lawguy2387

Replied: October 9, 2022

Ok that's your choice. I was thinking you'd want an end to this.

[29] Ms. Williams made a police complaint about the posting of her intimate image on lyla.ch. In October 2022, Mr. Lester was charged contrary to s. 162.1 of the *Criminal Code* with publishing an intimate image of Ms. Williams. This allegation related to the same post as is the subject of this application.

[30] In relation to the criminal investigation in 2022, RCMP Constable Peter Adamski searched all of Mr. Lester's electronic devices and did not find any evidence of the intimate image or any connection to Lawguy2387. During cross-examination, Mr. Lester explained that he was criminally charged in relation to the image but then the charges were "dropped" when a stay was issued on April 25, 2023.

[31] In December 2022, Mr. Lester sold his home and moved to another neighbourhood.

[32] Mr. Lester swore in his affidavit that when he and Ms. Williams ended their relationship he destroyed all intimate images of her, in accordance with their agreement. He denied being Lawguy2387, or knowing who Lawguy2387 might be. He went on to state:

15. I became aware of a post of an alleged intimate image of Larissa Williams on the Lyla website as a result of a comment by Larissa Williams during the course of the peace bond proceedings in June 2022. I located the post which, at the time, had an image which I recognized to be of Larissa Williams. I had not placed the image on that or any other website, nor did I retain the image that I had seen there.

16. Cst. Adamski did confirm that the Lyla screenshot found on my work cell phone during his search on October 24, 2022 was not directly related to Lawguy comments nor did it contain anything related to the applicant or any intimate images. As I was present for this search Cst. Adamski informed me of this at the conclusion of his search. The screenshot that was located referenced the name

Celeste Maya, which was the name I was provided as a tip by an employee in reference to a temporary worker that worked for my employer, and it was my role to look into this complaint. The usernames referenced in the posting were Curtiszz and Boomer01 and there is no reference to Lawguy 2387, the applicant or the intimate image.

17. I cannot explain any comments attributed to “Lawguy2387” because it is not me, nor do I know the identity of this person.

[33] On cross-examination Mr. Lester again maintained that he did not post the intimate image of Ms. Williams and reiterated that he was not Lawguy2387.

[34] As noted above, Mr. Lester also filed the affidavit of Constable Peter Adamski, who investigated Ms. Williams’ criminal complaint related to the posting of the image. Constable Adamski recounted that he executed a search warrant at Mr. Lester’s home on October 24, 2022:

6. During this search I confiscated four devices from Mr. Lesters residence. This included a black iPhone XR (personal phone), An Apple iPhone in a clear case (work phone), a Thinkpad Laptop (work laptop) and a silver HP Laptop (personal laptop).

7. On October 24, 2022 Mr. Lester signed a consent to search in relation to his work phone and work laptop (**Exhibit 2**). I completed this search and the only item of note that was located was a screenshot of the Lyla.ch webpage. This screenshot was not directly related to the alleged offense. I did not locate anything on these devices related to the username Lawguy2387 or any intimate images of the Applicant. These two devices were returned to Mr. Lester upon completion of the search.

8. On December 3, 2022 Mr. Lester signed a consent to search in relation to his personal phone and personal laptop (**Exhibit 3**). I completed this search and there was no evidence found related to this alleged offence. These two devices were returned to Mr. Lester upon completion of the search.

[As appears in original.]

Analysis

Civil claims under the Intimate Images and Cyber-Protection Act

[35] Section 2 of the *Act* describes its purpose:

2 The purpose of this Act is to

- (a) create civil remedies to deter, prevent and respond to the harms of non-consensual sharing of intimate images and cyber-bullying;

- (b) uphold and protect the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication; and
- (c) provide assistance to Nova Scotians in responding to non-consensual sharing of intimate images and cyber-bullying.

[36] Section 3 of the *Act* sets out the court's powers:

- (3) Where the Court is satisfied that a person has distributed an intimate image without consent or has engaged in cyber-bullying, the Court may
 - (a) order the person to pay general, special, aggravated or punitive damages to the person depicted in the intimate image or the victim of cyber-bullying; and
 - (b) order the person to account for profits.

[37] The *Act* permits anyone “whose intimate image was distributed without consent or who is or was the victim of cyber-bullying” to “apply to the Court for an order...”: s 5(1). The remedy is a civil one: s 2(a). Bringing an application under the *Act* “does not limit the right of a victim of cyber-bullying or a person depicted in an intimate image to pursue any right of action or remedy available to that person under common law or by statute”: s 10.

[38] The available orders are described in s. 6. Before making an order, the court must be “satisfied that a person has engaged in cyber-bullying or has distributed an intimate image without consent...”: s. 6(1). The considerations in deciding whether to make an order, and, if so, what order to make, are set out at s. 6(7). There are a number of defences permitted by the *Act*, which must be affirmatively established; the respondent is required to “show” that (for instance) the public interest defence applies: s. 7.

[39] The *Act* does not expressly address the burden of proof, but nothing in its language contravenes the general principle that a claimant in a civil proceeding has the burden to establish their claim. It being a civil claim, the standard of proof is on a balance of probabilities.

[40] The application proceeded exclusively by way of affidavit evidence, except for Mr. Lester, who was cross-examined. I am mindful of the principles governing credibility assessment as described in cases such as *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.).

Elements of the claim

[41] The *Act* defines cyber-bullying at s. 3(c):

3 (c) "cyber-bullying" means an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual's health or well-being where the person responsible for the communication maliciously intended to cause harm to another individual's health or well-being or was reckless with regard to the risk of harm to another individual's health or well-being, and may include

- (i) creating a web page, blog or profile in which the creator assumes the identity of another person,
- (ii) impersonating another person as the author of content or a message,
- (iii) disclosure of sensitive personal facts or breach of confidence,
- (iv) threats, intimidation or menacing conduct,
- (v) communications that are grossly offensive, indecent, or obscene,
- (vi) communications that are harassment,
- (vii) making a false allegation,
- (viii) communications that incite or encourage another person to commit suicide,
- (ix) communications that denigrate another person because of any prohibited ground of discrimination listed in Section 5 of the *Human Rights Act*, or
- (x) communications that incite or encourage another person to do any of the foregoing...

[42] Other relevant definitions appear at ss. 3(d) – (f):

(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;

(e) "electronic communication" means any form of electronic communication, including any text message, writing, photograph, picture recording or other matter that is communicated electronically;

(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;

[43] Section 4 of the *Act* confirms that the expectation of privacy is not lost simply by sharing an image:

- 4 (1) A person depicted in an intimate image does not lose the person's expectation of privacy in respect of the image if the person consented to another person recording the image 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.
- (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.

[44] Larissa Williams says that Cory Lester, using the pseudonym of Lawguy2387, posted an intimate image of her on lyla.ch and advertised her as a sex worker in order to bully, harass, and humiliate her. She also says that he made Facebook posts on a community Facebook page for the same purpose. Mr. Lester denies posting the intimate image and denies any knowledge of Lawguy2387. Mr. Lester agrees that he did post on the community Facebook page but denies he did it for a purpose prohibited by the *Act*.

[45] In considering whether the lyla.ch postings violate the *Act*, I must consider several factors, including whether the image of Ms. Williams was an intimate image, whether Ms. Williams has proven that Mr. Lester is actually Lawguy2387, if so, whether Mr. Lester posted the image and comments on lyla.ch for a prohibited purpose under the *Act*, and if so, whether he has any defence to Ms. Williams' claim.

[46] In relation to the Facebook posts, Mr. Lester admits he made them so the main issue is whether they were made for a purpose prohibited by the *Act*.

Intimate Image

[47] The image is a frontal view of Ms. Williams from slightly below her shoulders to mid-thigh. Her breasts are exposed, and she is only wearing only a small pair of underpants. It is an intimate image as defined by the *Act*.

Identity

[48] Ms. Williams says that she only shared the image in question with one person: Mr. Lester. Mr. Lester says he destroyed the image, that he is not Lawguy2387 and that he did not post the image on lyla.ch. In his affidavit and during cross-examination Mr. Lester said that he happened upon the image of Ms. Williams when he Googled her name after considering a comment made by Ms. Williams during the peace bond hearing in June 2022:

- Q. Okay, and what, exactly, did you Google?
- A. Um, her first name, um, the word “escort”, first name, um, prostitute. Just, like, just seeing if there was anything that came up.
- Q. Okay, and that’s what brought you to a link to the Lyla.ch website?
- A. It brought me to a...like a web, yeah, a web link and I just clicked on it and I seen an image that I could identify as her and...

[49] Mr. Lester also said the only person he shared the image with was Mr. MacMillan, and said that he blurred the version he sent to Mr. MacMillan:

- Q. And you ultimately ended up taking a screenshot of that post?
- A. I did, yeah.
- Q. And you sent it to Mr. MacMillan?
- A. Yeah.
- Q. Okay.
- A. And that screenshot, I...I believe it was just, like, the words and then the image was blurred out. It was a couple of years ago, but I don’t think I would have sent him the full image. I don’t...I don’t have the copy of the conversations between Scott and I anymore. Like, he must have me blocked on Facebook or whatever. I can’t see anything that he and I ever discussed. I can’t see that conversation that you submitted...or he submitted as his affidavit so...

[50] However, during cross-examination about his claim to have blurred the image in sending it to Mr. MacMillan, Mr. Lester’s explanation was curious. When

pressed, he said, “I can’t see me sending the full nude image to him.” Then he was referred to Mr. MacMillan’s evidence:

- Q. If you turn to page...which is, sorry, it is Exhibit 2, I believe, if you turn to page 33, at the bottom of page 33 is where you suggest to Mr. MacMillan to delete the image and you write, “If Tracie seen those, she would never get over it.” And you’re suggesting that if Tracie saw a blurred-out image, she’d never get over it?
- A. It’s probably more around the text and what was in it.
- Q. Okay, and...
- A. ...and it says “images”, I don’t even know if we’re talking about the same thing here ‘cause there wasn’t more than one thing I sent to him. Like, I don’t remember the context of exactly...that was almost two years ago now, so I’ve read through this and I’m reading that now: “Delete those images.” There’s not more than one thing that I sent him, and it was one screenshot.
- Q. Okay, and who is Tracie?
- A. His wife.
- Q. Whose wife?
- A. Scott Macmillan’s wife.
- Q. And if you go further up page 33, Mr. MacMillan says, “Don’t need those staring at me all day.” Again, you believe he’s referencing the blurred-out images? Or image?
- A. He said “those”, so he’s probably talking about images and whatever images we’re talking about ‘cause he’s...there’s obviously more than one image that was sent that we’re talking about here. [Emphasis added]
- ...
- Q. Turning back to when you sent Mr. MacMillan a screenshot of the post you found, you knew that there was something wrong with sharing it?
- A. Well, as...embarrassing to find it, embarrassing to show it and, you know, I was blown away when I seen it. And, after I’d sent it, and Scott went back and forth, I was like “just delete that, man”, like...
- Q. So, you told him to delete it?
- A. Yeah, said, “Your wife doesn’t need to see that.”
- Q. So, you knew it could be harmful for people to see that post of Ms. Williams?
- A. It was more the...on Scott’s side, yeah, if his wife seen it, yeah.

- Q. So, do you agree, though, that telling people that Ms. Williams was a sex worker could be harmful to her?
- A. Well, that's not the intention. It was me, as you can see in this and I believe this is a part of our conversations, this is an amended affidavit, but we talked about everything. He talked about issues with his wife and problems he was having in his relationships. We talked very closely. So, you know, I talked to Sarah, my partner, about this stuff. I talked to my mom and dad, and my brother and sister, and that's people I talk to every day in my life still to this day, except for Scott.

[51] In order to prove that Mr. Lester did post the image on lyla.ch and that he is Lawguy2387, Ms. Williams drew connections between Mr. Lester's behaviour (including postings that he made or was aware of) and the comments of Lawguy2387. As noted by counsel for the applicant, in *R. v. Evans*, [1993] 3 SCR 653, Sopinka J, for the majority, explained how unique statements can have probative value regarding identity, at pp. 662-663:

The ultimate value of these statements was to prove that the appellant and the purchaser of the getaway car were one and the same person. There was independent proof that the appellant worked as a fencer, and that he owned a large pregnant dog. If the purchaser could be proved to have a large pregnant dog and have worked as a fence installer, this would suggest that the appellant was the purchaser. However, there is no proof that the purchaser owned a dog or worked as a fencer unless the statements made to the Boutets are assumed to be true. The statements cannot be used for the truth of their contents unless they are admissible under an exception to the hearsay rule.

That being said, the statements still have some probative value as non-hearsay. Quite apart from the truth of the contents, the statements have some probative value on the issue of identity. On the issue of identity, the fact that certain representations are made is probative as it narrows the identity of the declarant to the group of people who are in a position to make similar representations. The more unique or unusual the representations, the more probative they will be on the issue of identity. I emphasize that the statements are not being used as truth of their contents at this stage.

For example, if a declarant stated: "I have a tattoo on my left buttock which measures 1 centimetre by 1½ centimetres and resembles a four-leaf clover" and it was proved that the accused had such a tattoo on his left buttock, the identity of the group to which the declarant belonged would be narrowed to include the accused as the most likely person, and his family or intimate friends, who would be in a position to know this fact. The statement has probative value without assuming the truth of the statement because the mere fact that it was made tells us something relevant about the declarant that connects him to the accused.

R. v. Ferber (1987), 36 C.C.C. (3d) 157, provides an illustration of a case in which statements were admitted on the basis that the mere fact that they were made was probative on the issue of the declarant's identity. The accused killed his wife. The only issues were self-defence, accident and provocation. The Crown introduced evidence of a telephone call made to and received by a third party, as proof that the deceased was alive at the time of the call, but not as proof of the truth of the contents of the conversation. The identity of the deceased as the caller was therefore essential, but the witness was unable to swear to recognizing the deceased's voice. However, the intimate details related by the caller provided some evidence that the caller was the deceased, as this detail narrowed the identity of the caller to those people who would be able to relate the information disclosed by the caller. This did not require an assumption that the information was true. "It was from the intimate detail of the conversation that the jury was asked to decide who participated in the call" (at p. 160).

The point is summarized in *McCormick on Evidence* (4th ed. 1992), vol. 2, at pp. 51-52: "authentication may be accomplished by circumstantial evidence pointing to X's identity as the caller, such as if the communication received reveals that the speaker had knowledge of facts that only X would be likely to know."

[52] In this case, counsel for the applicant points to several items of circumstantial evidence that she says proves that Mr. Lester is actually Lawguy2387. The circumstantial evidence can be placed into two categories. The first category relates to the intimate image posted on lyla.ch:

- Lawguy2387 must have had access to the intimate image in order to upload it to lyla.ch; and
- In Ms. Williams' affidavit, there is unchallenged evidence that she exclusively shared this specific image with Mr. Lester.

[53] In the second category of circumstantial evidence that support the conclusion that Mr. Lester is Lawguy2387, aside from Mr. Lester having been the exclusive recipient of the intimate image, are the many similarities between Mr. Lester and the comments made by Lawguy2387. These can be further categorized into several groups, as I will describe.

Lawguy2387 making bitter comments about Larissa Williams

[54] Mr. Lester ended his relationship with Ms. Williams as soon as he read her archived messages that he says confirmed she had been a sex worker or had, in previous relationships, manipulated men for their money. As noted earlier,

Lawguy2387 makes bitter comments about Ms. Williams in messages to Funtime12345, including the phrase “money hungry whore”.

Comments about Larissa Williams’ Involvement in Sex Work

[55] Lawguy2387 advertised Larissa as a sex worker. Mr. MacMillan’s evidence was that Mr. Lester had, in several messages and by sending him the screenshot, suggested that Ms. Williams was “a prostitute or escort.” Mr. Lester chose not to cross-examine Mr. MacMillan on his affidavit, so his evidence on this point stands unchallenged.

Reference to a police complaint

[56] Mr. Lester filed a police complaint regarding his first arrest in relation to Ms. Williams. Both Lawguy2387 and Mr. Lester discussed the existence of a police complaint with others. Mr. Lester discussed his police complaint with Mr. MacMillan in their Facebook correspondence, and said:

Cory James

And apologize to the RCMP officer she lied to. That constable is on a bunch of shit now because of her hate. She's been suspended and is still under investigation by the civilian review board

May 15, 2022 9:32:17pm

[57] Lawguy2387 similarly commented on the police complaint in the communications with Funtime12345, where he stated on October 9, 2022:

...The rookie cop is in trouble because of everything last year. She just wanted to help, but now she's got a pretty significant ding on her record and it's not over yet as the investigation is not yet complete...

Demands for apologies

[58] In the Facebook correspondence between Mr. Lester and Mr. MacMillan, Mr. Lester wrote, at various times:

Cory James

I'm still waiting for Claire to apologize for being such a cunt. Probably be waiting a while eh

Sep 13, 2022 10:13:35pm

...

Cory James

Oh yes...this part anyway. There is still the RCMP complaint and the libel suit looking for the formal apology...but that's just procedural

Jun 07, 2022 11:25:33am

...

Cory James

I'm in the process of filing a slander/liable lawsuit on her. And I'm not looking for money. She's going to have to formally acknowledge to people she's slandered my name to in writing. Claire, Rebecca and Dave and you guys.

May 15, 2022 9:30:19pm

...

Cory James

And apologize to the RCMP officer she lied to. That constable is on a bunch of shit now because of her hate. She's been suspended and is still under investigation by the civilian review board

May 15, 2022 9:32:17pm

[59] In his communications with Funtime12345, Lawguy2387 makes various comments about apologies, including:

Lawguy2387

Replied: October 9, 2022

This can all stop, all it takes is an apology. To show ownership and take some responsibility here. I don't want to press charges, the drama and hurt and emotional cost of that is not something I'm looking forward to. A simple apology saying you're sorry. That you were not honest with me. I don't care about the details, they mean nothing at this point. Also an apology from your friend across the street for making that ignorant public comment on social media, based on what you've been telling her no doubt. Her comment is all the proof my legal counsel needed as proof my reputation has suffered damage because of your actions. Read up on defamation and slander, the test has been satisfied for both. The rookie cop is in trouble because of everything last year. She just wanted to help, but now she's got a pretty significant ding on her record, and it's not over yet as the investigation is not yet complete.

I will see this through, that I do promise. It's in me to seek truth and I'll continue until I'm satisfied the truth is known, or alternatively, you show ownership and accountability, and maybe, just maybe you've learned something.

My ex wife took almost 3 years to do this, but she did it. And although it did not repair anything, I respect that she finally did it. The ball is in your court.

Lawguy2387

Replied: October 9, 2022

I'm offering you forgiveness. I know life hasn't exactly been ideal for you. But to continue to point blame on others is not going to make your future any brighter. Im right here. All it takes is to walk up, say I'm sorry...and I say in understand and thank you...and it's all over. That's it.

[60] On October 9, 2022, when the correspondence between Lawguy2387 and Funtime12345 was taking place, Lawguy2387 wrote, "All it takes is to walk up, say 'I'm sorry'". As noted earlier, this message was contemporaneous with the incident where Mr. Lester brought a lawn chair out to his yard and sat close to the street, where Ms. Williams said she saw him when she drove away. While she was driving away, she said, Lawguy2387 wrote, "Okay, that's your choice. I was thinking you'd want an end to this."

[61] Mr. Lester agreed that he sat in a lawn chair near the road, but denied he had moved it closer to the road to speak to Ms. Williams:

- Q. Okay. If I were to put it to you that you brought a lawn chair out to your yard and sat by the street on October 8th of 2022, would you have any reason to deny having done that?
- A. I would say that I have a lawn chair out on the side of my house everyday and there's a fire pit there and I used to sit there with a Chuck-It with my dog and throw the...throw the ball into the water. So, I did that almost every day, yes.
- Q. So, you could have been sitting by the street on your lawn chair on that day?
- A. I sit there every...almost every day after work, yes.
- Q. Okay.
- A. So, yes, I do do that almost every single day after work with my dog.
- Q. And do you ever move that lawn chair closer to the street?
- A. No...my son was out playing basketball, I might have done it at some point. But, no, I can't think of any specific time in relation to what Ms. Williams claims in her, you know, I read what you read, so.
- Q. So, you may have moved it closer to the street on some occasion?

- A. No. I said I may have had it out with...if my son was playing basketball or something, I may have been out sitting with him, but there was no...at no point was there, you know, me sitting there without either my son playing basketball or, you know, relation to some comments that were made to her from the Lawguy2387, like, there is no story behind...she has photos and pic...why is there no picture of me doing that? She took picture of everything else, so.
- Q. But if your son were to be out playing basketball, there were times where you would bring it closer to the road and sit with him while he was playing basketball.
- A. Yes, I have done that, yes. And I could add to that that it was complete common practice for people to have chairs at the end of their driveway around the cul-de-sac when the kids were playing, so, Ms. Williams often brought her chair over by my house...
- Q. Okay.
- A. ...and sat right out there with her friends and, you know, while all this was going on right in front of my house in fear of her safety, I guess, right in...right in front of me and I didn't mind 'cause her son would use my basketball net. Like, it was common practice.

Reference to a defamation lawsuit and an apology

[62] Mr. Lester wrote to Mr. MacMillan that he intended to file a defamation lawsuit against Ms. Williams or was consulting lawyers about a doing so, because he wanted an apology. Mr. Lester stated:

Cory James

I'm in the process of filing a slander/liable lawsuit on her. And I'm not looking for money. She's going to have to formally acknowledge to people she's slandered my name to in writing. Claire, Rebecca and Dave and you guys.

May 15, 2022 9:30:19pm

...

Cory James

Oh yes...this part anyway. There is still the RCMP complaint and the libel suit looking for the formal apology...but that's just procedural

Jun 07, 2022 11:25:33am

[63] Mr. Lester later wrote to Mr. MacMillan to say he wanted "Claire" to apologize. Mr. Lester and "Claire Vanessa" had the following exchange:

Cory James Author

There is process through Airbnb to have these things addressed if there are concerns and they will review the situation and determine if it can continue.

<https://www.airbnb.ca/neighbors>

Claire Vanessa

Cory James there is no safety issues.

Cory James Author

Claire, with all due respect, despite the lack of it you displayed above, let people make up their own minds.

Claire Vanessa

you have zero knowledge of the situation.

Claire Vanessa

Cory James how about that time you were arrested on the street, are you a safety issue ?

Cory James Author

I think you should rethink your comments Claire.

Claire Vanessa

Cory James is that a threat?

Cory James Author

No Clair. It's me telling you to take down a comment that is a lie and has nothing to do with the situation.

Claire Vanessa

Nah I'm ok with the truth.

[64] When asked about his possible defamation lawsuit during cross-examination, Mr. Lester said:

- Q. So, you'd agree that from January 2022 through October 2022, you spoke with Mr. MacMillan over Facebook quite often/a lot? (09:58:20)
- A. Um, between, I would, say mid-2018 when I moved in there and we started to become friends, until October of 2022, when the charges were laid and I didn't know who to trust anymore, um,...haven't talked to Scott MacMillan since then, I say we spoke almost every day.
- Q. Okay, and you spoke with him about a potential defamation lawsuit?
- A. After...at some point, yes.

...

Q. Okay, so you spoke to Scott about that, with Mr. MacMillan about that?

A. I don't rec...I may have.

Q. Okay, so, again, I would take you to page 49 of the same affidavit. Apologies, page 50. And here you mention at the top that Ms. Williams had slandered your name to Claire, is that right?

A. Yeah, that's what it says, that "she's going to have to formally acknowledge to people she slandered my name in writing..."

Q. Okay.

A. ...Claire, Rebecca, Dave, you guys."

Q. And, if you turn to page 17, near the bottom, the second-last message, it reads: "Claire crossed a line" or it starts "Claire crossed a line."

A. At 17?

Q. Page 17.

A. Okay, yeah, second-last one. Yeah, 'cuz she put...she put on...I think it's part of evidence somewhere the, uh,...she put on there that I was arrested and charged for...for harassment.

Q. So, you'd agree that this "crossing the line" in relation to that Facebook post?

A. Correct, yeah.

[65] Similarly, Lawguy2387 wrote to Funtime12345 that he was looking for an apology from her friend across the street because of comments she made on social media:

Lawguy2387

Replied: October 9, 2022

...Also an apology from your friend across the street for making that ignorant public comment on social media, based on what you've been telling her no doubt. Her comment is all the proof my legal counsel needed as proof my reputation has suffered damage because of your actions. Read up on defamation and slander, the test has been satisfied for both.

Lawguy2387

Replied: October 9, 2022

A person will not go to jail. However, it is a "tort" or civil wrong. This means that if a person/organization makes defamatory statements, the person affected

may seek compensation for their damages as a result of the defamation, through a personal injury lawsuit...

Seeking accountability

[66] In his conversations with Mr. MacMillan over Facebook, Mr. Lester wrote:

Cory James

Oh you know me...I'll call her out on the street one day. I'm not one to let shit go that easy

Sep 13, 2022 10:15:49pm

...

Cory James

It's in my dna to hold people accountable for actions, and that the consequences be felt.

Aug 31, 2022 5:42:58pm

[67] To a similar effect, Lawguy2387 wrote comments about accountability to Funtime12345:

It's in me to seek the truth

...

Lawguy2387

... I will see this through, that I do promise. It's in me to seek truth and I'll continue until I'm satisfied the truth is known, or alternatively, you show ownership and accountability, and maybe, just maybe you've learned something.

Knowledge of Larissa Williams' Personal Information

[68] Lawguy2387 posted Ms. Williams' contact information, knew about her specific tattoos, knew that she was a paramedic, and knew that she had her own home. Coincidentally, these are all things that Mr. Lester knew from having been in a relationship with Ms. Williams.

Lawguy2387

Posted July 7

Has anyone seen her recently? She used to be quite active but was out of the game she told me last year. Apparently she's back but I can't find her contact info.

Anyone been in touch with her recently? She's got the playboy tat on her hip and some decent ink on her back and other areas. She used to host out of her home and was a great provider.

...

Lawguy2387

Posted Wednesday at 09:14 AM

She's back taking clients again!!
she was working as a paramedic or something for a bit apparently but is back in the game [Emphasis added]

[69] On cross-examination Mr. Lester confirmed that he knew about these personal matters, including specific details of her tattoos, such as that she had a Playboy tattoo in a certain location along with tattoos on her back; that she had been a paramedic; and that she owned her own home.

[70] The similarities between Mr. Lester and Lawguy2387 are uncanny. The constellation of connections between Ms. Williams' actions at the critical times, Mr. Lester's actions and comments, and Lawguy2387's comments, strongly support the inference that Mr. Lester and Lawguy2387 are one and the same.

Other Credibility Issues

[71] At the hearing Mr. Lester said he sent Mr. MacMillan a blurred version of the image that turned up on the lyla.ch post. However, as noted above, the comments made about the post by both he and Mr. MacMillan at the time it was initially sent suggest the image was not blurred:

Cory James

Might want to delete those images. If Tracy seen those she would never get over it.

Jul 21, 2022 12:58:23pm

...

Scott MacMillan

And gone. Don't need those staring at me all day. Lol

Jul 21, 2022 12:59:35pm

[72] Mr. Lester said he located the lyla.ch post when he Googled Ms. Williams after the peace bond hearing. He said comments by made by Ms. Williams at the peace bond hearing had raised some suspicions:

15. I became aware of a post of an alleged intimate image of Larissa Williams. on the Lyla website as a result of a comment by Larissa Williams during the course of the peace bond proceedings in June 2022. I located the post which, at the time, had an image which I recognized to be of Larissa Williams I had not placed the image on that or any other website, nor did I retain the image that I had seen there.

[73] However, in text communications with Mr. MacMillan, Mr. Lester said he created a profile on lyla.ch in order to look at the posting:

Cory James

That post I showed you...well I created a profile on that site to follow it and commented on it for guys to take caution. A guy wrote me with this

Aug 09, 2022 7:50:01am

[74] Yet, on cross-examination Mr. Lester denied creating such a profile when asked if he had made such an account before Cst. Adamski searched his devices. The cross-examination continued:

Q. If you turn to page 24 of the same affidavit, the third message from the bottom, that starts: "That post I showed you."

...

Q. And the message reads, "That post I showed you, well I created a profile on that site to follow it and commented on it for guys to take caution. A guy wrote me this."

A. I didn't create a profile on it. I...you can just see...you can see the conversations without a profile, so I might have said it the wrong way to him, but...

Q. What were you meaning when you wrote that you created a profile?

A. Well, I mean I could see what was...what the conversations were. There was no profile created.

[75] Interestingly, Mr. Lester told Mr. MacMillan a very different story about how he discovered the post on lyla.ch, stating, at various times that a friend named Toby had alerted him to the post:

Cory James

One of my friends buddies that was at his house on Sunday watching the super bowl used to 'date' her we figured out...for \$250/hr...it just makes me sick to my stomach

Feb 18, 2022 6:32:19pm

...

Cory James

Well apparently our friend is back in 'the business'
Got an ad up apparently booking out call daytime appointments

May 04, 2022 8:58:26am

Cory James

Toby the guy I met that was a former client said she's been active lol

May 04, 2022 8:59:24am

...

Cory James

Oh remember the guy I told you I met at the Super Bowl party! That was one of wassernanes 'clients'

Well he sent me something yesterday.

Jul 21, 2022 12:45:29pm

[76] When asked during cross-examination about the story he told to Mr. MacMillan about Toby, Mr. Lester said he had made that entire story up in order to avoid discussing some of the contents of Ms. Williams' messages:

Q. Right. Do you remember in 2022 ever attending a Super Bowl party?

A. I go mostly every year, yeah.

Q. Okay. If I put it to you that you met some man named Toby at a Super Bowl party that year, would you agree?

A. No.

Q. No? If you could look at Mr. MacMillan's affidavit, which I can provide you a copy.

A. Yeah, yeah, I read it. I know what you're talking about.

...

- Q. So, the second message down on page 56 reads: "Toby, the guy I met that was a former client, said she'd been active lol." Can you identify who Toby is?
- A. No.
- Q. So that was not true?
- A. No.
- Q. Okay. And if you further turn to page 78, the first message on that page reads: "One of my friend's buddies was at his house on Sunday watching the Super Bowl used to date her we figured out...for \$250 an hour...it just makes me sick to my stomach."
- A. Okay.
- Q. Do you remember talking to anyone at the Super Bowl party about Ms. Williams?
- A. No.
- Q. So, this was also a lie or an untruth?
- A. Um, when I was introducing this to Scott, I didn't want to tell him what I'd seen in her phone that night.
- Q. Okay.
- A. And we were discussing this ongoing, as you can see through our conversation about this and many other things, and this is how I introduced it to Scott.
- Q. Okay, so you created a narrative, um, to avoid sharing other details with Mr. MacMillan?
- A. To protect a little bit of what I'd learned, yes...
- Q. Okay.
- A. ...on her behalf.
- Q. So, it's your evidence that it was not some person named Toby who sent you the screenshot, you took the screenshot yourself.
- A. Mmhmm.

No Image Found on His Devices

[77] Mr. Lester suggests that because the police did not find the image on his devices, he could not be responsible for the lyla.ch posting. Yet, he also says that prior to his devices being searched he actually did visit lyla.ch, he did see the post and the intimate image of Ms. Williams and took a screenshot of the image of Ms. Williams and that post, sent it to Mr. MacMillan, and then deleted it. No trace of

this admitted activity was found during the police search. So, the police not finding the image on his devices is not conclusive as to Mr. Lester's responsibility for posting the image.

Conclusion on identity

[78] The striking similarities between what Mr. Lester felt, knew and did, and the comments and actions of Lawguy2387, combined with the fact that Ms. Williams exclusively shared the intimate image with Mr. Lester, lead to only one possible conclusion given all the evidence. Ms. Williams has proven on a balance of probabilities that Mr. Lester is Lawguy2387, and that he is responsible for posting the intimate image on lyla.ch.

Posted for a prohibited purpose

[79] As noted above, Mr. Lester said on cross-examination that, without Ms. Williams' permission, one evening while she was out of their home, he scrolled through some of her archived messages. In those messages he believed he found conversations that showed that Ms. Williams was a sex worker prior to his relationship with her and that she had manipulated men for money. He said that he was unaware of her prior involvement in sex work and called her to end the relationship as soon as he read the messages because he felt she was only using him for his money.

[80] Mr. Lester said that he and his son then immediately moved out of his own home (since he was cohabitating with Ms. Williams and her son) in order to allow Ms. Williams time to find alternate living arrangements. Mr. Lester eventually sold his home and moved to another neighbourhood. He said he had no serious animosity toward Ms. Williams and no motive to have posted her intimate image.

[81] Despite these claims, it is clear that Mr. Lester felt Ms. Williams was using him and was upset about the behaviour he read about in Ms. Williams' archived messages. Using a pseudonym to post an intimate image of Ms. Williams on a website advertising her as a sex worker in order to exact some sort of revenge by bullying and harassing her is clearly a prohibited purpose, as defined by s. 3(c) of the *Act*.

Defences

[82] Because Ms. Williams has proven the identity of Lawguy2387 as belonging to Mr. Lester, I must now consider whether he has any of the statutorily proscribed defences. Section 7 of the *Act* states, in part:

7 (1) In an application for an order respecting the distribution of an intimate image without consent or cyber-bullying under this Act, 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.

(2) In an application for an order respecting cyber-bullying under this Act, it is a defence for the respondent to show that

(a) the victim of the cyber-bullying expressly or by implication consented to the making of the communication;

(b) the publication of a communication was, in accordance with the rules of law relating to defamation,

(i) fair comment on a matter of public interest,

(ii) done in a manner consistent with principles of responsible journalism,
or

(iii) privileged...

[83] None of the enumerated statutory defences have been raised and none apply.

Facebook Postings

[84] In relation to the Yolanda Muffer Facebook message, Ms. Williams has not proven on a balance of probabilities that Mr. Lester is responsible for that communication.

[85] Mr. Lester's credibility issues are not probative in relation to this aspect of the allegations. On a plain reading of the Facebook postings on the community page as identified in this application and that Mr. Lester admits to making, I do not find that they violate s. 3(c) of the *Act*. They do not fall under the definition of cyber-bullying, and objectively are not bullying, threatening, intimidating, menacing or harassing. I am simply not satisfied that Ms. Williams has met the burden of proving the elements of cyber-bullying in respect of these Facebook messages.

Conclusion

[86] Larissa Williams has proven on a balance of probabilities that Cory Lester is Lawguy2387 and posted her intimate image on lyla.ch, advertising her as a sex worker. All of this was done without Ms. Williams' permission and for the purpose of bullying, harassing and humiliating her. Mr. Lester is therefore liable in accordance with the *Act*.

[87] Ms. Williams has not proven any liability on Mr. Lester's behalf in relation to the community Facebook postings Mr. Lester admits to making and which were submitted in relation to this claim. She has also not proven that Mr. Lester is responsible for the Yolanda Muffer Facebook postings.

[88] I will schedule a virtual hearing within ten (10) days of the release of this decision to schedule submissions on damages and costs.

Arnold, J.