



Sexting and the Law



**Community Legal
Information**
Empowerment Through Knowledge

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Introduction

This publication offers information about sexting and the law. Accurate information can help you make informed decisions when you're online.

This publication does not make an argument for or against sexting.

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**The information
in this publication
is not legal advice
and does not
replace guidance
from a lawyer.**

About Us


Community Legal Information is a registered charity serving Prince Edward Island (PEI). We offer legal information and support navigating the justice system.

We acknowledge that we live and work on the ancestral and unceded territory of the Mi'kmaq People.

Community Legal Information

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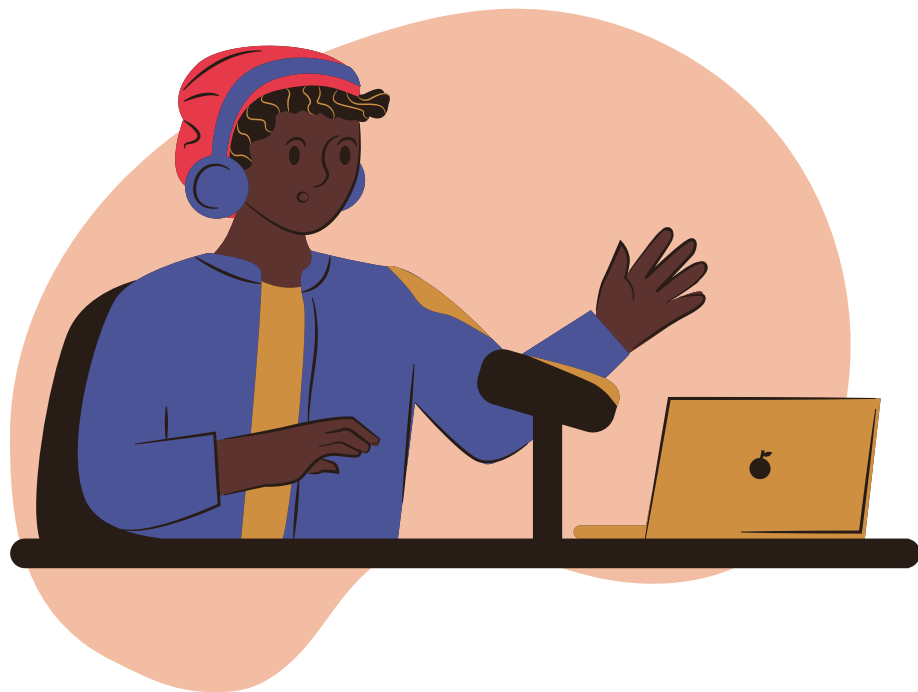
What is cyberbullying?

Cyberviolence is online behaviours that hurt someone's physical, psychological, or emotional well-being.

Cyberbullying is using technology to harm, shame, intimidate, mock or threaten someone.

Cyberbullying can include:

- Threatening physical or psychological harm.
- Spreading rumours.
- Insulting someone on a social media post.
- Posting on social media to hurt someone.
- Creating a fake account to hurt someone.
- Pretending to be someone else online.



When is cyberbullying a crime?

Cyberbullying can sometimes be a crime. Here are examples of criminal cyberbullying:

Criminal harassment

Criminal harassment is saying or doing something that makes a person fear for their safety, or for the safety of others. For example, if you are afraid for your safety because someone is sending you mean texts and messages multiple times a day, even though you told them to stop.

Defamatory libel

Defamatory libel is publishing, without lawful reason, something likely to hurt someone's reputation by exposing them to hatred or ridicule. For example, making a public post with negative gossip about someone.

Encouraging a person to commit suicide

For example, sending someone an email telling them to end their life is a crime.

Cyberbullying is not always a crime. It's not always a crime for someone to say something mean or petty about you. Someone could hurt you without it being a crime.

What is sexting?

Sexting is digitally sharing sexually explicit messages, photos, and videos with consent. A sext could be:

- Text or audio describing in-person sexual activity.
- A photo of yourself or someone else without clothing on the chest, buttocks, or genitals.
- A video of sexual touching.

Sexts can be sent by text, email, or social media.

Sexually explicit photos and videos are also called **intimate images**.

Sexting can be a way to develop intimacy in a relationship.

In some situations, sexting can be a crime.

When it comes to sexting and the law, it's important to know if there is consent.



Consent and sexting



The law has different rules about consent for people under the age of 18. See page 9 for more information.

What is consent ?

Consent is a voluntary, informed, and continuous agreement to participate in any sexual act.

- Voluntary means you decide. If you do not want to do it, you are not consenting.
- Informed means you understand what you are agreeing to, its consequences, and risks. It is illegal for someone to lie to you to get your consent.
- Continuous means you do not change your mind at any time. If you do not want to continue the sexual activity, you are no longer consenting.

In Canadian law, there is no implied consent. Consent must be verbal, expressive, and clear.

Consent is necessary for in-person and virtual sexual activity. Virtual sexual activity can include sexting, video chatting, and other online sexual activity. In-person or virtual sexual activity without consent is a crime.

Consent may be withdrawn at any time. This means you can change your mind at any time. Consenting to one sexual act does not mean that you consent to another. Consenting to a sexual act now does not mean you consent to the same sexual act again later.

Creating or sharing an intimate image of someone without their consent is illegal and a form of sexual violence.

When is sexting a crime?

Here are examples of criminal sexting:

Distribution of an intimate image without consent

Distribution of an intimate image without consent is showing, sending, or posting an intimate image of a person without their consent or knowledge.

For example:

- Someone takes a photo of you showering in the locker room and posts it on a fake social media account without your consent.
- An ex-partner distributes intimate photos of you knowing that you expected the photos to be private.
- You share an intimate image of someone without knowing or caring if they consent.

When an intimate image is shared without consent by an ex-partner in order to harm them, it's often called "revenge porn."

Child pornography

Child Pornography is creating, possessing, accessing, or distributing sexual images or written material representing persons under the age of 18. For example, if anyone has explicit images of a 15-year-old person on their phone.

Consent, sexting, and youth

For youth, consent is different for sexual activity in-person and online.

What is consent for in-person sexual activity?

In Canada, the legal age of consent for most in-person sexual activity is 16 years. People under the age of 12 can't consent at all.

People who are 12, 13, 14 or 15 years old can consent to in-person sexual activity in some situations.

- A 14 or 15-year-old can consent to sexual activity with someone less than 5 years older.
 - A 14-year-old can consent to sexual activity with someone under the age of 19.
 - A 15-year-old can consent to sexual activity with someone under the age of 20.
- A 12 or 13-year-old person can consent to sexual activity with someone less than 2 years older.
 - A 12-year-old can consent to sexual activity with someone under the age of 14.
 - A 13-year-old can consent to sexual activity with someone under the age of 15.

A person under the age of 18 can't consent to sexual activity with a person in a position of trust or authority over them. A person in a position of trust or authority may be a coach, teacher, guardian/parent or employer.



Even if you're under the age of 18, it's illegal to share intimate images of yourself or another person under the age of 18.

What about online sexual activity?

If you're under the age of 18, you can't consent to your images being published. This means that you could consent to in-person sexual activity but not to virtual sexual activity.

The Criminal Code says anyone who publishes or shares an intimate image of someone under 18 years old may be charged with possession or distribution of child pornography. Even if you're under the age of 18, it's illegal to share intimate images of yourself or another person under the age of 18. Police may get involved.

No one under the age of 12 can be convicted of a crime. Anyone 12 years of age and older can be arrested, charged with a crime, and must go to court.

The Youth Criminal Justice Act:

- Applies to youth aged 12 to 17 who are charged with a crime.
- Holds youth accountable for their actions.




What if I've caused harm?

If you caused harm, or if you're accused of a crime, you can get support.


Legal Aid

 902-368-6043 (Charlottetown)

 902-888-8219 (Summerside)


This program provides free legal advice and representation to youth and adults who live on a low income. Call Legal Aid to see if you're eligible.

Sexual Deviance Assessment/Treatment Program

 902-569-7684

This program is for adults and adolescents who are involved in the criminal justice system because they committed a sexual offence.

Mi'kmaq Confederacy of PEI Indigenous Justice Program

 902-367-3681

This program works to create an environment that allows Indigenous people to self-administer justice by building a traditional justice system based on holistic community values.

Safer sexting

You can take steps to make sure that sexting is safer for you and others.

Here are some safer sexting tips:

- Before you send a sext, make sure the person wants to receive it. Do not assume the person wants to see it. Even if you have a sexual relationship, that person may not consent to receiving a sext from you.
- If a person says, “No,” accept their answer.
- Crop your face or other identifying parts of your body or background out of intimate photos.

Remember:

- If somebody asks you to share something you are not comfortable with, you have the right to say no.
- You also have the right to change your mind. If you no longer want someone to have an image, ask them to delete it.





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Addressing online harm

You can decide how to respond when you have been harmed online. Here are some options:

- 1. If it's safe, ask the person who is harming you to stop.**
If someone is sharing a photo or video of you without your consent, tell them directly that you do not consent. If someone posted something mean, tell them that you want them to delete the post.
- 2. Report cyberbullying to your internet, phone or social media provider.** Your internet or phone provider may be able to block the person who is harming you.
- 3. Ask the administrator of the website that was used to share bullying messages or revenge porn to take it down.**
- 4. Report cyberbullying to a school official, caregiver, employer, sports team official, or other person of authority.**
- 5. Report cyberbullying to the police. The police may get involved if the cyberbullying is criminal.**

6. Take legal action. Under the new *Intimate Images Protection Act*, the Court can:

- Declare the distribution unlawful.
- Order the person to make every reasonable effort to remove the image.
- Order the payment of damages.
- Order internet service providers, social media companies, or search engines to make every reasonable effort to remove or de-index the image.
- Make any other just order

7. Access supportive programs and services.

- Kids Help Phone is a no judgement, private helpline. Call 1-800-668-6868, or text 686868.
- Cybertip.ca reports online sexual exploitation of people under the age of 18. Call 1-866-658-9022.
- NeedHelpNow.ca can help you to stop the spread of an intimate image.
- Cybersafecarepei.ca is a public education campaign for parents, caregivers, and educators to learn how to help keep kids safe online.

How can bystanders help?

A **bystander** is someone who witnesses another person being bullied in-person or online. You may be a bystander if someone tells you that they are being bullied, or if you see that someone is being bullied.

Bystanders can help people who are being bullied or cyberbullied. Reach out privately to the person being bullied. Offer them your support or concern. Ask them:

- If it's okay for you to reach out privately to the bully and tell them to stop (only do this if it's safe).
- If it's okay for you to report the bullying to a trusted authority figure, such as a parent, teacher, employer, or school administrator.

Remember that your response to the incident should be to support the person who was harmed. The person who was harmed may not want you to reach out privately to the bully. The person who was harmed may not want you to report the bullying, either.



Glossary

Child pornography

Creating, possessing, accessing, or distributing sexual images or written material depicting persons under the age of 18.

Consent

Voluntary, informed, and continuous agreement to participate in any sexual act.

Criminal harassment

When something a person says or does makes someone fear for their safety, or for the safety of others.

Cyberviolence

Online behaviours that hurt a person's physical, psychological, or emotional well-being.

Cyberbullying

Using technology to harm, shame, intimidate, mock or threaten another person. Cyberbullying is meant to cause harm to someone.

Defamatory libel

Anything published without lawful reason that is likely to hurt someone's reputation by exposing them to hatred or ridicule

Intimate images

Sexually explicit photos and videos

Distribution of an intimate image without consent


When someone shows, sends, or posts an intimate image of a person without their consent or knowledge.

Sexting

Digitally sharing sexually explicit messages, photos, and videos with consent.

Support services


Mi'kmaq Confederacy of PEI Indigenous Justice Program

 902-367-3681


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 902-888-8219 (Summerside)

Sexual Deviance Assessment/Treatment Program


 902-569-7684

Victim Services Queens and Kings County

 902-368-4582

 victimservicescharlottetown@gov.pe.ca

Victim Services Prince County

 902-888-8218

 victimservicessummerside@gov.pe.ca



Community Legal Information is a registered charity that receives funding from Justice Canada, the PEI Department of Justice and Public Safety, the Law Foundation of PEI, and other sources. We provide easy-to-understand information about the law and the justice system in PEI.

For information on other legal topics, visit our website at www.legalinfopei.ca, email us at info@legalinfopei.ca, or call us at **902-892-0853** or **1-800-240-9798** (toll-free). You can also find us on social media.

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