Civil Resolution Tribunal

Date Issued: March 28, 2025

File: IS-1-2025-000905

Type: Intimate Images

Category: Protection Order

Civil Resolution Tribunal

In the Matter of an Application under the *Intimate Images Protection Act*
for an Intimate Image Protection Order

Publication Ban Applies

BETWEEN:

A.Q.

APPLICANT

AND:

B.T.

RESPONDENT

REASONS FOR DECISION AND PROTECTION ORDER

Tribunal Member: Eric Regehr, Vice Chair

INTRODUCTION

1. The applicant, who I will call AQ, claims that the respondent, who I will call BT, shared intimate images of her without her consent. These are not either party's real initials.

2. AQ is a transgender woman. There are three images at issue. AQ asks the Civil Resolution Tribunal (CRT) for a protection order under section 5 of the *Intimate Images Protection Act* (IIPA). In a separate dispute, she also claims $5,000 in damages under IIPA section 6. I have written a separate decision for her damages claim. AQ is an adult and is self-represented. She resides in BC.

3. BT asks me to dismiss AQ's claims. She is an adult and is self-represented. She resides in Saskatchewan.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons and order. The CRT has jurisdiction over applications for expedited intimate image protection orders under *Civil Resolution Tribunal Act* (CRTA), Part 10 – Division 8, and under IIPA sections 1 and 5.

5. CRTA section 42 says the CRT may accept as evidence information that it considers relevant and appropriate, even if it would not be admissible in court.

The CRT's Jurisdiction

6. In her initial response, BT argued that the CRT has no jurisdiction over her because she is a "citizen" of Saskatchewan. However, the law about a court or tribunal's jurisdiction is more complicated than determining the parties' residence.

7. Another tribunal member considered the CRT's jurisdiction over IIPA claims where the applicant lives in BC but the respondent does not in *J.G. v. R.C.*[1] The tribunal member noted that for the CRT to have jurisdiction, it must have "territorial competence", which is a real and substantial connection between the application and BC.

8. The respondent's residence is one factor that presumptively creates a sufficient connection, but it is not the only way to create a real and substantial connection.

[1] 2024 BCCRT 518.

Another presumptively connecting factor is if the tort occurs in BC. The tribunal member in *J.G.* relied on the law of online defamation because, like in IIPA claims, the alleged wrong occurs online and not in a physical location. Relying on the Supreme Court of Canada case *Haaretz v. Goldhar*, the tribunal member found that the statutory tort of sharing or threatening to share an intimate image occurs anywhere the image is viewed or downloaded. I agree. As the court noted, the diffuse nature of the internet means that establishing a presumptive connection for internet-based torts is "virtually automatic".[2] I find this equally applies to IIPA claims.

9. This creates only a rebuttable presumption of territorial competence. This means a respondent can argue that the connection with BC is so weak that it would be unfair to force them to submit to a legal proceeding here.[3] I find that AQ's residence in BC means any harm she suffered was in BC. The connection is not weak. I find that the CRT has territorial competence over AQ's claim.

10. BT did not argue that another jurisdiction's legal system would be more appropriate to resolve this claim. Given the CRT's online process, I find that Saskatchewan is not a clearly more appropriate forum than BC. I therefore will decide this dispute on the merits.

The CRT's Procedure, and BT's Non-Compliance during the CRT's Process

11. CRTA section 39 says the CRT has discretion to decide the hearing's format, including whether it is an oral hearing or based on written materials. Under the *Intimate Images Protection Regulation* (IIPR), the CRT must consider the potential for an expedited intimate image protection order to mitigate harm.

12. This dispute has been highly contentious. The parties are both active online, AQ as a trans activist, and BT as an anti-trans activist. In this online space, they knew about and interacted with each other before the facts giving rise to this dispute.

[2] 2018 SCC 28, at paragraph 48.
[3] *Haaretz*, at paragraphs 44 and 45.

13. There were two preliminary decisions in this dispute, made by two other vice chairs. They both related to BT's persistent refusal to comply with the CRT's Code of Conduct for CRT Participants and to follow the case manager's directions. Among other things, the code of conduct requires parties to:

    a. Behave courteously and respectfully to other parties, CRT staff, and tribunal members.

    b. Refrain from abusive behaviour towards other parties, which includes:

        i. Making inappropriate behaviour or comments that the person knows or reasonably should know would cause another person to be humiliated, offended, or intimidated, and

        ii. Deliberately refusing to use a person's indicated name, title, or pronoun.

    c. Respect the confidentiality of information, records, and communications from the CRT's process.

14. The CRT's standard rules apply to AQ's damages claim. The CRT's Intimate Image Protection Order Rules (IIPO rules) apply to AQ's protection order claim. Both sets of rules require participants to comply with the code of conduct and a case manager's directions.

15. CRTA section 36 allows the CRT to determine that a party is non-compliant. Under standard rule 1.4(2)(a), the CRT may decide the dispute relying only on the information and evidence provided before the non-compliance. I find this effectively allows the CRT to decide a dispute without the non-compliant party's further participation. IIPO rule 2.8(4) makes this explicit.

16. The first preliminary decision is from February 7, 2025. The case manager referred the dispute to a vice chair to consider whether BT had breached the code of conduct or failed to comply with the case manager's directions.

17. The vice chair concluded that BT began breaching the code of conduct almost immediately after being served. Namely, BT copied numerous non-parties on correspondence that included confidential information, including one of the images at issue. BT also intentionally refused to use AQ's indicated name and pronouns. The case manager warned that a possible consequence of breaching the code of conduct was that the CRT would decide the dispute without her further participation. BT's breaches continued after the case manager directed her to stop.

18. The vice chair declined to make an order sanctioning BT, opting instead to frame her decision as a final warning that the CRT would not tolerate disrespectful or abusive behaviour. The vice chair directed BT to stop communicating directly with AQ, stop posting about the CRT disputes online, and not to share evidence with non-parties. She also directed BT to comply with the code of conduct. The vice chair imposed a publication ban.

19. A different vice chair made the second preliminary decision on March 11, 2025. According to that decision, BT's behaviour worsened after the first decision. She continued to intentionally misgender AQ, referring to her either by male pronouns or "it". The vice chair found that she also made Facebook posts denigrating the other vice chair, the CRT, and AQ, all using offensive language. The vice chair noted the significant prejudice to BT if the CRT prevented her from further participation, including the risk of monetary orders against her. The vice chair found that BT's past conduct made it likely she would continue to breach the code of conduct if allowed to participate. So, noting the fact that the other vice chair had expressly warned BT of the consequences of continued non-compliance, the vice chair took the "serious step" of ordering the disputes to continue without BT's participation.

20. I considered whether I am bound by the vice chair's decision. As a general matter of administrative law, tribunal members cannot bind one another. It was unclear to me whether that principle applies to the non-compliance order since it touches on the format of my hearing. So, I considered whether I would invite BT back into the process if I had the discretion to do so. Having reviewed the evidence and submissions that

were before the vice chair, I determined that I would not make a different decision about BT's participation if I could. BT's conduct since that order reinforces it was the right decision. After receiving the preliminary decision, BT posted on Facebook insulting the vice chair and referring to the CRT as a "trannie tribunal". She has also continued to insult and demean AQ. It seems inevitable that any opening for BT to re-engage with the CRT's process would only result in a fresh wave of abusive, demeaning, and offensive attacks against the CRT, its members and staff, and AQ. This weighs heavily in favour of making a decision without BT's participation.

21. Also, it was possible for me to discern several valid arguments out of the generally irrelevant material BT had provided before the non-compliance order. I asked AQ several detailed questions to give her an opportunity to address the valid issues with her claims, including those BT had raised. In this way, I sought to mimic the adversarial process without exposing AQ to any further abuse.

22. All of which is to say that despite BT's lack of involvement in the final decision stage, I find that I can fairly make an expedited decision based on the written materials before me and without BT's participation.

The Images at Issue

23. The materials AQ initially provided were confusing as to which image or images her claim is about. In her initial application, she referred to a "deepfake" image. In her initial submissions, she referred to an image depicting her genitals, but did not mention a deepfake or altered image. Then, the parties' evidence in the preliminary hearing showed a third image, which allegedly depicted blurred genitals.

24. I asked AQ to identify which images her claim was about. She said it was all three. This is essentially a request to amend her application, although she never formally asked CRT staff to amend her application as the CRT's rules require.

25. I decided to make a decision about all three images. Primarily, I rely on the fact that BT's evidence and preliminary submissions addressed all three, so she knew they

were all part of this dispute. I also rely on the fact that BT is essentially in default, so there is no point in forcing AQ to go through a formal amendment process. This decision is also consistent with the CRT's mandate to be informal and flexible.

Publication Ban

26. IIPA section 5(9) says that an "individual" must not be named in a "determination or order" unless they are a respondent. Section 1 defines "applicant" as an "individual". So, I have not named AQ in the style of cause (title page) above. To assist with enforcing this order, CRT staff will provide AQ with a cover letter addressed to her with a file number that matches the file number at the top right of this decision and order's first page.

27. IIPA section 13(1) requires me to order a publication ban on AQ's name or anything that would identify her. Section 13(3)(a) says that this publication ban may include all parties. I find this is appropriate here because BT's identity might indirectly identify AQ, given the frequency with which they have engaged online. **I order a ban on publishing AQ's or BT's names or anything that would identify either of them**. AQ is an adult, so she can ask the CRT to cancel the publication ban order. I also order that the CRT's dispute file be sealed and only disclosed by order of the BC Supreme Court or the CRT.

ISSUES

28. There are three images at issue in this dispute. I will refer to them as the "altered image", which depicts AQ's head on a different body, the "genitals image", which depicts two side-by-side images of female genitals, and the "blurred image", which depicts a heavily pixelated image, AQ's face, and text suggesting the pixelated portion depicts AQ's genitals.

29. The issues in this application are:

    a. Is the altered image an intimate image?

b. If so, did BT share the altered image?

c. Did AQ have a reasonable expectation of privacy in the genitals image?

d. If so, did BT share the genitals image?

e. Is the blurred image an intimate image?

f. If so, did BT share the blurred image?

g. Is AQ entitled to any protection orders?

EVIDENCE AND ANALYSIS

30. In a civil proceeding like this one, the applicant must prove her application on a balance of probabilities, which means more likely than not.

31. IIPA is not legislation that protects against all online harms, or against the sharing of all embarrassing, offensive, or degrading content. I will start by acknowledging that all three images have been shared online in a targeted way to harass, humiliate, and denigrate AQ. However, if an image does not meet the definition of an "intimate image" under IIPA section 1, then the CRT cannot grant a remedy about it.

32. The definition, in relevant part, is as follows:

> "intimate image" means a visual recording of an individual, whether or not the individual is identifiable and whether or not the image has been altered in any way, in which the individual is or is depicted as
>
> (a) engaging in a sexual act,
>
> (b) nude or nearly nude, or
>
> (c) exposing the individual's genital organs, anal region or breasts.

The Altered Image

33. The altered image shows AQ's head on a shirtless male torso. I use "male" torso intentionally, acknowledging that trans people do not necessarily have bodies that conform to a cisgender presentation. Still, it is obvious that whoever created the image did so to convey an anti-trans message that trans women are not women, and in doing so, selected a male torso to illustrate that point. There is no visible clothing. The image is cut off around the person's midsection, below the chest. One nipple is exposed.

34. AQ argues that the image depicts her nude or nearly nude. She does not explicitly argue that the image depicts breasts. She does say it creates the "false impression that I am exposing my breasts" and describes the photo as including "breasts and chest exposure", without elaborating on these thoughts elsewhere in her detailed submissions. If she is arguing that the image depicts her breasts, I do not agree. I find that the word "breasts" does not include a male chest. While the singular "breast" is sometimes used to describe the chest area in a gender-neutral way, this is not true of the plural "breasts". I find that by using the plural, the definition points to what the Merriam-Webster dictionary describes as "the pair of mammary glands extending from the front of the chest in pubescent and adult human females". In the context of the IIPA, I would add surgically-created breasts to that definition. I find that the simple act of putting a woman's head on a male torso does not, by itself, change the character of the male chest into breasts.

35. I also do not agree that the image depicts AQ as nude. That is an absolute term that means "completely bare".[4] While there is no visible clothing in the image, it only shows the body from just below the chest up. It is impossible to know whether the body is nude. In short, I find that it does not depict enough of the body to be considered "nude".

[4] *R. v. Verrette*, 1978 CanLII 208 (SCC).

36. “Nearly nude” is a more nuanced term. I previously considered it in *B.D.S. v. M.W.*,[5] which was about two images showing the applicant scantily clad, but not nude and not exposing his genitals or anal region. In that context, I said that the term “nearly nude” needed to be interpreted in the context of the overarching purpose of IIPA, which is to promote autonomy and privacy over images that are either intentionally sexual or may be sexualized by others. In other words, IIPA protects images where the person depicted has a privacy interest that is particular to the way bodies are sexualized. The rest of the definition of “intimate image” makes it clear that it is restricted to this type of image. In other words, not all images about which a person subjectively feels private are intimate images.

37. If the image at issue was of a cisgender man, I would have no difficulty concluding it does not depict him nearly nude. However, the fact that it depicts a trans woman as having a male torso complicates this analysis. I find that the interpretation of the term “nearly nude” must account for the experiences of gender diverse people.

38. Implicit in AQ’s submissions is the assertion that as a trans woman she has a privacy interest in her chest that is different than the privacy interest a cis woman may have in her breasts. A trans person’s exposed chest could make known what they may wish to keep private: their very identity as a trans person, or the nature of their transition. In other words, the presence or absence of breasts may be a particularly and uniquely private matter for trans people. I find this is equally true of a trans woman, who may dress in a way to suggest breasts despite not having them, or a trans man, who may dress in a way to hide his breasts. I find that this is interwoven with the trans person’s sexual identity, the way in which they experience their body, and the way others may sexualize them. So, I find that the photo of AQ depicting her without breasts, and with other male secondary sex characteristics like body hair, intrudes on her privacy over an intimate matter. For these reasons, I find that the altered image depicts AQ nearly nude.

[5] 2024 BCCRT 410, at paragraphs 35 to 37.

39. The fact that the image has been altered does not change my analysis. The definition of “intimate image” includes altered images. This image was altered in a way to imply what AQ’s topless body looks like. For the reasons set out above, I find that AQ has a reasonable expectation of privacy over what her topless body looks like, even if the body depicted is not actually hers. So, I find the altered image is an intimate image.

40. The next question is whether BT shared the altered image. There is evidence it has been shared several times. I will restrict my analysis to sharing that took place on Facebook by an account with BT’s first name but a different last name. BT has never denied that she controls that account. I find that the posts made on that account about the CRT’s process show that she wrote them. For example, there is a post where the account says “the trannie tribunal can lick our asses”, which at least shows it is controlled by someone involved in a CRT dispute. More tellingly, there are also posts that name the two vice chairs who made preliminary decisions, and for a time the profile’s picture was of one of the vice chairs. Another post references how long AQ’s submissions were in the second preliminary hearing. Together, these posts along with the common first name all strongly point to BT controlling that account. I find it more likely than not that BT posted the altered image to Facebook. There is no suggestion that AQ consented to this. BT’s sharing was therefore unlawful. I address the appropriate terms of a protection order below.

The Blurred Image

41. The blurred image is a printed poster, which was apparently posted in a public place. It depicts a heavily pixelated or blurred image next to a photo of AQ’s face. The blurred image is a colour that could be skin, but beyond that, it is impossible to say what the underlying image is. It is not recognizable as genitals.

42. The reason to think the underlying image is genitals comes from the surrounding text, which I will not repeat because it is offensive and the precise wording is irrelevant. Suffice to say, the poster was clearly created to imply that the blurred image was of AQ’s genitals.

43. However, to depict genitals, I find that the image must show something that is recognizable as genitals. I find that the accompanying text does not, in effect, unblur the image to render it a depiction of genitals. I accept that AQ finds the poster humiliating, but I find that the blurred image is not an intimate image. I dismiss AQ's claim for protection orders about this image.

The Genitals Image

44. The genitals image is undeniably an intimate image. It depicts two photos, side by side, both close-up views of female genitals. AQ says that she created the images intending only to share them with medical professionals, so I find she had a reasonable expectation of privacy when they were created.

45. BT alleged that the genitals image became public when AQ posted it to X (then Twitter) on February 11, 2021. She tagged a medical professional in the post. In submissions, AQ says that the post was live for a very short time, as she had intended to direct message it to the medical professional. She says she took it down as soon she realized her error. I find this explanation much more plausible than BT's assertion that AQ wanted to broadly publicize an image of her genitals alongside a question seeking medical advice. The genitals image is apparently still viewable on websites that archive past Twitter/X posts. Presumably, that is where others have accessed the genitals photo to share it.

46. IIPA section 2(b)(i) says that a person does not lose their reasonable expectation of privacy in an image just because it was distributed. I find that particularly in the case of inadvertent distribution, the individual retains their reasonable expectation of privacy. So, I find that AQ has always had, and still has, a reasonable expectation of privacy in the genitals image.

47. The genitals image has been shared multiple times. The more difficult question is whether BT ever shared it. AQ only attributes one instance of sharing to BT. In early March 2025 someone created an X account using AQ's deadname, a photo showing AQ's face as a profile picture, and the genitals image as a header image. I will refer

to this account as the troll account, as its purpose seems to be solely to harass AQ by impersonating her.

48. There is no direct evidence BT is behind the troll account. While it does target AQ, the evidence before me shows that BT is not the only person who routinely targets AQ online. AQ says she has ongoing IIPA disputes against others, meaning the timing and aggressive content of the troll account does not, by itself, necessarily implicate BT.

49. AQ points to the username, which is "Saskatchewan" followed by a string of numbers. AQ says that X's naming protocol is to use the beginning of the email address opening the account followed by numbers. AQ says that BT has used email addresses with the word "Saskatchewan" in them in the past. She says this is "conclusive evidence" that BT is behind this X account.

50. AQ provided no evidence of X's naming protocol. More importantly, she provided no evidence that BT uses email addresses with "Saskatchewan" in them, the crucial link between BT and the troll account. So, while I considered ordering X to disclose the email address associated with the troll account, I decided against it because AQ has not proven more than a speculative link between the username, possible email address, and BT.

51. Given BT's overall abusive conduct, it is possible that she is behind the troll account. However, the only evidence linking BT to the troll account is that she lives in Saskatchewan. I find this is not enough. That said, since the evidence clearly establishes that someone shared the genitals image without AQ's consent, I have made general protection orders below.

52. AQ also asks that BT be declared a vexatious litigant. I recognize that BT has been declared a vexatious litigant in Saskatchewan. However, there is no evidence she has filed more than one unmeritorious claim at the CRT, which she did not pursue and was never served. So, I find the step unwarranted, or at least premature. I also

deny AQ's request that BT be prohibited from acting as a representative, as there is no evidence before me that she has acted as one.

ORDERS

53. In this application for an expedited intimate image protection order, I make the following orders about the altered image:

    a. The altered image meets the definition of "intimate image" under the IIPA and is attached to this order as Schedule A, edited by me to blur any personal and identifying features.

    b. BT shared the altered image without AQ's consent.

    c. BT's sharing of the altered image was unlawful conduct.

    d. BT and anyone else who has shared the altered image must **immediately:**

        i. Delete or destroy all copies of it in their possession or control, and

        ii. Make every reasonable effort to make the altered image unavailable to others, including by:

            1. Having it removed from any online website or platform and from any other electronic form of application, software, database, or communication method, and

            2. Having the intimate image de-indexed from any search engine.

    e. Internet intermediaries or any other person or organization must **immediately:**

        i. Remove the altered image from any platform it operates and from any other electronic form of application, software, database, or communication method,

        ii. Delete or destroy the altered image, and

iii. De-index the altered image from any search engine.

54. In this application for an expedited intimate image protection order, I make the following orders about the genitals image:

    a. The genitals image meets the definition of "intimate image" under the IIPA and is attached to this order as Schedule B, edited by me to blur any personal and identifying features.

    b. Someone shared the altered image without AQ's consent.

    c. Any person who shared the genitals image must **immediately:**

        i. Delete or destroy all copies of it in their possession or control, and

        ii. Make every reasonable effort to make the genitals image unavailable to others, including by:

            1. Having it removed from any online website or platform and from any other electronic form of application, software, database, or communication method, and

            2. Having the intimate image de-indexed from any search engine.

    d. Internet intermediaries or any other person or organization must **immediately:**

        i. Remove the genitals image from any platform it operates and from any other electronic form of application, software, database, or communication method,

        ii. Delete or destroy the genitals image, and

        iii. De-index the genitals image from any search engine.

55. I dismiss AQ's remaining requested protection orders.

56. **Under IIPA section 13, I order a ban on publishing AQ's and BT's names or anything that would identify either of them.**

57. I order the dispute records sealed. Only the parties, their lawyers, and the CRT may have access to the dispute records. With the applicant's consent, the CRT may share information from the dispute record with the Intimate Images Protection Service of the British Columbia Minister of Public Safety and Solicitor General.

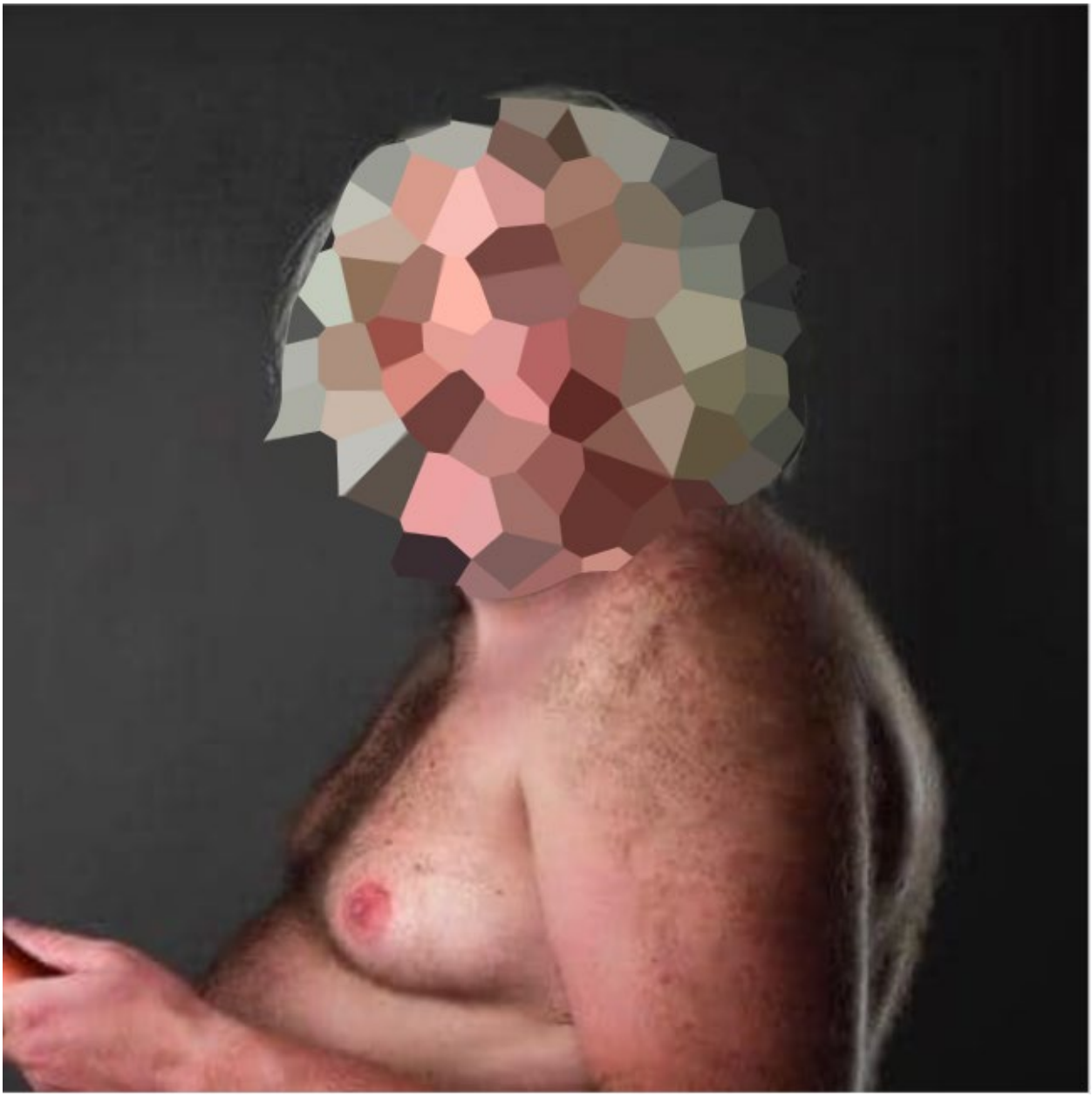
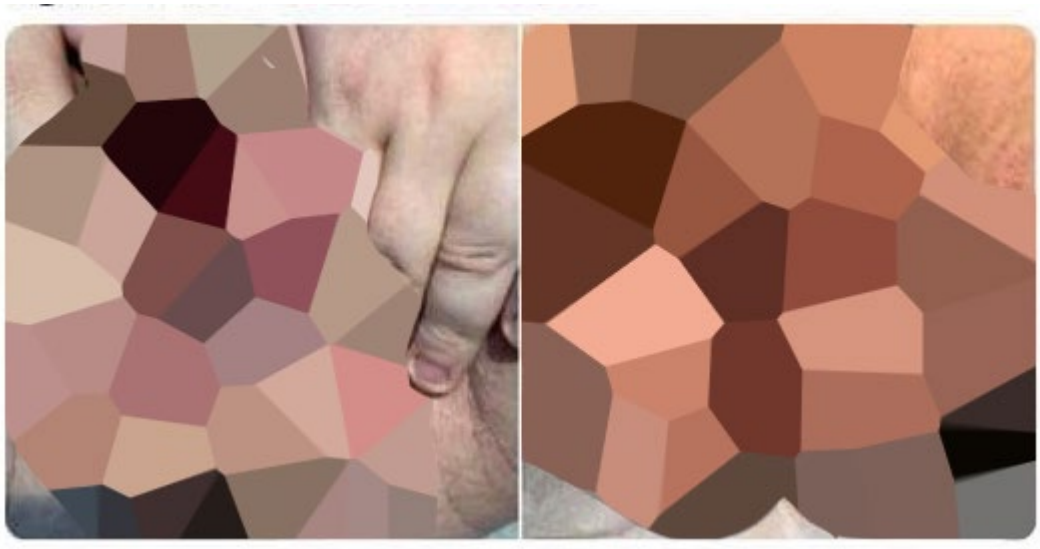
58. **Notice to the respondent about compliance with this protection order**. If you fail to comply with this protection order after receiving it, the applicant can apply to the CRT for an administrative penalty under IIPA section 16 and IIPR section 9, with notice to you. For individuals, the penalty is up to $500 per day to a maximum of $10,000 per penalty order. For organizations, the penalty is up to $5,000 per day up to a maximum of $100,000 per penalty order. Penalties are payable to the BC Government. Applicants can ask the CRT to issue a further penalty order, with the same monetary limits, if the non-compliance continues.

59. Under IIPA section 5(7) and IIPA rule 12.1, a person affected by this protection order, other than BT, has a right to ask the CRT to cancel it.

60. This is a validated decision and order. Under IIPA section 14, the CRT's order can be enforced through the British Columbia Supreme Court. Once filed, a CRT order has the same force and effect as an order of that court.

Eric Regehr, Vice Chair

SCHEDULE A – The Altered Image



SCHEDULE B – THE GENITALS IMAGE