

Title:

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New Title:

On the expanding scope of privacy law and Canadian law

(Music carries under visual)

(talking Head)

Today, I would like to talk to you about the ever expanding scope of privacy law and Canadian law. In particular, a very recent decision of the Ontario Superior Court in Jane Doe vs D.N. released in January of this year. It's come to be known in legal circles as the revenge porn case. Essentially, the facts are this. They are simple and unfortunately predictable.

("B" Roll)

A young college girl is communicating with her ex boyfriend from high school who has gone away to separate schools. They have a lingering relationship where he starts to ask her to make her a sexually explicit video.

(Talking Head)

At first she refuses to do so but begrudgingly, after reassurances that he won't share it with anyone, she provides him with the video. Almost immediately after receiving it, he posts it online. And so, therein lies the problem.

("B" Roll)

She commences a lawsuit seeking damages and an injunction trying to halt the videos distribution, having it removed and taken down and to prevent any further communication with her.

(Live talking head)

The ex boyfriend doesn't respond and she is ultimately successful. The court awards her \$100,000 in damages and develops what we'll call the new torque of public disclosure of private information.

The new torque contains three elements. First - the publication of private and sensitive information. Secondly, the content published must be highly offensive to a reasonable person, and third, it should not be of a legitimate concern to the public.

("B" Roll)

Now these days, private and sensitive information is quite diverse and broad and can be found in various modern online platforms, including health records, evidence of books that you've bought or purchased, history of downloading and streaming of television, music or media content and shopping behaviors.

(talking head)

What I think the case gives rise to is potential claims for unauthorized disclosure of private information going forward beyond sexually explicit content. If it's highly offensive to a reasonable person it could expose you to a claim. So, given the present trajectory of Canadian privacy law, anyone dealing with confidential information and/or its potential misuse is exposed.