

***Criminal Code* Amendments Re: the Publication of Intimate Images Worthy of Serious Distribution (A Law Student's Perspective)**

The publication of intimate images is a serious issue in Canada that can have many detrimental effects. Given that we live in a digital age, it is easier than ever to distribute intimate images to virtually anyone around the world in a manner of seconds. Not only is the actual distribution of intimate images harmful, the threat of distribution can be serious and traumatizing. There have been numerous public cases about individuals such as Rataeh Parsons and Amanda Todd who lost their lives due to the consequences of the publication of intimate images without consent. Other individuals have lost their jobs and had their reputations tarnished, as highlighted by the case of former Justice Lori Douglas.

In June 2018, Conservative Member of Parliament David Tilson introduced Bill C-409, *An Act to the Criminal Code (threat to publish intimate images)*.¹ The bill has only been through the first reading stage of the legislative process, meaning that a number of steps have yet to take place before it can possibly become enacted. Bill C-409 would amend section 162.1 of the *Criminal Code*,² which pertains to the publication of an intimate image without consent. The bill adds a category to the offence of the publication of an intimate image without consent by adding threats. The newly added provision states:

Threats

- (1.1) Everyone who threatens to commit an offence under subsection (1) is guilty
- (a) of an indictable offence and liable to imprisonment for a term of not more than three years;
 - or
 - (b) of an offence punishable on summary conviction.³

Bill C-409 also updates the provision related to a prohibition order and what should happen to offenders who are discharged on probation. The prohibition order states that if an individual is convicted of distributing an intimate image or threatening to distribute an intimate image and is discharged on probation, they may be subject to a number of conditions including being prohibited from using the Internet or other digital networks.⁴

Mr. Tilson's bill was introduced to "criminalize the threat to publish intimate images without consent" and is an expansion to the former federal Conservative Government's introduction of the criminal offence of the publication of intimate images without consent in 2014.⁵ In a news release Mr. Tilson stated, "Lives have been ruined through this reprehensible behaviour. We know that some Canadians have taken their own lives as a result. What is missing from this, in my opinion, is the problem of threatening to publish such images. Using the threat to publish images of another person as a means of control or coercion over that person is nearly as heinous"⁶. His news release also mentioned that his bill will bring Canada in line with several other countries, such as Australia, the UK, and some states in the USA, that have provisions about threatening to distribute intimate images.⁷

¹ <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-409/first-reading>

² *Criminal Code*, RSC 1985, C-46, at s 162.1.

³ *Ibid.*

⁴ *Supra* note 1.

⁵ <http://www.davidtilson.ca/media/press-release/tilson-presents-bill-to-criminalize-the-threat-to-publish-intimate-images>

⁶ *Ibid.*

⁷ *Ibid.*

The addition of threatening to publish intimate image seems like an excellent idea given the severity of the effects that distributing intimate images can have. There is a deterrence factor that is created by making the threat of distributing intimate images an offence, and the potential for up to three years imprisonment is a quite serious. Given that the maximum term of imprisonment for the publication of an intimate image without consent is up to five years,⁸ there is significant emphasis placed on the fact that the threat of distributing images is serious as is actual distribution.

There are potential criticisms that can be made of Bill C-409. Firstly, the criminal law approach to deterring the distribution of intimate images is reactionary and may not be effective for individuals who are unaware of the state of the law. Secondly, it may be argued that the potential maximum sentence of three years imprisonment is too harsh for threatening to do something that is currently illegal, but not actually doing it. The potential of criminalizing threats and sending an individual to a penitentiary for years may appear to be too serious of a punishment. That being said, given the significant harm and stigma that can be caused to people who think that their intimate images might be distributed, suggesting that threatening to distribute such images can reasonably be seen to be a crime. Lastly, there may be concerns about the evidentiary threshold that has to be met to demonstrate that threats to distribute intimate images have been made. Obtaining evidence in cases where the threats have been made online or via text would be much easier than proving that verbal threats were made.

While amendments to the *Criminal Code* are one way of deterring the publication of intimate images without consent, there are other ways to address this issue. Public education on the law regarding the distribution of intimate images, what constitutes consent, how content can be distributed globally and permanently, and the psychological impact of distributing intimate images without consent is necessary. Governments and schools can work together to integrate education on these topics in school curricula, and governments can prepare webpages, videos, and online and print content to inform the public about intimate images. Public education can compliment the criminal law regime that seeks to deter and decrease the distribution of intimate images without consent.

Overall, Bill C-409 is a concise piece of legislation that aims to make the law on the publication of intimate images without consent more stringent. Given the current digital age that we live in, this bill is logical and in line with legislation in other countries. It can make a significant difference in deterring and effectively addressing the actions of individuals who threaten to or actually publish intimate images without consent. Public education can enhance the newly proposed criminal law provisions. Since the distribution of intimate images with and without consent is likely to continue, it is important to have legal and public education measures in place. Bill C-409 is worthy of further distribution, debate, and discussion among legislators and has the potential to implement beneficial provisions to the *Criminal Code*.

⁸ *Supra* note 2 at s 162.2(1).