

Improving Section 162.1 to Account for Women's Physical and Digital Safety

Executive Summary

Revenge porn has peaked through covid lockdowns (Criddle, 2020) and leaves victims with the same mental health effects as sexual assault survivors such as PTSD, anxiety, and depression (Bates, 2017). Currently revenge porn laws are categorized with voyeurism as opposed to sexual assault, which is problematic as this legal process places women in a vulnerable state where they must provide evidence, beyond just a witness testimony, in order to receive any justice. There are two main issues with this process: It does not account for the mental health effects victims endure or the damages to their reputation and it may come with extra costs to acquire a good lawyer to defend any gray area in court. The policy itself does leave much gray area in terms of defining what counts as revenge porn which will further be discussed in the following situation brief.

This brief aims to tackle the outlined issues by outlining these potential policies:

- **Implementing feminist theory**
- **Categorizing revenge porn as a sexual assault offense**

Policy option number two is most recommended as it works to address the gray area currently present in Section 162.1 due to its wording around expectation of privacy, addresses the severity of the crime, allows more justice for the victims and increases the deterrents for future offenses. It also allows easier access to justice for women in fear of the legal process and low income women.

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Situation Brief

Currently section 162.1 claims everyone who has knowingly published or distributed intimate images of a person without consent of the person is guilty of an indictable offense or an offense punishable on summary conviction. The main issue present is the process it takes to prove someone guilty under section 162.1. In court the defendant must prove the images shared were sexual and that there was an invasion of privacy. This allows for many areas of debate around this law as, what if the video occurred in a public location where there may have been less expectation of privacy, but the partner leaked the video? Is the woman denied her claims because of this, or if the video isn't entirely sexual in nature (no full nudity) but could target a niche demographic for sexual purposes? Will this still be honored as illegal in court? These questions highlight the ways that judges may shift their attention from the harm done towards deciding if the expectation to privacy was reasonable or not and lead to victim blaming (Dueck-Read, 2020).

These questions also show the gray area around this law which is half of what makes it so scary for a woman to come forward. The other half is how women are treated online. The patriarchy displays its *divide et impera* motto online as men slut shame women for owning their sexuality, and women may shame other women to deflect rape myth and victim blaming stigma onto other women (Dragotto, 2020). As Crowie and Lees puts it this cyber violence is “one of the many ways through which women’s subordination to men is perpetuated” (1981). These

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factors create an unsafe online environment for women which should be accounted for in section 162.1, as voyeurism is a gendered crime (Dueck-Read, 2020)

Another barrier is the costs associated with going to trial. Legal fees are based on factors such as: time and efforts spent on matters, difficulty of the matter, and experience and ability of the lawyer (Law Society of Ontario, 2023). Defendants having to prove expectation to privacy and sexual implications of the images can contribute to significantly higher fees, especially if the defendant wants an experienced lawyer. This is especially important as many cases of revenge porn stem from abusive relationships; a common form of abuse is through controlling behaviors which can lead to the abuser controlling the abused's finances (American Family Physician, 2011).

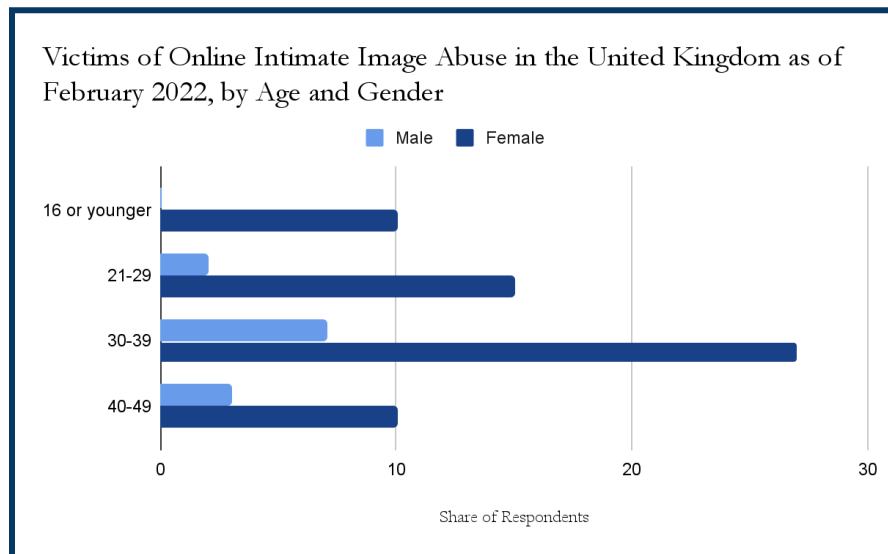
My definition of possible stakeholders is influenced by Amanda Todd and Rehtaeh Parsons whom were both within the following age range when they took their own lives due to misogynistic online violence:

- Women aged 12-22
- Women who have been in an abusive and/or toxic relationship
- The families of these women

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Statistics from Cyber Civil Rights Initiative 2013 Nonconsensual Pornography Research

- 90% of victims were women
- 55% fear that the professional reputation they have built up could be tarnished even decades into the future
- 51% have had suicidal thoughts due to being a victim
- 49% said they have been harassed or stalked online by users that have seen their material



(Statista, 2022)

This chart represents the gender differences between victims of revenge porn to further display it as a gendered crime.

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Policy DiscussionPolicy Option One

Implementing feminist theory – Applying a feminist lens to the language currently used in the code. It currently focuses on reasonability and privacy. These are objective standards which have been critiqued by feminist scholars especially when in relation to violent crimes against women (Dueck-Read, 2020). To implement feminist theory would be to ensure judicial determination of what is a reasonable expectation of privacy does not place control over women's bodies.

- **Strengths:** This will deemphasize the role of privacy and reemphasize the role of trust (in regards to who had access to intimate photos) and thus eliminate the court's ability to turn to victim blaming and highlight the violation of trust occurred when a partner distributes intimate photos to an uninvolved third party.
- **Weaknesses:** This focuses solely on the matter of privacy and does not address issues for low income women or women in abusive relationships who may not be able to defend any other gray area left over in court.
- **Implications:** This implies there had to be trust between the two parties, although revenge porn occurs most commonly in relationships, it is not always the case

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Policy Option Two

Categorizing revenge porn as a sexual assault offense – Currently revenge porn is categorized as a voyeurism crime in the criminal code, however as victims are shown to display the same mental repercussions as sexual assault survivors the legal process should be the same and section 162.1 should display this.

- **Strengths:** Sexual assault trials cases can be prosecuted using viva voce evidence, meaning the only evidence needed is a witness testimony (Legislative Services Branch, 2023). This would entirely eliminate the need to acquire further evidence to defend expectation of privacy or have to examine the intimate content in court which can help victims feel less fear when coming forward and creates less gray area. This would also make trials simpler and quicker, thus reducing legal costs.
- **Weaknesses:** Does not help those still in an abusive relationship and depending on special circumstances can still become a lengthy court process.
- **Implications:** This would imply joining Section 162.1 under Section 271 of the criminal code.

Improving Section 162.1 to Account for Women's Physical and Digital Safety**Recommendations**Policy Option Number 2: Categorizing revenge porn as a sexual assault offense

To call revenge porn an act of voyeurism undermines the emotional damage done on its victims and undermines the prevalent sexism within the crime. It is not only an invasion of privacy but a weapon against women from men who, thanks to the patriarchy, continue to hold a sense of power over women's bodies. This is a very damaging crime, as seen through the deaths of Amanda Todd and Rehtaeh Parsons, but very normalized. The word voyeurism does not reflect the intensity of this crime well enough and does not deter future offenders well enough. This is why Section 162.1 should not be seen as a voyeurism crime, but as a sexual assault crime.

This takes away the large gray area previously defined through the multiple interpretations of what is a reasonable expectation of privacy. As any publication of intimate images without the person's consent is an invasion of privacy and causes severe mental drawbacks to that person. By including Section 162.1 with Section 271 this would also increase the maximum jail time from 5 years to 10 years; this more severe deterrent will hopefully work to reduce the increasing trend of revenge porn. Along with the increased jail time the lowered burden of proof on the defendants would work to benefit low income women.

However, some social disagreeance will likely occur as to define revenge porn as sexual assault disturbs our society's want to have control over womens bodies, especially in a digital era, and may lead to increased stigma around those coming forward and victim shaming as men may try to shut down womens arguments. Despite this, the pros outweigh the cons and

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Julia Sherritt

For the Minister of Legislative Affairs
Ontario, Canada

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implementing this recommendation will work to address the gray area currently present in Section 162.1 to prevent women from facing legal trauma on top of the sexual trauma that occurred.

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