

Civil Litigation

Manitoba intimate images lawsuit could pave way for other complainants: lawyer

By **Terry Davidson**

(March 14, 2022, 10:08 AM EDT) -- A Manitoba lawyer hopes his client's pioneering lawsuit involving the unlawful sharing of intimate images will embolden other complainants to seek justice.

The March 2 Court of Queen's Bench of Manitoba decision in *Roque v. Peters*, 2022 MBQB 34 centred on a legal action brought by Brittany Roque against Terry Lynn Peters after compromising images of Roque were shared with the Brandon Police Service (BPS), to which Roque was applying to be an officer.

The court awarded Roque \$60,000 after hearing the case, which was sparked seven years ago by an affair Roque had with Peters' common law spouse, BPS officer Ryan Friesen.

In 2015, Roque participated in a BPS ride-along program, during which she met Friesen. The two would go on to have a three-month affair — even though Friesen at the time had been in a relationship with Peters since 2008 and had been living with her since 2013.

According to the written decision, it was during the affair that Roque sent "numerous intimate and private images" to Friesen — images Friesen had saved to his e-mail account.

Peters, at the time an employee with the Workers Compensation Board of Manitoba, knew Friesen had affairs with other women before and was acutely suspicious of his dealings with female officers. She learned about the ride-along with Roque, who became a new target of Peters' suspicions.

Through conversations with Friesen, Peters also learned of Roque's application to become a police officer with the BPS.

Peters' suspicions drove her to access Friesen's e-mail account, where she found the pictures of Roque stored in the "trash" folder along with photos of "at least a dozen other women."

Days after discovering the images, Peters notified BPS senior officers, two of whom went to Peters' home, viewed the images, and left with copies of them on a USB drive.

Over the following days, one senior officer viewed the images and talked with the force's psychologist about Roque's qualifications.

Meanwhile, Peters texted Roque, calling her a "horrible person" and asking her if "it was fun ripping a family apart." She also told Roque DPS senior officers had seen the shots.

In March 2017, Roque went for her second "pre-polygraph" interview, during which she disclosed her affair with Friesen and the existence of the images.

The interviewer, a staff sergeant, told Roque he had been provided with the photos and that she should have disclosed the affair and the photos in an application questionnaire beforehand.

Soon after, Roque was told she was being dropped from candidacy.

Roque lodged complaints relating to Peters' sharing of the images with BPS.

Roque sued Peters, using statutory torts in Manitoba's *Intimate Image Protection Act* and *Privacy Act*.

The written decision notes that Roque's lawsuit did not allege she lost the BPS job due to the images, but that it took aim at those images being unlawfully distributed by Peters without her consent.

Peters' primary defence was that she was justified in sharing the images with the BPS because doing so was in the public interest, arguing "the need for a thorough and complete background investigation of potential police officers" and for police to know "everything there is to know about a potential candidate."

(Peters also filed a third-party claim against the City of Brandon, taking issue with "the role BPS played in obtaining the images.")

But Manitoba Queen's Bench Justice Sandra Zinchuk disagreed, pointing out that Peters could have simply told BPS senior officers that the images existed, rather than share them.

"I do not disagree with the defendant's position that it is in the public interest for BPS to conduct a thorough and complete background investigation of potential police officers," wrote Justice Zinchuk. "However, I do not see this case as being about what 'information' relating to a candidate is entitled to remain private during such investigation. The fact that the Images existed is 'information'. The Images themselves are an entirely different thing."

Justice Zinchuk went on to find that "[a]n individual has the right to control who sees intimate and private images of their body."

"Given the accessibility to and use of modern ... technology it is incumbent on the Courts to recognize that right and adequately compensate those whose privacy right has been violated," she wrote, noting that the text messages Peters sent to Roque were "hostile, taunting and vengeful."

"They reflect Peters' true emotions at the time and I find that they were sent to cause anxiety and distress."



Kevin Toyne, Hill Sokalski Walsh LLP

Roque's lawyer, Kevin Toyne, said the ruling is a first when it comes to the 2015 enactment of Manitoba's *Intimate Images Act* and its creation of a statutory tort for the non-consensual distribution of intimate images.

"There may be other cases out there in the system, but, to my knowledge, this is certainly the first one that's actually gone to trial and generated a reported decision," said Toyne, a partner with Winnipeg's Hill Sokalski Walsh LLP.

He also said the legislation runs parallel to *Criminal Code* provisions dealing with the non-consensual sharing of intimate images, but added that he was not aware of any criminal matters in this case that involve Peters.

Toyne called the decision important in dealing with the public interest defence.

"In the Manitoba legislation, if you can establish that non-consensual distribution was in the public interest, you're off the hook from a liability perspective," he said. "The defendant here, because she shared my client's images with my client's prospective employer, the [BPS], she took the position that what she did was in the public interest. I said that there [are] good reasons why employers are not allowed to insist that they get to see prospective employees' naked bodies before they get hired. I can't imagine how the police should be any different."

Toyne hopes that Roque's decision to go public with her legal fight will encourage other complainants to come forward.

"Hopefully, people who have been victimized in this way — and it tends to be younger women — realize that they don't have to suffer in silence. That even if their community or their families — or God forbid even the local police force — doesn't believe them or take them seriously, the courts can and will, and that they are able to seek justice for the wrong that has been done to them."

When asked for comment, Peters' lawyer, Rhea Majewski, called this a case involving rare circumstances.

"In terms of the significance, the Plaintiff has said publicly this provides a roadmap for others, respectfully I disagree," said Majewski, of the Rhea Majewski Law Corporation. "This case is unique. I expect it will be rare facts similar to these will be litigated again. That being said, as it stands, this case certainly stands for the position that if private images of an individual are distributed the damage award will be significant."

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