

Is Cyber-Sex Grounds for Divorce?



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Cyber-sex, sexting, lurid Facebook messages, and other forms of virtual infidelity are becoming increasingly prevalent in Family Law. With vastly improved computer graphics and enhanced reality, the real world and the virtual world are becoming increasingly blurred.

According to Gartner, [the worldwide video gaming industry is now worth about \\$93B](#). Video gaming is now bigger than the Hollywood film industry. Adults and teens alike eagerly await the next installment of their favourite game, which makes back its development costs in just a week.

While people may think their online indiscretions are harmless or "don't count," the consequences of their behaviour are very real. No doubt virtual infidelity will become an increasingly important issue in many divorces in the future.

Is it legally infidelity?

To be granted a divorce in Canada, an individual has to show that the marriage has broken down, established by one of the three grounds listed in section 8 of the *Divorce Act*:

(2) Breakdown of a marriage is established only if

(a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding; or

(b) the spouse against whom the divorce proceeding is brought has, since celebration of the marriage,

(i) committed adultery, or

(ii) treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

In the case of *P. (S.E.) v. P. (D.D.)* the court defined adultery as intimate sexual activity outside of marriage, regardless of the specific nature of the sexual act performed. Cyber-sex or sexting, however, while obviously emotionally devastating to the other spouse or partner, does not reach the level of intimacy necessary for it to function as adultery under the *Divorce Act*.

This means that a person who seeks to divorce someone on the basis of their virtual infidelity must first separate from their partner and live separate and apart for one full year.

Cyber-sex or sexting are simply not infidelity under the Canadian legal definition.

Virtual Lives, Real Consequences

While it does fulfill the legal definition of adultery, virtual infidelity can still have devastating consequences on an individual's personal life, and any family law issue he or she may have.

Virtual infidelity often creates the slippery slope of obsession.

A person may spend increasingly large amounts of time escaping online in an effort to be with their would-be-paramour. When this is discovered and the marriage breaks down, this obsession can damage any claims a person may make for custody. The reality is that a person sacrificed time with their children in favour of his or her online love.

The effects of obsessions with virtual worlds are not necessarily limited to adultery, but can also include custody and child support.

In the United States, courts have accepted evidence of parents' excessive time spent on online, with interactive gaming websites such as [FarmVille](#) or [World of Warcraft](#). In either case, parents are not providing adequate support and care for their children. This can be used in court to show a history of poor parenting, and discourage a court from awarding that parent custody.

Virtual infidelity can also be a major issue in terms of finances. Despite having only met online, individuals in such affairs will often seek to shower their new found love with lavish

gifts. In some cases, this is the result of unscrupulous men and women exploiting the emotions of others to get money from them.

Regardless of the motivation on both sides, this can have serious consequences for the individual's real family. Money earned to support their family is instead diverted to impress a lover, who may in fact be a con-artist. This fact could be used against the person who has been committing virtual infidelity in court. That parent has demonstrated that he or she is not capable of putting the best interest of their child first.

Although virtual infidelity may never involve physical contact, the emotional pain it causes is all too real. It may seem somewhat old-fashioned, but people should strive to act in a reasonable and responsible manner even when online.

The alternative could be to end up embarrassed, publicly humiliated, and alone.

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