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## Is Cyber Sex Grounds for Divorce?

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By Andrew Feldstein

Cyber sex, sexting, lurid Facebook messages and other forms of virtual infidelity are becoming increasingly prevalent in family law. Anthony Weiner provided a very public display of the consequences of such behaviour. More and more, a person's virtual life is becoming important to the "real world."

While individuals may think their online indiscretions are harmless, it's clear that they have very real consequences. No doubt this will become an increasingly important issue in many divorces in the future.

### Is it legal infidelity?

To be granted a divorce in Canada, an individual has 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. In my opinion, cyber sex or sexting, while obviously emotionally devastating, does not reach the level of intimacy necessary for it to function as adultery for the purpose under the Divorce Act. This means that a person who seeks to divorce someone on the basis of their virtual infidelity must separate from them and live separate and apart for one year. It is simply not infidelity under the legal definition

### Virtual lives, real consequences

While it might not fulfil the legal definition of adultery, virtual infidelity can still have devastating consequences on an individual's personal life and any family law issue they may have. Virtual infidelity often creates the danger 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 their marriage breaks down, this obsession can damage any claims they may make for custody. They may have sacrificed time



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with their children in favour of their online love. This obsession with virtual worlds is not necessarily limited to adultery. In the United States, courts have accepted evidence of parents excessive time spent on Farmville or World of Warcraft. In either case, parents are not providing the 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 newfound 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 grave consequences for the individual's real family. Money earned to support the family is instead diverted to impress a lover, who may in fact be a con-artist. This could be used against the person who has been committing virtual infidelity in court. They have demonstrated that they are not capable of putting the best interest of their child first.

Despite that virtual infidelity may never involve physical contact, the emotional pain it causes is all too real. Although it may seem somewhat old fashioned, when online people should strive to act in a reasonable and responsible manner. The alternative could be to end up embarrassed, publicly humiliated and alone.