

## The criminal justice system and matrimonial disputes

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By Ida Mirzadeh

The outcome of a criminal prosecution will have a significant, but not always determinative, impact on parallel family law proceedings relating to disputes over child custody and the matrimonial home. Below are three relevant factors that are often overlooked by spouses who are faced with a high-conflict separation.

### **3 THINGS TO CONSIDER BEFORE CALLING THE POLICE ON YOUR SPOUSE:**

#### **Zero Tolerance Policy:**

It is important to understand that our government identifies domestic violence as a serious social concern. Accordingly, the police have been instructed that there be a zero tolerance policy toward domestic violence, such that upon receiving a complaint of domestic violence, the police are to exercise no discretion but to lay the appropriate criminal charge against the other spouse.

There are many situations where the complainant spouse has contacted the police in an effort to have the other spouse simply removed from the home, not expecting that the other spouse would be arrested and charged with a criminal offence.

#### **The “No Contact” Order and Conditions of Bail:**

Any conditions imposed by the criminal courts also must be followed in family court. If there is a “no contact” order imposed as a term of your release

("bail") you must not attempt to contact your ex-spouse under any circumstances.

Specifically, your bail will be subject to conditions which will prohibit you from communicating or associating, directly or indirectly, with your spouse and possibly the children of the relationship. You will also be restrained from physically attending at the family residence where the alleged assault took place.

It is important at this stage for the non-association/communication release clause to include an exception to allow for your contact or communication through, at the very least, a third party or lawyer to arrange access to your children or pursuant to the terms of a Family Court Order or Separation Agreement. It is important to understand that the bail conditions, unless they contain these exceptions, supersede any existing or later family court orders for access or even custody. The bail conditions will remain in effect until likely the first court appearance for the charge, which may not take place until several months from the date of the laying of the charge. Accordingly, the terms of bail provide your spouse with informal custody and exclusive possession of the home while they exist.

#### **Status Quo and the Best Interests of the Child:**

Domestic violence will usually have an impact on the court's determination as to who should be assigned primary care and custody of a child. Although this is only one factor in determining the best interests of the child, it is significant. The seriousness and frequency of the assaults, and the circumstances of the parties and of the child, all must be examined and balanced when considering the best interests of the child.

The first steps taken by the accused are crucial as a status quo may be inadvertently acquired, and this might determine the long term rights and obligations of family members.

Also, it is important to note that the resolution of an allegation of domestic violence in the criminal justice system does not mean that the family courts will not be required to grapple with issues of family violence.

Where a child's welfare is at issue, courts tend to be cautious and demonstrate a preference for maintaining the status quo where it has proven beneficial to the child. Peace bonds, which include conditions that limit the ability of a parent to develop or maintain a normal relationship with his or her child or children, can also play a significant role in the establishment of a "status quo".

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