

Supplemental Material

Tab #11: What Clients Need to Know about Contacting the Police

As a family law legal adviser, you may encounter situations where your client is considering contacting the police about a family violence matter. This document offers you some general information for these situations.

1. Considerations for your client about making a statement to the police and/or calling 911

- ▶ Some police departments have specialized domestic violence units (which may go by different names). The benefit of connecting with these specialized units is that the police undergo additional training and use procedures that are more sensitive to the situation (e.g. they may use an unmarked car or arrange to meet outside of the house).
- ▶ If your client or their children are in immediate danger, calling 911 may be the best option. If criminal charges are laid, this may be one of the fastest and most effective ways of having protective conditions, such as a no-contact order, put in place. Your client may also want to explore the option of seeking a recognizance under the *Criminal Code*, which does not require that a criminal offence has been committed. Often referred to as a “peace bond,” this is a criminal court preventative order that requires a person keep the peace and be of good behaviour. It can include specific protective conditions, such as no-contact and non-attendance conditions in relation to a victim.
- ▶ Victims of sexual offences may be able to make police reports through a third party, such as a victim services worker in your jurisdiction.
- ▶ When your client reports a crime, they will be asked to make a statement to the police. This statement will be essential evidence in the investigation and throughout the criminal file if charges are laid. It would be helpful if someone, such as a support worker, could accompany them when making the statement, but you should advise the client that the actual statement will likely be made alone with the police officer(s).
- ▶ In every case, police must consider many factors in deciding whether criminal charges are appropriate. Even if a charge is not laid, a 911 call or any other information that your client provides to the police will become part of the police file and will establish a record that assistance was sought.

Many jurisdictions in Canada have policies regarding investigation and prosecution of IPV offences. These policies may be referred to as “zero tolerance,” “pro-charge,” “mandatory-charge” or “pro-prosecution” policies. Generally speaking, the policies pertaining to police require that charges be laid in cases of IPV where, following an investigation, police have reasonable grounds to believe that an offence has been committed. These policies are intended to reflect the fact that a criminal offence committed within an intimate relationship must not be treated as a private matter between the individuals involved, but as a criminal act. At the same time, prosecution policies across Canada require that prosecutors proceed with charges only where there is a reasonable or substantial likelihood (or prospect) of conviction, and prosecution is in the public interest.

When allegations of criminal conduct are made against both intimate partners, many jurisdictions have “primary aggressor” or “dominant aggressor” policies that require police and prosecutors to try to determine whether there is a dominant aggressor, and consider whether a victim may have been acting in self-defence. Nonetheless, in some circumstances, charges against both partners may be seen as appropriate by those making decisions about charging.

If no charges are laid

- ▶ The police may still have investigated the complaint, and your client may have given a statement to police. Police incident investigation reports, along with victim statements and any police notes or other reports, may be helpful evidence in the future for your family law case.
- ▶ In many jurisdictions, police administer verified risk assessment tools when investigating criminal family violence cases. Even if the case does not result in charges, the police-administered risk assessments may provide information that helps to assess the level of risk in the family law case.
- ▶ Even if no charges are laid, that does not mean that the conduct does not amount to family violence that is relevant to the family court proceedings.
- ▶ If charges are not laid, it is important to be aware that your client may potentially be in a more dangerous position, as the other party may be upset that the police were called. See [Tab #10: Safety Planning](#).

If charges are laid

- ▶ If the police lay a charge against a person for a criminal offence and the person is released by police, there will likely be a condition of the police release that prohibits the accused from having contact with the victim. Breaches of such conditions can result in criminal charges and possible incarceration.
- ▶ Victim services can be helpful in obtaining a copy of the release conditions, which should be reviewed for impacts on the family law matter. For example, if there is a no-contact order, are there specific locations that the person cannot go to, such as the residence of the victim? Check to see if other family members have been included in the release conditions. For instance, sometimes there are provisions in the release order governing or prohibiting contact with children.

- ▶ For more information on concurrent family and criminal proceedings, see [Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings](#) and [Tab #16: When Your Family Law Client Is the Victim of Family Violence and There Are Concurrent Criminal Proceedings](#).

Involvement of child protection authorities⁷²

- ▶ It is important that your client understands that in some circumstances, calling the police may lead to involvement of child protection authorities. In many cases, police have a legal duty to report disclosures of IPV affecting children, as well as direct child abuse, pursuant to the applicable child protection legislation.
- ▶ Of course, it is also important that you understand your own legal and professional obligations in relation to the duty to report when a child is in need of protection in your province or territory.

When a child protection agency becomes involved in a case of family violence, the response will depend on the individual circumstances of the case along with other factors, such as legislation, policy, resources, training and intervention options. In cases involving children's exposure to IPV, there may be a focus on the victim parent's ability to protect the children from harm. This can make some IPV victims feel as though they are being blamed for not protecting their child, rather than supported. Supporting your client to engage in services to understand the impact of IPV, including the impact on their children, is important in these circumstances.