

Supplemental Material

Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings

This document provides practical information and suggestions on how to approach family law cases when your client is accused of committing family violence and is facing criminal charges. It is also recommended that you read [Tab #16: When Your Family Law Client Is the Victim of Family Violence and There Are Concurrent Criminal Proceedings](#).

1. Lawyers^{ix} in the criminal court matter and the family court matter

- ▶ While you may practise criminal law in addition to family law, many family law lawyers do not. If the client has more than one lawyer, with the client's consent both lawyers should work closely together and share information. This is important because even experienced family law counsel are at a disadvantage if they do not understand the criminal court process/matter. What the criminal lawyer does can affect the family file and vice versa.
- ▶ If your client is charged and arrested, it can be helpful for you to establish contact with the criminal lawyer as soon as possible. Your client may need to sign authorizations for lawyers so they can share information with each other.
- ▶ Your client may not be represented by counsel on the criminal matter. While they may be assisted by duty counsel, duty counsel will have limited time to spend on your client's case.
- ▶ In most jurisdictions, the criminal court matter and the family court matter will proceed separately, but they may overlap.

^{ix} In this document, the term "lawyer" is used for simplicity; however, it is intended to include other professionals who come within the definition of "legal adviser" in the *Divorce Act*.

2. Importance of release conditions

- ▶ Your client may be released by police with or without conditions, or released following a bail hearing. If your client is detained on the charges and there is a bail hearing, you or your client may want to ask the criminal lawyer to request certain conditions to assist with the family court file, especially when there are children involved.
- ▶ There will most likely be no-contact and non-attendance conditions with the victim on the release order. There may also be no-contact and non-attendance conditions with the children.
- ▶ Other common release conditions include an abstain from drugs and alcohol clause, a weapons prohibition, a requirement to report to the police or bail program at specific times and restrictions on visiting specific places and specific people.
- ▶ It will be important to consider how the release conditions will affect decision-making and parenting time for children. A criminal charge does not automatically mean the accused person will not have time with their children.
- ▶ Remember, the Crown Attorney is concerned about the safety of the complainant and the public, including any children involved, and protecting the integrity of the criminal case; however, their responsibility does not extend to the family law case.

3. Seeking changes to release conditions

- ▶ If the conditions of release have a negative impact on your client's situation in family court, you or your client may need to speak with the criminal lawyer about seeking a variation. For example, you will want to consider the potential impact on parenting arrangements. It can take time to have conditions varied, so the request should be made as soon as possible.
- ▶ Your client may want to seek an exception to a no-contact condition along the following lines: "except as may be outlined in an Order dealing with family law issues involving children or support granted by a court of competent jurisdiction."
- ▶ It may be necessary to set up an agreed upon third party contact for communication regarding the children. If the release conditions do not allow for this, a change would need to be requested.
- ▶ If the complainant is self-represented in family court, you may also need an exception in the release conditions for you as the family law adviser to be able to contact them.
- ▶ Conflicting orders need to be addressed. For example, there may be conflicts between bail conditions and family court orders regarding parenting time/access, exchanges, decision-making or communication.

4. Release conditions related to non-attendance at certain places

- ▶ The release conditions may include a non-attendance condition for the complainant's place of residence, employment, education and place of worship, among other places.
- ▶ The release conditions may have the effect of prohibiting your client from living at or visiting the family home. Your client may need a variation in the release conditions if the family court order allows them to remove items from the family home.

5. Understanding the criminal proceedings before drafting the family court pleadings

- ▶ Before you and your client make a decision about whether to provide your client's version of events in relation to the criminal charges in the family case, you should consider discussing this with the criminal lawyer. The pleadings in family court can be used for cross-examination purposes in criminal court, as can statements made to a child protection agency.
- ▶ It is important to be aware of the next step in the criminal file and understand the potential impact on your client's family law case.
- ▶ Be cautious if your client tells you that the victim is having the charges dropped or is changing the release conditions. It is helpful to ask them to provide some type of documentation. It is also a good idea to ask questions to ensure that your client is not pressuring the victim to withdraw the charges, as evidence of intimidation or manipulation could be used against the client in the family law case.
- ▶ If there is a criminal trial and the complainant testifies, that testimony will be relevant to the family case. Similarly, the criminal court may want to see the complainant's family court pleadings for cross-examination purposes in criminal court.

6. Knowing what your client pled guilty to and what facts were acknowledged

- ▶ Plea negotiations happen often. Guilty pleas can be made to some, all or lesser charges than the original charges an accused person was facing. During the plea process, the accused person can also agree to some or all of the facts.
- ▶ You or your client may need to seek details from the criminal lawyer about the plea. It may also be helpful to request a transcript or the agreed statement of facts so you can understand the charges the client pled to and the facts they admitted.
- ▶ It is important to understand both the guilty plea and the agreed upon facts. For example, you may need to prevent the other side in the family law matter from continuing to cite the original charge information if it is no longer appropriate. You may also need to explain to the court what your client has pled to, and knowing the details is important.

- ▶ Family court is not the place to re-litigate criminal court matters. For example, your client should avoid denying allegations in family court after having already pled guilty in criminal court.

7. Resolution of the criminal matter: Understanding how the criminal matter is resolved is critical for the family matter

- ▶ **Conviction after trial:** While your client can still choose to deny the allegations in family court after being convicted, it is important to remember that the criminal court has made a finding on the basis of the higher criminal standard of proof beyond a reasonable doubt.
- ▶ **Peace bond (s. 810):** Resolving the criminal charge by way of a peace bond is not an acquittal. When they are given the option to enter a s. 810 peace bond in exchange for having the criminal charges withdrawn, your client may be required to acknowledge that their actions have caused the victim to be fearful for their own safety or the safety of their children or new partner. If the charges are stayed or withdrawn, there is no entry on the criminal record but there are conditions the client must respect for up to a year, with criminal consequences for breaches.
- ▶ **Incarceration:** If there is a term of incarceration, you will need to consider how that will affect the parenting arrangements.
- ▶ **Probation:** Similar to pre-sentence release conditions, probation conditions can have an impact on the family law case. It is important to understand these conditions and to try to prevent conflicting orders between different courts.
- ▶ **Acquittal:** An acquittal in criminal court does not necessarily keep the incident out of family court because the two systems have different standards of proof: beyond reasonable doubt versus balance of probabilities. In addition, family violence does not have to be criminal in nature to be relevant in the family law case.

Criminal court may make findings of fact that may be detrimental to your client in family court without convicting them of a criminal offence. It may be helpful to order transcripts to understand everything that was stated by the court.