

# Supplemental Material

## Tab #16: When Your Family Law Client Is the Victim of Family Violence and There Are Concurrent Criminal Proceedings

This document provides practical information and suggestions on how to approach cases when your client is the victim of family violence and the ex-partner is facing criminal charges. Criminal proceedings can create additional stressors for your client and their children, and add significant complexity to the family law case. At the same time, criminal law proceedings can provide greater protections for your client and may also assist them by providing concrete evidence of family violence for their family law case.

In most jurisdictions, the criminal court matter and the family court matter will proceed separately. However, there are often overlapping issues, such as concerns around contact between the parties. Improving your understanding of the criminal charges, release conditions, court dates and outcomes will help you better serve your client.

Clearly, charges against your client will complicate the family law case even further. It is recommended that you also consult [Tab #13: When Your Family Law Client Is Accused of Family Violence and There Are Concurrent Criminal Proceedings.](#)

### 1. Circumstances surrounding the charges against your client's ex-partner

Many details surrounding criminal charges against a client's ex-partner may be relevant to the family law case. For example, it is important to know:

- ▶ Circumstances of the arrest – are there children and were they at home at the time?
- ▶ Have child protection services been in contact? Have they recommended any restrictions on the parenting arrangements?
- ▶ Where is the ex-partner now? Are they permitted to return home, and if so, under what circumstances?
- ▶ Does the ex-partner have a criminal lawyer?
- ▶ What are the facts that gave rise to the arrest?

- ▶ Who called the police? Were police called at the time of the incident or after?
- ▶ Did your client provide a statement (written or videotaped)?
- ▶ Were there witnesses? Did the witnesses provide a statement?
- ▶ Has your client been in contact with victim services?

## 2. Importance of release conditions

Find out if the accused has been released by police or by a court, has been detained for a bail hearing, or has been detained awaiting trial following a bail hearing. If the accused has been released, the following are some of the key things you should consider with respect to the release conditions:

- ▶ Do the release conditions contain a no-contact condition and/or a non-attendance condition so that the accused cannot communicate directly or indirectly with your client or appear at any place they may be?
- ▶ If children are involved, do the no-contact conditions include the children? There may also be a condition in place that allows the accused to communicate with the victim about the children through a third party.
- ▶ Accused persons can and often do apply to have release conditions modified by a court in order to permit contact with the victim to make parenting arrangements. Therefore, it is important that your client ask the Crown prosecutor to keep them informed about any applications to modify the release conditions.
- ▶ The accused may also pressure or manipulate your client, either directly or through the children, to withdraw or recant their criminal complaint. It is important to discuss possible implications for the family law case. You may be able to assist your client to develop strategies to document and resist manipulation and intimidation.
- ▶ Do the release conditions permit the accused to communicate with the children (and sometimes even the victim) as permitted by a family court order dated after the release document? If so, it will be important to identify with your client any parameters that they would be prepared to agree to. You may need to advocate against direct communication in your family court pleadings if the client does not feel this would be safe for them or their children.
- ▶ Do the release conditions permit the accused to return to live at the family home (or provide this as the address at which the accused will be living)?
- ▶ Is there a “no weapons” condition? Speak with your client about any weapons the accused may have in the home. If there are weapons in the home, it may be important to advise the police or consider how/whether this issue can be addressed in a civil protection/restraining order.
- ▶ If the accused has not yet been released, your client may be able to provide input about release conditions, either through victim services, the Crown Attorney’s office or a police officer with whom they are in contact about the case.

- ▶ Remember that the victim does not decide about the conditions or how the charges are resolved. Although their concerns or views may be taken into account, a victim is not a party in criminal proceedings.
- ▶ Remember that the “best interests of the child” is not a legal consideration for making decisions in criminal proceedings. However, the criminal justice system is concerned with the protection and safety of the public, including the victim, children and witnesses.

### 3. Understanding the release conditions and what constitutes a breach

- ▶ It is important to understand what constitutes a breach of the no-contact and non-attendance conditions, and what the exceptions are. For example, depending on the wording of the conditions, an email, a text, or a message from the accused’s mother could be considered breaches. Your client should be aware of their right to report this to the police, and you should consider how this may affect any relief that you are requesting in the family law case.
- ▶ Your client is not bound by the no-contact and non-attendance conditions. Unless your client is also facing charges, the conditions limiting how the parties interact bind only the accused. If the accused contacts the victim and they respond, the victim can still advise the police about the breach.
- ▶ However, the victim also has to respect these conditions, even if they do not agree with them. The victim cannot “invite” a breach by continually contacting the accused. Such behaviour can result in a criminal charge, although this rarely happens. Facilitating a breach can also be used by the accused in the family court proceeding to challenge the victim’s evidence about ongoing abuse or ongoing fear of the accused.
- ▶ If there are children, it is important to avoid having any family court order contradict the criminal orders that bind the accused.
- ▶ Your client may want to communicate with the accused about financial issues (e.g. child support) even if they are still fearful of them. If there are no-contact conditions, you may want to seek an exception so that legal advisers in the family law matter can communicate with each other on behalf of the parties, or that you can communicate with the accused on behalf of your client.

### 4. Following the criminal matter

It is important to follow the criminal process. For example, you will need to know:

- ▶ Will there be proceedings in court, such as a preliminary inquiry, trial or sentencing hearing? If so, will your client testify?
- ▶ Will there be another resolution such as a plea agreement? Your client may be consulted by the Crown or victim service providers about it. In addition, they have the right to provide a victim impact statement in relation to sentencing.

- ▶ If the abuser is diverted to a specialized IPV intervention program, getting the completion report can assist in family court since it should comment on their level of participation, whether they took responsibility for their actions, etc.
- ▶ It is helpful to request a transcript of any guilty plea or resolution. As the family court counsel, you need to be able to clearly articulate to the court what the accused admitted to. Was there a plea of guilty to one charge or to all of them? Sometimes an agreement is made for the accused to plead to one count of assault but the facts read into the court during the plea mention a number of different assaults on the victim (or different behaviour) and are admitted to by the accused. This will be reflected in the transcript, whereas the actual court documents (and subsequent criminal record) will only reflect the offence(s) to which the accused pled guilty.
- ▶ A criminal charge may be resolved by an agreement that a criminal charge will be withdrawn if the defendant agrees to enter into a recognizance through a peace bond proceeding (*Criminal Code* s. 810). Such a recognizance usually binds the accused to conditions for a year. Even if it's not a conviction, in practice these agreements often require the defendant to acknowledge that they have caused the victim to fear that the defendant will cause them or their children personal injury. The peace bond may include no-contact and non-attendance conditions and a weapons prohibition, but may also include an exception to communicate, with the victim's written revocable consent. It is helpful if the family law legal adviser is able to work closely with their client to support them in providing the Crown with information as to what practical conditions would best protect the client.
- ▶ If the accused is convicted and the sentence involves probation, all of the above comments regarding release conditions should be reviewed to see how they apply to the probation conditions. Before the sentence is imposed, the victim can, through their victim impact statement, provide information that may result in related probation conditions. Probation orders can last up to three years.
- ▶ If the accused is acquitted in criminal court, the incident is not necessarily kept out of family court. The two systems have different standards of proof: beyond reasonable doubt versus balance of probabilities. In addition, family violence does not have to be a criminal matter to be relevant in the family law case.
- ▶ It is important to consider the substance and scope of any release conditions, peace bonds or probation conditions, and how long they will be in force, to determine whether to seek civil protection/restraining orders for your client to avoid gaps in protection.

## 5. Using caution when describing family violence in the pleadings

- ▶ A criminal lawyer may use the family court documents to cross-examine the victim during the criminal trial. Although you will want to include details in the family court pleadings to demonstrate the nature, severity, frequency, and impact of the family violence, it is important to indicate that this is an overview and is not intended to be a complete version of the client's version of events. The criminal lawyer may review the pleadings, and the victim may be cross-examined about any inconsistencies at the trial.