

The Intersection of Family & Criminal Law Proceedings

Prepared for: Legal Education Society of Alberta

Intersection of Family and Criminal Law

Presented by:

Deborah Hatch

Hatch McClelland Moore

Edmonton, Alberta

For presentation in:

Calgary, Alberta – March 11, 2017

Edmonton, Alberta – March 18, 2017

THE INTERSECTION OF FAMILY & CRIMINAL LAW PROCEEDINGS

OVERVIEW

1. Conflict within the family unit frequently leads to tensions which require approaches and solutions in both the criminal and family law contexts. As all family and criminal counsel know, the two realms will routinely intersect, very often quite properly and for good reason, but sometimes as a result of one party manipulating within one realm with a view to influencing outcomes in the other.
2. The criminal justice system has not traditionally been well-suited to considering and accommodating the dynamics, complexities, and interests of family relationships. Criminal proceedings are of course focused on the Crown's ability to prove beyond a reasonable doubt the guilt of the accused and, in the event that guilt is proven, determination of the appropriate sentence. The focus is not on the best interests of any children of the family unit or of the complainant, nor necessarily is it concerned with the needs or interests of the accused person.
3. Criminal proceedings will often have a disruptive effect on the lives of the complainant, the accused, and other family members. Communication between spouses and children may be severely restricted, families may be separated, the accused may be evicted from his residence, the ability to parent may be terminated or limited for a lengthy period, and financial demands on the family may be increased dramatically. All of this may occur while the accused is presumed innocent and these conditions may persist for long periods of time while the matter makes its way through the criminal justice process. Further, once the matter is resolved, whether by way of acquittal, conviction, the withdrawal of charges, or a Peace Bond, the implications for all parties will generally be significant. Frequently, this is the case whether or not the allegation is serious or trifling.
4. In this context, it is important that all counsel are aware of the potential implications of their actions on other aspects of the client's issues, whether they be in the family or criminal realm.
5. In many situations, the complainant is not looking for a permanent separation or disruption of the family unit but rather to find appropriate help for the family member in order to facilitate a healthy family unit. In other situations, the relationship may have become highly adversarial. In either circumstance, the parties will require advice as to their options, the implications of various steps (both in the criminal and family realm) and the potential

outcomes. For the criminally charged accused, it will be important to refer the accused to capable family law counsel who can explain the various options and outcomes and how information may be used in the family law context.

CHARGES & BAIL

6. Contrary to popular views, complainants do not “press charges”. Once a complaint is made, the police decide whether or not a criminal charge will be laid. Typically, in Alberta, even in the most minor situations, a complaint to the police in a domestic situation will result in a charge being laid. This is due both to policy directives and to risk aversion, given the attention which is given to the potential consequences to all parties involved if a charge is not laid and something significant results. At least currently, there appears to be little discretion at this stage. This is even so where the complainant advises the authorities that he or she does not wish a charge to be laid.
7. Once a charge is laid, the accused will either be released by the police or held for a bail hearing. The police may release an accused without further detention by issuing a Summons, an Appearance Notice, a Promise to Appear, or a Recognizance. The least restrictive form of release which is appropriate in the circumstances ought to be used. Practically speaking, however, where the allegations are of a domestic nature, the authorities will frequently detain the accused for a bail hearing.
8. An accused person who is not released by the police must be brought before a Justice of the Peace for a judicial interim release (bail) hearing within 24 hours or as soon as practicable. Such hearings used to run 24 hours a day, however, due to recent developments (see, for example, *Hearing Office Bail Hearings (Re)*, 2017 ABQB 74 per Wittmann, C.J.) these hearings are now only conducted between 8:00 a.m. and midnight and prosecuted by Crown Counsel instead of police officers. It is foreseeable that significant delays will result. Not infrequently, these hearings may result in individuals being detained overnight or for longer periods of time. Many accused persons conduct these hearings on their own, and are in such a situation of disadvantage that they will likely agree to any conditions proposed by the Crown. Defence counsel can be of great assistance in reminding the Justice of the Peace that the onus is on the Crown to show cause for increasingly restrictive forms of release and the necessity of any conditions sought to be imposed on the accused. The tendency to lump all “domestic violence” cases together and to insist on the same stringent bail conditions no matter the circumstances must be resisted.