



DOMESTIC ASSAULT CHARGES

WHAT IF THE COMPLAINANT WANTS THE CHARGES DROPPED?

Domestic charges (e.g. assault, mischief, etc.) arise when the alleged offence takes place in the context of a familial or intimate relationship, even if the parties have since broken up, and/or reside separately.

Following domestic charges being laid, the Undertaking or Bail conditions will almost always place restrictions on the accused preventing them from having any direct or indirect contact with the complainant (i.e. the spouse, partner, etc.). This is the case even if the complainant wants the charges dropped and/or the No-Contact conditions removed. Further, in some instances, the accused may even be forced out of their own home by virtue of the Undertaking or Bail conditions.

After charges are laid, it is up to the Crown Attorney – not the complainant – as to if and how the charges will proceed. In other words, even if the complainant wants all charges dropped, conditions removed, and doesn't wish to testify at trial, the Crown Attorney is generally still under a mandate to proceed with the charges and keep the conditions in effect during such time. This directive stems from policy considerations, as there is a prevalent concern that the complainant will be under various external pressures to recant or otherwise request the charges be dismissed, and if such were to take place, there is a risk of violence reoccurring. Accordingly, these policies are in place with the intention of protecting the complainant, sometimes even against their own wishes.

With the above said, the complainant can sometimes *assist* the accused by providing an Affidavit. An affidavit is a written sworn statement, wherein the complainant sets out their account of events (if different from that stated to police), and also expresses how they wish the matter to proceed (e.g. want charges dropped and contact restrictions removed, or wish for accused to enter into a peace bond and undertake anger management / counseling, etc.). While the complainant can also simply articulate these items in a call or letter to the Crown or Victim Witness Assistance Program (VWAP), an Affidavit is generally more compelling as it is a formal sworn statement and demonstrates firm and settled intentions. Complainants often retain (their own) criminal lawyer to assist them in drafting the Affidavit, and thereafter, the lawyer provides the Affidavit to the Crown and/or accused's lawyer. Again, even though it is ultimately up to the Crown whether they wish to proceed with the case, upon seeing the Affidavit and realizing their "key witness" does not want the case to proceed, the Crown *may* decide to withdraw the charges and/or remove or vary the No-Contact conditions, or otherwise take a more lenient position on sentence to resolve the case.

For professional legal representation on domestic cases- whether you are the accused or complainant- call Daniel Freudman today.

DISCLAIMER: This document is for informational purposes only and does not create a solicitor-client relationship, nor does it constitute legal advice. No representations are made as to accuracy and/or completeness of the information herein. This document, is not, and is not intended to be, a comprehensive or detailed statement of the matters addressed herein. This information is not intended to be relied upon, nor is it a substitute for legal advice. Every case is different and the various options and preferable actions may differ accordingly. Freudman Law PC is not liable for any loss or damage to any person that may arise directly or indirectly, in any way, from reliance upon or in connection with any information herein.