



**Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP**  
**Answers to pressing questions on Family Law.**

**Husband and wife have same rights.**

**Question:** A couple has two kids aged 18 and 14. The wife works two jobs and the husband has not been employed (homemaker) for more than 19 years. After years of pleading with the husband to become employed, the wife has finally had enough and asks for a divorce. The husband has agreed to exchange a sum of money for the wife to retain child custody and the matrimonial home. However, the husband becomes violent one night and physically abuses the wife. Police are called and he is arrested pending three charges. He has no employment and no money. How will the court look at this situation? The wife's fear is that legal aid may become involved and she may stand to lose half of everything.

**Answer:** If the parents were not married then under amendments to Ontario's Children's Law Reform Act, a judge must consider violence and abuse when determining the best interests of child when considering how a child should be parented meaning issues of custody and access. This is true even if the violence was against the other parent, not against the child. If the parents were married no such precisions exist under Canada's Divorce Act, although violent spouses traditionally do not fare as well in custody disputes. However, aside from this issue your friend has every right to be worried. A court will likely treat her husband the same way it would treat a wife who was a homemaker for 19 years.

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