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Long haul to lift restraining order

By John T. Syrtash

Q: My cousin is going through a tough separation. His wife had a restraining order put against him and he is afraid to pick up his kids. He meets them near their school.

Now his wife would like to try reconciling.

How does she go about lifting the restraining order? She claims she did not put this against him.

She had gone to the police station and wanted him removed from their house so she could go back and leave to go to her mother's house with the kids. The police came and removed him.

My question is how does this restraining order work?

Can the police put a restraining order against your spouse? Does the spouse? How can it be reversed?

A: Here are the steps.

1. Wife goes to the police. The police witness domestic violence.
2. The police (not the wife), then usually lay the charges and arrest the accused who is later convicted with the assistance of a Crown prosecutor in a prosecution before a judge. The wife is only a witness at the hearing (unless the accused pleads guilty in which case there is no "trial", since the offence is technically against the public, not against the wife. The member of the public just happens to be the wife.)
3. The accused then faces a restraining order which only a Crown prosecutor can ask a judge to remove, not the wife.
4. The wife, usually with the assistance of a criminal (not family) lawyer, approaches a Crown prosecutor, if she's reconciling to set aside the restraining order.
5. The Crown prosecutor may or may not agree. It is not at all automatic. However, a good criminal lawyer will explain the restraining order is interfering in reconciliation.
6. If the Crown prosecutor agrees, there is another hearing -- often with the wife as a witness, who explains she no longer fears her husband and wishes to reconcile with him. Then, depending on the judge and what he had for breakfast that morning, the restraining order may well be set aside.

If the violent relationship has been overwhelming and of the "revolving door" variety, and the fellow presents a continuing danger, either the prosecutor or the judge may not agree to lift the restraining order, particularly if children may become the next victims or witnesses.

The agony felt by such abused women who go back to abuse is beyond one's imagining.