

## **Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP**

### **Answers to pressing questions on Family Law.**

#### **Charges Affect Custody**

**Question:** I recently have been unfairly charged by the police for allegedly assaulting my wife. The charges are ludicrous. But I have been excluded from the matrimonial home pending the hearing of the charges. The children live at home with her. Does this mean she now has custody of them?

**Answer:** Absolutely not. However, it does put you in a very disadvantageous position since on a day to day basis the children appear to be living with them in the home where they have been normally residing. It is imperative that failing negotiations to reassert your position as an 'equal parent' with perhaps something approaching equal time with the children, you consider court action to obtain as much time with the children as possible. The children's relationship with you should not have to change, especially if you are truly innocent of these charges. Unfortunately, given the reality of the justice system, it takes so long for the charges to be disposed of, that by the time it happens your relationship with them may well be negatively affected. If mediation with the mother fails it may be important to contact a qualified and competent family law lawyer to ensure that the Court understands the need for the children to have as much contact with their father as possible, no matter how strained may be the relationship between their parents.

**Question:** My wife and I are separating. I have RRSP's that I do not wish to cash but that I do wish to split with my wife now that we are going our separate ways. However, I am afraid to do so because of the tax consequences. Once cashed. I have to bring the fund into my income for that calendar year. What do you advise?

**Answer:** Canada's Income Tax Act permits a transfer tax free of any portion of your RRSP's to your spouse on separation if it is provided for a properly drafted separation agreement and if you sign a prescribed form it has for that purpose that you can obtain online or from any office of the Canada Revenue Agency and file with your tax return.

**Question:** My wife has sole custody, but I don't like the way she allows my 14-year-old daughter to dress in very immodest clothing, even though her school allows it. I have complained to my ex about her lack of proper attire several times. I am terrified my daughter will become pregnant one day. Is there anything I can do about this?

**Answer:** No.

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