

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.

John T. Syrtash, Associate
GARFIN ZEIDENBERG LLP
Yonge-Norton Centre
5255 Yonge Street, Suite 800
Toronto, Ontario, Canada M2N 6P4
Phone: (416) 512-8000 ext 410; Direct (416) 642-5410
Fax: (416) 512-9992
email: jsyrtash@gzlegal.com

John Syrtash is an associate and family law lawyer with the Toronto firm of *GARFIN ZEIDENBERG LLP*. Neither GARFIN ZEIDENBERG LLP nor John Syrtash is liable for any consequences arising from anyone's reliance on this material, which is presented as general information and not as a legal opinion