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About our presenter...

Pamela Cross is a feminist lawyer who works in the violence against women sector. She has worked as a legal educator and trainer for many years and is well known in legal reform circles for her expertise on family law issues as they relate to violence against women.

Presenting Evidence About Abuse

A webinar by Pamela Cross, based on content from
After She Leaves: Supporting Women through the Family Law Process,
an online training from Springtide Resources and
Luke's Place Support and Resource Centre for Women and Children



LukesPlace.ca



ending violence against women

SpringtideResources.org

Objective

- To increase your ability to support a **woman** through the **family law** process
 - Information about the kinds of **evidence** to present for child **custody** and **access** arrangements after a woman leaves an **abusive relationship**



The two kinds of court

- Different in **purpose** and **structure**
 - **Criminal** court: most evidence is presented through live witnesses
 - Free assistance located in the criminal court: Victim Witness Assistance Program or Duty Counsel
 - **Family** court: most evidence is presented in written format
 - Focus of this webinar

Disclaimer

- This information is current to the date of this webinar – **February 2012**
- This information specific to **Ontario**
- This is legal **information**, not legal advice



Obtain legal advice

- If possible, hire a **lawyer**
- If not, Legal Aid Ontario has **free services**:
 - Family Violence Authorization Program
 - Family Law Information Centres (FLICs)
 - Family court duty counsel
 - Family Law Service Centres (FLSCs)



Violence against women

- physical violence, sexual violence, financial abuse and psychological abuse
- the vast majority of victims of violence and abuse in intimate partner relationships are **women**
- the vast majority of those who commit acts of violence and abuse are **men**



Why evidence is important

- **Outcomes** are based on evidence provided
- Judge must choose between **two sides**
- Perpetrator will **deny** or minimize abuse
- There are seldom **witnesses**
- “**He** said – **she** said”

Why women are sometimes reluctant

- **Personal** information
- Must **re-tell** it repeatedly
- Must tell it to many **strangers**
- **Fear, embarrassment, doubt**

... all good reasons



She is going to have to provide **detailed information** about the abuse

- To get services and **orders**
- To keep herself and her children **safe**
- To make sure her **children's best interests** are respected



Who needs this information

- Legal Aid Ontario
- Her **lawyer**
- Family Law Information Centre (**FLIC**)
- **Duty Counsel**
- Mediation **screening** process
- **Mediation**
- **Court** documents
- The **judge**

The best **interests** of the **child** test

- Used for **all** custody and access decisions
- Section 24 of the *Children's Law Reform Act*
 - Expanded in 2006 to address **family violence**

Children's Law Reform Act



- 24(2) The court shall consider all the child's needs and circumstances, including,
- (a) the love, affection and emotional ties between the child and, each person entitled to or claiming custody of or access to the child, other members of the child's family who reside with the child, and persons involved in the child's care and upbringing;
 - (b) the child's views and preferences, if they can reasonably be ascertained;
 - (c) the length of time the child has lived in a stable home environment;
 - (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
 - (e) any plans proposed for the child's care and upbringing;
 - (f) the permanence and stability of the family unit with which it is proposed that the child will live;
 - (g) the ability of each person applying for custody of or access to the child to act as a parent; and
 - (h) the relationship by blood or through an adoption order between the child and each person who is a party to the application.

Children's Law Reform Act



24(3) A person's past conduct shall be considered only,
(a) in accordance with subsection (4); or
(b) if the court is satisfied that the conduct is otherwise relevant to the person's ability to act as a parent. 2006, c. 1, s. 3 (1).

24(4) In assessing a person's ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against,
(a) his or her spouse;
(b) a parent of the child to whom the application relates;
(c) a member of the person's household; or
(d) any child.

24(5) For the purposes of subsection (4), anything done in self-defence or to protect another person shall not be considered violence or abuse. 2006, c. 1, s. 3 (1).



The present provisions make it clear that
violence or abuse perpetrated
by an individual is **relevant** to
his or her **ability** to act as a **parent** and
require the **judge** to consider it.

However...

- Partner abuse remains **under-recognized** by judges
- Judge may still perceive joint custody or extensive access as in **children's best interest**

Therefore...

frame **evidence** of the abuse as
having an **impact** on the
abuser's ability to act as a **parent**.



Gathering evidence

- Be **specific**
- Describe **effect** on children
- Stay **focused**
- Be direct and give **factual** information
- Avoid **over**-representing or **under**-representing the facts



Evidence sources

- **911** calls
- **Police** incident reports
- Criminal **charges**, bail conditions, terms of probation etc.
- **Breaches** by her ex-partner of any family court restraining orders
- Crown **disclosure package** in any criminal proceedings
- **Comments** by the criminal court judge that verify there was abuse



Evidence *continued*

- **Hospital** reports
- Records from her family **doctor**
- Evidence from her **religious leader**
- **Neighbours** who witnessed abuse or violence
- **School** teachers and **day care** workers
- **Photographs** of injuries or property damage
- Evidence of post-separation **stalking**

Evidence *continued*

- Her notes or **diary**
- **Communication** by her ex-partner that demonstrate his abuse, violence, control or harassment (email, voice mail, etc.)
- **CAS** records
- **Employer** information about her abuser's violence, control or harassment

Affidavits

- **Written** document presenting **evidence**
- Information that the person promises is **true**
 - Credibility will be negatively affected if anything in the affidavit is not true



In custody and access cases

- “Parenting affidavits” or **Form 35.1**
- **Both** parties will prepare parenting affidavits



An affidavit should be

- Clear, detailed and **precise**
- Written in **logical** order
- **Legible**
- Paragraphs should be **numbered**
- Written in **first person**



Answer these 3 questions

Who is my family?

What do I want?

Why should I get it?



Who is my family?

- The **children**
- The **parents**
- Where everyone is **living**
- Informal **custody** and **access** arrangements
- When parents **separated** and *briefly* why



What do I want?

- Child **custody** and **access**
- Child and spousal **support**
- Division of **property**
- Exclusive possession of the matrimonial **home**
- **Restraining** order



Why should I get it?

- **Custody** – who cared for the children before and what is her plan now
- **Access** – why it should be restricted or supervised
- **Child and spousal support** – what are his and her work histories and income
- **Matrimonial home** – what is in the best interests of children
- **Restraining order** – why she has safety fears



If the woman has a lawyer

- Lawyer **prepares affidavits**, including affidavits from other sources
- The woman must **gather the information** for the lawyer
- The woman must **read** the affidavit and request necessary **changes** before she swears that it is **true**



If she does **not** have a lawyer

- Use a **computer** or print very carefully
- Be **clear**
- Give **details**, but not too many
- Find someone to **commission** her signature
- **File** the affidavit with the court and have her ex-partner served



Presenting evidence of **abuse**

- **Pattern**
- Length of **time**
- Whether it is getting **worse**
- Physical **injuries**
- What the **children** know
- **Impact** of the abuse
- **Safety** concerns



Organizing the information

- Be direct and **specific**
- Stay **focused** on the legal issues
- Be **factual** and don't exaggerate
- **Don't underplay** the seriousness
- Start with the **most recent** event, then move back
- **Categorize** information in a chart



Strategies used by the abuser

- **Deny** or minimize the abuse
- **Blame** the woman for his behaviour
- Alleging that **she is the perpetrator**
- Claims she is **incompetent**

His goal is to

discredit, intimidate and harass.



It is very helpful if

the woman can have a **support person** or
friend with her when she reads her
ex-partner's affidavit

Safety issues

- What are the expected **repercussions** of disclosing abuse?
- Should the woman take **additional steps** to preserve her safety after disclosing?



Safety plans

- **Individualized**
- Strategies to **reduce the risk** of violence
- Strategies to **maintain basic needs**
- **Change** as circumstances change

Points to remember

- **Never minimize a woman's safety**
- Be aware of **resources** for women in your own community
- **Collaborate** with other women's advocates
- Have an understanding of **interagency issues**
- **Respect a woman's choices**



A good safety plan will...

- Seek to reduce or eliminate the range of **risks** the woman faces
- Include **strategies** for staying in and/or leaving the relationship
- Have short- and/or long-term **time frames**
- **Change** as a result of changed circumstances



Include in a safety plan

- How to get **away** if there is an emergency
- How to get **help** if leaving is not a choice
- **Where** to go if she leaves
- How to be safe at a **new place**
- How to **keep in touch** with people who will help her
- How to keep her **children safe**
- How to protect her **personal property**
- How to stay safe **in public** and **at work**
- Anything else that the woman and children need to feel they have a viable safety plan



Safety strategies for court

- Preparing **emotionally** to see the abuser
- Visiting the court **ahead** of time
- Bringing along something to **pass the time**
- Knowing if the abuser is **representing himself**
- Making sure **everyone knows** about safety concerns



Safety strategies for court *continued*

- Arriving **early** to avoid seeing the abuser outside the court
- Making safe **transportation** arrangements
- Being aware of the **court security**
- **Staying behind** after court until the abuser has left
- Asking court security to **walk her** to her car
- Carrying a **cell phone**, if possible
- Having a plan for **leaving** the court



Keeping her address private

- Use a **post office box** or a friend's address for mail
- For court documents, use an alternative address at which **documents can be served**
- Do **banking** on-line
- If **applying for credit**, use a post office box or alternate address
- **Separate her credit files** with the credit bureau to avoid him having access to this information



Keeping her address private *continued*

- **Social assistance** – talk with caseworker about safety issues
- Request that her **lawyer** not disclose her address on court documents
- Alert her **employer** about keeping the address private
- **Visitors** to her home should make sure they are not followed
- Talk to her **children** about not giving out the address
- Find a safe drop-off and pick-up location for **access** visits

A lawyer can provide strategic advice

- Relevance of information to **legal issues**
- **Types** of evidence to introduce
- **When** to disclose information
- Is the information **credible** enough
- Role of **medical/psychological** information
- **How** to present information to the court



Online resources

- Ministry of the Attorney General
<http://www.attorneygeneral.jus.gov.on.ca>
- Ontario Court Forms Assistant
<http://formsassistant.ontariocourtforms.on.ca>
- Ontario Court Services
<http://ontariocourtforms.on.ca>



Your role

help any woman who comes
to you for support feel
believed, safe and not judged



Other ways to support

- Make **referrals**
- **Safety** plan
- Support her relationship with her **lawyer**
- **Explain** the family court process
- Help her with **evidence**
- Connect her to online **resources**
- **Advocate**



Gathering and presenting
evidence about **abuse**
is **critical** to achieving
appropriate **outcomes** in court



Questions?



For more information

After She Leaves: *Supporting women through the family court process*

An online training for community workers from
Springtide Resources & Luke's Place Support and Resource
Centre, presented by Pamela Cross and
funded by the Ontario Trillium Foundation

<http://learning.springtideresources.org>



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