



| Your Legal Rights



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## Disclaimer

This webinar is for **general information purposes only** and is not legal advice. It is not intended to be used as legal advice for a specific legal problem





## About our presenter...

Pamela Cross is a feminist lawyer; a well-known and respected expert on violence against women and the law for her work as a researcher, writer, educator and trainer. She is the Legal Director of Luke's Place Support and Resource Centre in Durham Region, where she leads the organization's provincial projects, including research, training and advocacy.

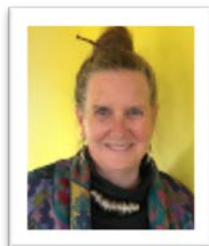


# Explaining the New *Divorce Act*

August 27, 2019

*Presenter:*

Pamela Cross  
Legal Director  
Luke's Place



We acknowledge that the land from which we are presenting this webinar is the traditional territory of the Mississaugas of Scugog First Nation.

# Luke's Place

- Durham Region: services for women who have left abuse & are engaged with family law
- Provincial & national level: research, resources, training & systemic advocacy



FamilyCourtAndBeyond.ca



LukesPlace.ca



LukesPlaceTraining.ca

# Agenda

- Overview of the *Divorce Act*
- History of past efforts to revise the *Divorce Act*
- Summary of the revisions
- The revisions relating to children
- The relevance of family violence

From the perspective of women fleeing abuse

An intersectional feminist framework

# Disclaimer

This webinar is not to be interpreted  
as legal advice.

It is legal information related to changes to  
Canada's *Divorce Act*.

Only a lawyer can provide legal advice.



# What is the *Divorce Act*?

# Laws for family breakdown

## Federal law

- *Divorce Act*: applies to everyone in Canada
- Married people can end marriage in divorce
- Also custody & access, property division, support

## In Ontario

- *Children's Law Reform Act*: custody & access, child support
- *Family Law Act*: spousal support, property division, matrimonial home, restraining orders

# History of changes

Child Support Guidelines passed in mid-1990's



Fathers' rights organizations campaign for *Divorce Act* changes: shared parenting (less child support)



Attempts by federal governments to change custody & access provisions



Women's organizations: gender-based family law reform



2018: Bill C-78

## Significant changes:

- Jurisdictional & cross-jurisdictional issues
- Relocation of children
- Enforcement of child support
- Duties of legal advisors
- Dispute resolution
- And more

No presumption in favour of shared parenting

## In this webinar:

- Language
- Family violence
- Best interests of the child test

# The language

## Custody

- Decision-making responsibility
- Often also primary responsibility for the care of children

## Access

- Time children spend with other parent
- Formal or informal; supervised or unsupervised

## Sole custody

- One parent makes decisions without consulting with other

## Joint custody

- Parents must consult one another about major decisions

## Bill C-78/ *Divorce Act*

- Eliminates terms “custody & access”
- Uses “parenting order”, “contact order”, “decision-making responsibility”, “parenting time”

## Ontario’s *Children’s Law Reform Act*

- Continues to use “custody & access”

# Contact order

Time child spends with someone other than their parents, e.g. grandparents

Grandparent rights protection new for federal law

Can set out how time is spent: physically, telephone, Skype, etc.

To decide: best interests of the child test



# Decision-making responsibility

Who can  
make  
decisions  
about the  
children

One parent  
or shared

Whichever  
parent child  
is with has  
authority to  
make  
decisions at  
that time

Challenges  
for women  
who have  
left abusive  
relationship

## Parenting order

Replaces  
“custody  
order”,  
“access  
order”,  
“custody &  
access order”

Assigns  
parenting  
time &  
decision-  
making  
responsibility

## Parenting time

Time child  
spends in care  
of each parent

Includes time  
they are not  
physically  
with parent

No distinction between custodial & access time

## Parenting order example

- Mother shall have primary parenting time / child shall be primarily resident with mother
- Father shall have parenting time every other weekend, every Wednesday

# Family violence definition

# Family violence definition

“any conduct, **whether or not** that conduct constitutes a **criminal offence**, by a family member towards another family member, that is **violent** or **threatening** or that constitutes a pattern of **coercive & controlling** behaviour or that causes that other family member to **fear for their own safety or for that of another** person – & in the case of a child, the **direct or indirect exposure** to such conduct”

# Includes

## Physical abuse

- Including forced confinement
- Excluding self defence

Sexual  
abuse

Threats to kill or  
cause bodily harm  
to any person

Harassment,  
including stalking

The failure to provide  
the necessaries of life

Psychological  
abuse

Financial  
abuse

Threats to kill or  
harm an animal or  
damage property,  
and

The killing or harming  
of an animal or the  
damaging of property

# Addresses these issues

Family violence can be dismissed by family court when there are no criminal charges

“Pattern of coercive & controlling behaviour”, fear: acknowledges insidious kinds of abuse

Under-acknowledged behaviours: sexual / psychological / financial abuse; abuse of animals

# **Family violence factors to be considered**



What is the nature, seriousness & frequency of abuse & when does it occur?

*> Assess whether likely to continue*

Is there a pattern of coercive & controlling behaviour?

*> Will also indicate abuse is likely to continue*

Is it directed toward a child or is child directly / indirectly exposed to it?

What is the physical, emotional & psychological harm or risk of harm to the child?

*> Violence is not restricted to physical acts*

Is there a compromise to the safety of child or others?

*> Assess risk of future violence*

Does the violence cause the child or others to fear for safety?

Is the person who engaged in violence taking steps to prevent further violence & improve parenting?

> *Inadequate programs, no assessment system*

Any other relevant factors?

# Best interests of the child test

“only the best interests of the child of the marriage in making a parenting order or a contact order”

Child–  
focused

Families  
are  
unique

“primary consideration to the child’s physical, emotional & psychological safety, security & well-being.”

Indicates the presence of family violence will be given weight in use of the best interests test

# Best interests test

11 criteria

Weight is **not** assigned to each

Discretion rests with the court

Allows court to weigh factors







Ability & willingness of each parent to care for & meet child's needs

Ability & willingness of each parent to communicate & cooperate on matters affecting child

Family violence & its impact on abuser to care for child & appropriateness of making an order requiring cooperation between the parties

Civil or criminal proceedings, orders, conditions or measures relevant to safety, security & well-being of child

# Maximum parenting time

## Before June 2020

Children should have as much contact with each parent as in children's best interests

"Friendly parent rule"

Challenging for mothers concerned about children's well-being in care of father

## After June 2020

Language similar

Detailed best interests of child test & strong family violence definition

Hoped: less onerous for mothers needing to limit contact children have with father

# Revisions to *Divorce Act* effective June 2020

Watch [LukesPlace.ca](http://LukesPlace.ca)  
for more information



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