

# Collecting Evidence for a Family Court Case involving Violence

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*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



# Disclaimer

This webinar is not to be interpreted  
as legal advice.

Only a lawyer can provide legal advice.

## We recognize

- Men can be victims
- Abuse happens in same-sex relationships
- Trans or non-binary folks may face abuse in relationships

Abuse rooted in misogyny & traditional male power

Women are subjected to most serious forms of coercive controlling & physical violence

We use gendered nouns & pronouns when talking about violence within families

# Evidence in a family court case where violence is an issue

## This webinar

- Role of evidence
- What issues require evidence
- Where a woman can look for evidence

## 2nd webinar

- How to effectively present evidence

# Why is evidence so important?

# Family law addresses issues following family breakdown

## Arrangements for children

“Custody & access” -  
*Children’s Law Reform Act*  
(Ontario)

“Parenting orders”,  
“parenting time”,  
“decision-making responsibility” –  
*Divorce Act*  
(Canada)

## Financial matters

Spousal & child support

Property division

## Violence

Restraining orders

Exclusive possession of matrimonial home



# Both people in a family law case need to present evidence

## Who you present evidence to

- Lawyer, mediator or court

## Why you present evidence

- To support your claim (what you want)

# When there are lawyers

Client gives detailed information to lawyer

Lawyer uses this to convince other lawyer to accept outcome

Information will be called evidence if case goes to court

*Example:* Woman wants primary care of children

- Must give lawyer information why this would be the best for the children

# When there is a mediator

Mediator gets information from both people



Uses information to guide them to outcome they can agree on



If information contradicts, mediator tries to sort it out



Mediator can ask a person about hard-to-believe information



Resolution more likely when detailed, honest, accurate information shared

If people  
can't work  
out issue

Information  
is now  
evidence

They go to  
court

It assists  
judge to  
make a  
decision

# Standard of proof

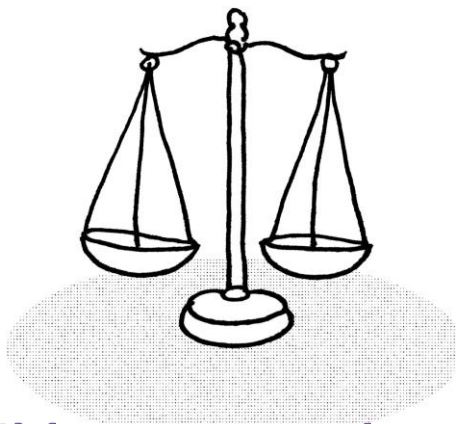
How decisions are made by a judge

Family court:  
“on a balance of probabilities”

Criminal court:  
“beyond a reasonable doubt”

# On a balance of probabilities

- Easier standard to meet
- Judge makes decision by weighing evidence & deciding whose evidence is more believable



**51%** credible compared to the other person

Detailed  
evidence is  
critical  
when there  
is family  
violence

*because...*

Courts don't  
always  
believe  
women

Abusers  
almost always  
deny or  
minimize

Some abusers  
claim the  
woman is  
abusive, his  
acts justified

He makes  
allegations of  
parental  
alienation

# Challenges to collecting evidence

Abuse occurs in  
private

Abuse builds over  
time

Many women don't  
talk about the  
abuse

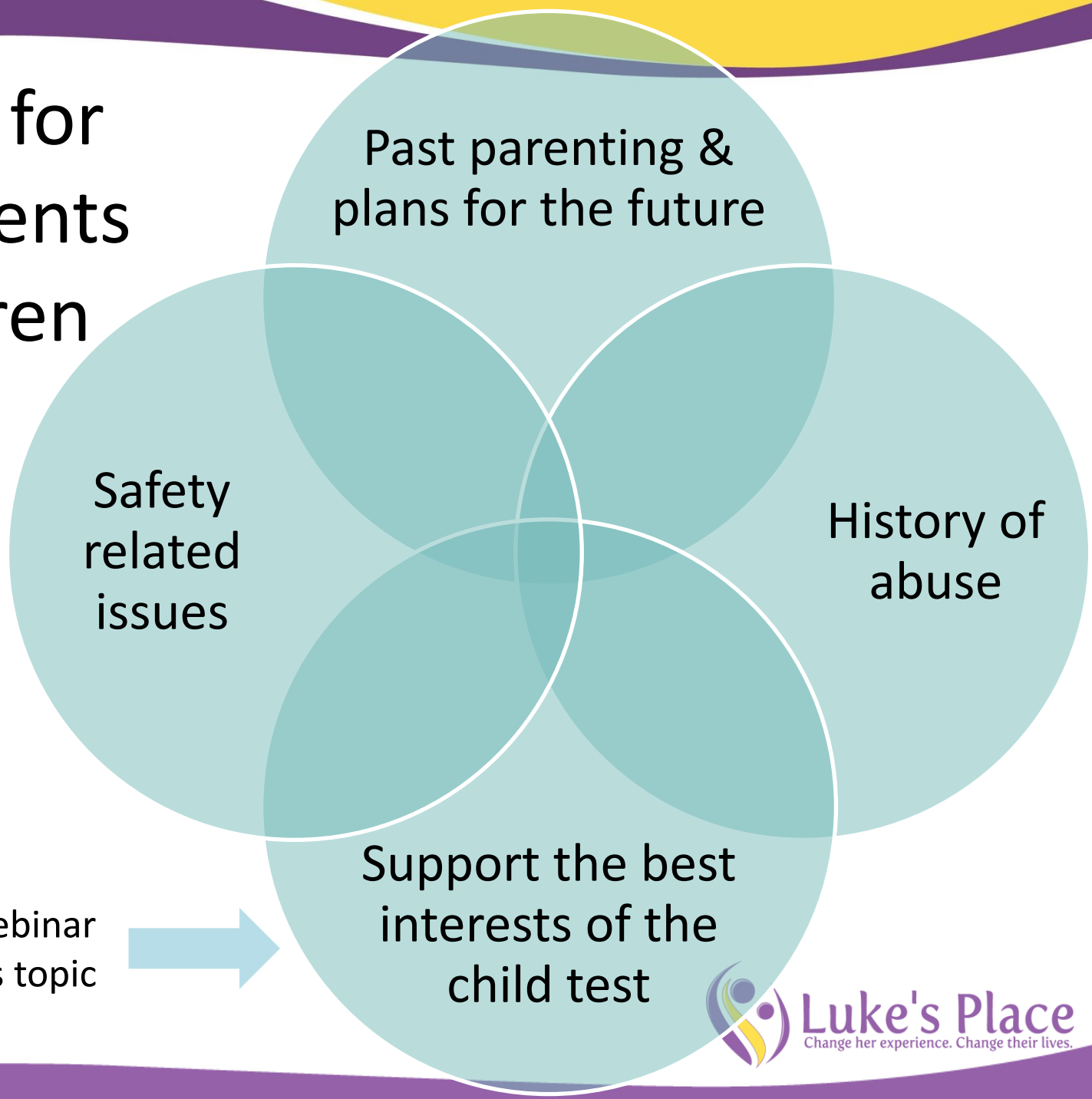
May be no visible  
evidence if not  
physical

Only 25% report to  
the police



# What is evidence needed about?

# Evidence for arrangements for children

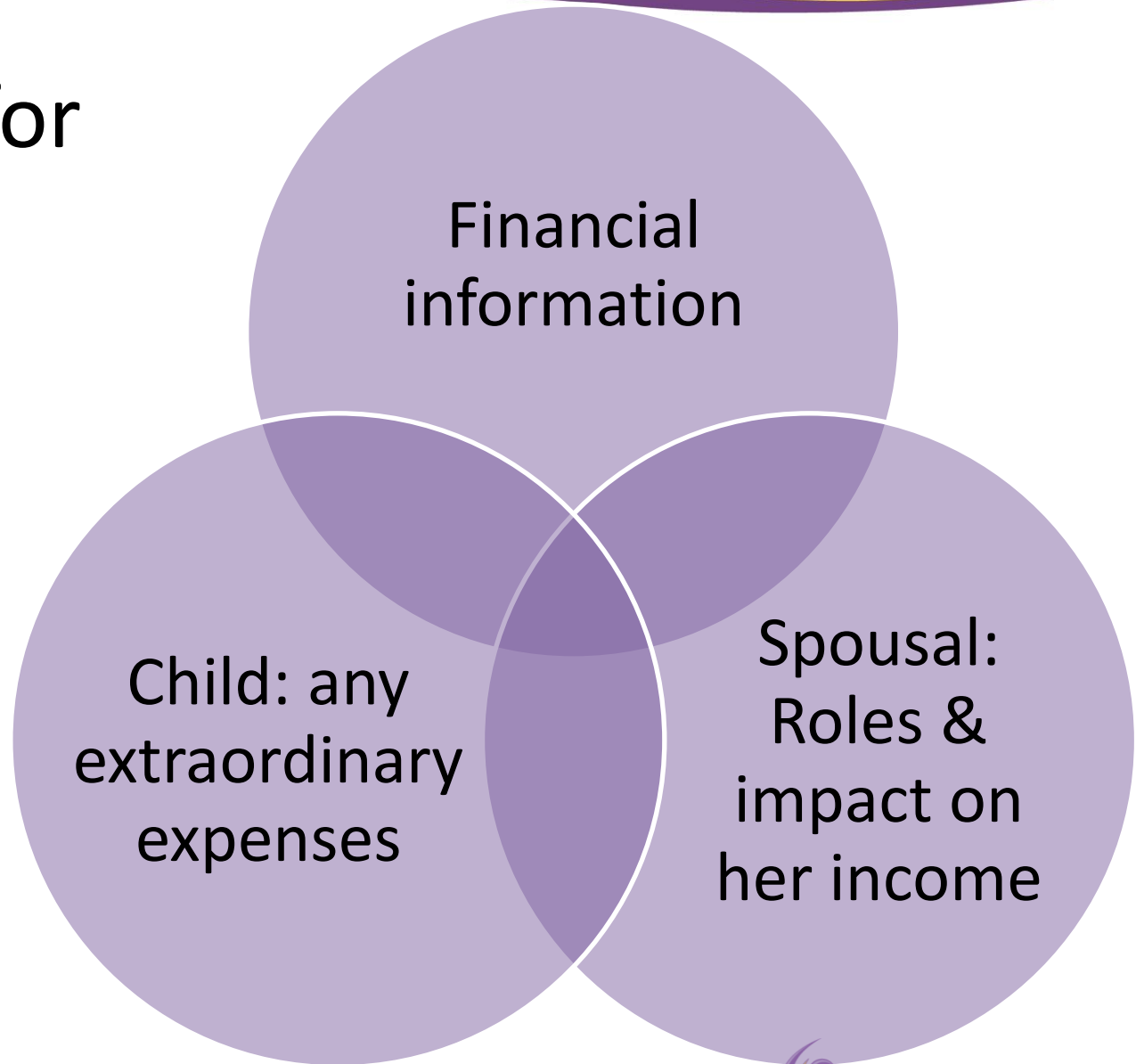


See webinar on this topic



# Evidence for support

Via the Financial Statement form



# Evidence for property division

**Married:** who owned what on dates of marriage & separation; what those items are worth

**Common law:** evidence of contributions she made to his property

# Evidence for a restraining order



Incidents  
that led to  
the  
application

Why she  
has  
reasonable  
grounds to  
fear him

# Evidence for exclusive possession of matrimonial home

Why it's in  
kids' best  
interests to  
remain in  
home

Why she  
needs court  
order to  
keep him  
away from  
home

# Where to find evidence?

# Sources of evidence

911 transcripts

Police reports

Criminal offence charges

•Criminal convictions for assault / dv

Abuser's confession

•Previous charges

Information from other partners of the abuser

•Photos of injuries

Medical reports

Counsellors' reports



# She tells you there is “no evidence”

Her claims are valid in family law context

- Standard of proof: claim established on balance of probabilities

Family court is about best arrangements after separation

- Family court **not** about guilt or innocence

Evidence is likely admissible/relevant

- May not have been in criminal court

Judge looks at behaviour over time to assess credibility & determine its relevance

# A woman's story is very important

Sworn/affirmed > affidavit or live testimony



May also be able to provide evidence about children's primary parent

Workplace

Day care/  
school

Doctor

Third party  
evidence

Community  
leader

Child  
protection

Neighbours

<https://familycourtandbeyond.ca/family-law-court/evidence/gathering-evidence-checklist/>

# Technology

Where to get evidence	What to watch for
Social media: negative comments, photos demonstrating his parenting or finances	He will watch her online for evidence too
Email, text, messaging: harassment & threats	He may manipulate her to say things online that she will regret
Information of his monitoring her through GPS, children's accounts/devices, cameras, home security, spyware	If she discovers spyware, be cautious in response
Hacked accounts, impersonation	

## Collect evidence

Screen shots

Police, telecommunications companies

Tips online

<https://familycourtandbeyond.ca/keep-safe/web-phone-safety/>

# Get support

# Support is important

## Legal advice

- Lawyer
- Duty counsel at the family courthouse
- Luke's Place Virtual Legal Clinic for women in rural & remote areas of Ontario  
<https://lukesplace.ca/for-women/lukes-place-virtual-legal-clinic/>

## Family Court Support Workers

- Support for family violence survivors
- Assist with evidence  
[https://www.attorneygeneral.jus.gov.on.ca/english/ovss/family\\_court\\_support\\_worker\\_program/](https://www.attorneygeneral.jus.gov.on.ca/english/ovss/family_court_support_worker_program/)

# Keep safe



# Prepare for the abuser's evidence

He will deny or minimize

She will need to reassert, add new information to counter his

He will highlight her faults

She needs to frame negative aspects ahead of time

He may present as sympathetic, charming

She must remain polite & respectful



# Summary

- Evidence is important to support your family court claims (what you want)
- Standard of proof in family court
  - “on the balance of probabilities”
- Issues evidence is needed for
  - Arrangements for the children, support, property division, restraining orders, matrimonial home
- Sources of evidence
  - Criminal/medical records, woman’s story, third parties, technology
- She will need support