

Presenting Evidence in a Family Court Case involving Violence

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Presenter:

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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

Webinar supported by



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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

1st webinar

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

This webinar

- How to effectively present evidence throughout the family law process

Why does evidence matter?

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

Standard of proof

How decisions are made by a judge

Family court:
“on a balance of probabilities”

Criminal court:
“beyond a reasonable doubt”

Judge weighs evidence & decides whose is more credible/believable.

Detailed
evidence is
critical
when there
is family
violence

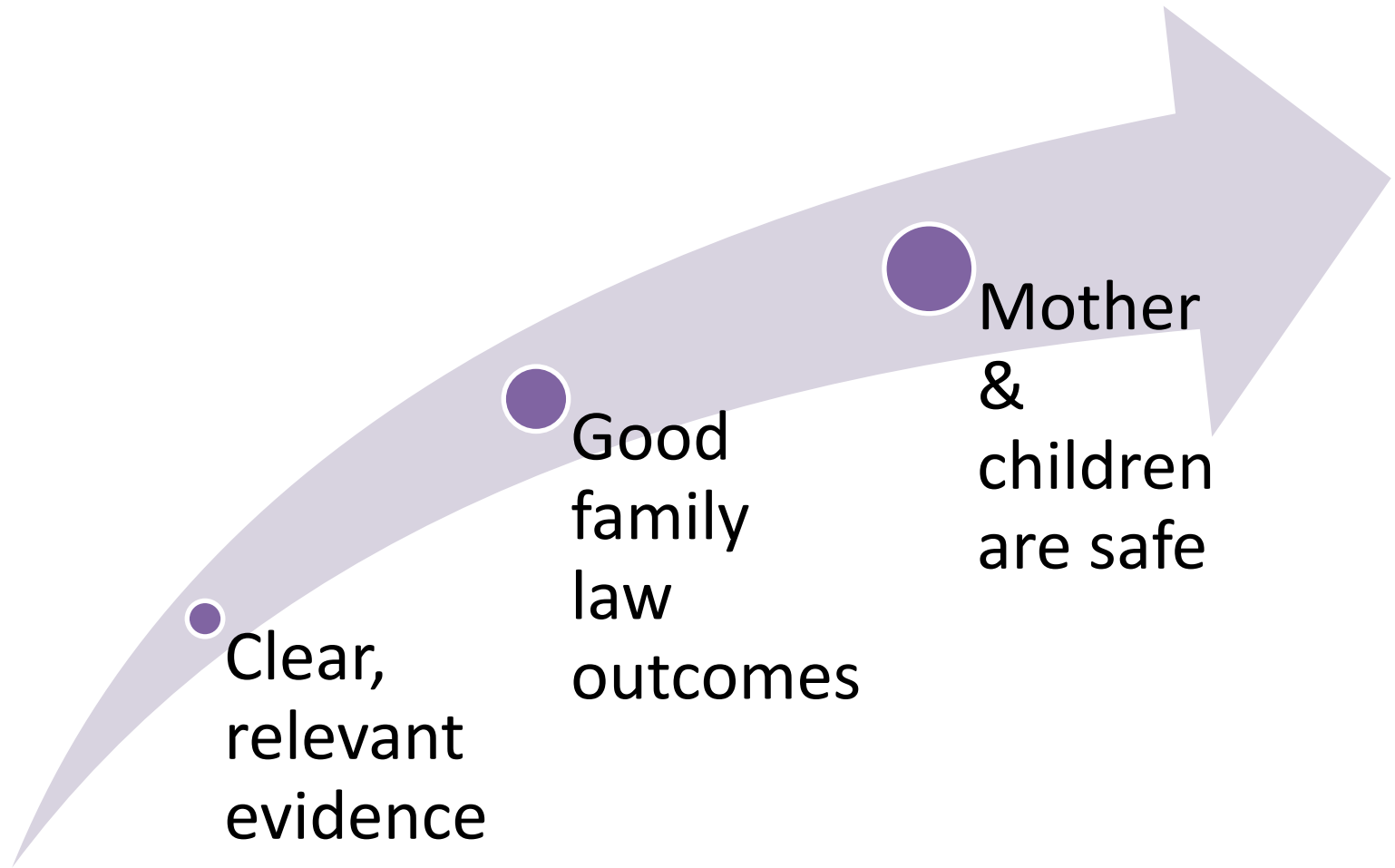
because...

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



When and how is evidence presented?

Lawyer

- 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

Mediator

- Gets information from both people
- Uses information to guide them to agreed upon outcome
- If information contradicts, tries to sort it out
- Can ask a person about hard-to-believe information

Resolution is more likely when detailed, honest, accurate information is shared.



Affidavit

- Legal document
 - Tells the person's story
 - Presents most evidence
- Each person
 - Prepares a number of affidavits throughout the case
 - Promises what they say in them is the truth

Parenting issues:
parenting affidavit/Affidavit in
Support of a Claim for Custody
& Access/Court Form 35.1

Safety issues:
restraining orders, exclusive
possession of the matrimonial
home

Topics affidavits can cover

Financial or property matters

Evidence for motions
(regular or *ex parte*)

Most family law cases
settled without going
to trial



At court: viva
voce/testifying in the
courtroom



Present evidence
before getting to court
through affidavits/
in writing

Form 35.1: The parenting affidavit

Must be completed by anyone applying for custody & access of a child

- ✓ Questions about the family members
 - ✓ Where child is living
 - ✓ Who has been primary parent
 - ✓ Plans for future parenting
- ✓ Past custody & access, child protection cases
- ✓ Criminal charges &/or convictions
- ✓ Family violence

What goes into an affidavit?

Who is my family?

Names, ages & dates of birth of the children

Information about any children who are not part of this court proceeding & arrangements for them

Full names of both parents

Date they were married or began to live together

Date of separation

Who everyone is living with

Current arrangements for custody, access & support

What do I want?

Custody
joint, shared, sole

Access
how much, supervised or not, exchanges supervised or not, scheduled or unscheduled

Child support

Spousal support

Division of property

Exclusive possession of the matrimonial home

Restraining order

Why should I get it?

Examples

Applying for custody

- Main responsibility for children before separation, & plans for their future care
 - Information about abuse, impact on children, involvement/exposure
-

Supervise or restrict access

- Abuse/violence in relationship or after separation
- Concerns about other parent harming, abducting children
- Safety concerns during exchanges

Why should I get it?

Examples

Child support

- What is known about the former partner's job and income
-

Spousal support

- Her own work and income, currently and in the past
- What is known about the former partner's job and income

Why should I get it?

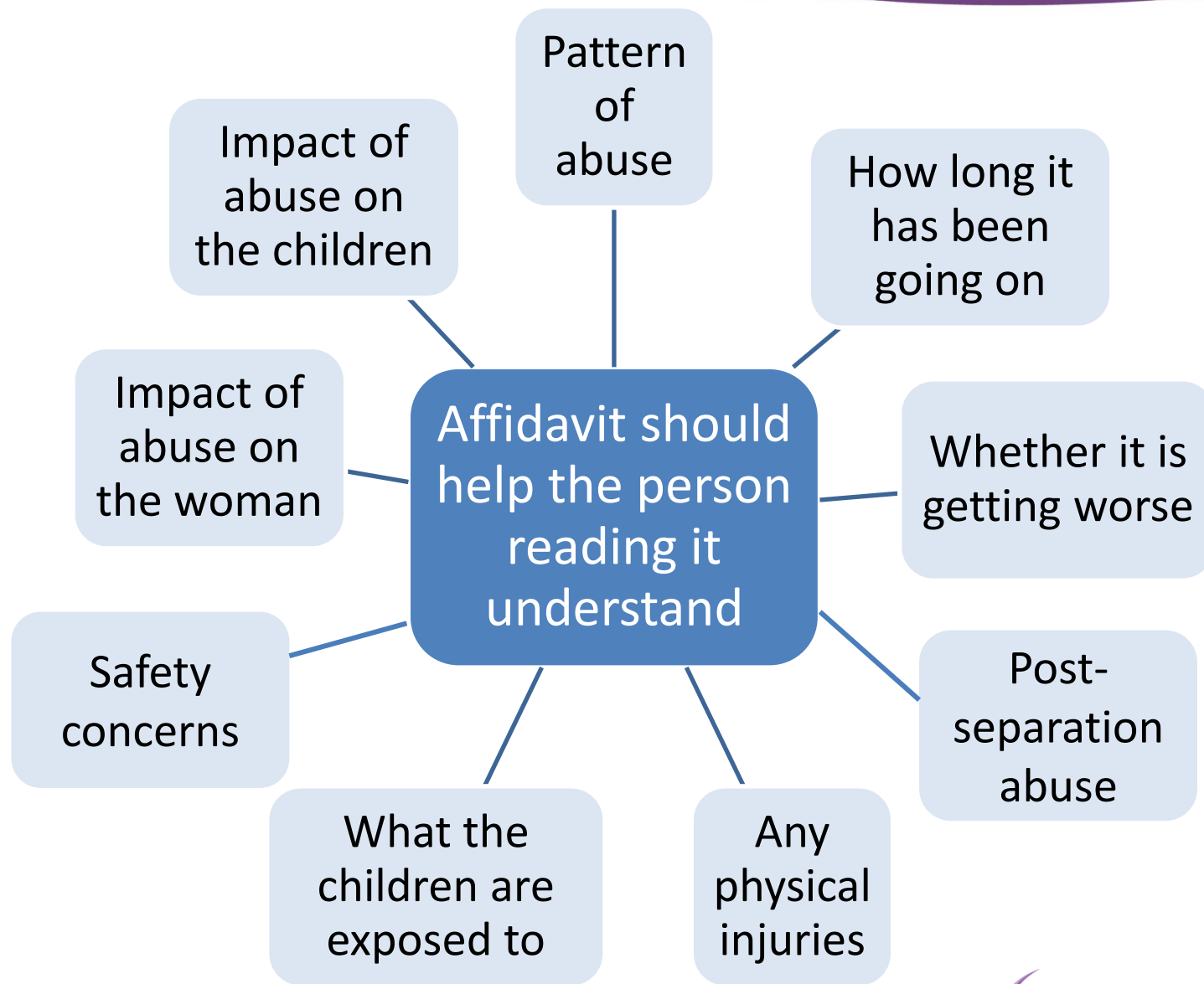
Examples

Exclusive possession of matrimonial home

- Why this is in the best interests of the children
-

Restraining order

- Why she is fearful for her safety and/or safety of her children



How to organize information in an affidavit

Write clearly

- Get to the point

- Be detailed

- Be direct and specific

Use point form

- Use numbered paragraphs

- Stay focused on the legal issues

- Be factual & don't exaggerate

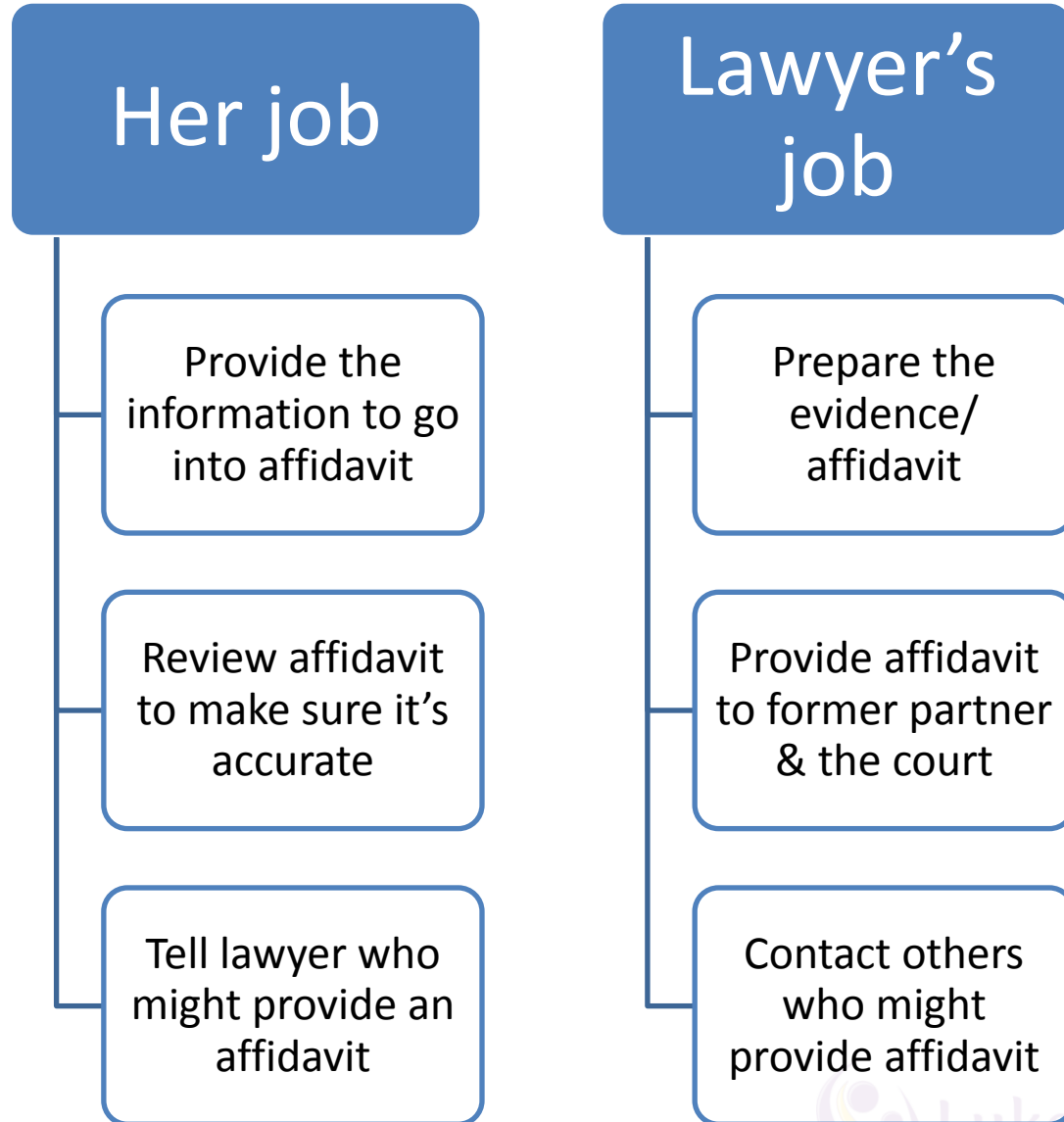
- Don't underplay the seriousness of what has happened

- Start with the most recent event, then move back in time

<https://FamilyCourtAndBeyond.ca/family-law-court/evidence/affidavits/>

Supports for women

If she has
a lawyer



If she does not have a lawyer

she will have to prepare her own court documents, including affidavits

Family Court Support Worker

To find one, visit the Ministry of the Attorney General website

<https://www.attorneygeneral.jus.gov.on.ca/>

Embarrassment

Shame

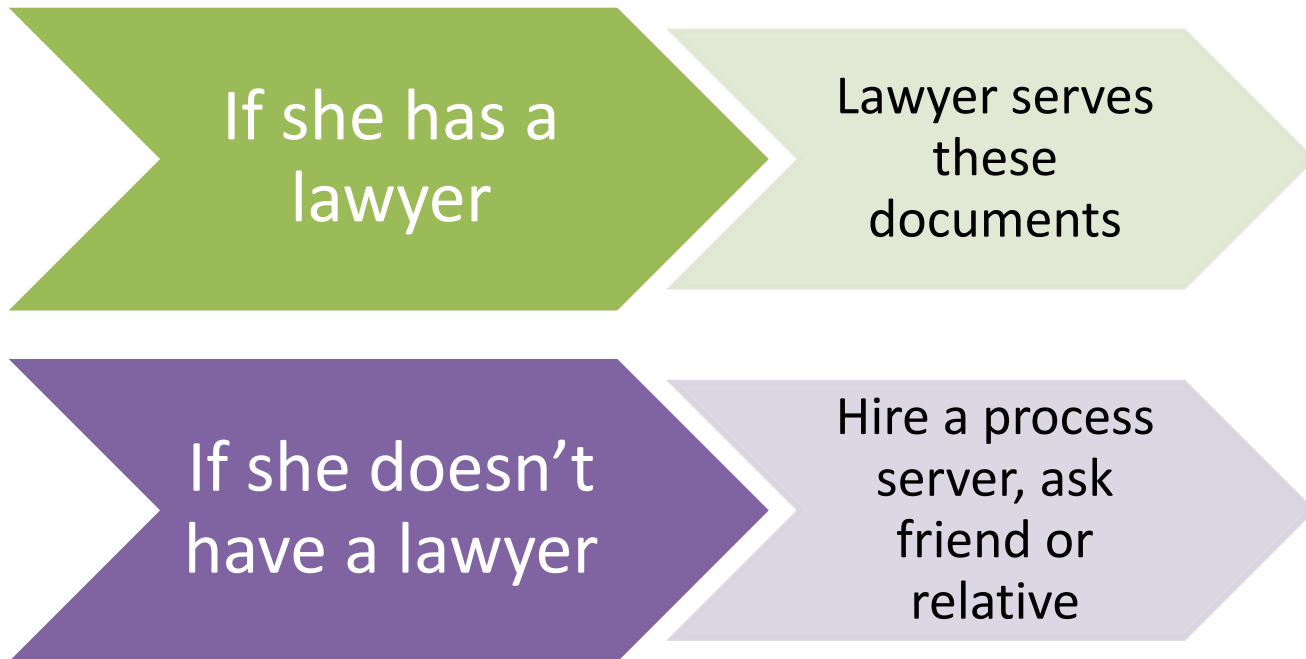
Impact on
the kids

Is there
enough
evidence?

Am I
remembering
accurately?

She needs
support
as she
prepares
her
affidavit

Safety



Safety plan for when the abuser receives documents

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Why evidence is so important

The outcome of your court case will depend significantly on the evidence you provide to the court. This is true in every family court case, but it is especially true in cases involving abuse, because the impact of abuse is still misunderstood by many in the family law system.

Whether you are preparing your own paperwork or working with a lawyer who will prepare the court documents, you have an important role in providing as much detailed information as possible.

- Where do I get evidence and how do I present it?
 - Gathering evidence checklist
 - Collecting electronic evidence
- Affidavits
- Presenting information about parenting
- Dealing with your former partner's evidence

Summary

- Evidence helps a judge make a decision about your case
- Affidavit
 - A legal document that tells your story
 - Form 35.1: the parenting affidavit
 - Who your family is, what you want, why you should get it
 - Must be organized, clear, focused
- Get legal, emotional & safety planning support when preparing evidence: Family Court Support Workers

Thank you!

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