

# Supporting women with family law issues during COVID-19

*April 22, 2020*

*Webinar prepared for CLEO*

# 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. This webinar was recorded on April 22, 2020 and reflects developments in the law before that date.



**CLEO**

Community Legal Education Ontario  
Éducation juridique communautaire Ontario





## 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.



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



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

# Agenda

Safety issues for women who remain in the home with the abuser

Current family court operations

What makes a family law case “urgent”

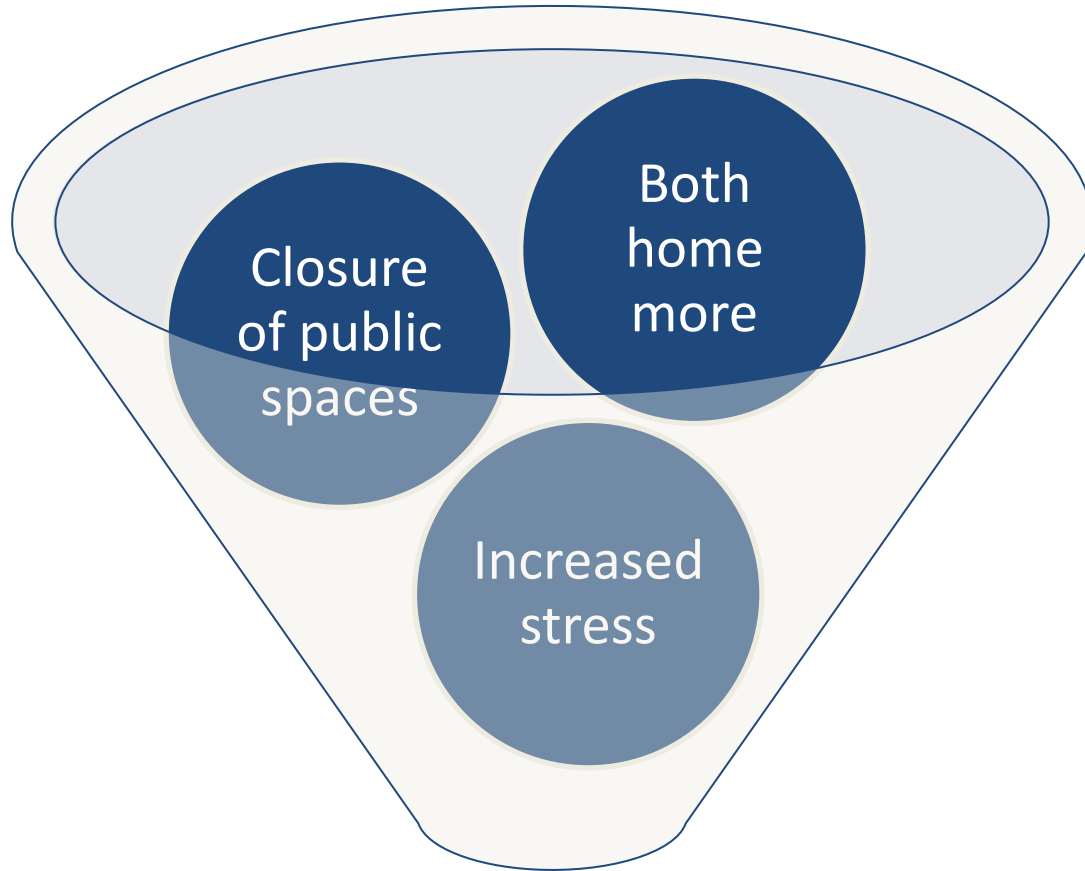
What that looks like in the context of family violence

Where women can get legal advice and support



# **SAFETY FOR WOMEN STILL LIVING WITH THE ABUSER**

# Women living with an abuser



Situation is likely more high risk than ever

# Privacy & legal advice

Let her lawyer know  
if/when/how it is safe  
to contact her

Code word with her  
lawyer - if an unsafe  
situation develops  
during an appointment

Use quick escape  
functions if on a  
website

Must clear her browser  
history every time

If safe, change all her  
passwords

Not keep any hard  
copies of legal  
documents in the  
house

# Safety resources

- Safety tip sheet for women living with an abusive partner

[LukesPlace.ca/social-distancing-safety-tips-for-women-still-living-with-an-abusive-partner](https://LukesPlace.ca/social-distancing-safety-tips-for-women-still-living-with-an-abusive-partner)

- Safety planning information

[FamilyCourtAndBeyond.ca/keep-safe](https://FamilyCourtAndBeyond.ca/keep-safe)

# **FAMILY COURT OPERATIONS DURING COVID-19**

- Status of courts changing on an ongoing basis
- Keep up-to-date: visit LukesPlace.ca



Learn about **our services under COVID-19**. Get updates on **family law supports for women** in Ontario.

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Family law support and guidance on how to stay safer for abused women and their children

[Phone & web safety](#)

# Ontario's family courts as of April 22/20 (1)

- All scheduled matters postponed, will be rescheduled
- Dealing with matters deemed “urgent”
- Hearing requests for
  - Consent orders submitted by 14B motions under Family Law Rules
  - Case conferences with potential limit on the number of issues addressed

# Ontario's family courts as of April 22/20 (2)

- Email service of court documents permitted
- Judgements, endorsements, order effective date they are made (unless stated otherwise)
- Court filing counters open from 10am-12noon, 2pm-4pm
  - But might be less in smaller communities: find out



# Ontario's family courts as of April 22/20 (3)

- Documents for urgent matters can be filed electronically
- Communicate by email with court staff & trial coordinators
  - Subject line: Level of court, type of matter, file number (NEW if no number), type of document
  - Each email: only 10MB

# Ontario's family courts as of April 22/20 (4)

- Court services are not providing in-person services (e.g. duty counsel, FLIC)
- Duty counsel & Info/Referral Coordinators available remotely
- LAO waived financial eligibility requirements for summary legal advice & for DV
- Law Society: new helpline for urgent legal assistance

# Important resources

- <https://stepstojustice.ca/legal-topic/family-law>
- <https://familycourt.cleo.on.ca/en/about-flowcharts>
- <https://stepstojustice.ca/legal-topic/family-law/covid-19>
- <https://familycourttandbeyond.ca/>

# **WHAT MAKES A FAMILY LAW CASE URGENT**

## Do existing access orders have to be followed?

“We understand that it will be difficult for many families to manage the parenting arrangements during this time and that it may give rise to some emergency situations.

Clients and lawyers should be encouraged to **resolve these issues** between themselves where possible and **only engage the court where there are really pressing issues regarding a child’s safety or wellbeing, or the safety of a parent.**

## Do existing access orders have to be followed?

We understand that **virtual mediation services** may also be available that could be considered, for appropriate cases, to address pressing child-related issues.

Counsel are encouraged to **follow the caselaw** to see how judges are applying the urgency threshold to these circumstances.”

*- Superior Court of Justice*

# Caselaw

Courts are using a two-step process:

1. Is it urgent?
2. Is it one of the issues contained in Chief Justice Morawetz's list?

# Caselaw

## Key themes:

- Be reasonable
- Cooperate
- Communicate
- Follow existing orders

Family violence may be relevant to finding a case is urgent.



# Legal bullying during COVID-19

- Courts will shut it down
- Father prohibited from bringing further motions
- Access was not being denied by mother

# A sampling of other decisions

## Key themes:

- Protecting children from COVID-19 a priority
- So is following existing orders
- Parents' concerns about COVID-19 must be understood
- People must be “reasonable”
- Police enforcement may not be appropriate

Cannot await resolution  
at a later date

Significantly affects the  
health/safety/economic  
well-being of parties  
and/or children

## 4 criteria for urgency

Definite issue rather than  
theoretical

- Partner/child's health, welfare,  
dire financial circumstances

Evidence & examples of  
the urgency

**WHAT DOES THAT LOOK LIKE IN A CASE INVOLVING DOMESTIC VIOLENCE?**

# **The issue must be immediate; one that cannot wait resolution at a later date.**

Woman will have to establish that the issue is urgent.

Woman should try to explain why there are no alternatives to bringing the matter to court and/or what attempts she has made to resolve the issue herself.

**The issue must be significantly affect the health, safety or economic well-being of parties and/or their children.**

Woman will have to establish what the impact on the health and safety of the children or herself would be (e.g., evidence of poor health that makes the person more susceptible to COVID-19).

Would strengthen her case if she shows what attempts she has made to suggest alternative access or exchange arrangements.

**The issue must be definite and material rather than speculative. It must relate to something tangible (a spouse or child's health, welfare, or dire financial circumstances) rather than something theoretical.**

AND

**It must be one that has been clearly particularized in evidence and examples that describes the manner in which the concern reaches the level of urgency.**

Evidence could also include:

- Prior threats by the father not to return the children
- Situations in which he delayed or did not return them
- Current threats
- History of threats related to the children generally
- Threats made in front of or to third parties who can confirm the woman's evidence
- Electronically made threats (email, text messages, telephone messages, FB posts)
- Actions the mother has taken in previous instances
- Any relevant criminal proceedings



# More case summaries

We have summarized cases on our website at [www.lukesplace.ca](http://www.lukesplace.ca).

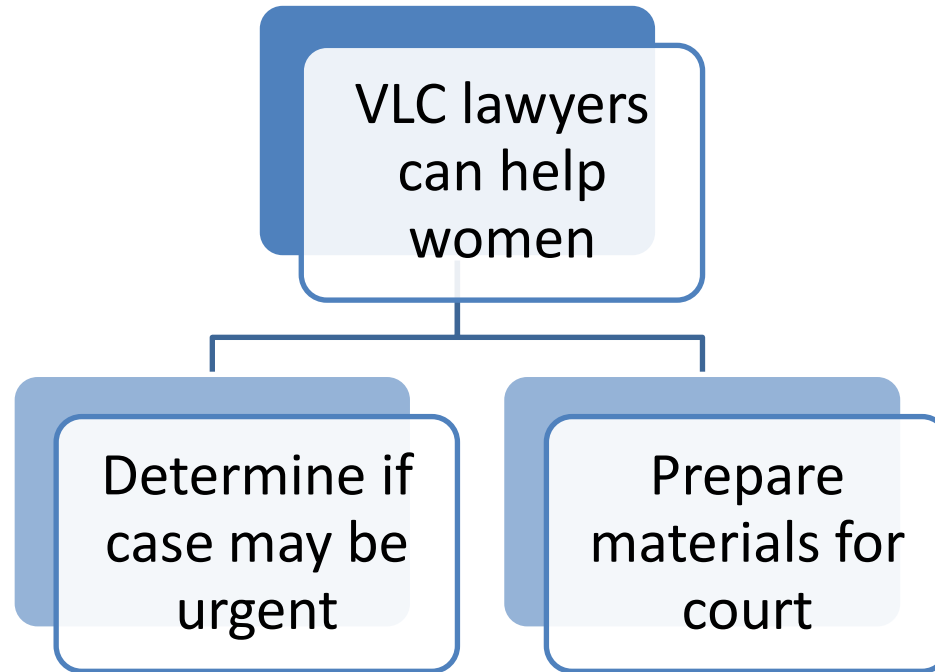
New precedents are being set, almost daily.

# **ASSISTING WOMEN TO GET LEGAL ADVICE**

## Options for women seeking legal advice:

- Check with lawyers in your community to see if they are taking new clients and who will take legal aid certificates
- You may find more lawyers are willing to accept the 2-hour forms
- Help your client set up an appointment with the Luke's Place Virtual Legal Clinic

# Use the Virtual Legal Clinic



If you are working with a woman who you think could benefit from a VLC appointment, please contact Kathryn at [kathryn@lukesplace.ca](mailto:kathryn@lukesplace.ca)

# **SUPPORTING WOMEN WITH LEGAL ISSUES**

# Tips to assist you:

- Help client assess her issue realistically
- Assist her to get legal advice:  
<https://www.lukesplacetraining.ca/mod/forum/discuss.php?d=3453>
- Stay up to date
- Filing counters have limited hours
- Serving by email does not require consent

- Commissioning by videoconference
- Managing unsworn affidavits
- Keep originals!
- Less than 10MB
- Don't use Dropbox
- Notice of motion needs to be clear and supported by detailed affidavit

# Survival tips for advocates

- Keep updated: Visit [LukesPlace.ca](http://LukesPlace.ca)
- Take time for self care
- Tap into the Virtual Legal Clinic





# Questions?

*Thank you!*

LukesPlace.ca

FamilyCourtAndBeyond.ca

CLEOConnect.ca/yourlegalrights/webinars

StepsToJustice.ca