

# Relationships, rights & responsibilities

October 27, 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 October 27, 2020, and reflects developments in the law before that date.





# | Your Legal Rights

## 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.



**CLEO**

Community Legal Education Ontario  
Éducation juridique communautaire Ontario



**Luke's Place**  
Change her experience. Change their lives.

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



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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

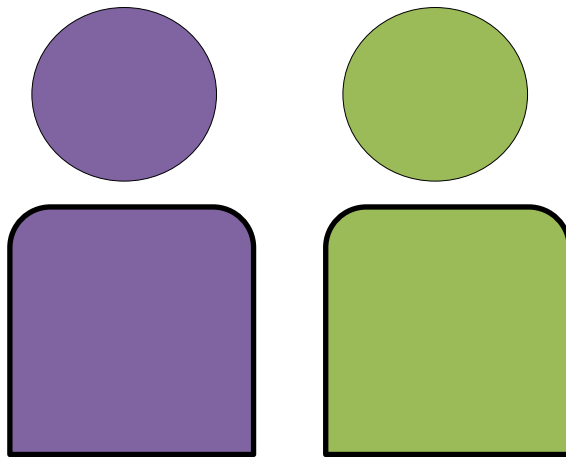
Abuse rooted in misogyny & traditional male power

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

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

# Agenda

- Similarities between marriage & common-law
- Differences
- Considerations before beginning a relationship
- Considerations before ending one





# Marriage vs. Common-law

# Marriage

Provincial  
jurisdiction



Ontario:  
*Marriage Act*



Who can  
marry whom

## Can marry

- Any 2 unmarried adults
- Previous marriage has been dissolved by divorce
- At least 18
- With parental consent if between 16 & 18

## Cannot marry

- Close blood or adoption relations
- Under 16 (criminal offence for anyone who assists such a marriage)

Ceremony & union  
must conform with Canadian laws  
or courts cannot assist when  
something goes wrong

*Example:*

Bigamy & polygamy are illegal

➤ People in these marriages have few legal rights

# Living together

Different laws

Different time periods

Different rights & responsibilities

# Role of Abuse

# Financial abuse

Controlling  
access to money

Setting the rules  
about how  
money is spent

Requiring her to  
work & hand  
over income

Preventing her  
from working

All property is in  
his name

Running up debt

Hiding money  
and property

When there is financial abuse



Understand legal differences  
between married & common-  
law relationships



## *Examples: He'll claim...*

- He won't fight for children if she won't make financial claims
- Because the deed to the home is in his name, she has no right to it

Understand her financial legal rights -> rights may be different depending on the type of relationship

# **Legal Similarities & Differences Between Being Married & Living Common Law**

# Definitions of spouse

## Divorce, corollary relief (support, property division)

- Must be legally married (*Divorce Act*)

## Property division

- Only legally married people are spouses (*Family Law Act*)

## Spousal support

- Spouse if living together continuously for 3+ years / relationship permanence & have a child (*Family Law Act*)

## Parenting arrangements & child support

- The parents' relationship does not matter

# Similarities

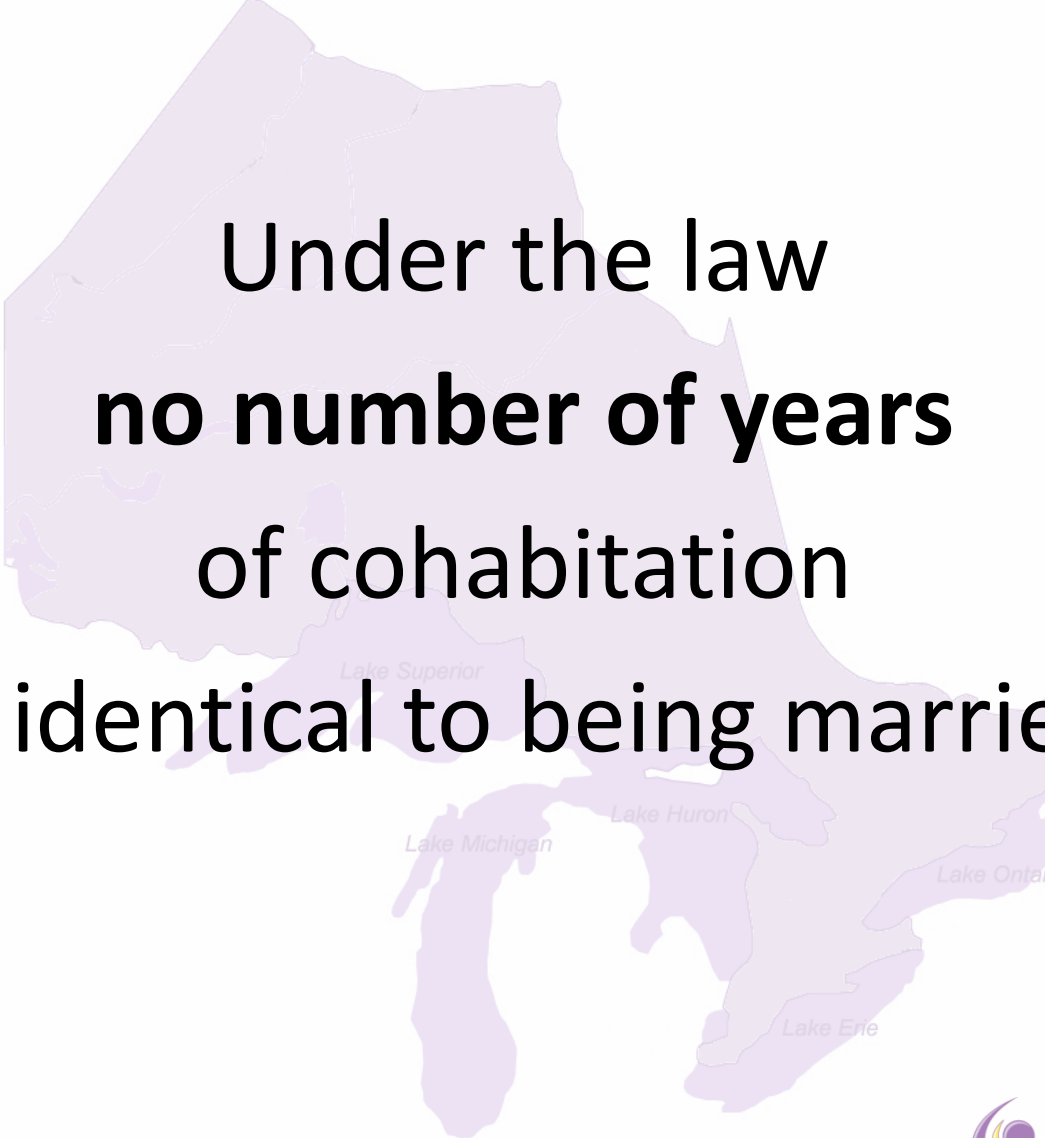
Post-separation  
arrangements for  
children

Child support

Law will treat the relationship  
the same way

Spousal support

Restraining order

A light purple map of the Great Lakes region is centered in the background. The map shows the outlines of Lake Superior, Lake Michigan, Lake Huron, Lake Erie, and Lake Ontario. The text is overlaid on this map.

Under the law  
**no number of years**  
of cohabitation  
is identical to being married

# Differences

	Married	Common-law
Divorce	Can divorce	Cannot divorce
<i>Divorce Act</i> *	Applies	Does not apply
Property division	Shared equally	Complicated...

\*For more information see our webinar on the *Divorce Act* changes

# When married



**Matrimonial  
home &  
property  
shared  
equally**

# When common-law

- Name on deed/lease
- Who paid
- What they brought into relationship



# Exclusive possession of matrimonial home

Married: Either  
spouse can  
make a claim

Common-law: Only  
person with name  
on the deed/lease

# Before Entering a Relationship

# Domestic contracts

Framework managing issues if relationship breaks down



Governed by provincial/territorial legislation



Ontario: *Family Law Act*

Cohabitation  
agreements

Marriage  
contracts

Separation  
agreements

## Applies to

- Primarily financial & property matters

## Doesn't apply to

- Post-separation parenting
- Limiting spouse's right to occupy matrimonial home
- Any provisions not in best interests of the child
- Unreasonable re child support
- Limiting rights of party dependent upon chastity
- Preventing remarriage

# Contract may be set aside if

Either party fails to disclose assets,  
debts, liabilities

A party did not understand the  
contract

Contract is not in accordance with  
the law

# To be valid: Independent Legal Advice (ILA)

Certificate/  
waiver of ILA

Both parties seek  
ILA before signing

Once signed,  
courts cannot  
intervene

UNLESS

- Incomplete disclosure
- Contract signed under duress

Adults can sign  
away their legal  
rights

Supreme Court  
decision

Doesn't reflect  
interests of  
vulnerable  
people

- Women with abusive partners
- Newcomer women unaware of their rights
- Women coerced by their community

# When Leaving a Relationship



# Separation agreements

## Why

- Resolve issues upon end of relationship

## How

- Between individuals
- With lawyers
- Collaborative law process
- With mediators

## What

- Spousal support
- Division of property
- Parenting arrangements

# Other notes on separation agreements

## Married?

- You will still need to obtain divorce

## Safety?

- Restraining orders cannot be included

If a woman is

- Informed about her own financial situation before relationship
- Informed about family's financial situation during relationship
- Jointly owns property with her partner



She will be in a better position

- If they separate
- To manage her own financial affairs
- To avoid influence by others if partner dies first

# Summary

- Some rights & responsibilities are shared
- Some are different, especially financial & property matters
- Domestic contracts allow people to set out their own terms
- Such contracts are more challenging for women dealing with abuse

*Thank you!*

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