

# **Explaining the New *Children's Law Reform Act***

January 25, 2021

*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 November 24, 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



LukesPlace.ca



LukesPlaceTraining.ca



FamilyCourtAndBeyond.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

- Overview of the *Children's Law Reform Act (CLRA)*
- Examine the current revisions relating to children
- Discuss the relevance of family violence
- Discuss why either the *CLRA* or the *Divorce Act* would be preferable in different situations



# **What is the *Children's Law Reform Act* ?**

# Ontario's family laws

## *Children's Law Reform Act*

- Issues relating to children:
  - post-separation parenting arrangements
  - child support

## *Family Law Act*

- spousal support
- property division
- exclusive possession of the matrimonial home
- restraining orders

# *Children's Law Reform Act (CLRA)*

Applies to

- Anyone whose habitual residence is in Ontario
  - the place the family lived before the parents separated

and

- Any family regardless of parents' relationship (married, common law, etc.)
  - *Divorce Act* only applies to married people

# Bill 207

## *Courts of Justice Act & Family Law Act*

- Housekeeping changes
- Not covered in this webinar

## *CLRA changes*

- Address many concerns raised by women's advocates, but not perfect
- Potential to improve outcomes for families, especially when there is abuse

# 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

# The new *Children's Law Reform Act*

Emphasizes  
a focus on  
children

- Eliminates terms custody & access
- Uses
  - Parenting order
  - Contact order
  - Decision-making responsibility
  - Parenting time

# Contact order

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

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

# 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 necessities 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?

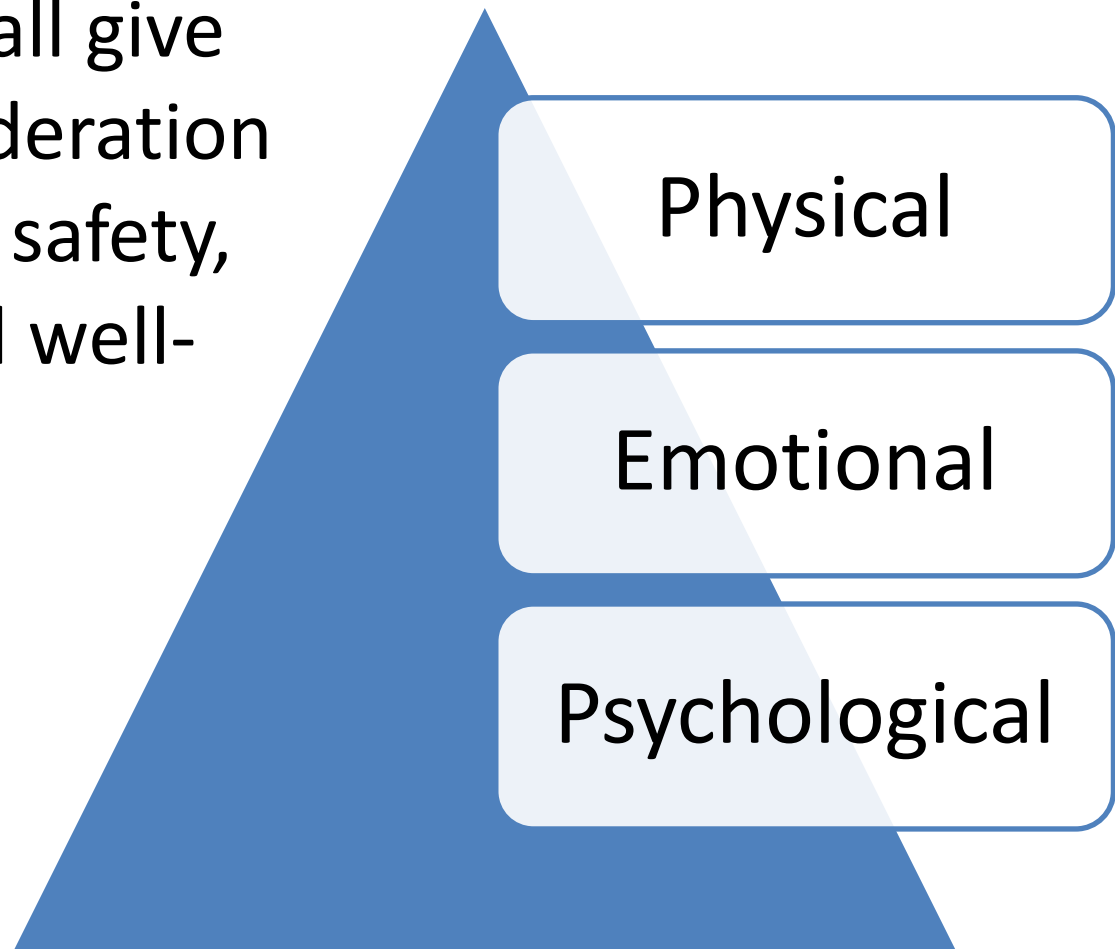
Is the person who engaged in violence taking steps to prevent further violence & improve parenting?

*> Inadequate programs, no assessment system*

Any other relevant factors?

# **Best interests of the child test**

The court shall give  
primary consideration  
to the child's safety,  
security and well-  
being



# CLRA best interests test

11 criteria

Weight is  
**not**  
assigned to  
each

Discretion  
rests with  
the court

Allows court  
to weigh  
factors



Child's needs, including stability

Child's relationship with each parent & other family, people

Each parent's willingness to support child's relationship with other parent

History of care

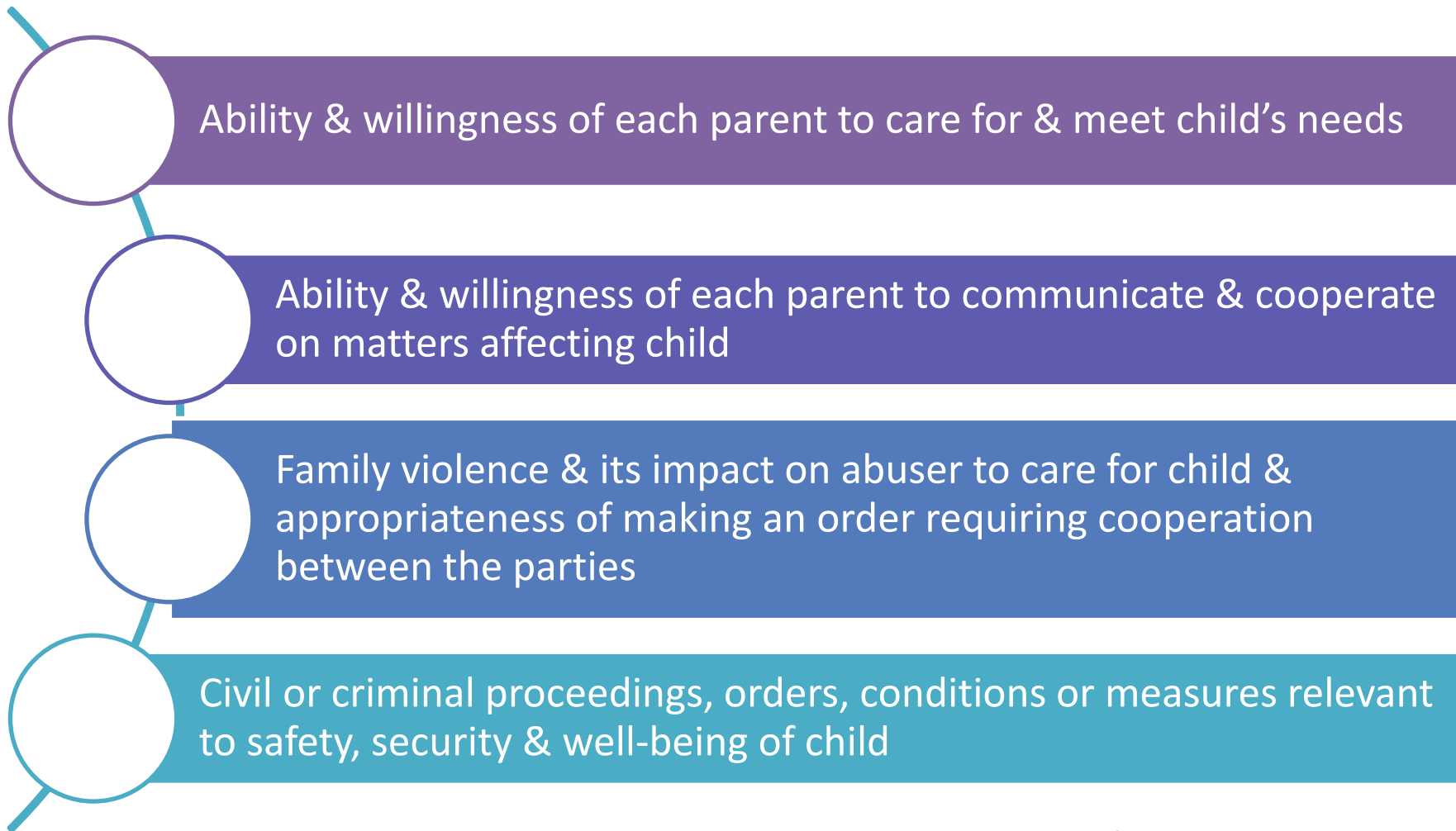
Child's views & preferences

Child's upbringing and heritage

Plans for the child's care



**Safe Place**  
Change her experience. Change their lives.





# Challenging provisions when there is family violence

## Ability & willingness

- To counter abuser's claim, introduce evidence of his lack of past parenting as well as history of abuse

## Communi- cation

- When there is coercive control that continues, provide evidence & explicitly identify fears

## Maximum parenting time provision

Encourages arrangements for children that ensure they spend as much time as possible with each parent

## New CLRA

“a child shall have as much time with each parent as is consistent with the best interests of the child”

# ***CLRA & the Divorce Act***

## *CLRA & Divorce Act* alignment means...

Less confusion in  
Ontario about the  
rules

People have access to  
same legal response  
regardless of marital  
status

People not married & Ontario  
is their habitual residence

*CLRA*

Married  
people

Don't want/can't afford  
a divorce

*CLRA*

Want to sort out parenting  
issues quickly

*CLRA*

Need a restraining order

*Family  
Law Act*

Want a divorce

*Divorce  
Act*

# Summary

- *Children's Law Reform Act* & how it compares to federal *Divorce Act*
- Recent revisions to the CLRA
- The role of family violence in determining parenting arrangements
- The revised best interests of the child test
- Why someone might pick the *CLRA* or the *Divorce Act*

*Thank you!*

LukesPlace.ca

FamilyCourtAndBeyond.ca

CLEOConnect.ca/YourLegalRights/Webinars

StepsToJustice.ca



**CLEO**

Community Legal Education Ontario  
Éducation juridique communautaire Ontario

