

**Welcome to our Supporting the Health of Survivors of Family Violence in Family Law Proceedings Webinar**

*Bridging the gap between the needs of survivors of family violence and the realities of family court*

**Presenters:** Pamela Cross LLB, Legal Director, Luke's Place Support & Resource Centre for Women & Children & Linda Baker PhD, C. Psych., Learning Director, Centre for Research & Education on Violence Against Women & Children

**Date & Time:** December 15, 2020 | 4:00-5:30 PM EST

- All attendees are muted during the webinar.
- If you are experiencing issues, please type into the chat box.
- If you have a question for the webinar speakers, please type into the Q&A box and we will spend 15 mins near the end on Questions and Answers.
- There will be an evaluation link in the chat box at the end of the webinar, please fill out the form as your feedback will guide our future webinars.
- Once you complete the evaluation form, you will be directed to a website where you will be prompted to enter your full name and email address. A certificate of attendance will be generated and emailed to you.
- Presentation slides are posted on our website, there will be a link in the chat box.
- The webinar recording will be posted on our website within the next few days.

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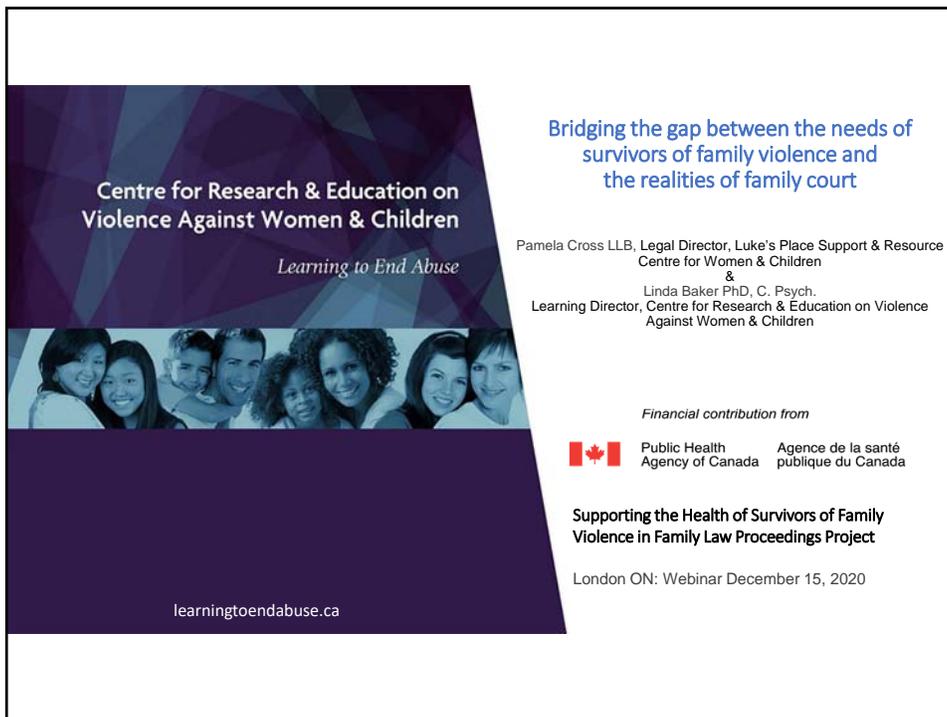


1



Please think about the traditional lands you are currently situated on and join us in acknowledging and thanking the generations of Indigenous peoples who have cared for these Lands and in celebrating the continued strength and spirit of Indigenous Peoples. The ongoing work to make the promise of truth and reconciliation real in our communities and in particular to bring justice for murdered and missing Indigenous women and girls across the country should inform our discussions in this webinar and beyond.

2



**Centre for Research & Education on Violence Against Women & Children**  
*Learning to End Abuse*

**Bridging the gap between the needs of survivors of family violence and the realities of family court**

Pamela Cross LLB, Legal Director, Luke's Place Support & Resource Centre for Women & Children & Linda Baker PhD, C. Psych. Learning Director, Centre for Research & Education on Violence Against Women & Children

*Financial contribution from*

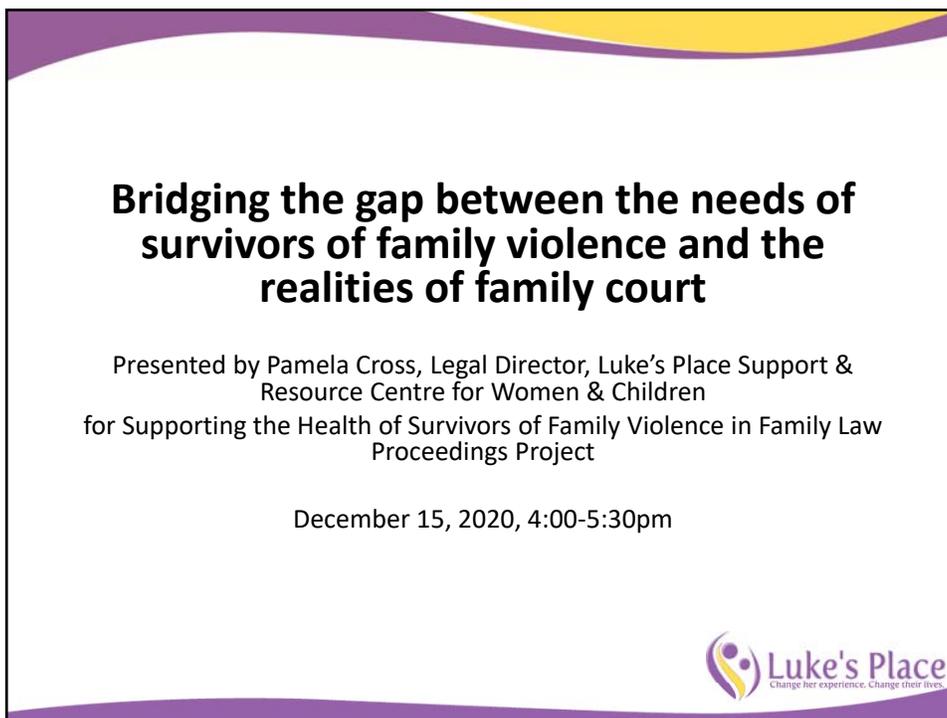
 Public Health Agency of Canada    Agence de la santé publique du Canada

**Supporting the Health of Survivors of Family Violence in Family Law Proceedings Project**

London ON: Webinar December 15, 2020

learningtoendabuse.ca

3



**Bridging the gap between the needs of survivors of family violence and the realities of family court**

Presented by Pamela Cross, Legal Director, Luke's Place Support & Resource Centre for Women & Children  
for Supporting the Health of Survivors of Family Violence in Family Law Proceedings Project

December 15, 2020, 4:00-5:30pm

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

4

## PART ONE: CHALLENGES



5

## Accessing court

- Most women, especially those with children, will have to engage with the family law at some point when they leave an abusive relationship
  - Unsafe
  - Difficult to negotiate with an abuser
  - Intimidation and manipulation are common
- Mediation may work, but often inappropriate in cases involving abuse



6

## Accessing court *cont'd*



- Barriers:
  - Fear
  - Trauma
  - Lack of knowledge
  - Believe abuser's promises
  - Lack of legal representation
  - Lack of trust in the court system



7

## Accessing court during a pandemic

- Family courts were only hearing urgent matters – not opening new files
- Court services went virtual
- Language and technology challenges
- Security issues
- Reduced access to lawyers and other court-related services
- Difficult to have accurate and current information on how courts are operating across Ontario



Luke's Place posts updates about the status of Ontario courts: <https://lukesplace.ca/supporting-women-to-access-family-law-supports-during-covid-19/>



8

## Presenting a case involving family violence

- If a survivor is unrepresented she may not be aware of:
  - Her legal rights
  - The outcomes she should seek
  - The kinds of evidence that should be presented
  - The legal processes appropriate for her
- Safety concerns when former partner is self-representing



9

## Common legal bullying tactics



- Common legal bullying tactics of abusers include:
  - Self-representation
  - Seeking repeated delays, failing to file documents on time, filing incorrect or incomplete documents
  - Repeatedly changing lawyers
  - Meeting with every lawyer in the woman's community
  - Bringing frivolous motions
  - Refusing to follow court orders



10

## Survivors' experiences in family court

- Survivors of family violence:
  - Are likely to encounter a high number of professionals with limited knowledge about FV
    - Outdated attitudes may blame the victim
    - Don't see intimate partner abuse as relevant to the best interests of children
  - Often emerge with an order for shared parenting, joint custody or the equivalent which provides the abuser with ongoing control over her



11

## Risks with disclosing a history of family violence

- Increased risk of elevated levels of abuse towards her or the children
- If she has not taken the steps the professional thinks are appropriate, they may not take her evidence seriously or may not attach as much weight to her story of abuse
- Can be difficult to present 'reliable' evidence of violence
- Abuser may deny claims of abuse or make a counter claim of parental alienation



12

## HEALTH IMPACTS OF DV AND HOW THEY AFFECT PRESENTATION IN COURT

Presented by Linda Baker, Learning Director  
Centre for Research & Education on Violence Against Women & Children



13

### IPV impact the health of survivors

Can affect the individual's functioning and psychological, physical, social, emotional, or spiritual well-being

Includes effects on:

- Daily routines
- Parenting
- Employment
- Economic stability
- Long-term health



14

**Experiences of Violence and Trauma are Shaped by our Social Location**

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15

## Trauma

Exposure to an event(s) that is (are) experienced as:

- outside of normal experience
- physically or emotionally harmful or life threatening
- overwhelming one's capacity to cope

It can be acute, chronic, or complex

Any trauma has potential physiological effects, including **neurobiological and neurohormonal changes**

Memory

Mood modulation

Heightened sensitivity to stressors

Chronic activation of physiological stress response

Increased frequency/intensity of experienced fear and anxiety

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16

## PTSD and Traumatic Stress

### Potential Impacts

- Avoidance
- Hyperarousal
- Intrusive experiences
- Emotional responses to reminders of the traumatic event(s)
- Memories may be encoded in the form of sensations, flashes, and images

More frequent and severe violence is associated with increased reports of trauma symptoms.

## Traumatic Brain Injury

**1 in 2**  
 Women who live with an abusive partner may be subject to frequent unreported and untreated physical violence involving the head. Such violence may lead to TBI.

(Campbell et al., 2018)

### Potential Impacts of TBI

- Memory problems
- Physical symptoms
- Mood changes (anger, depression)
- Difficulty sleeping
- Difficulty learning new information

## Violence and Trauma Can Affect Presentation in Court

- May appear distant, distracted, inattentive
- Display poor recall; uncertainty about details
- Share information in a disjointed or incoherent way
- Appear angry or hostile; especially toward partner
- Appear very reactive; display intense mood fluctuations
- May miss court or not return after recess



19

**When IPV is a factor and violence and trauma are not understood, then the emphasis shifts from:**

**“What happened to her and the children, and how is it impacting this family?”**

**to:**

**“What’s wrong with her and how is she impacting this family?”**

20

## **Court experiences often cause survivors to:**

- Feel the court does not understand
- Feel their experiences are dismissed
- Feel the significance of their harms have been trivialized
- Feel further traumatic stress, upset, frustration, hopelessness, and lack of control
- Feel the court is putting their children at risk

## **PART TWO: HOPE ON THE HORIZON**

## Changing laws

- Revised *Divorce Act* comes into effect on March 1, 2021 and will include:
  - A detailed and expansive definition of family violence
    - Uses the language of coercive and controlling behaviour
    - Includes sexual, psychological and financial abuse as well as threats of or actual harm to animals
    - Conduct need not constitute a criminal offence



23

## Changing laws *con't*

- Revised *Divorce Act* also includes:
  - A comprehensive list of factors for determining whether or not family violence should be considered
  - A list of criteria to support the best interests of the child test
  - An end to the divisive language of custody and access, replaced with “parenting time” and “decision-making responsibility”

Luke's Place webinar offers more information:  
<https://lukesplace.ca/explaining-the-new-divorce-act-webinar/>



24

## Provincial laws

- Some provincial family laws already use similar language
- Provinces like Ontario are amending laws to align with the revised *DA*
- Parents who are not married to each other must rely on provincial laws



25

## Department of Justice tool



Department of Justice  
Canada

Ministère de la Justice  
Canada

- Department of Justice is releasing a resource for family law advisers called HELP Identify and Respond to Family Violence
  - <https://www.justice.gc.ca/eng/rp-pr/jr/can-peut/can-peut.pdf>



26

## Department of Justice tool *con't*



- Department of Justice will also be releasing an online, self-directed family violence training for family law practitioners
- Both resources should increase the skills, knowledge and comfort of family law advisers, resulting in better outcomes for survivors and their children



27

## Bill C-3



- Recently passed by the House of Commons
- Mandates sexual assault education for newly appointed federal judges
  - Hoping a similar approach to FV education will follow



28

## Community Resources

- Family Court and Beyond (<https://familycourtbeyond.ca>)
  - Resource and website to support women throughout their family court case
  - Includes basic legal information, tips, fact and work sheets for tracking and recording information about safety plans, evidence, communication with former partners, etc.
- CLEO Webinars (<https://lukesplace.ca/resources/webinars/>)
  - Explores different aspects of a family law case through the lens of family violence





29

## Community Resources *con't*

- Luke's Place Training for Lawyers (<https://lukesplace.ca/for-lawyers/accredited-training-for-lawyers/>)
  - Self-directed course for lawyers seeking more information about representing survivors
  - Accredited by the LSO for CPD hours






30

## Looking forward

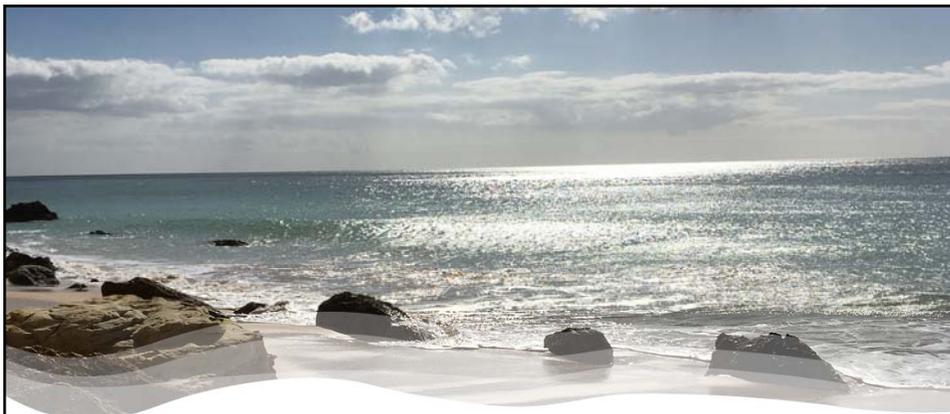


While there's a lot of work to be done, we are slowly moving in the right direction

<https://lukesplace.ca/wp-content/uploads/2013/01/When-Shared-Parenting-and-the-Safety-of-Women-and-Children-Collide.pdf>



31



**HOPE IS ON THE HORIZON**

32

## Trauma-Informed Approaches (TIA)

Policies and practices that

- recognize the connections between violence, trauma, negative health outcomes and behaviours
- Increase safety, control and resilience for people seeking services in relation to experiences of violence and/or have a history of experiencing violence

(Government of Canada, 2018; <https://www.canada.ca/en/public-health/services/publications/health-risks-safety/trauma-violence-informed-approaches-policy-practice.html>)

## Key Assumptions of TIA

- Realize widespread impact of trauma
- Recognize signs and symptoms of trauma
- Respond by integrating knowledge about trauma
- Resist re-traumatization

(SAMHSA 2014: <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf>)

**“Pockets” of Trauma-Informed Organizations**

**Women's Shelter**

**Boys & Girls Clubs of Canada**  
Repaires jeunesse du Canada

**Children's Mental Health Matters!**

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35

**Goals of Trauma-Informed Courts:**

To minimize harm, not to treat trauma

- minimizing perceived threats
- avoid re-traumatization

To fully engage families by:

- enhancing safety
- promoting agency

(Marsh et al., 2015; SAMHSA, 2013)

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36

## Adopting a Universal Precautions Approach in Trauma Informed Courts:

- Assumes embedding trauma informed approaches into all aspects of policy and practice create universal trauma precautions that reduce harm and provide positive supports for all people appearing in courts

## Establishing A Baseline: Trauma consultations/audits seek information related to:

- Understanding trauma
- Engagement of consumers
- Identification of trauma
- Knowledge of resources
- Court environment
- Secondary traumatic stress

Marsh et al, 2016



**Promising Components of Becoming a Trauma-Informed Court:**

- Engage the entire Court team
- Leader from within



The illustration shows a group of diverse court staff members, including judges, clerks, and support personnel, arranged in three rows. Below them is a large, golden, circular award seal with a trophy in the center and the word 'CHAMPION' written twice around the perimeter.

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39

**Promising Components of Becoming a Trauma-Informed Court:**

- Trauma education and training
- Environmental changes to limit arousal



The first circular image shows a courtroom with wooden paneling and a judge's bench. The second circular image shows a courtroom with a wooden desk and chairs, with a purple wall in the background.

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40

**Promising Components of Becoming a Trauma-Informed Court:**

- Process to describe vision to all stakeholders
- Progress monitoring and evaluation



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**Things Courts can do to be More Trauma-Informed**

- ✓ Create a shared understanding of trauma and trauma-informed
- ✓ Prioritize secondary traumatic stress
- ✓ Promote safety through positive interactions in the court
- ✓ Provide separate waiting areas

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42

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43



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44