



**flew** Family Law  
Education for Women  
Women's Right to Know

**fodf** Femmes ontariennes et  
droit de la famille  
Le droit de la femme à savoir

## How and When to Prove Abuse in Family Court

October 12, 2016

**Tamar Witelson**, Legal Director, METRAC  
**Malerie Rose**, Rose Family Law

Funded by:

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)



**The Law Foundation of Ontario**  
*Building a better foundation for justice in Ontario*

# METRAC

## **METRAC, Action on Violence**

- works to prevent violence against women and youth
- a not-for-profit, community-based organization

[www.metrac.org](http://www.metrac.org)

## **METRAC's Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

[www.owjn.org](http://www.owjn.org)

## **FLEW, Family Law Education for Women in Ontario**

- provides information on women's rights and options under Ontario family law and other relevant laws when families break down
- in 14 languages, accessible formats, online and in print

[www.onefamilylaw.ca](http://www.onefamilylaw.ca)

[www.undroitdefamille.ca](http://www.undroitdefamille.ca)

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



## **Malerie Rose**

Rose Family Law, Toronto



# Topics to be Covered

1. Introduction
2. How do I prove abuse in my Family Court case?
3. When does abuse matter in Family Court cases?
4. Where can I get help dealing with abuse in my Family Court case?
5. Additional Resources

*Information is accurate as of the date of this webinar, October 12, 2016*



# Introduction

# What Could Be Abuse?

## Abuse can include:

- physical and sexual assault
- emotional and psychological abuse
- controlling behaviour over:
  - money
  - activities
  - social contact

# Raising Abuse in Family Court

- Family Court will consider abusive behaviours in many situations:
  - against you, a child or other family member
  - can affect outcome of a case
- Abuse must be **proven with evidence** by person raising the issue of abuse
  - usually requires putting together many examples
  - helpful to have proof from other people

# Raising Abuse in Family Court

Evidence is needed because:

- Judge must decide between two sides
- evidence has to show it is **more likely than not** that the abuse happened
- the case begins with the assumption that there was no abuse
- you have to prove claims of abuse are not made up

# Barriers to Raising Abuse in Family Court

Raising abuse in a Family Court case means:

- you have to talk about personal, upsetting events and emotions
- you have to repeat your story to different people
- you often have to tell your story to strangers
- you may feel embarrassed, ashamed, at fault
- you may be worried about the impact on children

# Barriers to Raising Abuse in Family Court

Survivors of abuse often feel:

- embarrassed or ashamed
- responsible for causing the abuse
- worn down and depressed
- not deserving of kind or fair treatment

# Barriers to Raising Abuse in Family Court

- Survivors of abuse often worry about:
  - the impact on children of talking about abuse
  - the reaction of other people (family, friends, community)
  - the impact on ex-partner
- Survivors of abuse may not know that abuse is an important factor to decide some family law issues

# Challenges to Proving Abuse in Family Court

Be prepared for the abuser to:

- deny or play down the seriousness of the abuse
- accuse you of starting or provoking the abuse
- say you are lying to be punishing or to gain an advantage in your case
- suggest you are incompetent or unwell
- be intimidating or a bully

# Challenges to Proving Abuse in Family Court

- you may feel like others are saying you are exaggerating or making up stories of abuse
- you might be the only one who knows it happened
- partner abuse is not well understood by some Judges

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



## **Malerie Rose**

Rose Family Law, Toronto





# How to Prove Abuse in Family Court

# Police and Criminal Court Documents

Information related to a criminal offence, such as:

- Records from **911 calls**
- **Police** incident reports
- Record of **criminal charges** or **finding of guilt** for assaulting you or someone else
- Transcript of Judge's comments about violent or abusive behaviour

# Criminal Court Documents

Outcome from a criminal charge, such as:

- **Bail conditions**
- **Probation Order**
- order to attend **Partner Assault Program (PAR)**
- **Peace Bond**
- charge for breach of any Court Order to protect you

# Webinars on Domestic Violence and criminal law

- When Charges are Laid in a Domestic Dispute

[www.onefamilylaw.ca/en/webinar/#domestic](http://www.onefamilylaw.ca/en/webinar/#domestic)

- The Victim/Witness Assistance Program

[www.onefamilylaw.ca/en/webinar/#victim](http://www.onefamilylaw.ca/en/webinar/#victim)

- The Partner Assault Response Program

[www.onefamilylaw.ca/en/webinar/#parprogram](http://www.onefamilylaw.ca/en/webinar/#parprogram)

- Staying Home Safely After Abuse

[www.onefamilylaw.ca/en/webinar/#stayinghomesafely](http://www.onefamilylaw.ca/en/webinar/#stayinghomesafely)

# Other Kinds of Proof of Abuse

If you go to Family Court, you can help prove your partner abused you or someone else with:

- medical notes
  - doctor, hospital
- counselor, therapist, support worker notes
- Children's Aid Society records
- information from your child's school or daycare
- information from your supervisor or co-workers

# Other Kinds of Proof of Abuse

Other records that can show abuse or the effects of abuse:

- information from people who witnessed the abuse
  - family, friend, neighbour, co-worker, religious leader
- photographs of injuries or property damage
- abusive or threatening emails, text messages, voicemail messages, or posts on social media
- your diary, or emails sent to yourself

# Information from Witnesses

- A person might be a **witness** for you if:
  - the person **saw or heard** the abuse
  - you **told** the person about the abuse
- Witnesses can give their **evidence** to the Court by giving a written statement called an “affidavit”
  - affidavit must be signed, witnessed by a lawyer or notary
  - you must swear or promise what you are writing is true
  - like swearing or promising to tell the truth in Court

# Organize Your Information

- Organize your points about the abuse in order of when things happened
- Focus on events
- Be specific with time, date, place, names
- Describe what happened
- Give details, such as the actual words your abuser used

# Organize Your Information

- Describe the effect on you, children, others
- Do not include negative comments about abuser that are not related to abuse
- Be honest about what happened and how serious it was
- Collect your information before you meet a lawyer
- Tell your information about abuse at the beginning of the case
  - to your lawyer
  - in Court

# Presenting Your Information

What you want the Court to understand:

- the pattern of abusive behaviour, not just a few events
- whether the abuse is getting worse
- how long the abuse has been going on
- how the abuse has affected you and your child
- what your child has seen or heard, or knows about
- any safety concerns you still have

# Prepare a Safety Plan

- Think about how the safety of you or your child may be at risk
- Plan in advance how you will leave in an emergency
- Prepare before you leave
  - Creating a Safety Plan  
[www.pcawa.net/safety-planning-guide.html](http://www.pcawa.net/safety-planning-guide.html)
  - Making “My Safety Plan”  
[www.cleo.on.ca/sites/default/files/book\\_pdfs/plan.pdf](http://www.cleo.on.ca/sites/default/files/book_pdfs/plan.pdf)

# Review Questions: True or False?

1. You have to report abuse to the police first, if you want to prove it in Family Court.
2. You need proof of physical abuse like medical records, photos, or a witness to prove abuse in Court.
3. To prove abuse, people who saw or heard the abuse must go to Family Court in person to answer questions in front of a Judge.

# Review Questions: True or False?

1. You have to report abuse to the police first, if you want to prove it in Family Court.

**FALSE**

2. You need proof of physical abuse like medical records, photos, or a police report, to raise it in Family Court.

**FALSE**

3. To prove abuse, people who saw or heard the abuse must go to Family Court in person to answer questions in front of a Judge.

**FALSE**

# Review Questions: True or False?

1. Police or Court reports can help you prove abuse, but they are not necessary in Family Court.
2. Abuse does not need to be physical to be important in Family Court. But you do need some evidence to prove the abuse that you are claiming. Some examples include medical records, photos, or a police report.
3. Witnesses who saw or heard your abuse or its effects will usually write what they know in an affidavit. The affidavit is entered as evidence in Family Court.

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



## **Malerie Rose**

Rose Family Law, Toronto





# When Abuse Matters in Family Court Cases

# When Abuse Matters in Family Court

1. Child Custody and Access
2. Deciding Who Can Live in the Family Home
3. Getting the Court to Protect You and Your Child

# 1) Child Custody and Access

## **Custody**

- the right and responsibility to make significant decisions about a child

## **Access**

- the right to spend time with a child and know important information about the child, such as health and school

# Partner Abuse and Child Custody and Access

- The Court must make decisions for a child based on the “best interests of the child”
- Deciding the best interests of the child takes into account the circumstances of the child’s life and needs
- To decide what custody and access order is in the best interests of the child, the Court will consider a person’s **ability to act as a parent**

# Partner Abuse and Child Custody and Access

To determine a person's ability to act as a parent for a child, the Court **must consider** if the person has been **violent or abusive** to:

- you or your child
- the person's spouse
- anyone else living with the person
- any other child
- any other person, if the Court thinks it affects the parenting of a child

# Partner Abuse and Child Custody and Access

If your partner gets access to spend time with your child, and there are concerns about violence or abuse, the Court can order:

- **supervised visits** for the access parent
- **supervised pick-up/drop-off** for the child
- a **pre-arranged access schedule**
  - schedule says when and how often the child sees the access parent

## 2) Deciding Who Can Live in the Family Home

- Family Court can make an **Order for Exclusive Possession** of the family home
  - a **temporary** order for your spouse to **stay out** of your home if s/he is abusive
- The Court can make this order only if:
  - you and your spouse are married
  - the home is where you normally lived as your family home

# Order for Exclusive Possession

The Court will consider:

- did your partner **abuse** you or your child?
- is it best for your child to stay in your home and stay with you?
- can either spouse live somewhere else safely?
- can either spouse afford to move out?
- did you make any written agreement or did the Court already make any orders about the home?

### 3) Court Order to Protect You and Your Child

Family Court can give you a **Restraining Order** against your partner

- your partner has to stay away from your home and places you and your child go
- your partner cannot contact you or your child in any way not agreed, such as through your lawyer

# Restraining Order

You can go to Family Court to get a Restraining Order if:

- you fear for your **safety** or the safety of your child, and
- you are or were **married**, or are or were **in a relationship and lived together**

# Restraining Order

- **Keep a copy** of your Restraining Order with you
- Police should also have a record of your Restraining Order
- If your partner does not follow any part of a Restraining Order
  - call the police
  - police can arrest and charge your partner with a **criminal offence**

# About Child and Spousal Support Payments

## **Child Support**

- money your child's other parent must pay you each month to help care for your child, if you look after the child most of the time (60% of the time or more)

## **Spousal Support**

- money your ex-partner may have to pay you, so you can support yourself after your relationship ends

# About Child and Spousal Support Payments

- Abuse **does not** change the **amount of child support** you can receive
- You have the **right to get child support** from the other parent, if the child lives with you most of the time
  - abuse can affect your child custody and access arrangements, which may lead to the child living with you most of the time

# About Child and Spousal Support Payments

- You can get spousal support if you and your ex-partner were **married** or **common law spouses**
  - common law means you lived together at least 3 years, or lived together and have a child
- Abuse **usually does not** change the amount of **spousal support**
  - except in very extreme cases where your ex-partner had a **pattern of behaviour** that makes it very hard for you to support yourself

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



## **Malerie Rose**

Rose Family Law, Toronto





# Exercise: Sample Situation

# Review: Sample Situation

Chris and Flora have decided to separate after 7 years together. They both want custody of their 5-year-old son, Sammy.

Chris has always been an angry person, and it got worse in the last year of the relationship. Chris slapped Flora last month, and she called the police. Chris was charged with assault, and had to go to Court, and has not lived at home since then. Flora isn't sure what is happening with those charges.

## Review: Sample Situation

Flora's sister is very glad that Flora and Chris are finally splitting up, because she has heard Chris yell at Flora for years, and has had to comfort her sister many times.

Chris made lots of angry calls to Flora at work, and there were times she was worried about going home. Sometimes she even called the daycare to ask them to not let Sammy go home with Chris until she got there.

Flora has decided to fight to get sole custody of Sammy and child support.

# Review: Questions

1. Is Chris' abusive behaviour important to Flora's case to get **child custody**?
2. Is Chris' abusive behaviour important to Flora's case to get **child support**?

# Review: Answers

1. Is Chris' abusive behaviour important to Flora's case to get **child custody**?

**Yes.** The Court must consider evidence that a person abuses their spouse, to determine if that person can act as a parent in the best interests of a child, which is a factor in determining child custody and access.

2. Is Chris' abusive behaviour important to Flora's case to get **child support**?

**No.** The person who looks after a child most of the time has a right to get child support from the other parent. Abuse does not affect this.

# Review: Questions

- 3. If the Judge considers Chris' abusive behaviour, how will that affect the decision about who gets custody of 5-year-old Sammy? (WHICH IS THE BEST ANSWER)**
- a) If the Judge believes Chris is abusive, then Flora will automatically get custody of Sammy.
  - b) If the evidence is that Chris slapped Flora only once, then it is impossible for Flora to prove she should get custody.
  - c) There has to be evidence that Chris was abusive to Sammy, otherwise Chris' behaviour will not affect the custody decision.
  - d) If the Judge believes that Chris' bad temper had an abusive impact on Flora, the Judge could decide that Chris is not able to act as a parent, and give custody to Flora.

# Review: Answer 3

**d) If the Judge believes that Chris' bad temper had an abusive impact on Flora, the Judge could decide that Chris is not able to act as a parent, and give custody to Flora.**

This is the BEST answer because it is true that a history of verbal and emotional abuse that increases to physical abuse could be seen as affecting Chris' ability to act as a parent. The Judge has to consider if the abuse would affect the best interests of the child, and might decide to give Flora custody. Chris might still get access.

# Review: Answer 3

Even if the Court believes Chris was abusive, this does not mean that Flora will automatically get sole custody.

If Flora can only prove that Chris slapped her one time, it is still possible to prove that she should get sole custody. The Court has to consider any abuse towards a partner, child, family member, or anyone else if the Court thinks it is relevant. If the Court decides any abusive behaviour prevents Chris from acting as a parent, or is not in Sammy's best interests, the Court can order that Flora gets sole custody.

This is true even if Chris was never directly abusive to the child Sammy.

# Review: Questions

- 4. What are some ways that Flora can try to prove in Court that Chris was abusive?**
- a) police report
  - b) bail conditions
  - c) letter of Chris attending/dismissed from PAR program
  - d) peace bond
  - e) criminal conviction
  - f) probation order
  - g) breach of a no-contact order
  - h) affidavits from Flora's sister, co-workers, daycare
  - i) records from Flora's work
  - j) records from Sammy's daycare
  - k) all of the above

# Review: Answer 4

**4. What are some ways that Flora can try to prove in Court that Chris was abusive?**

k) all of the above

All of these suggestions might apply or be available in Flora's situation. It is important to talk to Flora about whether she can get any of this evidence to try to prove the abuse in her relationship with Chris. Proving abuse could be important in her case to get custody of Sammy.

# Presenters

## **Tamar Witelson**

Legal Director, METRAC



## **Malerie Rose**

Rose Family Law, Toronto





# Finding Help

# Finding Help

- Contact a local women's organization
- Contact a local women's shelter
  - ShelterSafe  
[www.sheltersafe.ca/](http://www.sheltersafe.ca/)
  - Ontario Association of Interval and Transition Houses (OAITH)  
[www.oaith.ca/](http://www.oaith.ca/)  
Support services: [www.oaith.ca/find-help.html](http://www.oaith.ca/find-help.html)

# Finding Help

- Talk to a Family Court Support Worker

[www.attorneygeneral.jus.gov.on.ca/english/ovss/family\\_court\\_support\\_worker\\_program/service\\_providers.php](http://www.attorneygeneral.jus.gov.on.ca/english/ovss/family_court_support_worker_program/service_providers.php)

**Phone:** 1-888-579-2888 (toll-free); 416-314-2447

- A Family Court Support Worker can help a survivor of partner abuse:
  - understand how Family Court works
  - help you with safety planning
  - help you prepare proof of abuse for the Court
  - help you find a lawyer and supports
  - go with you to legal appointments or Court

Read:

[owjn.org/owjn\\_2009/legal-information/understanding-the-legal-system/344-domestic-violence-family-court-support-workers-program](http://owjn.org/owjn_2009/legal-information/understanding-the-legal-system/344-domestic-violence-family-court-support-workers-program)

# Finding Help

- Talk to a lawyer

- 1) **Law Society of Upper Canada**

- Lawyer Referral Service

[www.lsuc.on.ca/with.aspx?id=697](http://www.lsuc.on.ca/with.aspx?id=697)

**Phone:** 1-800-268-8326 (toll-free)

416-947-3330 (Toronto); 416-644-4886 (TTY)

- 2) **Justice Net**

- Reduced fee lawyers for people with low income who are not eligible for Legal Aid

[www.justicenet.ca/directory/search/](http://www.justicenet.ca/directory/search/)

**Phone:** 1-866-919-3219 (toll-free)

- 3) **Canadian Family Law Lawyers Network (National)**

[www.cfln.ca](http://www.cfln.ca)

# Finding Help

- Talk to a lawyer

## **4) Legal Aid Ontario**

[www.legalaid.on.ca/en/getting/default.asp](http://www.legalaid.on.ca/en/getting/default.asp)

**Phone:** 1-800-668-8258 (toll-free); 1-866-641-8867(TTY)

**If you have experienced domestic violence:**

- you can get a free, two-hour emergency consultation with a lawyer
- you may qualify for a Legal Aid Certificate to help you pay for more legal advice

# Finding Help

- Talk to a lawyer

## **5) Family Court Duty Counsel (Legal Aid)**

- if you meet income test
- if you don't have a lawyer for Court that day

### Family Duty Counsel can:

- give you legal advice right before your hearing
- help you prepare legal documents
- represent you in Court for certain issues

# Finding Help

- Talk to a lawyer

## **6) Community Legal Clinic**

[www.legalaid.on.ca/en/contact/contact.asp?type=cl](http://www.legalaid.on.ca/en/contact/contact.asp?type=cl)

**Phone:** 1-800-668-8258 (toll-free)

**In Toronto:**

**Barbra Schlifer Commemorative Legal Clinic**

[schliferclinic.com/help/help-from-a-lawyer/](http://schliferclinic.com/help/help-from-a-lawyer/)

**Phone:** 416-323-9149 x278 (legal intake); 416-3231361 (TTY)

# Finding Help

If you are starting a case in Family Court:

- there may be fees you are charged to file your documents
- ask if you can get a “waiver”, which means you will not have to pay the fees



# Additional Resources

# Domestic Violence and Abuse

**For information, if your partner or family member is abusive or violent:**

**Assaulted Women's Helpline** <http://www.awhl.org/>

- 24 hours/7 days; multiple languages
- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868

**Legal Aid Ontario** [http://www.legalaid.on.ca/en/getting/type\\_domesticviolence.asp](http://www.legalaid.on.ca/en/getting/type_domesticviolence.asp)

- Available to every immigration status
- Free telephone interpretation services for languages other than English and French
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

**Family Violence Authorization Program (Legal Aid Ontario)**

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters and community legal clinics
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

**FLEW (Family Law Education for Women) Resources page**

<http://www.onefamilylaw.ca/en/resources/>

# Domestic Violence and Abuse

## **Barbra Schlifer Legal Clinic**

- Toronto: 416-323-9149 x278 (legal intake) TTY: 416-3231361
- Free counselling, referral, legal and interpreter services to survivors of violence (Family, Criminal and Immigration law)

## **Network of Sexual Assault/Domestic Violence Treatment Centres**

[www.sadvtreatmentcentres.net](http://www.sadvtreatmentcentres.net)

## **Victim Services in Ontario**

<http://services.findhelp.ca/ovss/>

# Domestic Violence and Abuse

## **Network of Sexual Assault/Domestic Violence Treatment Centres**

[www.sadvtreatmentcentres.net](http://www.sadvtreatmentcentres.net)

## **Ontario Coalition of Rape Crisis Centres**

[www.sexualassaultsupport.ca/](http://www.sexualassaultsupport.ca/)

## **Ontario Association of Interval and Transition Houses (OAITH)**

<http://www.oaith.ca/>

## **Family Court Support Workers**

- Check local community agency or call Toll-free:1-888-579-2888 or 416-314-2447

# Domestic Violence and Abuse

- **Luke's Place Resources** (Evidence of Abuse Tip Sheet) [www.lukesplace.ca/for-service-providers/resources-and-fact-sheets/](http://www.lukesplace.ca/for-service-providers/resources-and-fact-sheets/)
- **Get Help with Family Violence**  
[www.justice.gc.ca/eng/cj-jp/fv-vf/help-aide.html](http://www.justice.gc.ca/eng/cj-jp/fv-vf/help-aide.html)
- **Domestic Abuse - Increasing Your Safety**  
[owjn.org/owjn\\_2009/component/content/article/56-criminal-law/318-domestic-abuse-increasing-your-safety](http://owjn.org/owjn_2009/component/content/article/56-criminal-law/318-domestic-abuse-increasing-your-safety)

# Additional Resources (Family)

## **What You Should Know About Family Law in Ontario (Resource from the Ministry of the Attorney General)**

[www.attorneygeneral.jus.gov.on.ca/english/family/familyla.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/family/familyla.pdf)

## **Family Law Information Centres (FLICs)**

[http://www.legalaid.on.ca/en/getting/type\\_family.asp](http://www.legalaid.on.ca/en/getting/type_family.asp)

## **Family Law Services Centres (FLSCs)**

<http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>

## **Family Law Education for Women (FLEW)**

<http://www.onefamilylaw.ca/en/resources/>

## **Femmes ontariennes et droit de la familles (FODF)**

<http://undroitdefamille.ca/>

## **Ontario Women's Justice Network (OWJN)**

[www.owjn.org](http://www.owjn.org)

# Additional Resources (General)

## **Victim Crisis Assistance and Referral Services (VICARS)**

- Immediate, on-site service to victims of crime 24 hours a day, 7 days a week
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

## **Victim Support Line (VSL)**

- province-wide, multilingual, toll-free information line providing a range of services to victims of crime
- Services available from 8 a.m. to 10 p.m., 7 days a week in 13 languages
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

## **Court Prep**

[www.courtprep.ca](http://www.courtprep.ca)

- provides information on the Canadian legal system and prepares victims and witnesses to give evidence

# Additional Resources (General)

## **Law Society of Upper Canada Lawyer Referral Service**

<http://www.lsuc.on.ca/with.aspx?id=697>

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

## **Toolkit for a good Client-Lawyer Relationship**

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

## **Ministry of the Attorney General**

<http://www.attorneygeneral.jus.gov.on.ca/english/>

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

## **Find a community legal clinic near you**

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

## **211 Canada.ca**

<http://211canada.ca/>