

LUKE'S PLACE SUPPORT AND RESOURCE CENTRE
FOR WOMEN AND CHILDREN

PRESENTING EVIDENCE ABOUT ABUSE IN THE FAMILY COURT PROCESS

A Tip Sheet for Women

Introduction:

As you begin and move through any legal process related to the abuse you have experienced, you will need to provide evidence about what has happened to you. This Tip Sheet focuses on how to do that in the family law process.¹

It can often be difficult to share information about abuse with other people, especially people you don't know. You might be used to keeping the abuse a secret; your abuser may have threatened to hurt you if you tell anyone else; you may be embarrassed; you might be afraid that no one will believe you; you may not want to get your partner in trouble or you may have another reason for not wanting to describe what has happened to an "outsider."

These are all good reasons to want to keep what has happened to you private. However, if you are involved with family court, the people there need to know about the abuse. It will affect whether or not you are able to get the services and orders that will keep you and your children safe and make sure your children's best interests are respected.

This resource provides you with some explanations about who needs to know about your abuse and why and then provides you with practical tips about what kind of evidence you need to collect and how to present it during the family court process. It also makes some suggestions about safety planning and about how to deal with the evidence your abuser presents during the process.

If you have a lawyer, she or he will take on most of the responsibility for gathering evidence. However, it is still a good idea for you to read this Tip Sheet so you can help your lawyer find useful evidence.

¹ If you are involved with criminal court, you will also need to provide evidence about what has happened. Some of these tips might be useful to you, but that is not the focus of this resource. Criminal and family courts are very different in terms of their purpose and their structure, so if you are involved in a criminal proceeding, you should get information and advice from the Victim Witness Assistance Program (if you are the victim) or Duty Counsel (if you are the accused). Both these services are located in the criminal court and provide services free of charge to those who qualify.

Who needs to know:

You will need to tell about your abuse to a number of people and at several stages as you move through the family court process. Most people in the court system use the term "domestic violence" to refer to the violence many women experience in their intimate relationships. You may want to use this term when you are dealing with the police, lawyers and others involved in the legal and court system, even if it is not the way you usually talk about your situation.

Whatever stage you are at and regardless of who you are talking to, if you have concerns for the immediate safety of you or your children, you should say so.

Legal Aid Ontario → This advice is true for MR as well

If you contact Legal Aid Ontario through its 1-800 line, you should tell the first person you speak with that you have experienced domestic violence so your call can be fast-tracked to the appropriate person. You should not have to provide much detail at this point, but you should be ready to answer a few basic questions.

Your lawyer

Your lawyer needs to know the details of the violence you have experienced so she or he can do the best possible job for you.

Duty Counsel

You may use Duty Counsel to help you before you get a lawyer of your own. It is important for this lawyer to know if you have experienced domestic violence.

Mediation screening process

Mediation may not be appropriate for you, depending on your experience of domestic violence or abuse, so it is important to tell the person who is screening you the truth about what has happened in your relationship.

Mediation

The mediator needs to know if you have been or are in an abusive relationship as well as about the level of fear you feel about your former partner so she or he can make appropriate suggestions for how you and your partner can resolve your differences.

Court documents

As we describe below, you will need to provide detailed information about your violence or abuse in several of the documents you need to file with the court.

The judge

The judge may ask you questions about the abuse you have experienced. You need to be prepared to answer those questions clearly and truthfully, even if it is very hard to do so with your partner in the room while you are talking.

Why you need to share this information:

Unfortunately, there are still many people in the family court system who do not understand the impact of violence and abuse. Many people think that the violence ends when the relationship ends even though it often continues and sometimes even gets worse for a while.

Some people think a woman who has been abused needs to just “put that behind her” and move ahead when, in fact, she may have serious concerns about her safety and the safety of her children.

The more your lawyer knows about what has happened during your relationship, the better advice she or he can give you. It may be hard to tell but, if your lawyer does not know what has gone on, she or he cannot provide the correct information to the court or help you get the orders you need to keep yourself and your children safe.

Your abuser may present himself as charming and reasonable in the family court process, appearing as someone who could not possibly be abusive.

It very important for you to present accurate, detailed and credible information so the judge and others hear the truth about what went on during the relationship and post-separation if you are experiencing continued violence, control or harassment.

Going to court is an adversarial process: the judge has to decide between two sides. You need to make sure the judge has enough information about what has happened to you that she or he understands and believes your side of the story.

What information you need to share:

1. Information from you:

You need to provide specific, detailed information about the abuse that has happened during your relationship.

It helps if you take some time to organize this information, preferably in writing (point form is fine), before any meeting or appointment where you think you might have to talk about it; for

instance, before you meet with duty counsel or a mediator, before your first appointment with your lawyer.

You want whoever you are talking to or whoever is reading what you have written to understand:

- The pattern of abuse (how often it happened, what triggered it)
- How long it has been going on
- Whether it is getting worse
- Whether you have received any physical injuries
- What the children have seen, heard or are otherwise aware of
- The impact of the abuse on you and on the children
- Whether you have current safety concerns based on past or ongoing abuse

Here are some tips about how to organize your information:

- Be direct and specific
- Stay focused on the legal issues of your case
- Be factual and don't exaggerate
- Don't underplay the seriousness of what has happened
- Start with the most recent event, then move back to the beginning of your relationship. You want the other person to know immediately what is going on right now and, once you have told them that, you want to tell your story in the order it happened

You should also make a list of other sources of useful information. This could include:

- Records of 911 calls, if you have made any
- Police incident report, if you have ever called the police. Even if no charge has been laid, the police may have filed an incident report, which could contain relevant information
- Criminal charges, bail conditions, terms of probation etc.
- Information about any breaches of previous family court restraining orders;
- Crown disclosure package in any criminal proceedings
- Any comments by the criminal court judge that verify there was abuse. This evidence is best if contained in the transcript of the judge's reasons for judgement or reasons for sentence, which you can order from the criminal court
- Hospital reports, including any records from the Sexual Assault/Domestic Violence Care Centre, if you ever went to the hospital for treatment after an assault
- Your family doctor, if you have ever talked to her or him or if she or he has asked you whether you are being abused
- Your religious leader, if you have turned to her or him for support
- Neighbours, if they have witnessed abuse or violence

- School teachers and day care workers if the children have demonstrated an awareness of abuse at home
- Photographs
- Evidence of post-separation stalking
- Your own notes or diary
- Emails, letters, text messages, information on Facebook by your partner that demonstrate his abuse, violence, control or harassment
- Tape-recorded messages from the abuser
- CAS records, including any voluntary service contracts you have signed
- Any information from your employer about your abuser's violence, control or harassment of you

How you share your information:

Most evidence in family court is presented through written documents called affidavits. You and your partner will each prepare at least one affidavit, or two if you are seeking a restraining order or bringing a motion.

An affidavit is a written legal document that the person promises is the truth. It is just as important to tell the truth in an affidavit as if you are giving evidence in a courtroom in person. People's willingness to believe you (which is sometimes called your "credibility") will be negatively affected if you put anything in your affidavit that is not true.

If you are seeking a restraining order or bringing a motion, you will prepare your own general affidavit which is your chance to tell your story to the court. In it, you will answer three basic questions:

i. Who is my family?

In this section, you will tell the court several things:

- The names, ages and dates of birth of all the children
- Information about any children who are not part of this court proceeding (for example, a child from a previous relationship) and what the arrangements for them are
- The full names of both parents
- The date you and your partner were married or began to live together
- The date of separation
- Who everyone is living with right now

- Any information arrangements for custody, access and support that are in place right now

ii. What do I want?

You will list which of the following you are applying for:

- Custody: joint, shared, sole
- Access: how much, supervised or not, exchanges supervised or not, scheduled or unscheduled
- Child support
- Spousal support
- Division of property
- Exclusive possession of the matrimonial home
- Restraining order (prohibition order)

iii. Why should I get it? [Prohibition order]

This is the long part of the affidavit, in which you provide the information we have described above about the abuse, and then detailed information about why you should get what you are asking for. For example:

- If you are applying for custody, you need to describe who had the main responsibility for caring for the children before you separated, and what your plan is for caring for them now
- If you want access restricted or supervised, you need to describe why
- If you are seeking child support, you need to tell the court whatever you know about your partner's job and income
- If you want spousal support, you also need to tell the court about your work and income, both current and historic
- To get an order for exclusive possession of the matrimonial home, you have to show why this is in the best interests of the children
- If you need a restraining order, you need to provide detailed information about why you are fearful for your safety and/or the safety of your children

If you have a lawyer, your lawyer will prepare the affidavits based on the information you provide. Your lawyer may also prepare affidavits from any of the sources suggested above: your doctor, your religious leader, your child's teacher or day care worker, etc.

These additional affidavits are submitted to the court with your affidavits to provide independent, objective evidence that you have been abused.

Generally, courts are not persuaded by affidavits from your close friends or family members because those people are not seen to be objective. It is assumed they would take your side

rather than necessarily being able to provide unbiased information. However, if a friend or family member has witnessed an important event or has been a victim of abuse by your partner, their evidence may be valuable. Your lawyer, if you have one, can help make this decision.

If you have a lawyer, your job is to collect the information/evidence we have described above and give it to your lawyer, who will prepare draft affidavits. You need to read the drafts very carefully to make sure they are accurate. Your lawyer can make changes if you think they are necessary. She or he will then ask you to promise that everything in the affidavits is true. You will need to sign each affidavit to put this promise in writing. Your lawyer will also sign it.

Your lawyer will also be responsible for organizing affidavits from other people.

If you do not have a lawyer, you may need to prepare your affidavits yourself. In this case, you need to:

- Use a computer or print very neatly. If the judge cannot read your writing or printing, it will be hard for her or him to understand your story
- Be clear and simple in writing your story
- Give enough details that the judge can understand what has happened, but not so many that the judge will become impatient, bored or confused while reading your affidavit
- Find someone who is authorized to commission your signature on your affidavit. Court clerks can do this, as can duty counsel lawyers at family court. The clerks at the family court counter do not charge for commissioning affidavits
- File your affidavit with the court and make arrangements to have your affidavit served on your partner. If you have concerns about your safety and the affidavit must be served personally, you can ask the court staff to make arrangements to have the affidavit served on your partner.

If you want other people to prepare affidavits, you need to tell them where to find the forms, how to complete them and what to do with them once they are completed.

Safety planning:

As we have mentioned above, you have to serve your affidavits on your partner. This may be the first time he reads a description of his abusive behaviour and, not surprisingly, he may become angry or feel the need to reassert his power and control over you.

If you have a safety plan in place, you should review it and think about whether you need to take additional steps to make sure you and your children are safe during the period of time after your partner receives the affidavit.

If you do not have a safety plan, now is a good time to make one. You can talk to your counsellor or court support worker for help with this. In the meantime, you should do your best to avoid any direct contact with your partner.

Dealing with your partner's evidence:

Your partner may use his affidavits as a way to intimidate, harass or tell lies about you. It is important that you be ready for this before you read what he has written. Also remember that you have the chance to write another affidavit commenting on what he has said in his.

In his affidavit, your partner may:

- Minimize or deny the abuse
- Claim that you are to blame for his behaviour
- Claim that you have been abusive to him
- Say that you have been a bad or neglectful mother
- Tell lies about your drinking or use of drugs
- Claim that you have mental health issues
- Exaggerate any negative information about you

You will feel hurt and angry when you read things your abuser has said about you, so it is important to remember that a judge won't necessarily believe them, especially if you have prepared your evidence in a complete and organized way so that it is more believable.

Try to have a support person or friend with you when you read your partner's affidavit so you don't have to deal with your reaction by yourself.

GATHERING EVIDENCE ABOUT ABUSE FOR FAMILY COURT
A Checklist

Evidence		Status
Personal	Journal	
	Calendar	
	Photographs	
Electronic	Facebook postings	
	Emails	
	Text messages	
	Telephone messages	
Police	Record of 911 call(s)	
	Police incident report(s)	
Criminal court	Criminal charge sheet(s)	
	Crown disclosure package	
	Bail conditions	
	Reasons for judgment or sentence	
	Terms of probation	

Medical	Family doctor notes and files	
	Hospital emergency room reports	
	Sexual assault/domestic violence care centre records	
Community	Neighbours	
	Religious leader	
	Therapist or counsellor	
Children	Children's teacher(s)	
	Children's day care worker or babysitter	
	Children's coach(es)	
	CAS records or contacts	
Workplace	Internal incident reports	
	Coworkers	
	Supervisor	
	No trespassing letter	
	Security recordings	
Other		

From Aboriginal Affairs and Northern Development Canada website

<http://www.aadnc-aandc.gc.ca/eng/1317176225807/1317176282125>

Frequently Asked Questions - Family Homes on Reserves and Matrimonial Interests or Rights Act

Q.1 What is the on-reserve matrimonial real property issue?

A.1 Generally speaking, provincial and territorial laws protect the matrimonial real property interests and rights of both spouses during a relationship, or in the event of separation, divorce or death. On-reserve matrimonial interests or rights include a couple's family home, where both spouses or common-law partners live during a marriage or common-law relationship, and other matrimonial interests or rights.

In 1986 the Supreme Court of Canada ruled that courts cannot apply provincial or territorial family laws on reserves governed by the *Indian Act* if doing so would alter individual interests in matrimonial real property on reserves. As a result, many of the legal protections relating to matrimonial interests or rights that are applicable off reserves are not available to individuals on reserves. Further, the *Indian Act* is silent on this issue.

There is a broad recognition that resolution of this urgent issue is long overdue. Several parliamentary committees and other domestic and international bodies have studied the issue and consistently recommended legislative action. Litigation has also been filed on this matter by the Native Women's Association of Canada.

Q.2 Do provincial/territorial matrimonial property laws apply on reserve?

A.2 Some rights and protections under provincial/territorial matrimonial property laws apply on reserves and some do not. Provincial/territorial laws can be used to assist couples living on reserve to determine how to divide the overall value of all matrimonial property (house, cash, cars, etc.). Either spouse can ask a court to determine his or her share of the couple's matrimonial property. However, a court cannot force the sale of a home on a reserve or re-allocate rights of possession or occupation of a home. Provincial/territorial laws cannot change the rights of individual First Nation members to their land.

This means that if a Certificate of Possession has been issued to only one spouse for land where the family home is located, the other spouse will not be able to obtain even temporary possession of the home, even if that spouse has custody of the children. If both spouses have their names on the Certificate of Possession, neither spouse can prevent, even temporarily, the other spouse from staying in the family home. Off reserve, courts can decide which spouse gets to stay in the family home, regardless of whose name is on the legal documents.

On reserve, there are no existing laws to prevent a spouse who has his or her name on the Certificate of Possession from selling the family home without the consent of the other spouse, whose name does not appear on the Certificate of Possession. This applies during a marriage or after a separation. As a result,