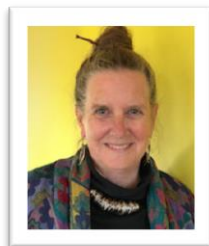


# Restraining Orders

January 28, 2020

*Presenter:*

Pamela Cross  
Legal Director  
Luke's Place



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



LukesPlace.ca



LukesPlaceTraining.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

# In this webinar on restraining orders

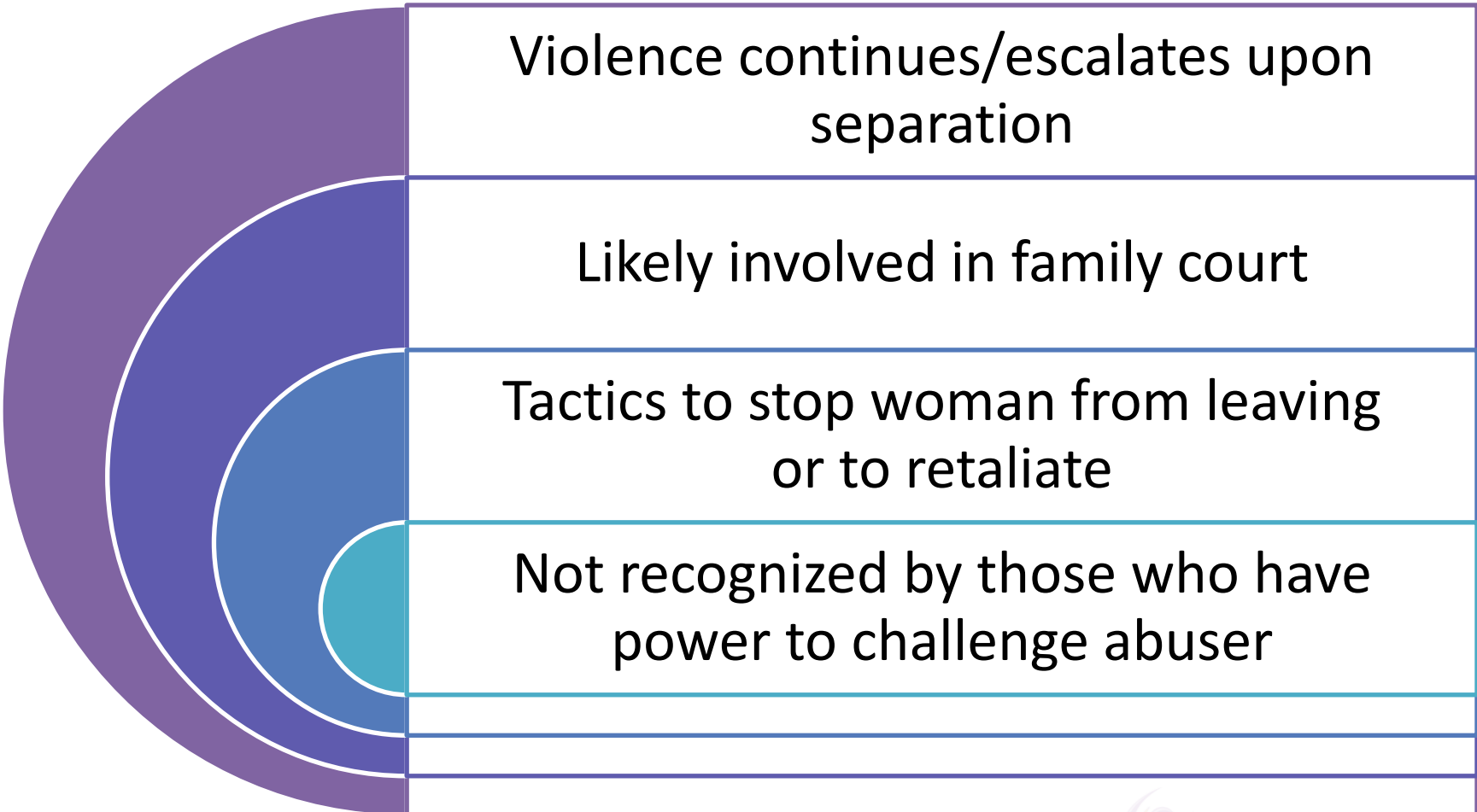
- Post-separation abuse
- What a restraining order is
  - The law
  - How to get one
- Other court orders that can protect
  - Exclusive possession of the matrimonial home
  - Bail conditions
  - Peace bonds

# Post-separation abuse

Rate of **homicide increases 6-fold**  
when women leave abusive partners

**2–6 months after separation**  
most dangerous for women for  
lethal & serious violence

# Post-separation abuse



Violence continues/escalates upon separation

Likely involved in family court

Tactics to stop woman from leaving or to retaliate

Not recognized by those who have power to challenge abuser

# Why violence continues

**Post-  
separation  
abuse**

Retaliate

Re-establish  
control

Reconcile

Moves outside  
the family home

More likely to  
involve the kids

Technology  
abuse increases

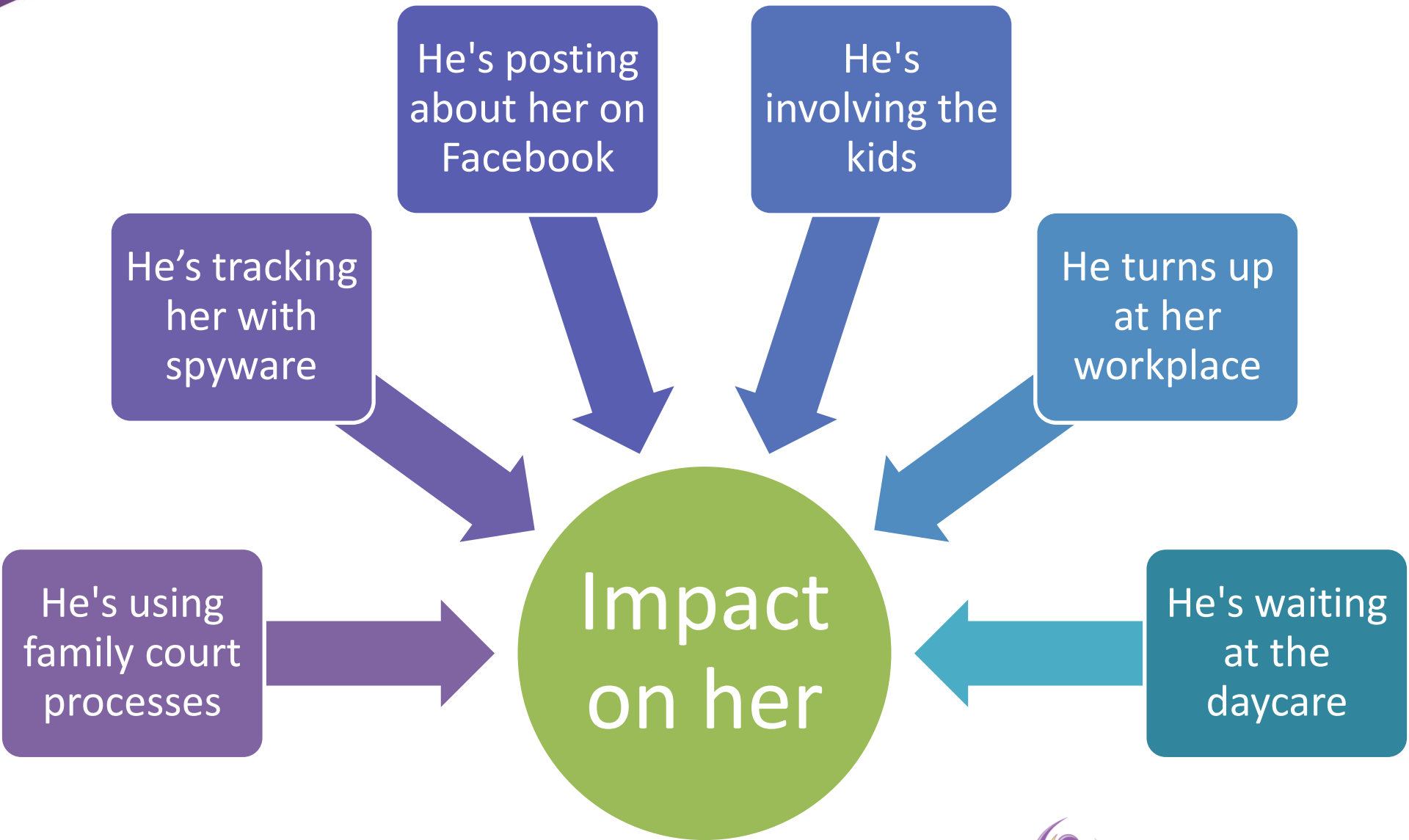
# Abuse after separation

More threats  
than acts of  
physical violence

Stalking  
increases

# Legal bullying

The intentional manipulation of family law & court process by one partner to intimidate, threaten & harass the other.



# The law

*Family Law Act,*  
section 46

Spouse, former  
spouse,  
common-law  
partner, former  
common-law  
partner

“reasonable  
grounds to fear  
for his/her  
safety or for the  
safety of any  
child in his/her  
lawful custody”

Person seeking  
the order:  
**Applicant**

Person against  
whom the order is  
made:  
**Respondent**

A restraining order can:

- Restrain direct or indirect contact or communication with Applicant or any child in Applicant's custody
- Restrain a specified distance of one or more locations
- Provide exceptions to either of the above
- Make any other provision it deems necessary

Court orders are  
pieces of paper

Just the beginning  
of safety planning

# Getting a restraining order

# Evidence

Demonstrate the reasonableness of her fear

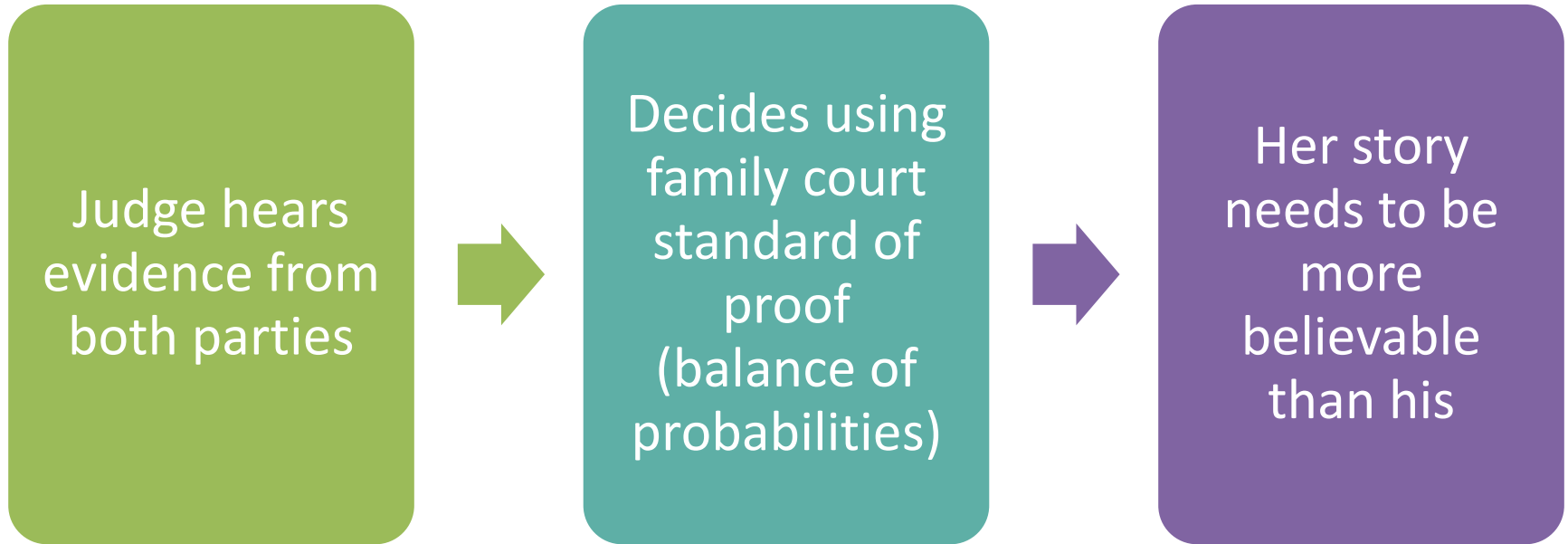
- Document each instance of stalking, harassment, abuse, threats
- Evidence of threats/mistreatment of children

Anticipate the abuser's response

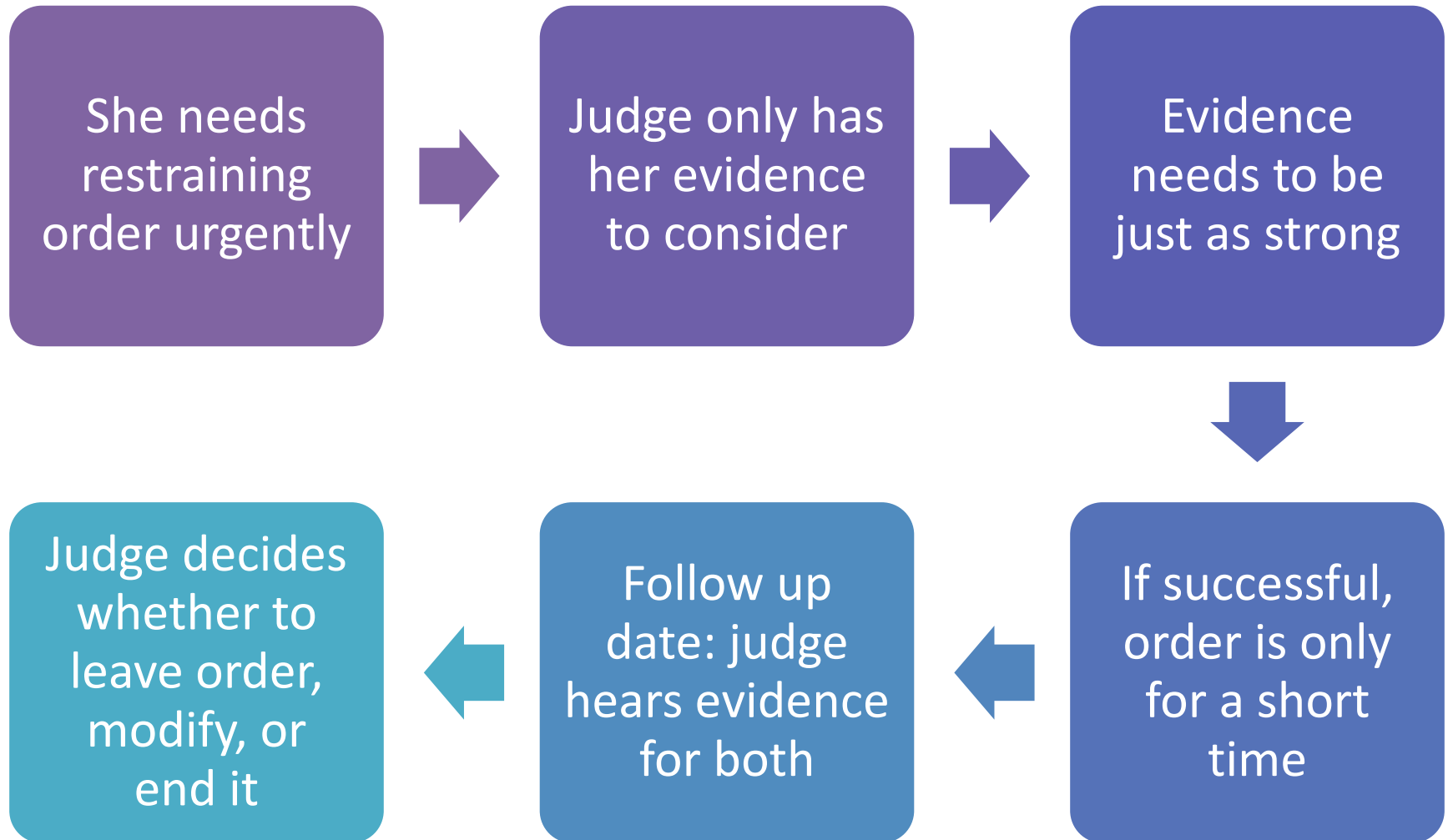
Tie pre-separation threats to post-separation behaviours

Do not assume court understands family violence

# Regular motion



# *Ex parte* motion



# For either type

Set out  
conditions  
wanted in order

More precise



Harder for abuser to  
manipulate it



Easier for police to  
enforce

## Exact addresses of locations

e.g. her home, workplace, kids' school/daycare, parents' home, her gym, etc.

## If they will communicate

Why & how

People who should not act as intermediaries

Made on  
standard form  
order

Entered into  
CPIC

Violation  
(breach)

Can be  
charged  
under  
*Criminal Code*

Can be held  
for bail  
hearing in  
criminal court

Case will  
proceed in  
criminal court


[https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/restraining\\_order/](https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/restraining_order/)

Ministry of the Attorney General

## Restraining Order

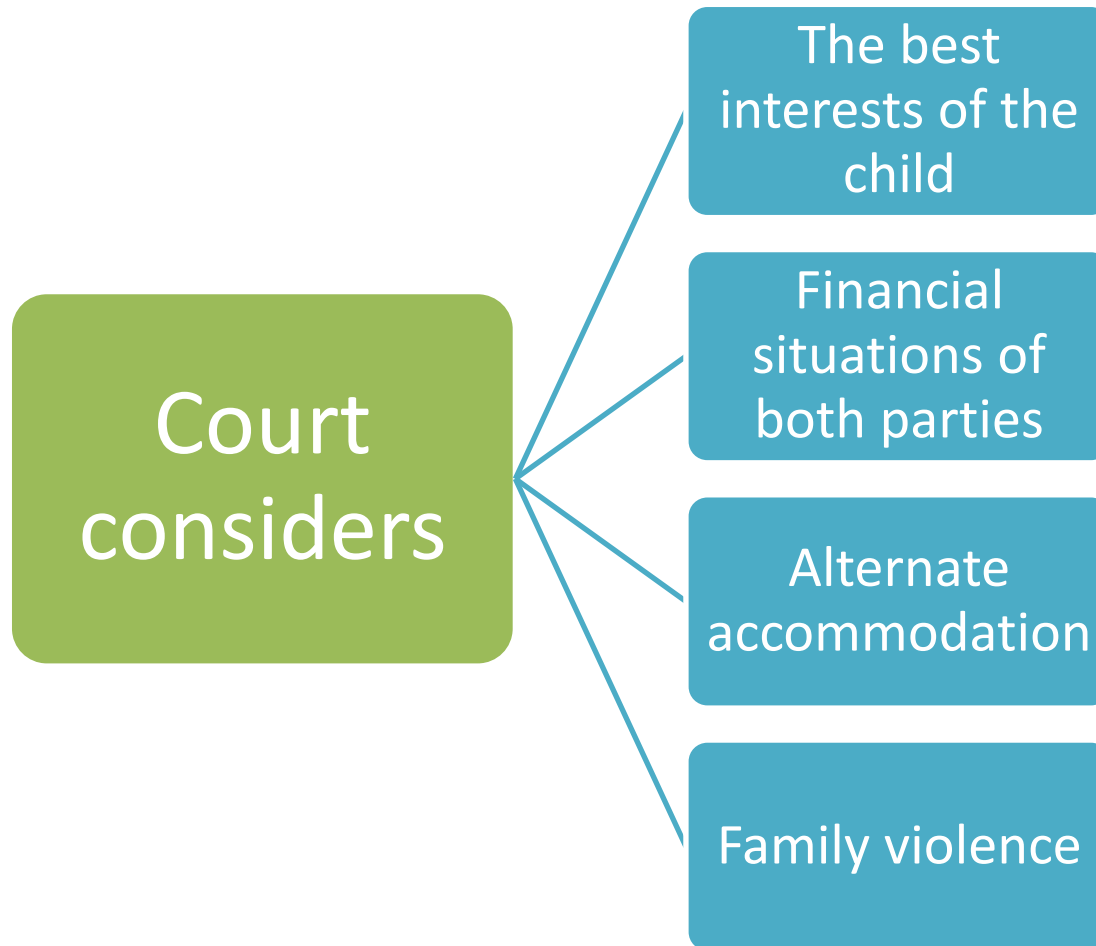
A Self-Help Guide: How to make an application for a restraining order

Ministry of the Attorney General

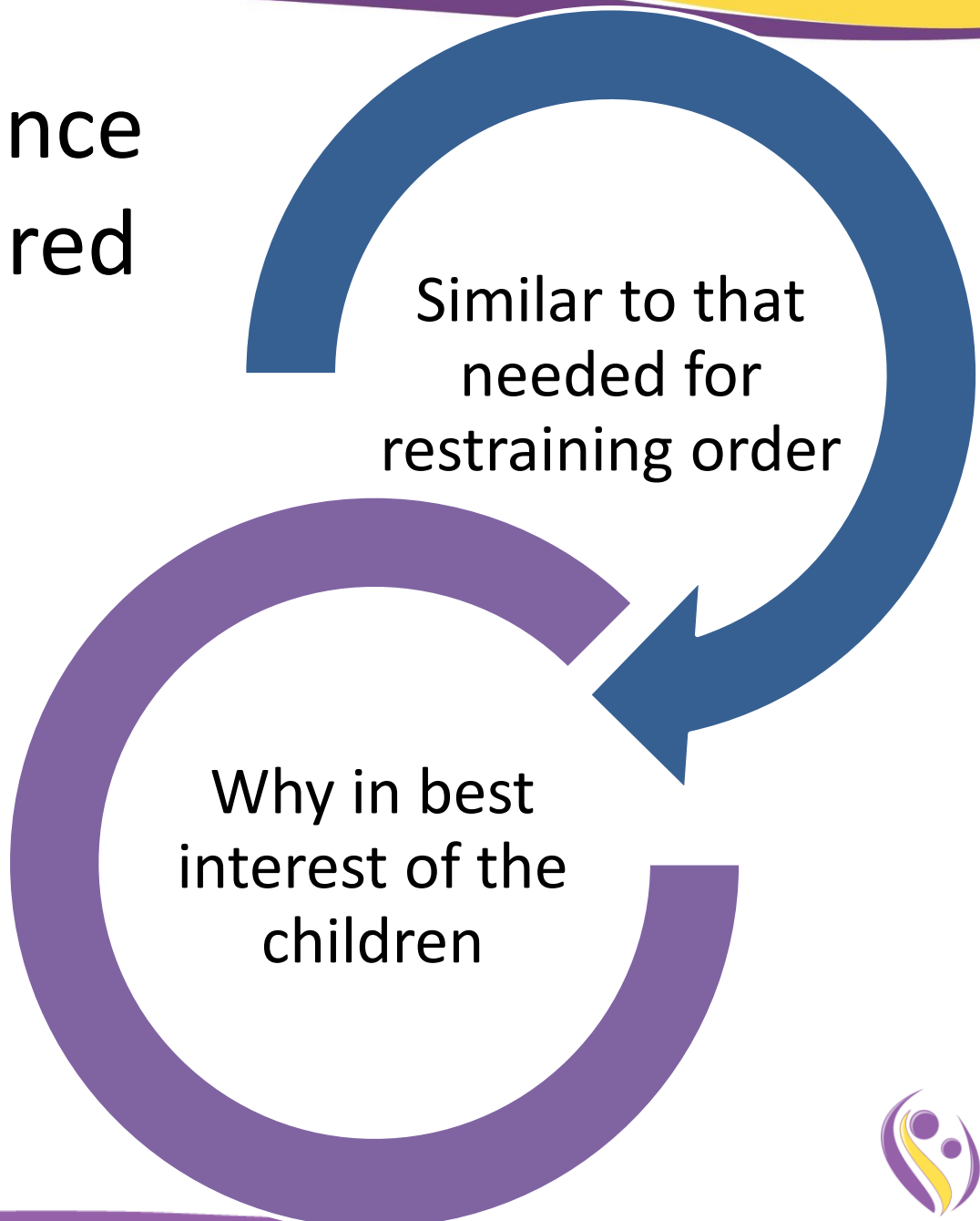
Ontario 

# **Exclusive possession of the matrimonial home**

# If she is married to her partner



Evidence  
required



Similar to that  
needed for  
restraining order

Why in best  
interest of the  
children

# Orders from criminal court

# Bail

## conditions

(pre-trial terms of release)

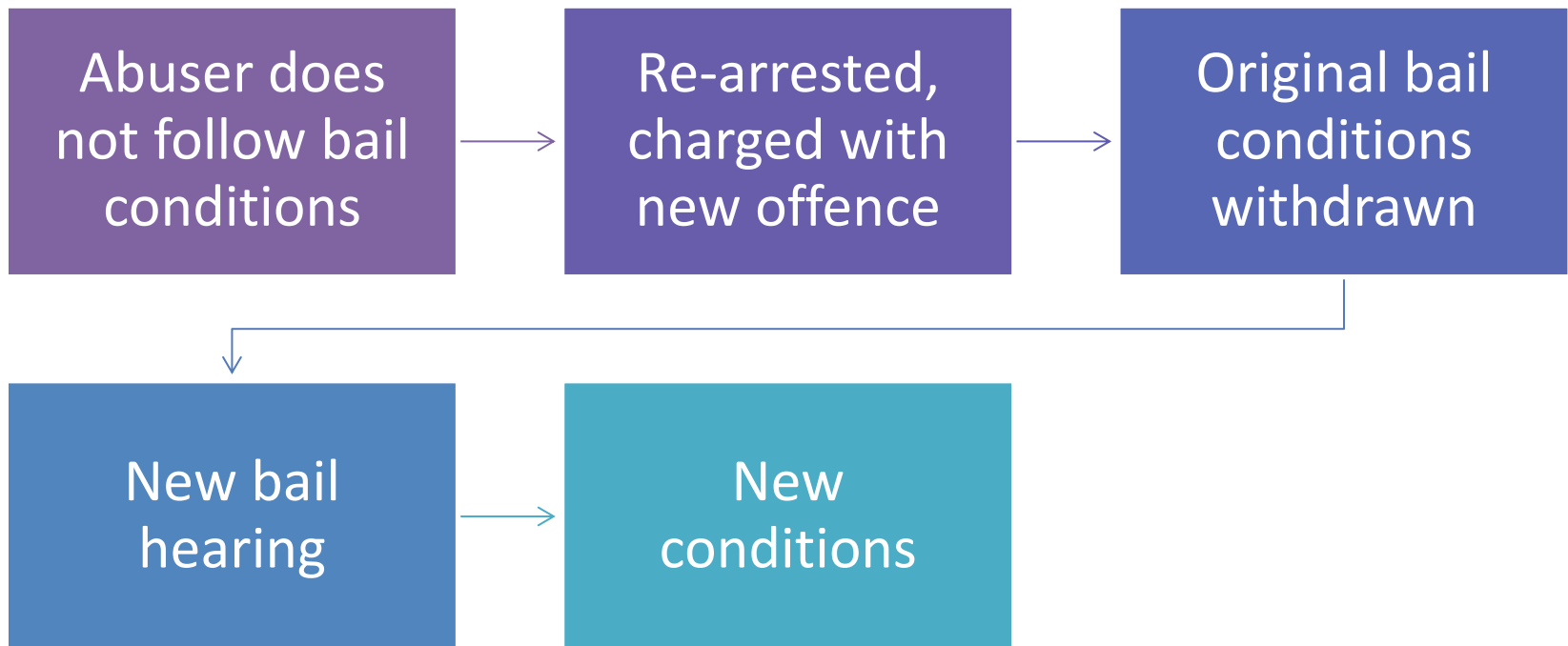
### Purpose

- Public safety
- Victim/witness safety
- Ensure court appearance

### Restrict/prohibit

- Communications
- Access to specific locations
- Possession of weapons
- Specific conditions
- Access to children

Most Crown Attorneys consult with victim before bail hearing  
– Particular conditions / special situations



# Bail conditions

## Trump family court orders

- Let Crown know about family court orders

## End as soon as criminal case is over

- Woman may not be informed

# Peace bonds

Another criminal court order

Can apply for one even if no charges laid or she is unable to get a restraining order

Effective for up to 12 months - if followed, abuser will not have criminal record at end

Even if she has a criminal court order, still seek a restraining order

- It may be permanent
- Criminal charge might be withdrawn/dismitted
- Not dependent on criminal court outcomes

# Enforcement

## Police are to enforce these orders

- Tend to take criminal orders more seriously

## Challenging to enforce

- If there has been contact between parties
- If children are present

Do not encourage former partner to breach it

Have multiple  
certified copies  
of order

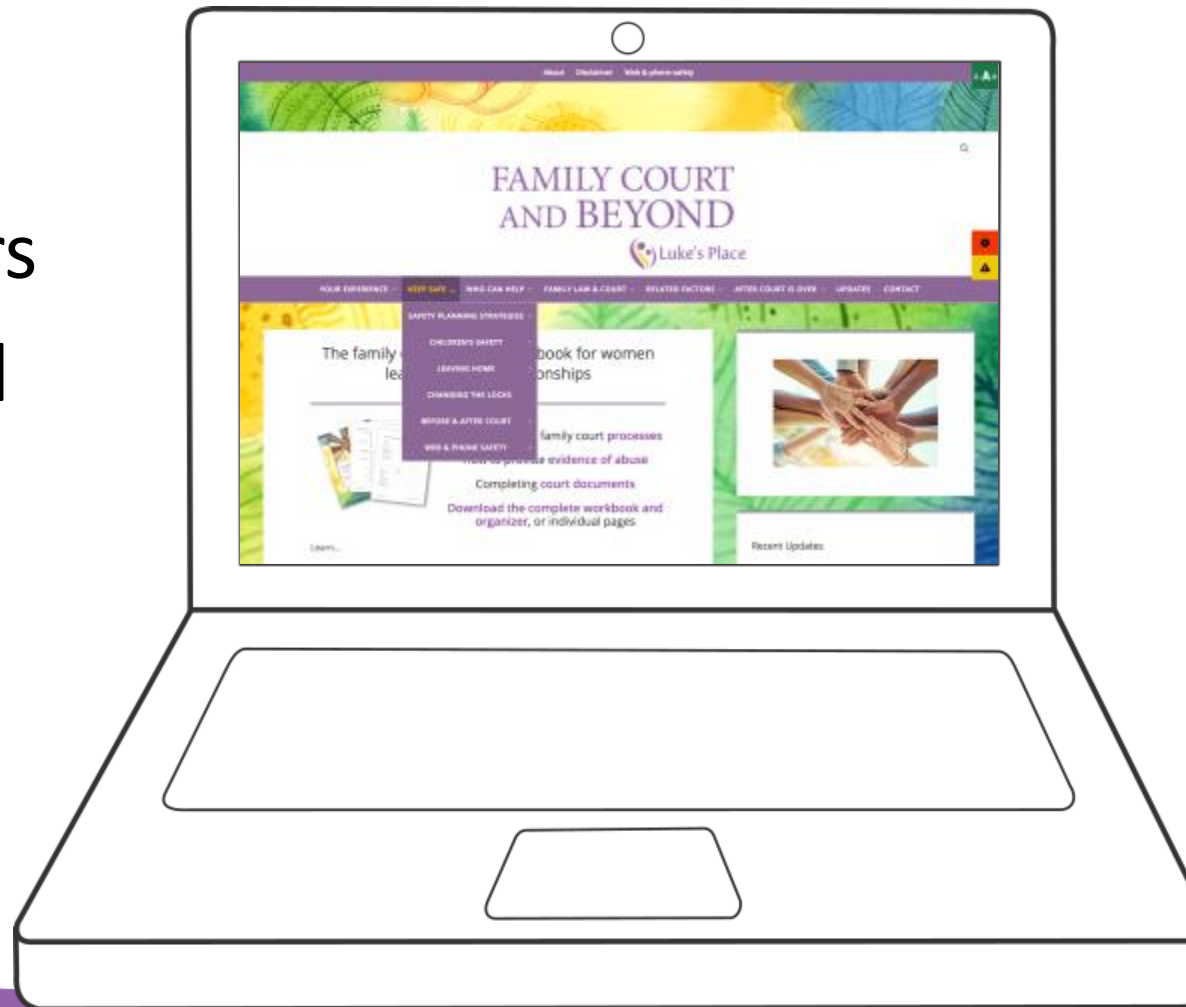


Leave copies in  
relevant  
locations

Women in rural/remote areas:  
consider police response time

# These orders are a part of her safety plan

- Family Court Support Workers
- FamilyCourtAndBeyond.ca



# Summary

- Post-separation abuse is common
- Restraining orders
  - Family court orders restricting contact/communication
  - Evidence must demonstrate that her fear is reasonable
  - Provide detailed, specific conditions
  - Regular & *ex parte* motion
- Other court orders that can protect
  - Exclusive possession of the matrimonial home (family court)
  - Bail conditions (criminal court)
  - Peace bonds (criminal court)
- To assist with enforcement, have multiple copies available
- Only a part of her safety plan
  - Family Court Support Workers
  - [FamilyCourtAndBeyond.ca](http://FamilyCourtAndBeyond.ca)

*Thank you!*

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