

Intersections between Family Law & Other Legal Issues When there is Violence in a Family

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Presenter:

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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



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Disclaimer

This webinar is not to be interpreted
as legal advice.

Only a lawyer can provide legal advice.

We recognize

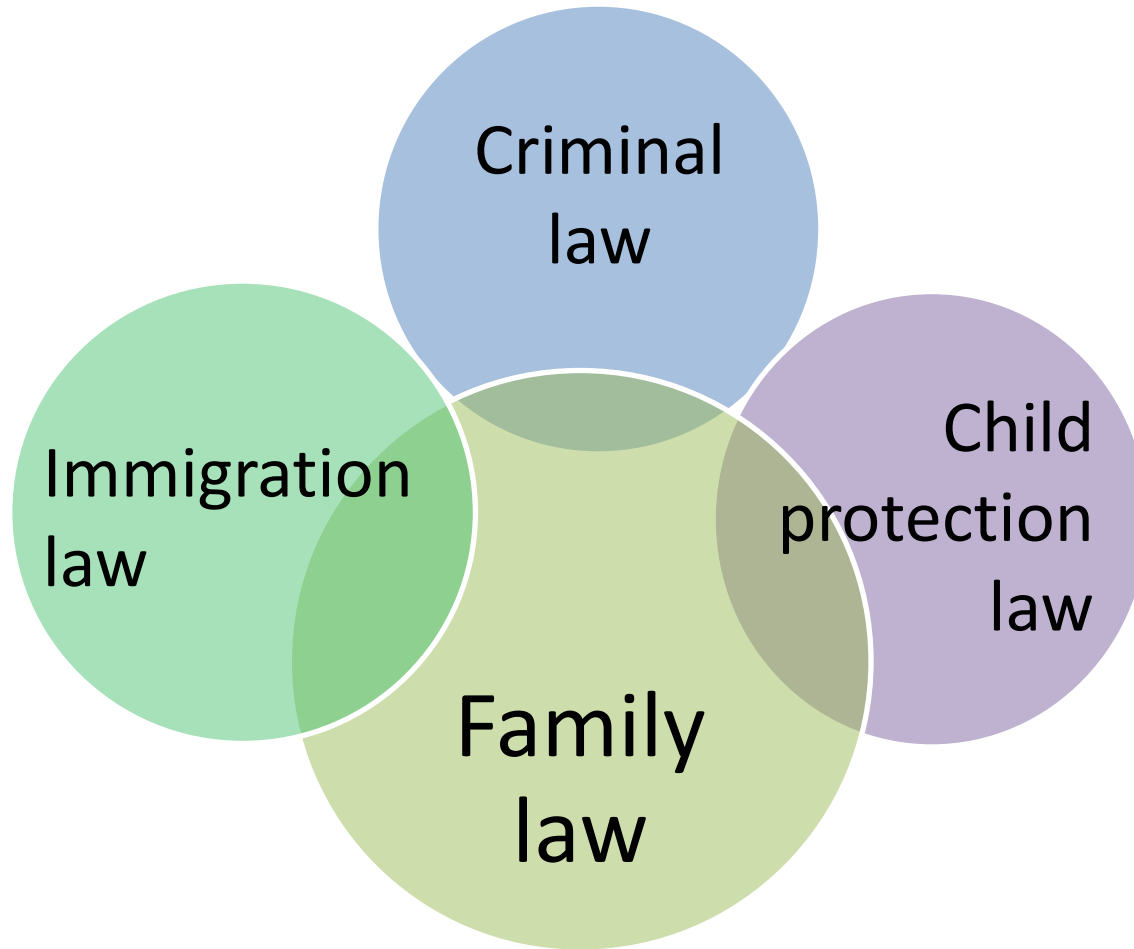
- Men can be victims
- Abuse happens in same-sex relationships
- Trans or non-binary folks may face abuse in relationships

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

Intersecting legal issues



Purposes of different legal systems in context of family violence

Family law

- Sort issues that arise at end of relationship

Immigration law

- If family or one parent is new to Canada

Criminal law

- Police charge one or both people in the relationship

Child protection

- If someone reports that the children may be “in need of protection”, includes exposure to family violence

Laws for family breakdown

Divorce Act - Federal law

- What: Divorce, parenting arrangements, child & spousal support, property division
- Who: Married people seeking divorce

Children's Law Reform Act - Ontario

- What: Custody & access, child support
- Who: Families living in Ontario at time of separation

Family Law Act - Ontario

- What: Spousal support, property division, matrimonial home, restraining orders
- Who: Families living in Ontario at time of separation

More information on family law

The screenshot shows the homepage of the Luke's Place website. At the top, there is a navigation bar with links for 'About', 'Disclaimer', and 'Web & phone safety'. Below this is a large banner with the text 'FAMILY COURT AND BEYOND' and the Luke's Place logo. A secondary navigation bar lists various topics: 'YOUR EXPERIENCE', 'KEEP SAFE', 'WHO CAN HELP', 'FAMILY LAW & COURT', 'RELATED FACTORS', 'AFTER COURT IS OVER', 'UPDATES', and 'CONTACT'. The main content area features a section titled 'The family court survival workbook for women leaving abusive relationships'. This section includes a list of resources: 'Legal issues and family court processes', 'How to provide evidence of abuse', 'Completing court documents', and 'Downloadable checklists, organizer and other resources'. There is also a 'Learn...' section with bullet points: 'When legal advice is essential', 'Safety planning — for you, your children and when going to court', and 'How a women's legal advocate can help'. A 'Recent Updates' section lists: 'More court related services' (February 12, 2019), 'Working with a lawyer' (November 28, 2018), and 'How to purchase hardcopies of the Workbook and Organizer' (November 7, 2018). A disclaimer at the bottom states: 'This website is provided by Luke's Place. The material contained on this website is legal information and not legal advice; please read our disclaimer. Some legal information is specific to Ontario.'

<https://familycourtandbeyond.ca/>

The screenshot shows the 'Steps in a Family Law Case' page on the CLEO website. At the top, there is a navigation bar with links for 'About these flowcharts', 'Before you start flowchart', 'Applicant flowchart', 'Respondent flowchart', 'Getting legal help', and 'More family law resources'. The main content area features a flowchart titled 'Steps in a Family Law Case: Before you start'. The flowchart starts with the question 'What legal issues do you need to think about?'. It branches into two paths: 'What if you and your partner agree on some or all of your issues?' and 'What if you and your partner don't agree about what should happen?'. The 'Agree' path leads to 'Make a separation agreement', then 'File your separation agreement with the court', and finally 'You start a family court case. You are the applicant.' The 'Don't agree' path leads to 'Which court do you go to?' and 'Get help from a family law professional'. The 'Which court' path leads to 'Your partner started a family court case. You are the respondent.' The 'Get help' path also leads to 'Your partner started a family court case. You are the respondent.' The flowchart ends with two boxes: 'Applicant flowchart' and 'Respondent flowchart'. A legend at the top left of the flowchart identifies the colors: green for 'Either partner', red for 'Applicant', blue for 'Respondent', and a dotted line for 'Optional step'.

<https://familycourt.cleo.on.ca/>

Criminal law

Law for criminal activity

Criminal Code of Canada - Federal law

- Some offences fall under provincial legislation
- Common charges when there is family violence: assault, assault with a weapon, assault causing bodily harm, uttering a threat, forcible confinement, criminal harassment (stalking)

No good process for sharing information
between criminal & family courts

If her partner is charged

Woman will be

- Required to testify
- Able to use Victim/Witness Assistance Program (VWAP) for info about the case, community services & support

If she hasn't been charged too

- She is not a party to the proceedings
- Has no legal standing in the case
- No right to a lawyer
- No right to legal aid
- Referred to as the “Complainant”
- Crown Attorney is NOT her lawyer
- Anything she says to the Crown, the Crown is required to disclose to the accused if relevant

If she has been charged

- Can have a lawyer represent her
- May qualify for legal aid certificate depending on her financial situation & other criteria
- Will not qualify for V/WAP unless also a victim of a crime

Mandatory charging

Policy directing police to lay charges when reasonable grounds to do so

Decision to charge is the responsibility of the police (not the woman's)

Problems with mandatory charging

Inflexible bail conditions

Lengthy delays between charges & resolution

Dual or counter charging

Differential /inappropriate police response to same-sex abuse

Inconsistent charging based on race, class, immigration status, disability, etc.

Charges laid when women really don't want them laid

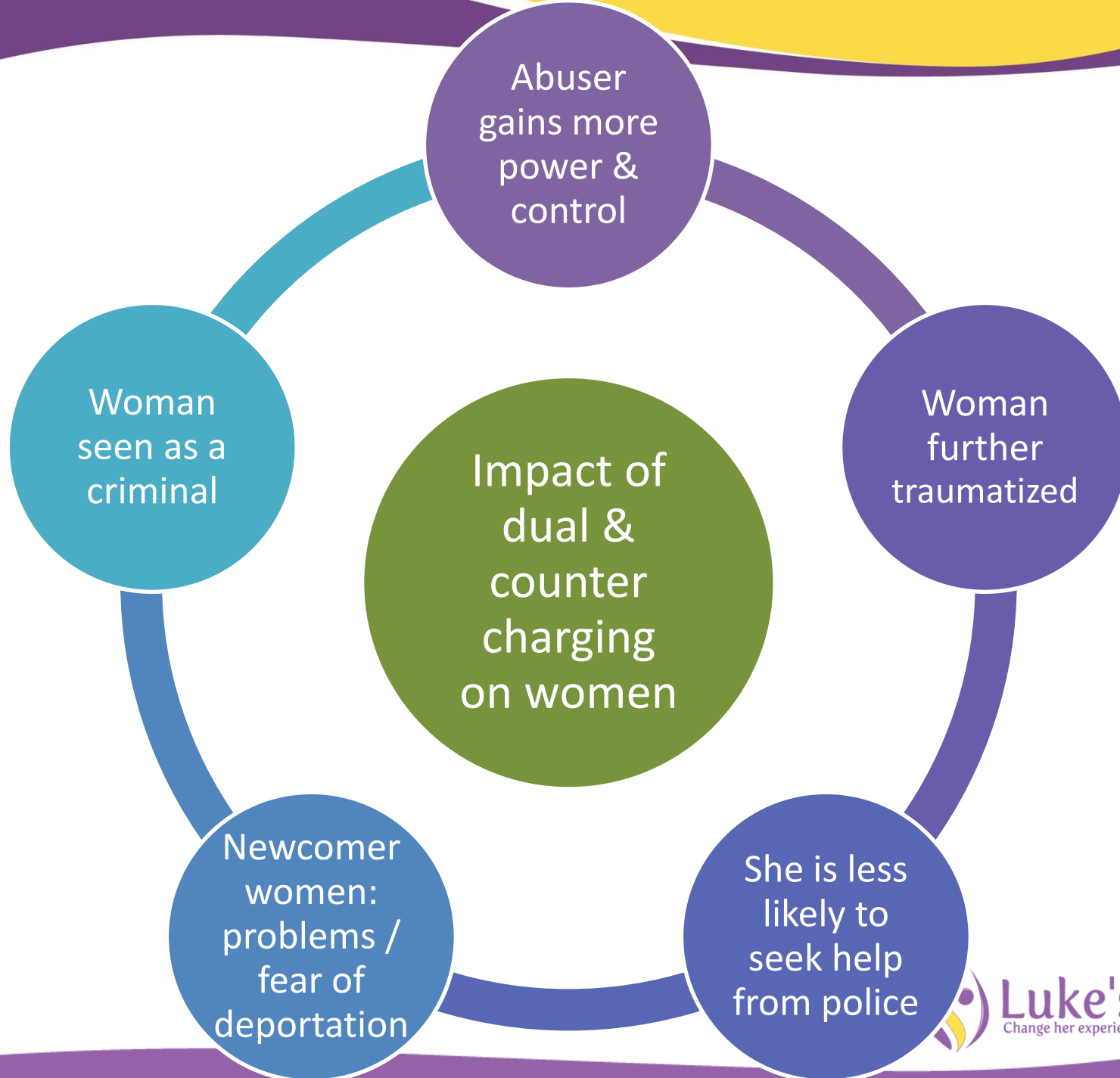
Women don't know what may happen once police are called

Dual charging

- Both woman & abuser are charged

Counter charging

- Woman is only one charged
- OR
- Charged person (abuser) lays a private charge against complainant (woman); he will be the prosecutor (not the Crown)



At further risk of harm

No clear message that
abuse is wrong

Impact of dual & counter
charging on children

Possible child welfare
system involvement

Further traumatization
if taken from caregiver

Dual & counter charging

Impact on the criminal & family legal systems

Lessens the ability to prosecute appropriately

Women plead guilty to speed up processes for children

Women disadvantaged in legal proceedings, unsafe outcomes for family

Preventing dual & counter charging

Police must analyse situation so appropriate person is charged

Police must identify “dominant aggressor”/ principal abuser

Aggressor not necessarily person who initiated violence

In criminal court

Complainant's
role is that of
witness

Decisions about
case made by
Crown Attorney,
defence lawyer,
judge

- Crown is NOT complainant's lawyer

Legal test:
beyond a
reasonable
doubt

- Family court
test: balance of
probabilities

Defence may try to delay (adjourn) family law case until criminal case complete



If accused is acquitted, can use this in family law case to discredit allegations of abuse



Criminal cases can take a long time



Delays resolution of family law issues

No contact provisions with bail

Accused usually released on bail in criminal cases involving family violence

Bail conditions will include no contact with victim

Challenging if there is a family court order that permits/requires contact:

Let police & Crown know about this ASAP

Lack of communication between courts

Women have to tell their stories more than once

- Emotionally challenging
- Slight differences will be used against her

Issues may fall through the cracks

Inconsistent responses

Criminal court orders trump family court orders:

Ensure family law lawyer is kept up-to-date

FAMILY COURT AND BEYOND



Criminal law

In addition to your family law case, you may be involved with criminal court as a result of the violence you have been subjected to in your relationship. This may be because your ex-partner was charged, you were charged, or you were both charged.

When the police become involved

At some point in your relationship, the police may have been called to your home. You may have called them for help. It may have been one of your children, another family member or a neighbour or friend who made the call, because of safety concerns.

What you (or whoever else made the call) may not have known is that, once the police are called, it is the police and not you who make the decisions about what is going to happen. This is because police in Canada follow a mandatory charging policy that requires them to lay charges in "domestic violence" cases where they believe there is evidence a crime has been committed, regardless of the wishes of the victim.

While this policy was rooted in good intentions and can be helpful to some women,

Criminal law

- If your partner/ex-partner has been charged
- If you have been charged
- Comparing family and criminal court
- Tips: Managing in both family and criminal court

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FamilyCourtAndBeyond.ca/related-factors/criminal-law

Child protection

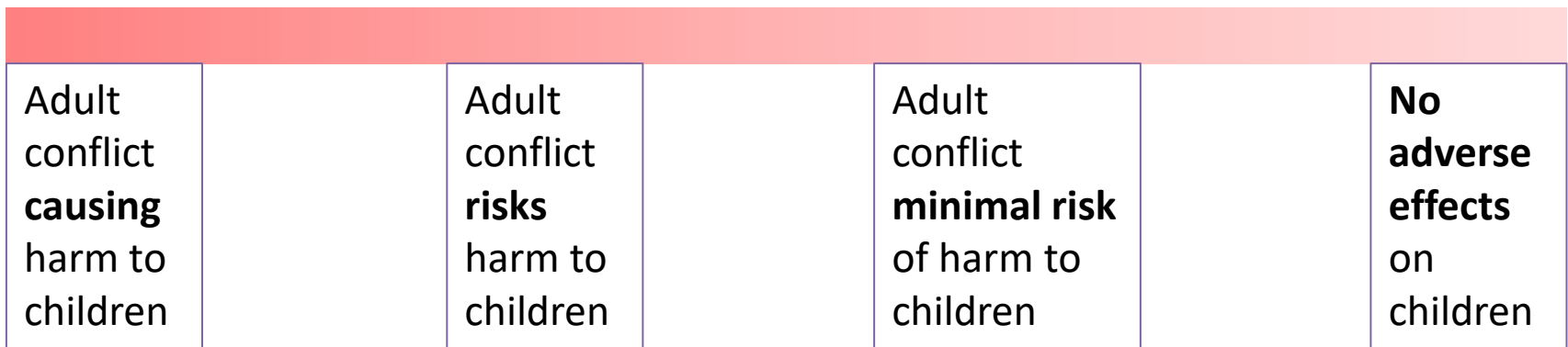
Law for child protection (CAS)

Child, Youth and Family Services Act – Provincial law

- Child protection authorities mandated to intervene when they deem a child in need of protection
- Children exposed to woman abuse grounds for protection

Exposure to woman abuse

Child protection use risk assessment model with eligibility spectrum



Intervention only likely in extreme or moderately severe levels of conflict

Negative impacts of child protection

Woman may feel punished / re-victimized

Threat or reality of having her children removed

Woman may have to prove her parenting skills

Puts blame for the abuse on the woman

If kids removed, they lose their primary caregiver

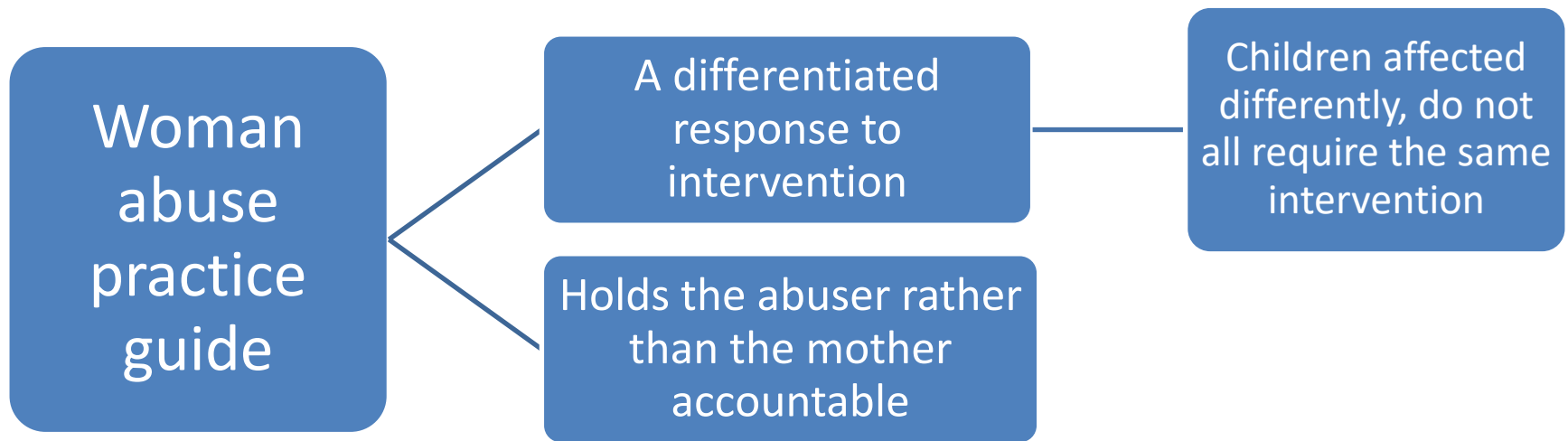
Foster care not always a good alternative

➤ Abuser is not held accountable

➤ Can discourage women from reporting abuse

➤ Making a report may put women & children at increased risk

Ontario Association of Children's Aid Societies



If there is a family law case

Family law case stops until
CAS case is concluded



Any CAS order trumps
any family court order

Immigration

Status issues for newcomer women when leaving an abusive partner

Her refugee status based on his: see a lawyer to start her own claim

He is her sponsor: there are steps she needs to take

She sponsored him: obligation to support him

She doesn't have legal status: he may threaten to report her

Fear of deportation, especially if there are children

Family court case

She can start a case regardless of her status

Could bring her to attention of authorities

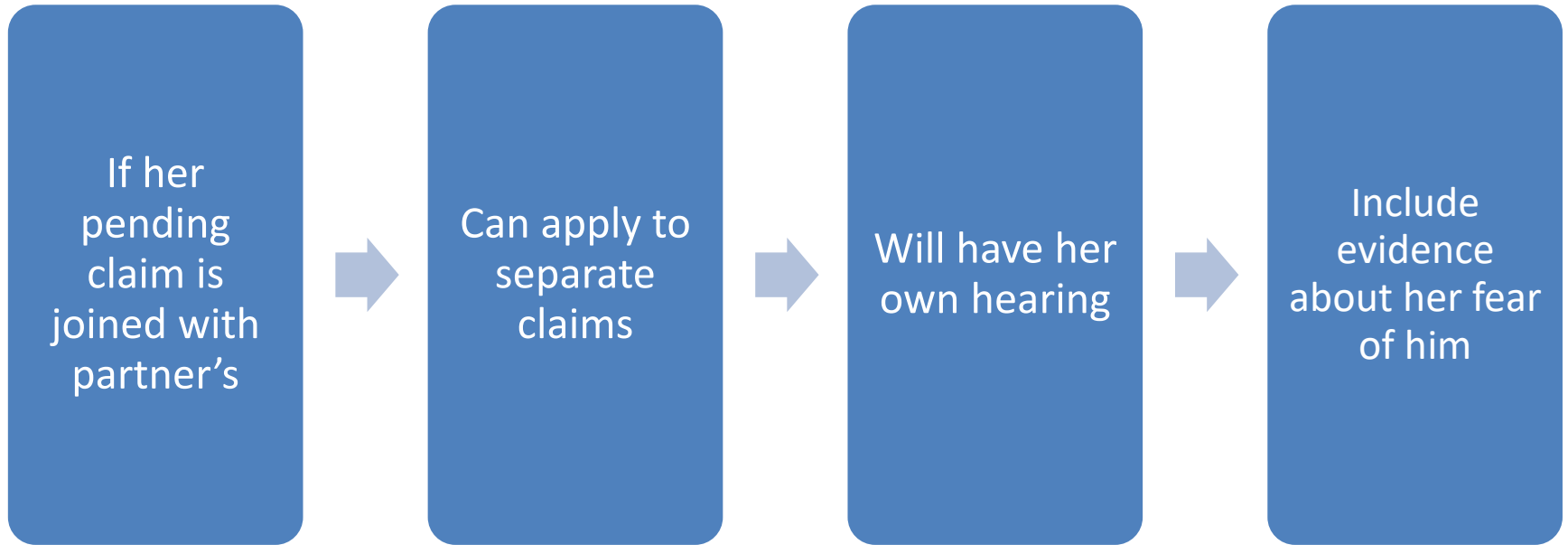
May buy her extra time in Canada

- Postpones what will happen next in immigration situation

Criminal case

If she is a witness, may be able to stay in Canada until case completed

Refugee claims



If their refugee claim denied: she may be able to make Pre Removal Risk Assessment (PRRA) application

www.LegalAid.on.ca

- 2 hour family violence authorization forms
 - Consult with family and/or immigration lawyer
 - Obtain one for each purpose

The screenshot displays the Legal Aid Ontario website interface. At the top left is the logo for LEGAL AID ONTARIO / AIDE JURIDIQUE ONTARIO. To the right are navigation links: SERVICES ▾, FOR LEGAL PROFESSIONALS ▾, CORPORATE ▾, and FAQ. Below the navigation is a search bar with the placeholder text "Search for services, clinics and more...". The main content area is divided into several columns of service categories:

- Criminal legal issues**: Charged with a crime that could send you to jail? Going to court without a lawyer? Charged under the Youth Criminal Justice Act?
- Domestic abuse**: Abuse is never ok. If you are experiencing domestic abuse, we may be able to provide you with legal advice or representation.
- Family legal issues**: Do you want to separate from your partner? Need to decide custody, support or access? Contacted by Children's Aid?
- Mental health legal issues**: Need legal help with a mental health hearing or appeal? Are you being held in a psychiatric facility?
- Refugee and immigration legal issues**: Want to apply for refugee status? Need help completing your Basis of Claim form? Was your refugee claim rejected?
- Legal clinics**: Were you denied Ontario Works or Ontario Disability Support? Need help with income supports such as pension? Being evicted?

On the right side, there is a "Most Accessed" sidebar with links: Contact us, Legal Aid Online, Family legal issues, How do I apply for..., and Finding the right... The "Refugee and immigration legal issues" section is highlighted with a red rectangular border.

Summary

- How family court, criminal court, child protection & immigration systems interact
- No formal communication systems
- Women involved with more than one have burden to share information between systems

Thank you!

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CLEOConnect.ca

StepsToJustice.ca