

Supporting an abused woman to bring an emergency motion

A webinar presented by Pamela Cross,

based on content from

Emergency Motions Toolkit,

a resource published by

Luke's Place Support and Resource Centre

and available for \$15.00

by contacting admin@lukesplace.ca

Objectives

This webinar will assist you in supporting women who are thinking about bringing an emergency motion in family court.

You will learn:

- What an emergency motion is
- What the process is to apply for one
- Common reasons that emergency motions fail
- The importance of evidence
- How to support women in gathering evidence and presenting effectively

Disclaimer

This webinar provides basic legal information and not legal advice. It is not a replacement or substitute for legal advice or representation. Any woman considering taking any action in family court should meet with a lawyer if at all possible.

Some resources for women who cannot afford to pay for a lawyer include:

- Family Law Information Centre (at family court)
- Family Court Duty Counsel (at family court)
- Family Law Service Centre
- Family Court Support Worker
- 2-hour Family Violence Authorization certificate available from many women's shelters

What an emergency motion is

- A way to step outside the regular Application and Motion processes
- Allows a party to obtain a short-term order very quickly

What an emergency motion is (cont'd)

- Only available when there is a serious emergency
- They are the exception to the rule and are hard to obtain

Types of emergency motion

➤ **There are two types of emergency motion:**

- Motion without notice, also called an *ex parte* motion
- Urgent motion

When to bring an emergency motion

- Safety
- Children
- Property
- Financial support

Procedure

- Usually brought at the beginning of a case, but can be brought at any time an emergency arises
- Woman prepares required documents (Forms 14, 14A and likely 35.1) and submits at court counter

Procedure (cont'd)

- No court appearance – judge reads documents in chambers and makes a decision
- Order must be immediately served on the abuser before it is in effect

Why emergency motions fail

- Person is seen by the court to already be safe
- Crisis has passed, at least for the time being
- There is an alternative
- The circumstances don't meet the emergency standard

How to meet the test of emergency

➤ **Situations that could meet the test:**

- Abduction or threat of abduction
- Imminent return or release of abuser who has made threats of harm
- Abuser has threatened to deplete all family's assets and has means to do so

How to meet the test of emergency (cont'd)

- Woman needs to provide strong evidence to support her claim
- Very important not to exaggerate or overstate the facts as this can jeopardize the future of the woman's case

The importance of evidence

- Standard of proof: on a balance of probabilities
- Court needs to be strongly persuaded because no evidence is being heard from the abuser
- Court looking for red flags that this is an emergency

What makes good evidence

- a history of violence, especially if frequency and severity are increasing
- a history of breaching restraining orders or other court orders
- threats of violence, homicide, suicide or abduction of child(ren)

What makes good evidence (cont'd)

- stalking behaviour
- Unemployment
- alcohol or drug dependency
- depression /history of mental illness

What makes good evidence (cont'd)

- history of withholding children
- abuser's ties to another jurisdiction
- any activities by the abuser that are consistent with leaving
- abuser has children's passports

Presenting evidence effectively

- a strong, detailed affidavit is important
- should begin with most recent event, then present history in chronological order
- should identify tactics woman has already attempted to deal with problem

Supporting a woman who is considering an emergency motion

- become familiar with judicial attitudes in your family court
- help women identify degree of crisis
- support her in gathering evidence

Supporting a woman who is considering an emergency motion (cont'd)

- assist her in preparing affidavit
- safety planning
- support her in preparing for the return to court

Additional resources

Emergency Motions Toolkit

Luke's Place Support and Resource Centre

\$15.00

admin@lukesplace.ca

Questions?