

Submission No.....	2
Date Received.....	29.06.05

28/7/2005

House of Representatives Legal and Constitutional Affairs Ctee  
(re draft bill amending Family Law act)

Members of the committee,

The main points I would like to make to you are:

1. Court orders in relation to contact with non residential parent are not being enforced and are treated with contempt by large numbers of residential parents.
2. Family court administrative procedures are appallingly inefficient and unnecessarily costly.
3. The practice of allocating only 2 days to a trial in the magistrates section of the family court also causes huge problems to anyone wishing to access the family court

#### Background information

At that time he was essentially unemployed (a major factor in the divorce), he was unable to pay for lawyers and could not get legal aid. His ex wife had (apparently) unlimited legal aid and the services of some of the best lawyers in [redacted]. He agreed to the standard formula of his ex wife having residence of the children and he was to see them on alternate weekends.

Since then he has had an ongoing battle to gain access to his children.

1. **Problem :Non enforcement of access orders**  
**(Solution : Make refusal of access an instance of child abuse)**

After some [redacted] visits to court for 'directions' hearings, 'mediation', one formal trial (when his ex wife was given a [redacted] for breach of the court order), and many 'discussions before the magistrate' the magistrate could not get her to allow access on anything approaching a regular basis.

In all, [redacted] he attended the family court over [redacted] times - all aimed at trying to get the court to enforce the access order it had issued. Since I often attended court with him, I ended up spending a LOT of time sitting in the foyer of the family court waiting for some procedure or other to occur. Since many conversations in the family court are emotionally charged and easily overheard, it quickly became obvious that

- some 50% of the business of the magistrates part of the family court is dealing with enforcement of access orders.
- Penalties are almost never issued
- It makes no difference if you have a lawyer
- A lawyer has stated that the court NEVER penalises resident mothers who breach the court orders relating to access and suggested there may be a guideline of some sort to this affect.

Fairly obviously, hostile ex wives soon get the idea that an access order is an inconvenience which can be ignored. [redacted] ex wife stated in court on several occasions that she would allow access [redacted]. The magistrate did not seem to take this statement as the gross contempt of court that it seemed to be.

It would seem to me that if shared parenting is to become a reality then at the very least, the court needs to be prepared to enforce its orders - or the whole thing just becomes a joke.

I am aware that the reason for the courts' attitude in this matter is that penalties on the resident mother will only penalise the children. I dispute this view. There are many penalties which do not affect the children at all - such as community service while the children are in child care or at school. Even a weekend stint in gaol while the father has contact is not out of the question and would save the taxpayers millions of dollars and the children a LOT of heartache. Penalties would not be needed often - just often enough to make 'contempt of court' a serious charge again.

In my experience there is also another penalty which would work in the cases where the fathers are concerned about the welfare of their children. Where this problem is most severe the father is often willing and able to be the resident parent - the only reason the father is not the resident parent is that the court almost always awards residency to the mother. Legislation already states that children have a right to contact with both parents. ***It should not be difficult to build into legislation that repeated breaches of access orders amount to child abuse*** and therefore increase the father's (currently non-existent) chances of becoming the residential parent.

**2. Problem: Gross administrative inefficiency in Family Court  
(Solution: a time and motion study on the way the court runs its business)**

While I am extremely impressed with the way the family court machinery deals with highly emotive people, I am totally appalled at the mind boggling inefficiency of the court when dealing with day to day administration. It is no wonder that the court takes years to make decisions and costs a fortune to do the most trivial tasks. The court seems not to have heard of computers, the internet or even secretaries. On many occasions I have seen a magistrate sitting in front of the whole assembled court (costing some \$10000 per hour) leafing through his diary looking for a time slot to do something. On one occasion this took [REDACTED]. On most court visits, this process wastes at least 5 minutes - during directions hearings it can waste up to 50% of the time taken for the hearing.

I would suggest that judges and magistrates are doing many tasks for which they are not trained and for which they are grossly overpaid. A judge is paid like the CEO of a substantial corporation - to have him manage his own diary is silly. If scheduling alone is transferred to someone who is trained to do it (a secretary perhaps!), my experience would suggest some 20% savings in running costs might be available.

**3. Problem: Magistrates court will only allocate 2 days to a trial.  
(Solution: allocate a reasonable time to allow the trial to finish in one session)**

Perhaps as a consequence of grossly incompetent administrative procedures, trials and other court events take far more time and cost much more than they need to causing sometimes insurmountable barriers to those involved with it - particularly those trying to hold down a job.

[REDACTED] has just endured a custody trial which started in [REDACTED] and finished in [REDACTED] - a trial that took [REDACTED] but only needed to take [REDACTED]. He is now waiting for a final judgement which we are told will probably take another [REDACTED] - and may take years - for no apparent reason other than that the magistrate has to get around to it.

The [REDACTED] of this trial was allocated in [REDACTED] sections with anything up to [REDACTED] in between the sections. With such long delays between sections, the first day of each section was used just to 'catch up' - this waste of time was a major factor in the cost of the action in both lawyers fees and work time. I have been told by the lawyers that the magistrates' court always allocates only 2 days to a trial in the hope that the trial will complete in that time - it does so only rarely. With the benefit of hindsight admittedly, this trial would have been completed in no more than 5 days if it was done in one section. I talked to many others who are enduring the same silly arrangements. With these long delays, I seriously question that the magistrate is able to retain an

adequate grasp of arguments which were put as long as two years previous to the judgement – especially as transcripts are no longer made and he is forced to refer to a tape.

While it may not be the direct aim of your current enquiry, I would strongly suggest that a simple time and motion study of the business operations of the family court be made and I would expect that the savings made by implementing simple changes, would release resources to allow the court, and the magistrates, to get on with their real business more effectively to say nothing of making the courts functions more accessible to ordinary people – which is part of your enquiry.

Yours Faithfully

