

# **A guide to recording your own court hearing**

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## **Background**

In recent years there has been a growing number of complaints from those attending courts about the lies, deceptions and cover-ups that are going on in family courts. It is well recognized by many Canadians, including high ranking Canadian authorities and even some judges, that perjury in family court is rampant and that this crime often goes unpunished in family court. Ontario Justice, Mary Lou Benotto, once stated this before a public audience attending the Advocates Society conference in Nassau, Bahamas.

Malicious comments and lies are often made in the courtroom by judges, lawyers or their clients which ultimately causes a lot of harm to children and their families. Even some judges step over the line and make comments which are clearly biased, mean-spirited or have racial overtones. Some judges act in a manner or say things that are clearly unbecoming of their position as a judge. Family courts which involve child protection matters seem to be especially worse as they are generally closed hearings so the public rarely gets to witness what is really going on. Matters have become so bad that many citizens and even some lawyers are speaking in terms of outright corruption of the court system, including some of the judges.

In one case, a Toronto area lawyer reported that a Judge in the Ontario Court of Justice made remarks in court which had racial overtones, which were directed towards one of the racial minority groups in the Province. The lawyer was shocked that the judge would make such a comment. After the court hearing, the lawyer went to the court's administration office to order a copy of the court transcript. While the lawyer was ordering the court transcript other lawyers who were in the courtroom room at the time of the judges comments, including opposing counsel, approached him and quietly warned the lawyer that it would be unwise for the lawyer to order this transcript and to pursue the matter any further. The lawyer was given the distinct impression to just leave this matter alone. The lawyers in the court knew that what the judge had said in court was wrong and if word of this got out to the ethnic community, that this would create problems for the judge. The lawyer went ahead and ordered the transcript anyway but the transcript took much longer than was normal. When the lawyer inquired with the court reporter as to why the transcripts were taking so long, the lawyer was told that the judge had to approve the transcripts before they were released. The lawyer did eventually get the transcripts but found that the racially motivated comments did not appear on the official transcript. The lawyer did not pursue matters further because the lawyer was fearful of the backlash by those in power at the court which would literally force the lawyer out of business. The lawyer's comments were to the effect that the lawyer would be "blackballed" and would likely not fare well with clients in that court again.

In another case, a parent from Burlington, Ontario reported that when he ordered court transcripts for his court hearing because of inappropriate comments made by the judge and the opposing counsel, that two sets of transcripts from two separate days were lost by the court. Not one, but two sets! The court reporter said that she had been instructed to turn over her audio tapes of the court proceedings to the Attorney General's office which she did. While in the care of the Attorney General's Office of Ontario, the audio tapes mysteriously disappeared. The court reporter stated that for many years up until that time that it had been the practice of court reporters to keep their

own tape recordings and to be responsible for them. In the many years of her working as a court reporter, not one of her own court tapes had ever been replaced. According to the court reporter, it was only when the Attorney General's Office started to take the tapes from the reporters for central storage did this problems of "missing" tapes begin.

In yet another case, another parent, after ordering transcripts from an Ontario court and convinced that the transcripts had been altered, insisted that the audio tape recordings taken by the court reporter be listened to and compared against the accuracy of the transcript. The parent reported that during the meeting in which the audio tape was listened to, the tape ended but then suddenly a few seconds later started playing the same section of tape that was already heard previously. It was clear to the parent that the tape had actually been taped over a second time and that certain sections of the tape had been removed electronically during the editing process. The parent reported that when this discrepancy was brought to the attention of the court reporter, that the court worker clearly was embarrassed to see that the parent had discovered the alteration on the tape. The parent was told that a copy of the tape could not be given to anyone and the parent was promptly ordered out of the office where the meeting had occurred.

Recently, complaints have been heard about people entering court buildings being searched and told that it is illegal to bring a tape recorder into the court. Some court houses have even gone so far as to mislead people by posting signs at the entry to courtrooms which lead people to believe that audio recording is not allowed by anyone except by court staff. Some court security staff appear to be totally unaware of a party's right to tape record their own court hearing and appear to have been told that it is illegal for anyone to bring tape recorders into the court. In reality, there is no law banning this, only that members of the public cannot tape record when they are in the court. It is becoming the practice of more and more people these days to carry personal tape recorders with them to record notes and memos. It is also recognized under the Courts of Justice Act that members of the press also have the right to record court proceedings for the purpose of supplementing their notes.

Enough stories have been reported in recent years, which raises many serious questions about the openness, accountability, reliability, accuracy of the current method of allowing court agents and the Attorney General's Department to totally control all aspects of record keeping in the court. Many Canadians, including some members of the legal profession feel that those citizens who are involved in the court system can no longer rely on the courts and the Attorney General's office to maintain an accurate and reliable record of what was said and done in the court. Complaint abound as well as to the costs of obtaining transcripts which raises questions as to the ability of the court system to provide this service to the public at a reasonable cost. Many Canadians, including members of the law society feel that judges should not have the authority to "approve" transcripts or to even be allowed to review transcripts before they are released.

This article was written with a focus on helping people involved with the court system to understand their rights and to know how to record their own court proceedings. Citizens who audio record their own court hearing can significantly improve the chance of justice in the court. This document is based on provisions of the Ontario Courts of Justice Act which gives parties in court the right to tape record their own court hearings. A copy of the Act has been attached to this document. The author of this document believes, as do many other Canadians, that the reasonable use of audio recording of court hearings by participants in court hearings will significantly improve openness and accountability and increase the public's trust in the administration of justice.

## **Using a recorder will increase accountability and ultimately Justice in the courtroom**

One way in which you, as an individual can make all parties in the court more accountable and prevent the likelihood of court transcripts being altered is to have your court hearing recorded, using your own personal recording equipment. In Ontario, section 136 of the Courts of Justice Act for Ontario gives persons or their solicitors the right to record for the purposes of supplementing their notes. Persons in other provinces should check into the legislation relating to recording court proceedings, to see if similar legislation exists in their province.

## **Why the courts and the lawyers don't want you to record your court hearings**

Not all judges are against allowing the use of recorders in the courtroom, and some of them have been on the record as permitting parties to record their own hearings. Although there are some honest and respectable judges who readily allow individuals to record their own court hearings, unfortunately, there are too many judges who will do everything within their power to obstruct your right to do so. The reason why so many judges don't want parties to record their own court hearings is simple – tape recorders will make it virtually impossible for those involved in the court, especially judges, to alter the transcripts and/or court tapes. Judges often make inappropriate comments in court which would not reflect favourably upon them if exposed to the public. Virtually all lawyers don't like recording equipment because it makes it too easy for any party to expose them when they are incompetent or acting unprofessional.

Another significant factor is that most lawyers have a fear that if they argue on your behalf to have the proceedings recorded with your own recording device, that the judge will view the lawyer as the person responsible for teaching the client about recording and the lawyers knows that judges don't want this. Because of this, many lawyers are fearful that they will get blackballed in court by the judge in the future and that they will lose their cases in the future. Just like many citizens, lawyers are afraid of their own legal system and the absolute power that judges have that can literally be used to put a lawyer out of business. This is why most lawyer will tell you no when it comes to recording with some going so far as to tell you that they will not be your lawyer if you insist that they argue the issue of recording in court.

## **Understanding your rights**

Every person who appears in court in the Province of Ontario has the right to record his/her own court proceedings. The Law is quite clear. Under section 136 of the Ontario Courts of Justice Act, citizens have the right to record their own court proceedings. At the end of this document is a copy of the applicable section of the Courts of Justice Act. No judge can act or make a ruling in his/her court which violates the law, and the Courts of Justice Act, is the Law. Should a judge act outside of the Law, the judge would lose his/her jurisdiction in the court. If a judge has to make a ruling based on legislation which is vague or not clearly defined, then the judge must make his/her ruling based on what the intent of the Legislation was and also to take into consideration the Principles of Fundamental Justice. Fairness and Justice must be allowed to prevail in court and all decisions must support the advancement of Justice. Allowing a person or their solicitor to record the court proceedings, is clearly promoting the concept of openness and accountability, which would be in accordance with the Principles of Fundamental Justice.

Although this document has been written specifically with the Courts of Justice ACT in mind, the principles of recording in the courts may be successfully argued before any court, in any jurisdiction, provided enough research is obtained to support arguments before the court. The Principals of fundamental Justice must be reflected in every decision by each and every judge.

## Equipment to use

The Courts of Justice Act states that recording in the court by the parties must be done unobtrusively. To minimize the possibility of the court rejecting your right to record your proceeding, keep your recording equipment small and simple. Ideally, the recording equipment should be small and simple to set up and operate between recesses in the court without having to change batteries or recording media. Although the old style pocket tape recorders can serve this purpose, old style tapes generally only last up to 30 minutes to one hour per side before the tape has to be changed over. Most of the newer digital recording equipment offers many advantages over tape technology.



Shown here is a Sony Walkman Mini Disk Player with a high sensitivity microphone which can record very high quality sound in a room and record conversations for more than 5 hours on one mini disk. Although mini-disk players are more expensive, they offer higher quality recording than most digital or tape style recorders. During long court cases mini-disks can be easily and conveniently changed as compared to digital recorders which have to be downloaded on to a computer.



Shown here is a Diasonic 44 hour digital recorder which will produce high quality recordings when used for either room or telephone conversations. The user can choose which mode to use. There are a large variety of surveillance quality digital tape recorders similar to this one on the market, some of which can record for over 40 hours without having to change batteries or tapes. Recorders like this can record an entire day's proceedings without any disturbance to the court. The quality of digital tape recorders tends not to be as good as other recording devices so purchasers must ensure that they obtain a good quality recorder capable of picking up voices in a room. These types of digital recorders are also good for use in recording meetings with lawyers, social workers or when your children meet with workers at your home.

When you do go into court with the intent of recording your hearing, you must be prepared to present your arguments. If you are in an Ontario court, you should have a copy of the Courts of Justice Act, ready to show the judge. When using recording equipment, one should use a good

quality recording device and a professional quality microphone that will effectively pick up the voices in the room. The recorder can be positioned in the front of the court, in an area where the court reporter takes notes. Try to place the microphone up high so that it is in the line of sight of all those who will be speaking before the court. In many cases, the court has a power outlet. The recording equipment should be located so that it can be operated with the least amount of distraction for the court. The court should not have to be interrupted by changing of tapes or the repositioning of equipment, while the court is in session.

The bottom line is that when all parties know that you have your own recording, there will be a greater sense of accountability by all parties in the court.

## **Don't let your lawyer convince you to waive your rights**

When it comes to recording your own proceedings in the court, one of the last people you should put total faith in, is any lawyer, sometimes even your own! Your lawyer may try to tell you not to record your hearings, because the judge won't like it. If your lawyer advises you in this manner it is the first sign that your lawyer does not know the Courts of Justice Act very well and/or may be very well afraid of having himself/herself recorded in the court. As far as the judges disliking recordings, your lawyer is definitely right about that. Most judges definitely don't like it for reasons previously explained. Your lawyer may go so far as to try to put pressure on you to not record your hearings and he/she may even threaten to drop you as a client. But if you want to do what is the best interest of you and your children, you should demand accountability and refuse to yield to these types of threats and intimidation, even if they come from your lawyer. The recording your court proceedings will help to ensure maximum accountability by all participants of the Court.

When your lawyer tells you that it is not a good idea to tape record in court, this is your lawyer's way of trying to intimidate you not to exercise your rights. The lawyer may be more concerned about the judge getting upset at the lawyer because the court likes the lawyers to have control over their clients without it making look like it is the court that is the one violating people's rights under the law. Remember, most lawyers want to support the system and by keeping the judge as unaccountable as possible and by keeping tape recordings out of the court, this is one way of protecting the judges and lawyers.

Always insist that audio taping be done and if you have a lawyer, insist that your lawyer argue this before the court. An honest, ethical and competent judge should have no objections to you tape recording your court matter and an honest, competent and confident lawyer should have no problems in following your instructions to argue for your right to tape record your court.

Attached to this article is a sample letter that you might use to send to your lawyer in regards to your instructions to the lawyer for audio recording in your hearings. This should be used if your lawyer give initial indications that he/she is not willing to support your legal rights to audio record your court hearings.

## **Be prepared for court security staff**

If you are attending a hearing where there may be court security guards at the entrance to the court building, you may find that security officers may try to stop you from taking your tape recorder into court. Most of these security officers know nothing about the Courts of Justice Act. If you are

challenged at any time by security officers, then politely ask them if they are familiar with the Courts of Justice Act and ask them if they are aware that court participants have the right to record their hearing. Have your copy of the Courts Of Justice Act to show them. In most cases, simply by telling them that you plan to tape record your hearing and show them that you have the right to do so, this will end the resistance by security staff. Some security staff members may get aggressive when you question them. Ask them to show you where the law says that you can't bring a recorder into the court. Be sure to note what they say to you and get their badge numbers. If they refuse to allow you to pass with the tape recorder then simply ask them to summons their supervisor down and then discuss the issue with the supervisor. Have a copy of the Courts of Justice Act ready to show to the supervisor. If the Supervisor refuses to let you pass then signal to one of your witnesses to come to your side and then ask the supervisor to take you to his/her superior. Be sure not to go alone but take your witness with you. Never go alone with court security as some parties have reported being physically roughed up by court security staff.

Note: In situations where you will have to pass through security with a recording device, it is always advisable to have a support person with you some distance in front and another some distance behind you who does not appear to be travelling with you. These persons can act as witnesses should security guards try to intimidate you at the entrance to the court.

## **Don't be fooled by those signs posted at the court building regarding recording in the court**

Some courts have become so paranoid about people recording what goes on inside of a courtroom, that some courts have gone so far as to post misleading signs at the entry to the court buildings or courtrooms which are worded in such a way as to mislead people to believing that NO persons are allowed to record what is happening in the courtroom. As this article points out, persons do have the right in some Jurisdictions such as Ontario, to record their own court hearing. Members of the media also have the right under law to bring recorders into the court for the purposes of supplementing their notes. So don't be fooled by these signs and be prepared to complain about them if you see them posted at any court building.

## **Understanding the legal arguments in court**

In order to successfully argue your right to tape record your court hearing, you must be prepared to argue for your right to do so. You must have a copy of the Courts of Justice Act with you and you should fully understand and be familiar with the wording of the legislation. The only reason you are allowed to record is for the purposes of supplementing your notes, so therefore this intent must be clearly stated to the court and that this is your main reason for wanting to record the hearing. An example presentation is outlined below.

Whatever you do, **do not** ask for the court's permission to record your hearing because when you ask for permission, you have in effect, surrendered your rights under legislation and transferred jurisdiction to the judge based on his/her discretion. If the judge tells you that he/she does not give you permission to record then you must accept the judge's decision because by asking for the judge's permission beforehand, you have left the decision up to the judge. Always indicate to the court that you are **exercising your right under the Law**. If the judge does not want you to record the hearing and violates your rights, then ask the judge on the record to explain why he/she is refusing to allow you to exercise your clearly legislated rights under the Law.

### **Example presentation by self represented litigant**

*Your honour, I would like to inform the court that I would like to exercise my right as outlined under section 136 of the Courts of Justice Act to record these court proceedings using my own recording equipment for the purposes of supplementing my notes. I find it very difficult, if not impossible at times, to be able to write notes and to still focus on what is being said in the court at the same time. I have my own personal recorder here with me here (show the court the recorder) and would like to position it at the front of the court near the court reporter where it will reasonably pick up audio conversations of these proceedings. It will not take any more than about one minute to position my recorder in the court. I have a copy of the Courts of Justice Act with me, if your honour would like to confirm view the applicable section of the act. (Hold the Court of Justice Act in your hand to show the judge)*

At this point the judge may attempt to challenge the issue with you. Remember, they do not want tape recorders in the court and in most cases will challenge you so that you will back down. You must however, remain firm and be ready to argue the following additional points during your arguments.

- 1) That you find it difficult to follow and keep notes of the proceedings and that tape recording will allow you to supplement your notes without distracting your attention from court matters. That listening to the tapes at the end of the day as a way to supplement your notes, that this will help you to respond and to prepare materials for the next court appearance.
- 2) That other judges have permitted recording in the family court. Refer as just one example to the Court Watch Report regarding Justice Czutrin of the Hamilton Court who admitted he had erred in blocking a parent's right to tape record. Have a copy of this document to give to the court. If you have any other documents or letters which support tape recording in the court, then have them ready to show in addition.
- 3) Recording your court proceeding will help you to supplement your notes in a cost effective and timely fashion and allow you to better protect your legal rights and those of your children.
- 4) That you understand that the purpose of tape recording is to supplement your notes only and that the tape recordings will be strictly for your own use and that you understand that your tape recording cannot be used in lieu of official court transcripts.
- 5) That you cannot afford to purchase court transcripts and that the recording will help direct you which portion of the day's proceedings would be helpful to your case which would allow you to narrow down the portions of transcripts that would be most helpful.
- 6) That it was clearly the intent of legislation to allow citizens to record their own court proceedings and that it would be a violation of the intent of legislation and the Principles of Fundamental Justice to deny a person the right to record.
- 7) That if it would make things more acceptable, that you will arrange to provide the opposing side with a copy of the recording as soon as you can arrange to have a copy made.

If you have a lawyer representing you in court, then you can instruct your lawyer to inform the court of your intention to record the court in a similar manner as you would argue yourself. Be prepared

for some resistance from your lawyer because few lawyers want recorders in the court. Recorders make the judges and the lawyers very nervous and rightfully so. If your lawyer refuses to argue your right to record your hearings, then you should consider firing him/her.

### **Example presentation by a lawyer representing a litigant**

*Your honour, my client has instructed me to inform the court that (he/she) would like to exercise (his/her) right as outlined under section 136 of the Courts of Justice Act to record these court proceedings using (his/her) own recording equipment for the purposes of supplementing (his/her) notes. My client has indicated that (he/she) finds it difficult, if not impossible to be able to write notes and to keep up with what is being said in the court at the same time. My client has (his/her) personal recorder with (him/her) today which I have here (lawyer should show the judge the recorder) and my client would like to position (his/her) recorder at the front of the court, near the court reporter where it will reasonably pick up audio conversations of these proceedings. It should not take any more than about one minute to position and set up the recorder in the court. My client has provided me with the applicable section of the Courts of Justice Act, if your honour would like to review the applicable legislation. (The lawyer should hold the Court of Justice Act in his/her hand so that it is visible to the judge and be ready to pass it to the judge upon request)*

Again, the lawyer must be prepared to use the same additional arguments (1 - 6) as listed previously for self represented litigants.

The only aspect of the wording of the Courts of Justice Act that the judge or the lawyers may try to use against your argument is the wording in the Act which states, “in the manner that has been approved by the judge”. If you read this clause in the Act very carefully, at no time does not give the Judge the discretion to stop you from recording your hearing. This clause only gives the Judge the discretion to approve the manner in which the recording can be done. The judge must, therefore, allow recording in some form. If the judge tries to put some conditions as to the manner of how the tape recording is conducted, which in effect make the recording useless, then again, you must argue that having restrictions placed on the recording have the effect of rendering it of limited use in supplementing your notes, and therefore not in accordance with the intent of legislation or the Principles of Fundamental Justice.

You may explain to the judge that legislation was written at a time before the appearance of modern day recording devices and that at one time, bringing in a bulky tape recorder to the courtroom could be a very cumbersome situation involving wires and reel to reel tapes. With the appearance of miniature recorders, it is clear that recording can be done easily and unobtrusively and therefore not require any approval by a judge.

If the judge still says no to your rights under the law, then you or your lawyer must state to the judge, “for the record your honour, could you provide me with a written ruling on this matter and your reasons for not allowing recording”. By asking the judge to put their reasons on the record and to make a ruling, this forces the judge to put their decision on the court record as to why he/she is refusing to allow you to exercise your rights to record your hearing. Rulings are also made available immediately at the end of the court. A copy of this ruling should be obtained immediately

after the court. Armed with the judge's written ruling and a copy of the Courts of Justice Act, a person has the evidence for a damning complaint letter about the judge and a possible appeal of the case. It can be also argued that by denying a person the ability to obtain accurate notes of a court proceeding, in effect is denying the person the ability to argue their matter before the court in the most effective manner.

## **Getting the other side on board with you might make things even easier**

In most cases, when arguments arise in court, they will usually come from the judge and/or the opposing lawyer. If you are able to reasonably communicate directly with the other side then ask them if they would like to have a recording of the hearings. If you can get the opposing side to agree to this, then this makes it even that much more difficult for the judge to oppose the request as both sides are in agreement on this issue. Judges will rarely oppose the position of both sides if they are in agreement on some issue. Remember, however, that the opposing lawyer will not likely want the court hearings recorded, and they may not inform their client of the actual reason why they are opposed to having the proceedings recorded. The lawyer may go so far as to convince his/her client that they should take a position against recording. If you think the other party might be agreeable to taping but his/her lawyer is not, then you may have to approach the other side directly and bypass his/her lawyer. In reality, tape recording the court hearing is of benefit to both sides by helping ensure that the judge and the lawyers act more professionally. Tape recording captures the tone of the discussions and arguments in court, something which written transcripts can never achieve.

## **Notify opposing counsel ahead of time of your intent to record your court proceeding**

Another way in which to strengthen your argument before the court would be to send out a letter to the opposing lawyer prior to any court proceedings, advising them that you intend to record the court proceedings as it is your right under the Courts of Justice Act. You can ask for their position on this matter.

Most lawyers will argue against recording in court but are uneasy if they have to state their position in writing outside of the court. Lawyers know that if you get them on the record as being opposed to recording, that this may be used against them later. In some cases, their opposition to recording may even cause them to lose business. Attached to this document is a sample letter which may be of use to you. This letter will notify the opposing lawyer of your intent. Be sure to send the letter by fax so that you will have a receipt of your transmission. If you do notify the opposing lawyer of your intent then you should also advise them to bring their own recording device as well for their client's notes.

Under some circumstances, you may not wish to inform the opposing lawyer ahead of time of your intent to record in court. You may prefer to catch both the lawyer and the judge off guard which could result in them making some ridiculous oral arguments. When you have witnesses in the court, some of them may hear and write down some of the priceless comments made by the lawyer or the judge which of course can be used as the basis of a complaint later or possibly the grounds for an appeal. You should decide which approach is best suited for your particular case.

## **Witnesses in court will add significant weight to your arguments as well**

Always remember as well that having witnesses in court taking notes during your hearing is very helpful as well. Often, when the judge sees witnesses in the court, he/she knows that these people are potential witnesses to what was said in the court and the conduct of the judge. Witnesses should come into the court armed with pencils and pad and should make notes during the hearing. The only time that witnesses may not be allowed will be during case conferences or settlement conferences but during conferences, the judge cannot make a ruling on the issues before the court anyway.

## **What to do if the Judge refuses to allow you to exercise your right to record your court hearing**

There is always the chance that you will encounter some hard-nosed, stubborn judge who will not give a damn about your rights under the law. Some judges only care having total control over any record of what is said in the court as this is one way in which they can protect themselves and maintain unaccountability. If a particular judge absolutely refuses to allow you to record your hearing, then depending on how much courage you have, you may consider the following steps:

- 1) If you have the courage to stand up for your rights, you can advise the judge immediately in court, that their failure to uphold the Law violates your rights and that you are going to file a judicial complaint against the him/her. You should advise the judge that he/she is obligated to adhere to the law and to ensure that all people are allowed to exercise their rights. You should advise the judge that by him/her violating your rights to record your hearing, that the judge has breached his/her duty as a judge and as such has lost his/her jurisdiction over the court. You should then demand that the judge immediate **“recuse”** himself/herself from the case and that the matter should be moved to be heard before another court. The term “recuse” means to:

***“Disqualify (as oneself or another judge or official) for a proceeding by a judicial act because of prejudice, conflict of interest or loss of jurisdiction.”***

- 2) Alternatively, if you do not have the courage to challenge the judge’s authority in open court as outlined in (1), then you may proceed with your court hearing and hope for the best. You can be sure however, that you will not have the same protection as you would with your own recorder.
- 3) Immediately after the court hearing you should file a formal complaint to the Judicial Council, giving specific reference to the Court of Justice Act and including a copy of the judge’s ruling. You should ask that the judge be removed from your case.
- 4) Also provide copies of your complaint to organizations which can circulate your complaint to each and every Member of the Provincial and Federal Parliament. If enough public complaints are directed to the politicians then changes to legislation will eventually be made, which would make it common to have recording devices used. Hopefully, at some time in the future, the use of videotape will be mandatory. Groups in Canada such as the Canada Court Watch at <http://www.canadacourtwatch.com> are advocating to have the courts provide copies of the court proceedings on audio tape immediately at the end of each court hearing rather than having to wait for court reporters to process transcripts and obtain permission of the judge to release them.

The importance of having personal witnesses in the court, cannot be over-emphasized. If you are going to challenge the judge, then you are well advised to have witnesses present in the court who are willing to file complaints against the judge as well. Chances are if you have enough credible witnesses in court, the judge may just back down and allow you to record without objection.

Remember, if you want to maximize justice in your case and if you wish to contribute justice for others in your community, then be ready to fight for your right to record your own court hearing and which will help ensure that judges, lawyers and court reporters will be held accountable for their actions.

## **What to do if the opposing lawyer argues against you exercising your right to record your court hearing**

In many cases, the opposing lawyer may argue against the use of recording equipment. If you find that the opposing lawyer attempts to prevent you from exercising your right to record your hearing, then you should file a complaint against the lawyer to the Law Society. Also file a complaint with the Canada Court Watch as well. If a local Court Watch group is located in your area, they likely will maintain a list of local lawyers who have acted inappropriately or unprofessionally and will place that lawyer on that group's "do not recommend" list.

## **What to do if your own lawyer refuses to argue to have you record the proceedings**

In many cases, your own lawyer may refuse to argue recording your court matter. If your lawyer refuses and if the lawyer is a lawyer you would prefer to continue working with, then advise the lawyer that you are instructing him/her or her to argue this issue in court. The lawyer **MUST** follow your instructions, otherwise the lawyer is violating his/her oath as a lawyer and can be disciplined for this if you file a complaint along with the evidence to prove your instructions to the lawyer. If your lawyer refuses to argue this issue, then you can fire your lawyer and sue your lawyer for all costs related to having to go to a new lawyer and to have the new lawyer familiarize themselves with your case. To set your lawyer up for a lawsuit, you would be advised to record your conversation with the lawyer or better still, send your lawyer a fax with your written instructions with a request for the lawyer to respond. Most lawyers know that if they formally reject your formal instructions, then they have violated their Oath as a Lawyer and could be help liable for damages. As referred to earlier in this document, a sample letter has been attached which will show how to instruct your lawyer on the record regarding audio recording.

If all efforts to get your lawyer to cooperate fail, then you should fire your lawyer and file a complaint with the Law Society and with any local Lawyer Referral Service.

## **What to do when court security staff have interfered with your attempts to bring your recording device into the court**

As well as judges and lawyers, you may find that you were treated rudely or unlawfully by some court security officers who attempted to keep your recording device out of court even after you have informed them of your lawful right to record your hearing, then file a complaint with the Attorney General's Office and again copy your complaint to all local organizations such as the Canada Court Watch. Be sure to include the badge numbers of those security officers who were responsible. .

## **What to do if you see misleading signs posted at the court building regarding audio recording in the court**

If you see any signs which appear to be misleading about recording in the court, then you should file a complaint to the Attorney General and copy your complaint to Canada Court Watch. You should have a witness with you to see the signs who could also testify as to the signs. Sometimes, the court staff may remove the signs when a complaint is lodged and claim that the signs were removed a long time ago or were never posted in the first place. A sample complaint letter has been attached to the appendix of this document. It would also be helpful to arrange to have your complaint letter sent out to all the members of Parliament complaining about this. Some organizations can assist in distributing your complaint to the appropriate places.

## **Going public with your complaint helps change the system**

It has been mentioned that you must complain when your rights are being violated. While sending your complaints to the Law Society, the Judicial Council or the Attorney General may have some value, you must always remember that most of these bodies are self regulated and in most cases more interested in protecting the lawyers, judges and workers associated with the court system than they are about protecting you. When complaining it is important that you contact organizations such as the Canada Court Watch to ensure that your complaint will get as much public exposure as possible. Take the time to find out what organizations are in your area that can assist you to circulate your complaint to as many citizens as possible.

Those in the system are worried about the public's perception of the court system and want to minimize damage to the reputation of the system. Every time a judge, lawyer or anyone else associated with the court system violates your rights, you should be taking your complaint to your member of provincial and federal parliament. Change will occur only after many people bring their complaints forward.

## **What to do if legislation in your area does not specifically allow personal recording of your court hearings**

As pointed out earlier, this document has been based on Ontario's Courts of Justice Act, which does allow the citizens of Ontario, the right to audio record their own court hearings before an Ontario court. If you are living in a geographical area outside of Ontario where legislation does not exist which gives you the right to record your own hearing then you should still argue this right before any court you happen to be before. You can still use laws from other jurisdictions as an argument in another court.

If the court in your area tries to resist the use of recording equipment then you should approach your elected representatives for the purposes of implementing legislation similar to Ontario that will ensure the rights of citizens to record their own court proceedings. It may be helpful to join up with citizen groups who advocate for accountability in the court system, such as Court Watch and to push for legislative changes. After all, if the courts have nothing to hide, then why are they so afraid of recording?



*Few will have the greatness to bend history itself, but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope... and crossing each other from a million different centers of energy and daring those ripples build a current that can sweep down the mightiest walls of oppression and resistance.*  
Capetown, South Africa June 6, 1966.

*Senator Robert F. Kennedy 1925-1968*

Brother to John F. Kennedy, the 35<sup>th</sup>  
President of the United States of America  
1961-1963

[www.jfklibrary.org/r060666.htm](http://www.jfklibrary.org/r060666.htm)

## **Always remember**

**Every time you stand up for your rights and insist on promoting openness and accountability in the courts by doing your own recording, or advocating for laws to promote recording in the courtroom, you are helping to change a small portion of events which will help to improve the administration of justice for the benefit of all children and families in your community and in our nation!**

## Recording Your Own Court Hearing

# Appendix

- Section 136 of the Courts of Justice Act
- News article - Canada Court Watch Report – Justice Czutrin backtracks on recording in court
- Sample letter to opposing counsel regarding their position on recording the court proceedings
- Sample letter to a person's own counsel regarding instructions to the lawyer to recording further court proceedings
- Sample Judicial Complaint letter by a party to a proceeding regarding a judge who refuses to allow audio recording during a court hearing.
- Sample Judicial Complaint letter by a witness in court regarding a judge who refuses to allow audio recording during a court hearing. (To be added for next release of this document)
- Sample letter to Attorney General re misleading signs at the court (To be added for next release of this document)
- Sample letter to your member of Parliament (to be added for next release of this document)
- Actual complaint letter from one parent to the Ontario Judicial Council which shows the kind of problems that citizens face with transparency and accountability in the courts.

# Section 136 of the Courts of Justice Act

## Prohibition against photography, etc., at court hearing

**136.** (1) Subject to subsections (2) and (3), no person shall,

(a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,

(i) at a court hearing,

(ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or

(iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or

(c) broadcast or reproduce an audio recording made as described in clause (2) (b). R.S.O. 1990, c. C.43, s. 136 (1).

## Exceptions

**(2)** Nothing in subsection (1),

(a) prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing; or

(b) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).

## Exceptions

**(3)** Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;

(b) in connection with any investitive, naturalization, ceremonial or other similar proceeding; or

(c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

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# CANADA

# COURT WATCH REPORT

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## HAMILTON JUDGE G. CZUTRIN BACKTRACKS WHEN CHALLENGED ABOUT TAPE RECORDING IN FAMILY COURT!

**By Mike March, Hamilton Court Watch – Sept 17, 1998**

Hamilton Court Judge G. Czutrin, after admitting previously that he erred, backed off from an earlier decision and ruled that a Hamilton father who had not seen his children for 8 years could tape-record his own proceedings. He also said that the father be allowed to take the tape home. At the previous hearing, both the judge and the opposing lawyer, attempted to impede the legal right of the father to tape-record his court hearing. The judge had previously ordered that the tape be kept at the courthouse and that the father not be allowed to take it home. In today's hearing, those barriers were effectively removed.

However, in a second motion before the court by the same father, when the judge was asked to rule on a simple request to allow the father to see his children, the court could not make a decision and deferred its ruling to a later date. The father even pleaded with the court to let him have access to his children agreeing to supervised access until matters went back to court again.

During arguments against the father about the taping issue, the opposing lawyer, Ms. Linda Henry of Hamilton, Ont. seemed somewhat short of words. She tried to argue that she found placement of a small hand held mini-cassette recorder on the podium obtrusive. Seemingly, in a desperate bid to grasp for straws, she told the court that the tape recorder may accidentally get pushed off the podium and broken and because the tape recorder was not her property she did not want to be responsible for possible damage.

Court Watch spoke to members of the public who attended court. One person told Court Watch Observers "it was a shame what went on in there today.

The CANADA COURT WATCH REPORT is a periodic report published by the many volunteers and supporters of the Canadian Citizen's Free Press from locations Canada-wide. It is intended for printing and distribution without copyright to any individual, group or organization having interest in the materials. Interviews with the persons involved in stories may be possible for any recognized news-reporting agency. Articles written in this report are based on information relevant to the citizens involved with the Canadian legal system.

This publication is intended to bring to the attention of the public matters which involve the Canadian Legal System. All Canadians are urged to copy this report and pass on to their fellow Canadians. To have a story published, have a court reporter attend your court or to have your organization receive regular issues of this report, then please contact Rev. Dorian Baxter at 416-451-4115

**NOTE: All stories contained in this report represent the views of the writers and do not necessarily represent the views or opinions of the local printing agents or local distributors.**

I see a father, who had been prevented by the courts from seeing his children for eight years, asking only to see his kids, as recommended in an assessment. And yet, the thing the lawyer and the court considered most important was to try to keep this poor guy from taping his hearing. To the courts and the lawyers, the children seemed irrelevant. When it comes to reuniting these children with their father, the court could not make a decision, even when the father offered to have supervised access as a condition. In the end they told this poor guy to come back to court again. He has been forced to go to court for the past eight years as if in a revolving door. How much more hell is the court going to subject this poor family to. These judges cannot even get to the heart of the issue, make a simple decision and do what is right.

Ms. Henry, the lawyer for the mother, refused to comment to reporters and the mother was not in attendance in the court.

The father in the case, Mr Yasar Sharif, said: " This whole exercise was a sham and a waste of taxpayer's money and a further example of how the courts have no respect for the rights of Canadians and no interest in protecting families. Look at how much time and resources have been wasted. These lawyers and judges know the law. They should have known all along that it is permissible to tape record in the court, so why do they fight so hard to prevent it. What do they have to hide? All I want is to see my children and all they want to do is to keep tape recorders out of the court and keep me from seeing my children. They know that it is wrong to keep children separated from their parents and yet they continue to promote it."

"I came to Canada many years ago with nothing and I worked hard to become successful with hopes of raising my children in this country. Before I got involved in the courts, I had a successful business and contributed to the economy of this country. I came to Canada believing that Canada was a free country with just courts and fair laws. Unfortunately I have found out that there is little justice for ordinary people in family court. The courts are arenas where lawyers and judges play legal games which destroy families while they get rich and maintain their power over ordinary Canadians. Although the system itself has been designed to be fair, many of those judges and lawyers have lost touch with their own people and it is the children who are playing the ultimate price."

Mr. Sharif showed credible documents which supported the fact that he was a good father and that the children wanted to see him, including a favourable report from an assessor. Other documents showed that the mother with the knowledge of her lawyer, had violated previous Access Orders. She also continued to employ tactics designed to alienate the children from their father. Previous hearings in Hamilton failed to address the issue of the mother breaking court orders. Judge Czutrin said in court that he had not read the documents concerning

## **HOSTILE PARENTING IS CHILD ABUSE!**

**Granting sole custody to one parent so that one parent can act in a vindictive manner, often denying the child's right to love and attention by the other parent is child abuse.**

**Call your local M.P and demand that shared parenting be implemented in law to stop this needless abuse of children by vindictive spouses**

**Shared parenting will also eliminate much of the needless litigation in court which will save families and taxpayers hundreds of millions of dollars.**

## **PLEASE HELP STOP ABUSE OF OUR CHILDREN & FAMILIES**

**Most of us know of someone in our community whose family has been ravaged by our Family Court system. False allegations, lies, deceptions, and poor decisions by judges are destroying the children of divorce, who are stuck in the middle. Please copy this report and pass it on to as many of your friends, neighbours, relatives and co-workers as possible. It is only through awareness in our community of getting to know the truth about how our family court system is destroying our families that the destruction will be stopped. Call, write and fax your member of the Federal and Provincial government and demand that he/she support government initiatives to take family matters out of the adversarial court system.**

the welfare of the children in their entirety.

Many of those in the court said that it was a shame what the courts are doing to families. Another parent who came to the court to support the father stated how his family felt that the Hamilton Court seemed very much against families and routinely separates children from their parents and support parents who knowingly force parents out of their children's lives. "The Hamilton Court has a reputation for this type of activity" he said.

It is ironic that while the Judges and the lawyers go home to be with their children, Mr. Sharif, like many other non-custodial parents, is left with only a hope, that one day the court will deliver justice that his family so rightfully deserves. Until then, he'll continue to bravely fight those in the system that he feels are bias and unaccountable to Canadians.

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## **HELP BRING JUSTICE**

**BACK IN TO OUR COURTS!**

## **HELP MAKE LAWYERS**

**ACCOUNTABLE TO OUR  
COMMUNITY!**

**Call your local M.P. and M.P.P. and demand that he/she support legislation designed to make it a criminal offense for anyone to make false allegations or for lawyers to counsel clients to make them.**

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**Sent by Fax to (XXX) XXX-XXXX – 1 page(s)**

Date Here

XXXX XXXXX XXXXX Ave.  
XXXXXXXXXX, Ontario  
XX XX

Ms. XXXXX XXXXX  
XXXX XXXXXXXXXXX X  
XXXXXXXXXX, Ontario  
XX XX  
Tel: (XXX) XXX-XXXX  
Fax: (XXX) XXX-XXXX

Dear Ms. XXXXX

**RE: Audio recording of court proceedings**

It is my intent to present arguments to the court which will allow me to unobtrusively record any further court hearings, including case conferences and/or settlement conference hearings. Under section 136 of the Courts of Justice Act, I believe that I have the right under the Law to record my own court hearings.

If you think that a copy of an audio recording of any of the court proceedings would be helpful to you or your client, then I would be willing to provide you with a copy of the recording for whatever my cost is to have the information copied on to a computer disk. I will not object should your client also wish to record the court hearing using his/her own equipment.

Could you please advise me of your position on this matter, and whether you intend to oppose or unopposed my right to record my court proceedings? If you are opposed to this, please provide your reasons in writing, so that we can minimize the time required to argue this before the court.

Your response in writing, by fax this week, would be greatly appreciated. Your response can be sent by fax to (XXX) XXX-XXXX.

Yours truly,

XXXX XXXXXXX

**Sample letter to your own lawyer giving instruction regarding audio recording your own court hearings**

**Sent by Fax to (XXX) XXX-XXXX – 4 pages (including attachments)**

Date Here

XXXX XXXXX XXXXX Ave.  
XXXXXXXXXX, Ontario  
Postal Code

Mr. XXXXX XXXXX, Barrister and Solicitor  
XXXX XXXXXXXXXXXX Xx  
XXXXXXXXXX, Ontario  
Postal Code  
Tel: (XXX) XXX-XXXX  
Fax: (XXX) XXX-XXXX

Dear Mr. XXXXX

**RE: Audio recording of court proceedings**

I would like to be able to record any of my further court hearings, including case conferences and/or settlement conferences. Under section 136 of the Courts of Justice Act, I believe that I have the right under the Law to unobtrusively audio record my own court hearing.

I would request that you, as my solicitor, take the necessary steps to ensure that my rights under the law to audio record my court hearings are protected and respected. I would request that you should be prepared to argue this issue before the court if necessary. I have attached a copy of section 136 of the courts of Justice Act and an article from Canada Court Watch which would support arguments for audio recording in the court.

If you believe that by offering a copy of the audio recording to the opposing council would be helpful in getting the other side's consent to audio recording, then I would ask that you approach the other lawyer and make this offer in writing and ask for the opposing council's response.

Your response in writing, by fax this week, would be greatly appreciated. You can send your response by fax at (XXX) XXX-XXXX.

Yours truly,

XXXX XXXXXXX

Attachments:

Copy of Section 136 of the Courts of Justice Act  
Copy of Canada Court Watch Report regarding Justice Czutrin

**Sample judicial complaint letter by a party to the Ontario Judicial Council for judge who refuse to allow audio recording during a court hearing. This letter could also be used for a complaint to the Canadian Judicial Council for a federally appointed judge.**

[The Date Here]

[Your name]

[Your address]

[City/Town], [Province]

[Your postal Code]

Tel: (XXX) XXX-XXXX

The Ontario Judicial Council  
P.O Box 914  
Adelaide Street Postal Station  
31 Adelaide St. E.  
Toronto, Ontario M5C 2K3  
Fax: 416-327-2339

Dear Sirs/Madames

**RE: Judicial Complaint – obstruction of justice by Mr. Justice Xxxxxx of the Ontario Court of Justice, University Ave, Toronto, Ontario.**

I would like to file a formal judicial complaint against Mr. Justice Xxxxxx of the Ontario provincial court at 393 University Ave in Toronto, Ontario. The grounds for my complaint are:

- 1) That Mr. Justice Xxxxxxx failed to uphold the law and protect my rights in his court, specifically those granted under Section 136 of the Courts of Justice Act which gives persons the right to audio record their own personal court hearing.
- 2) That by refusing to allow me exercise my rights under the Law, Justice Xxxxxxx has obstructed justice and has violated his sworn oath and duty as judge.
- 3) That by showing such a blatant lack of knowledge and respect of the application of section 136 of the Courts of Justice Act, Justice Xxxxxxx has brought the administration of Justice into disrepute.

On [court date], I was a party appearing before Justice Xxxxxxx in the Ontario Court of Justice at 393 University Ave., Toronto. In the court, I indicated to Justice Xxxxxxx that I wished to exercise my right to unobtrusively record my own court hearing for the purposes of supplementing my notes. I had a small hand-held audio recorder which I wanted to simply place in view of the court so that after the court, I could review what was said so that I could be in the best position to continue on with my case and to defend my rights and those of my children. Unfortunately, Justice Xxxxxxx refused to allow me to record the hearing as permitted under Section 136 of the Courts of Justice Act.

It seems quite clear from the wording of section 136 from the Courts of Justice Act that the legislators intended to protect the rights of citizens to audiotape their own court hearings for the

purposes of helping them. I cannot imagine how Justice Xxxxxx could interpret this section of the Courts of Justice Act in any other way except as a tool to assist those appearing before the court.

While court transcripts can be ordered, it certainly does not seem fair to force me to purchase official court transcripts at great expense when I can simply obtain the same information with my own recording device and in addition not have to wait to get them. It sometimes takes days or sometimes weeks to get court transcripts so why should so much time and court resources be tied up for the purposes of allowing a person to more closely review what went on in a particular court hearing.

What also concerns me about relying strictly on court transcripts is that I have seen correspondence which would indicate that court transcripts have been permanently lost by court staff and therefore it would appear to be some question as to the security surrounding court transcripts.

In regards to recording in the courtroom, I believe that most Canadians would take the position that those in a courtroom who have nothing to hide should have no fear of any the parties recording the court hearing. I am curious to know just what Justice Xxxxxx is so afraid of that would cause him to obstruct my rights in this area.

To avoid the problem I encountered from being repeated in other courts, I would most respectfully request that the Judicial Council or the powers responsible, to put out a memorandum to the judges to clarify this issue and to remind them that they **MUST** not interfere with a party's request to audio record their own court hearing if the party is doing it in a reasonable manner.

In light of this complaint, I would also kindly ask that the Judicial Council advise Justice Xxxxxx that he should recuse himself from hearing any court matter before him where I may be a party at the hearing.

A response in writing would be most appreciated.

Yours truly

*your signature here*

[Your name typed here]

cc: various provincial and federal members of Parliament  
Canada Court Watch

**Actual Judicial Complaint letter**

Note: This letter is a copy of the actual text from a complaint letter sent to the Judicial Council. Information about the parent who wrote this letter has been removed from this document because this case involves a child protection matter and under the law, information which would identify the child cannot be published.

December 27, 2004

Mr. XXXXX XXXXX  
XXX XXXXXXXXXXXX Rd.  
Toronto, Ontario  
XxX XxX  
Tel: (416) XXX-XXXX  
Fax: (416) XXX-XXXX

The Ontario Judicial Council  
P.O Box 914  
Adelaide Street Postal Station  
31 Adelaide St. E.  
Toronto, Ontario M5C 2K3  
Fax: 416-327-2339

Dear Sirs/Madames

**RE: Judicial Complaint against Justice James P. Nevins of the family court at 47 Sheppard Ave. Toronto, Ontario**

I would like to file a formal judicial complaint against Justice James P. Nevins of the provincial court at 47 Sheppard Ave. W. in Toronto, Ontario. My complaint concerns what I feel was his most unprofessional conduct as a Judge at my court hearing on Dec. 31, 2003 which I believe has had significant influence in my son being terrorized by agencies associated with the court system and his relationship with his father being forcefully terminated contrary to his best interest and his clearly stated wishes. As a result of Justice Nevins's incompetence and bias, I am also concerned of the possibility that my son may have been forced to undergo a circumcision at 12 year of age contrary to his clearly stated wishes and religious beliefs.

On December 31, 2003, I appeared before Justice Nevins in a matter where I was fighting the Jewish Family and Child Services for what I feel was the abduction of my son as part of a scheme to forcefully take my son from my custody and to return him into the custody of his Jewish mother and to force my son to submit himself into the Jewish religion contrary to his clearly stated wishes.

Although the incident in the Sheppard Ave. W. court involving Justice Nevins which I describe below happened almost a year ago, I have not filed a complaint against Justice Nevins up until now because since that time I have been cautioned over and over again by lawyers and others who are involved in the court system that complaining about Justice Nevins would greatly prejudice my case if I was to file a complaint against him. Some lawyers have said that they would not take on my case if I chose to exercise my rights to file a complaint. Many who know the family court system

have said that I will never see my child again if I file a complaint against a judge and that “the system” will “get even” with me for speaking out to protect my son.

I have been warned that I won't be able to prove my claims of Justice Nevins's conduct and that by complaining I would only worsen my position before the court and only harden the resolve of those government funded agencies responsible for physically and emotionally abusing my son, to hide the abuse they have caused him. Because of the many family court horror stories that I have read about involving abuse of power and authority by children's aid agencies and the Children's Lawyer's Office, I must admit that I have been fearful of the court system to complaint up until now. However, I have reached a point where I feel that the actions of Justice Nevins and the actions of other agencies associated with the court have put me in a position where I have nothing else to lose. I have not seen my son in over a year. The last thing my son said to me and his friends at the last event we were at together, was to help him come home with his dad and to help protect him from the abuse by Jewish Family and Child Services, the Office of the Children's Lawyer and the Ragesh Group home where he was been terribly abused for a long period of time. It has become absolutely clear to me that the Justice system has totally failed my 12-year-old son and that the legal aid lawyers who have worked for me up to this time have been grossly ineffective. Because of Justice Nevin's previous actions which appear to have abused the administration of Justice and would appear to be biased in favour of the children's aid society, I am very fearful of this judge and do not feel that he can ever be fair as a judge towards me or my child.

Based on my experience with the family court system, it appears to me that the amount of money one has is a significant factor in the pursuit of Justice when one is up against a children's aid agency which has almost unlimited power and resources behind it, all funded by the Provincial Government. A parent's ability to obtain Justice seems to be very limited when using Legal Aid as Legal Aid lawyers are unable to put in the amount of hard work that is required into mounting an effective defense. Money simply is not there under Legal Aid for the hours needed. On the other hand, lawyers with a children's aid agency, have unlimited taxpayer's funds at their disposal and will go to any extent to protect their workers, even when they have done wrong. The case of the Reverend Dorian A. Baxter v. the Durham Children's Aid Society is a good example of abuse of power and authority by a provincially funded children's aid agency. In that court case, the judge found the children's aid society guilty of malicious prosecution, incompetence, negligence and blackmail.

Referring back to the incident on Dec 31, 2003 which is the main subject of this complaint letter, I wish to report the following abuse of the Administration of Justice by Justice Nevins:

On December 31, 2003, at the end of my court hearing (I was representing myself), the clerk at the front of the court announced that the court was ended as is usual practice. However, Justice Nevins did not get up and exit the courtroom as is the practice with most judges in most courts. Justice Nevins continued sitting at the bench and was handling the papers in front of him after the microphones had been turned off and everyone was cleaning up and getting their coats on ready to leave. Shortly after the court was closed and the microphones were turned off, Justice Nevins summoned the lawyer from the Office of the Children's Lawyer, Adam McIvor, over to his bench and in a quiet tone of voice, which clearly appeared to be an attempt not to be overheard by others in the court, spoke to Mr. McIvor direct off the court record. Being at the front of the court myself

while packing up, I could overhear what Justice Nevins was saying to Mr. McIvor. What I heard was shocking. I overheard Justice Nevins instruct the children's Lawyer that he was to send the message to my son that his father did not like him anymore and to tell my son that his father did not want to see him anymore. The judge's instructions to the children's lawyer were clearly intended to mislead my son into thinking that his father had given up the fight in court to free him and that his father did not love him or want to see him anymore. After being ignored and put down earlier in the short court hearing by Justice Nevins, I felt totally powerless to say anything in this judge's domain.

At that point, the children's lawyer, Mr. Adam McIvor, appeared somewhat taken back and uncomfortable by the instructions from Justice Nevins. Looking a bit startled, Mr. McIvor said to Justice Nevins, "Your honour, you want me to tell this to Howard?" Justice Nevins, then said to the children's lawyer, "Yes, and if you have problems saying this then tell the boy the judge said it" while touching his both hands to his chest to point at himself. Mr. McIvor then departed the room. Of course, none of what transpired between the judge and the children's lawyer was on the record or recorded because it occurred after the court reporters had stopped recording the court and everyone was busy packing up and trying to get out of the court because it was New Year's Eve.

Since that court date, I have not seen or heard from my son. My son clearly has stated that he wants to see his father and has reported being threatened and intimidated by his children's lawyer and Adam McIvor of the Office of the Children's Lawyer. It is my belief that my son has been misled to thinking that his father does not love him and that his father has given up fighting for him in court. The Office of the Children's Lawyer and the Jewish Family and Child Services have been effective in cutting off all communication between my son and all those who my son trusts, including his friends. My son reported being threatened with a knife by his Jewish mother if he did not do what the Jewish Family and Child workers were telling him to say to his lawyer. The school principal at my son's previous school wrote a letter barring my ex-wife from coming on school property because she had threatened other children at my son's school. Other eye witnesses have testified of seeing my son's mother physically abuse my son.

Prior to this court date, my son made it very clear to me and to others that he was being threatened and coerced to go along with the Jewish Family and Child Services by his children's lawyer, Adam McIvor, and that he did not trust his children's lawyer. Attached to this complaint letter is a letter from my son which he sent to a child and family advocate asking for help. Yet, while my son was pleading for help to save him from abuse by the children's lawyer, he was denied a new lawyer by the Children's Lawyer's Office, even though he requested one.

I have also included with this letter, copies of three private videotaped interviews with my son formatted on to DVD which were taken by a third party agency prior to him being kidnapped by the Jewish Family and Child Services. My son discloses horrendous abuse by the Jewish Family and Child Services and the Ragesh Group home agency, including sexual abuse, as well coercion and abuse by the Office of the Children's Lawyer. In these interviews my son clearly disclosed being threatened and coerced by the Office of the Children's Lawyer prior to Justice Nevins telling this same lawyer on December 31, 2003 to lie and coerce my son yet again. My son has disclosed that he has been threatened with circumcision at 12 years of age as part of a plan to force him to submit himself into the Jewish faith which his mother is a member of. My son has disclosed on video tape that he does not want his body mutilated by the Jewish Family and Child Services and he does not

want to be forced against his will into the Jewish religion. Yet, it seems that after he has disclosed these things that he has been made to conveniently “disappear” by the Jewish Family and Child Services with the assistance of the Office of the Children’s Lawyer and with the further support of Justice Nevins on December 31, 2003.

I am a Holocaust survivor myself who barely managed to escape with my life from Hitler’s soldiers who were trying to execute me and other children when I was a young boy. I can clearly relate to what I see is happening to my son now as a result of the abuse of power and authority by this children’s aid agency because I experienced a similar experience being taken from my parents by the Germans and scheduled to be executed. It seems to me that these agencies are doing to same thing to my son as Hitler did which is to take him away from his loving parent and then to threaten coerce and brainwash him into submission and compliance. In this case, rather than it being the Nazis abusing their power, it is the Jewish Family and Child Services which is abusing its power to force my son into compliance with the Jewish faith. What the Canadian court system and the Children’s Aid Society is now doing to my child is in my mind no less a crime than what Hitler did to many children in Germany during the war. I can speak of this because I am one of those Holocaust children who survived those atrocities during the war under the Nazi regime of Hitler.

Based on my experiences before Justice Nevins, I am thoroughly convinced that Justice Nevins has determined that he is going to support the position of the Jewish Family and Child services and obstruct my ability to seek justice for my son without giving proper weight to the evidence before him. I verily believe that Justice Nevins is biased in favor of those agencies who often work closely with the family court system.

Although I know that I can offer no substantial proof to my complaint about Justice Nevins except one witness in the court who saw Justice Nevins and the children’s lawyer speak to each other after the court had ended, I have decided to file my complaint for the record anyway. The family justice system and Justice Nevins have put me in a position where I have had the one most precious thing in my life, my child, stripped from me and as a loving and devoted father I literally have nothing left to lose now. The Children’s Aid Society and the Family Court system have put my back up against a wall, violated my rights and my child’s rights and have maliciously taken my child from me. At the very least, I would ask that the Judicial Council take steps to ensure that Justice Nevins not be allowed to have anything to do with my case at all. I don’t trust this judge at all and I believe that it would be a further miscarriage of Justice for Justice Nevins to force himself upon my case at any future court hearing again.

What further disturbs me is that on one of my previous hearings, I saw Justice Nevins conversing in a friendly and joking manner with the lawyer with the Jewish Family and Child services after the court had ended. On yet another occasion, I observed the lawyer from the Jewish Family and Child services walk back into the courtroom from the hall after the courtroom and been cleared and when I opened to the door to look inside, I saw the lawyer with the Jewish Family and Child Services conversing with Justice Nevins alone in the courtroom. It would appear that these informal chit-chats between Justice Nevins and some of the lawyers after the court has closed are not just isolated incidents. Based on just my own observations, the actions of Justice Nevins do not look good and reinforce the perception that Justice Nevins has some special relationship with the Jewish Family

and Child Services and/or lawyers in general. I thought that the administration of Justice was supposed to not only be unbiased, but **APPEAR** to be unbiased.

In addition, I have heard from sources having knowledge of the court system at 47 Sheppard Ave, that others in the community, including some lawyers, have expressed concerns about transcripts of court hearings being altered at the Sheppard Ave. W. court. I have heard that it is practice for Judges to review and approve transcripts before they are released to the parties who order them. This practice of judges checking things before they are released causes one to question the integrity of judges and the integrity of the justice system itself. Why do judges have to read and approve transcripts before they are released? Do the judges not trust the court reporters to record the proceedings correctly? Why do the taxpayers of the Province have to pay a judge's salary for the time it takes to check a written transcript with what is on the court's audio tape. What is said on the record should clearly be written as said and the record should stand and no party, not even a judge, should have special privilege to review the transcripts before being released to anyone who has ordered them.

To prevent such situations as I have described happened in my court, I would suggest that it be a **strict written policy** that once a court hearing ends that the judge **MUST** leave the courtroom as is currently the case in most court hearings and to not do so would be judicial misconduct. The court should remain in session with court reporters on duty and recording proceedings until the judge is completely finished and has exited the courtroom. The court reporter's tape should record the judge leaving the court. An added protection to prevent wrongdoing in the court would be to have the courts install video surveillance cameras in the courtrooms at the front to provide visual evidence to back up transcripts taken by court reporters. Video cameras in the courtroom would help provide an additional level of protection to all parties, included judges and members of the public and help improve the public's confidence in the court system. The procedure of court reporters being relied on record the proceedings in court clearly has it flaws and too open to abuse by the judges and those having sole control of the tapes and the transcripts. All steps should be taken to give the public the appearance of transparency in our family court system.

My 12-year-old son, who is **not** Jewish has indicated during an interview with a third party prior to all these happenings, that it is his desire **not** to be forced into the Jewish faith and that he would rather follow the Christian faith. My son has been physically, sexually and emotionally abused while under the care and control of the Jewish Family and Child Services. These abuses appear to me and to many others to me to be part of an evil plan by the Jewish Family and Child Services to assist my son's Jewish mother take total power and control of the child and to force the boy to be a follower of the Jewish faith. During one videotaped interview my son reported that he did not want to be Jewish because of all the physical and emotional abuse he has suffered at the hands of Jewish Family and Child Services. He indicated that he could not in good faith want to be part of a group of people that had tortured him so much, both physically, sexually and emotionally.

In this matter involving my son, there has been a terrible abuse of power and authority by the Jewish Family and Child Services and the Office of the Children's Lawyer. I believe that the Administration of Justice has been grossly perverted by those two agencies. The rights of my son to the security of his person under the Canadian Charter have been grossly violated. It is absolutely

astounding that such abuse of power and authority is allowed to happen here in Canada under the shady veil of “child protection.”

I would ask that the Judicial council investigate my complaint against Justice Nevins and at the very least inform the court at 47 Sheppard Ave W. to have the court coordinator ensure that Justice Nevins is not scheduled to act as judge in my case or for him to have anything else to do with my court file. I would also request that the court be asked not to have a Jewish Judge hear my case because I believe that the Jewish Family and Child services and its lawyers hold considerable influence within the family court system and that this may cause a Jewish judge to be biased in favor of the Jewish Family and Child Services.

I would also most respectfully request that the Judicial Council or the powers responsible, to put out a memorandum to the judges, making it mandatory that they **MUST** exit the court after every court hearing once it has been announced before the body of the court that the court has ended. The kind of abuse of power that Justice Nevins exercised that day in court must never be allowed to happen in any court in this country. The practice where a judge can continue sitting in a courtroom after a hearing has ended and to enter into private discussions with lawyers for one side, must be stopped.

Yours truly

Xxxxx Xxxxx

(a loving father stripped of a relationship with his son by the Ontario’s family court system

**Attachments and enclosures**

Letter from my son to child advocate telling that he does not trust the Office of the Children’s Lawyer

Three (3) video interviews (on DVD) of my son disclosing abuse by Jewish Family & Child Services and general systemic abuse resulting from failure of the courts and abuse of power and authority by a children’s aid agency.

June 28, 2003 (70 minutes)

July 12, 2003 (43 minutes)

August 15, 2003 (37 minutes)