

# FAMILY Flyer



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## LAST (2) PUBLIC SEMINARS – BOOK NOW!

Don't miss this opportunity to learn from Accredited Family Law Specialist, Michael Lynch. Only 2 seminars on the popular topic "7 Secrets to Surviving Property Settlement".

In "plain-English" Michael will explain the complexities, identify the common traps and (more importantly) give you the tips to overcome them. Anyone about to separate or recently separated needs to know this!

For ONLY \$20 you will receive a 1 hour information session with handouts and have the opportunity to ask questions. There will also be a **SPECIAL OFFER** for all attendees. There are only 2 seminars remaining:

### "7 Secrets to Surviving Property Settlement"

- [Brisbane City](#): 1-2pm – Tuesday, 28 October, The Sebel Suites, Cnr Charlotte & Albert St, Brisbane City
- [Sunnybank](#): 6-7pm – Wednesday, 29 October, Sunnybank Community & Sports Club – 470 McCullough St, Sunnybank

To register, call (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au). Book now, seating is limited!

## CAN YOU SEE THE FAMILY REPORT WRITER'S NOTES?

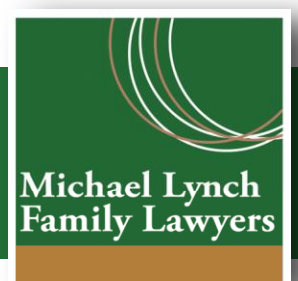
One of the most crucial pieces of evidence in any parenting case is usually the family report.

The report will contain the report writer's professional assessment of the family based on interviews and observations with the parents, children and any other significant adults. The report will usually include specific recommendations regarding the arrangements which the writer believes will best meet the future care, welfare and development needs of the children.

The court is not bound by the recommendations in the family report, however the report writer's evidence and recommendations are generally very persuasive. As with any evidence, the appropriate forum for challenging the report is at a trial by cross-examination of the report writer.

In a recent case a self-represented father asked the Judge to allow him to have access to the notes made by the family report writer during the course of interviews with the parents and children. The report writer stated in her report that she had kept handwritten notes during the interviews. The father sought the notes to enable him to prepare for cross-examination of the report writer at the trial. The Judge refused his request. The father then appealed this decision.

On appeal, the Full Court of the Family Court held that the Trial Judge was wrong and that the father had the right to have access to the notes and he was entitled to have that access before the report writer came to be cross-examined.





## ORDERED TO FILE A TAX RETURN

It is unusual for a court to order a party to complete and file a tax return, but if it does happen – does a failure to comply with that order form the basis for an application for contempt of court?

The distinction between “contempt of court” and a “contravention application” is important to understand. The High Court has commented on the distinction stating that a civil contempt (which would be equal to a contravention in the Family Court) involves disobedience to a court order, whereas a criminal contempt is committed when either there is a contempt in the face of the court or there is an interference with the course of justice.

The Family Court when considering the issue of contempt has often described it as a “*flagrant challenge to the authority of the court*”.

In a recent case before the court the wife sought an order that the husband in breaching court orders, be held to be in contempt of court. What had the husband done? He had failed to complete 13 years of outstanding tax returns (both personal and company returns), despite being ordered to do so by the court.

The wife argued that the court should be “suspicious” of the husband. The wife believed that once the proceeds were concluded the “*husband would be able to complete his taxations returns promptly and, enter into some compromise with the ATO regarding the outstanding tax, and as a consequence convert what appears to be a negative asset pool into a positive one to his great advantage, and to the significant disadvantage of the wife*”.

The court disagreed. The court believed the evidence of the husband and did not believe him to be cunning or deceptive, but rather a “*shambling ruin of a man*”. In considering all the evidence the court found that the failure to file remaining tax returns was a contravention, and treated it as such, rather than a contempt of court.

## WHAT LOCATION FOR CHANGEOVER?

Often where changeover is to take place can be a big issue in a parenting dispute, particularly if one parent feels they are bearing the brunt of the transport time and costs.

When parties are negotiating over this issue, a reasonable and fair approach is often to suggest a half-way point, so it is shared equally. However this is not always possible, or agreed to.

Such an issue was considered by the Court recently in a case where the child was 3 years old. In handing down judgment, the Judge made the following comments:

*The Court is conscious of the age of the child, the financial disparity in terms of disposable income available to each of the parties, the nature of the travel and the roads on which that travel is to be undertaken and the distances and times between each of the parties’ respective proposals.*

It is common ground that the distance between the mother’s home and the father’s home was in excess of 250 km one way and, subject to travel, was about a 3½ hour drive.

The Judge favoured the mother’s proposal which required the father to travel a further distance for changeover to occur.

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**Principal: Michael Lynch\***  
\*Queensland Law Society  
Accredited Family Law Specialist



**CONTACT:**  
**Telephone:** 07 3221 4300  
**Address:** Level 6, 193 North Quay  
Brisbane QLD 4000  
**Website:** [www.mlfl.com.au](http://www.mlfl.com.au)

