

Family Court Endorses Electronic Access to Documents

by **Geoffrey Hancy and
Andrew Davies**

In what appears to be a first for an Australian Court, Acting Judge Thackray (as he then was) in the Family Court of Western Australia has endorsed the use of the Internet as a permissible way for a law firm to provide its client and experts with access to electronic copies of commercially sensitive or confidential documents of the other party or third parties: *Plunkett* (PTW 578 of 2003, 28 June 2004). The Court was satisfied that the electronic litigation system used by the law firm created no greater risk of unauthorised access or disclosure than traditional methods that used paper copies.

In the case, the wife sought maintenance and property settlement from her husband. The level of the husband's net worth was an issue in the claim. The wife lived overseas.¹ She possessed thousands of documents about her husband's financial affairs. The wife required help from accountants to determine what conclusions could be drawn from the documents.

The wife gave copies to her solicitor in Perth. However she had great difficulty providing her solicitor with instructions on the documents.

She changed law firms. The new law firm suggested that the documents be copied into electronic form, and that computer hardware and specialised software be used to allow the wife and her experts to access the documents using a computer terminal and the Internet.

The husband and third party entities associated with the husband, were advised that the documents had been copied and that the copies could be viewed by the wife, her lawyers and her experts via the Internet. They sought an injunction restraining the

wife and her lawyers from posting documents on a web site.

The Family Court of Western Australia refused the injunction and held that there was not a real, rather than theoretical, risk of unauthorised access or disclosure. The Court was satisfied that a number of steps had been taken to reduce the risk of unauthorised access or disclosure, including that:

- The electronic copies of the documents were stored on a server (computer) that was dedicated to the purpose of storing documents;
- The system used software that had been specifically designed and created for use in litigation;
- The dedicated server was in a secure location at the offices of the wife's law firm;
- In order to obtain access to documents a person needed to know a web side address (URL-Uniform Resource Locator) which was not linked to the law firm's web site;
- User names and passwords were required and these were defined by a system administrator and not by the user;

DOBINSON DAVEY

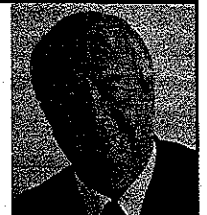
CANBERRA FAMILY LAW

AGENCY AND REFERRALS

Our firm is located within minutes of all courts.

We have experienced family law practitioners available to take agency work and referrals in all family and related matters.

Contact Phillip Davey or Julie Dobinson.



LEVEL 2, 1-13

UNIVERSITY AVENUE, CANBERRA CITY

GPO BOX 545, CANBERRA 2601

T 02 6262 8444, F 02 6262 8445, DX 5729

MAIL@DOBINSON.COM.AU, WWW.DOBINSON.COM.AU

ACCREDITED SPECIALIST
FAMILY LAW (NSW)

Geoffrey Hancy is a member of Francis Burt Chambers, Perth and **Andrew Davies** is a principal of O'Sullivan Davies, Perth.

- A password was 8 digits or more and comprised digits and letters, and it was case sensitive;
- User names and passwords were changed regularly;
- Once the user located the web site, the user was required to type in a unique user name and password;
- After the user typed in a unique user name and password, the user was presented with a web page containing the case to which that user had access. In order to access the documents for the case, the user was required to type in a second unique user name and password;
- The communications between the user's computer and the server were protected by a 128 bit Secure Sockets Layer (SSL) protocol. This protocol encoded the communications between the server and the user's computer and vice versa;
- There was a limited number of users who had access to the server (knowledge of the URL and each having two sets of unique user name and password);
- The system incorporated software to prevent unauthorised access to the server including firewall software, virus monitoring software, software to prevent spying or back door entry, and security recommendations of all providers of software used in the system were implemented.
- Once copied, the documents could then be stored safely off site.

The Family Court of Australia has now published Guidelines for Exchange of Documents by Electronic Communication which details the protocols to be adopted in this area. Electronic file management and exchange of documents is now on course to become a useful litigation tool in future Family Law cases.

The Children's Hospital at Westmead

The Children's Hospital at Westmead is one of the most respected paediatric centres in the world, caring for newborns to adolescents, with problems as simple as tonsillitis or as complex as cardiac disease needing open-heart surgery. We have skilled and dedicated staff using the latest high-technology equipment. We provide the very best of care for children from all over NSW and beyond. Can you assist us to continue this vital work?



For further information contact the Planned Giving Coordinator
Phone: (02) 9845 3463, Fax: (02) 9845 3457.



MEMBERSHIP INVITATION

The Law Council of Australia is the peak body representing the legal profession nationally. Its constituent bodies comprise the State and Territory Law Societies and Bar Associations.

The Family Law Section (formed in 1985) represents the views and interests of family lawyers throughout Australia. It makes submissions to Federal Government Law Reform Commissions, the Family Court of Australia, the Federal Magistrates Service, the Family Law Council, the Family Court Judges' Rules Committee, and other bodies, and has established a strong representation with those responsible for legislation, policy-making and administration in the family law area. The Section has active committees dealing with the whole range of family law issues and provides many services to its members.

MEMBERSHIP

Membership of the Family Law Section is available to:

- Barristers and solicitors practising in family law
- Academic, corporate and government lawyers interested in the jurisdiction
- Foreign lawyers, law students and law graduates
- Practitioners in associated disciplines

BENEFITS OF MEMBERSHIP

Membership of the Family Law Section provides many benefits including:

- Strong representation on issues affecting family law practitioners
- Complimentary issues of *Australian Family Lawyer* and the Family Law Section Newsletter
- Password access to the members site on the Section website containing archival conference papers, current and historical contents of *Australian Family Lawyer* and hot topic notes on recent cases and changes to legislation and Court procedures
- The Biennial National Family Law Conference
- CLE programmes in various States and Territories
- National seminar series on important legislative and other changes
- Annual Family Law Intensive in Melbourne and Sydney
- Reductions in registration fees at seminars, conferences and conventions conducted by the Section and the Law Council
- A voice for country practitioners through the Country Committee
- Practitioner aids including the Australian school holiday calendar and special editions of *Australian Family Lawyer*
- Travel, accommodation, car hire and other discount and corporate plan arrangements
- Representation on international issues through established relationships with international Family Law bodies

ENQUIRIES

For enquiries in relation to membership contact the Section Administrator, Patricia Allan of the Law Council of Australia, GPO Box 989, Canberra, ACT 2601. Tel: (02) 6246 3788 Fax: (02) 6248 0639 Email: patricia@lawcouncil.asn.au

For further information visit the website at www.familylawsection.org.au