



- Who's looking at your facebook page?
- Use of secret recording for personal protection

- The treatment of long service leave
- What is a contact centre?

## WHO'S LOOKING AT YOUR FACEBOOK PAGE?

In an interesting recent parenting case a mother has appealed the trial judge's decision and sought a 'stay' (a suspension) of the decision pending an appeal.

In part of her case the mother argued that the court had inappropriately accessed her social media profile.

The mother complained that "her social media profiles had been accessed from the Judges computer" and the mother made a later complaint that the Judge's associate had accessed her social media profiles. A similar complaint had been made during the trial of the matter. The Judge made the following comments:

- The Judge had never accessed any of the mother's social media profiles from his computer.
- There was more than ample evidence before the court for the Judge to consider the mother's professional qualifications, employment history and experience.
- The Court regularly warns litigants about the use of social media and the ready access by others to it. The mother, as with any person, is the author of her own information on social media. Making information available through social media necessarily involves, if not invites, others having access to it. If a person seeks to have a social media profile, it is a tad disingenuous to complain about someone accessing the very information that the provider of the information has made available on social media.

The court refused the 'stay' application.

## USE OF SECRET RECORDING FOR PERSONAL PROTECTION

Can audio recordings taken by the mother, without the father's knowledge or consent, be used in a parenting case in court?


This was a question recently considered by the court.

The recordings in question were recorded before the parties separated. The father admitted that he was the person in the recordings.

The court noted that under the Surveillance Devices Act 2007, a person must not knowingly use a listening device to record a private conversation. The legislation does not apply, however, if the recording is "reasonably necessary" for the protection of the lawful interest of one party (here, the mother).

The mother's case was that the father was abusive, controlling and violent. The father contended that he had never been abusive towards the mother and, other than two occasions on which he damaged property, denied any acts of family violence.

The Court found that the recordings were "reasonably necessary" in this case. At the time the recordings were made, the mother was living with the father, was fearful of leaving him and was concerned about finances. There was no evidence to suggest that the recordings were made for any reason other than to corroborate the mother's story or to protect her from the father.



In the circumstances where the mother was fearful of the father, the Court held that it may not have been reasonable for the mother to go to the Police and obtain a warrant to record the conversations. The Court allowed the recordings to be used in the parenting trial.

## THE TREATMENT OF LONG SERVICE LEAVE

The value of accrued long service leave can be large and can therefore be a significant factor in a property settlement. But how is it treated? The Appeal Court has recently considered the question.

### The Facts

The parties had a relationship of 14 years. At commencement the wife had savings of \$50,000, superannuation and accumulated long service leave from her position at a bank which she had had since finishing high school. The wife sought a percentage adjustment in her favour for this initial contribution.

Some 8 years after the commencement of the relationship, the wife was made redundant and received a redundancy package of \$110,000 net. The wife sought a further percentage adjustment of 10% for this payment.

At the trial, the Judge provided the wife with an overall adjustment of 15% (or 65% of the pool). There was no differentiation between the initial contributions and contributions during the marriage. No adjustment was made to either spouse for 'future needs'.

The husband appealed, on the basis that the Judge had mischaracterised the wife's redundancy entitlement as an initial contribution when she had no right to the redundancy package at the commencement of the relationship.

### The Court Found

The Appeal Court agreed that when identifying property of the parties, accumulated long service leave cannot be treated as property and was satisfied that the trial Judge did not do this.

The Court found that it was open to the trial Judge to consider 'accumulated long service' which ultimately leads to a 'redundancy payment' as an initial contribution percentage. However, the Judge must ensure that 'double dipping' does not occur.

As the trial Judge had not specified a percentage adjustment to the wife separately for 'initial contribution' and the 'redundancy' just an overall contribution adjustment, the Appeal Court was satisfied that double dipping had not occurred in this case.

### The Court Ordered

The Husband's appeal was dismissed.

## WHAT IS A CONTACT CENTRE?

Contact Centres are staffed premises that facilitate contact changeovers and assist children from separated families to maintain or establish a relationship with the parent they do not reside with.

### What can they do?

- Provide a neutral location for child changeovers between parents;
- If necessary, the Centre can supervise the time children spend with a parent or other family member.

A Contact Centre is not however a confidential service, anything that is said or done can be reported as evidence to the Court.

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