



# Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: SPRING 2014



## Welcome Paula Pfingst

*"I am passionate about helping people get through what is likely to be the most stressful and emotional time in their lives."*

Paula joined Berry Family Law in July which brings the number of family lawyers to 14!

Paula completed her Bachelor of Laws with first class honours and Bachelor of Fine Arts majoring in Creative and Professional Writing with distinction at Queensland University of Technology. She received the Family Law Practitioners Association of Queensland Prize in 2012 for her academic results and was admitted as a legal practitioner in Queensland in January 2013.

Prior to joining Berry Family Law, Paula worked as Legal Associate to two Judges in the Family Court of Australia for six months before moving to the role of Associate to one of those Judges for a further 18 months. She has been fortunate to work closely with members of the judiciary on a daily basis and has gained valuable insight

into how complex cases are determined. She has spent extensive time in Court over the last two years and has a keen sense of the realistic outcomes a client can expect.

On a personal level, Paula loves travelling and challenging herself with new experiences. She has skydived, climbed Mt Kilimanjaro in Tanzania, dived with great white sharks in Cape Town, swung across the Batoka Gorge over Victoria Falls in Zambia and gone white water rafting in Austria.

Paula commented that "I chose to specialise in Family Law because it is the area of law that is most likely to affect people, regardless of their background. I am passionate about helping people get through what is likely to be the most stressful and emotional time in their lives."



Berry Family Law

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# Social media and family law proceedings

Today most households have access to the internet and also use social media such as Facebook, Twitter, YouTube and Instagram. Some people will use the internet to discuss how they are feeling and to express their disdain. These comments may be available to friends, friends of friends or even the general public. Once a comment is on the internet it can remain in this form forever. A comment believed to be deleted can be retrieved or even copied by someone before being deleted.

The bottom line is, once you type or publish anything on the internet, you lose control over it.

Most family law matters resolve prior to proceedings being issued. Some cases will proceed to Trial. Litigants in the Family Court process must exercise a great deal of restraint. Although most Family Court sessions are open to the public, Section 121 of the *Family Law Act 1975* restricts the publication of Court proceedings. This means that a person who publishes by any means or discloses to the public any account of proceedings which identifies a party to the proceedings may be guilty of an offence. Upon conviction a party may be imprisoned for a period of not exceeding one year.

In the midst of litigation it may be tempting to post a comment on matters before the Court. Don't do it.

In the matter of ***Xuarez and Vitela [2012] FAM CA 574 (25 July 2012)*** the father created an internet website which identified the Family Law proceedings. He named the parties in the matter and uploaded some photographs of the lawyers and experts involved in the proceedings. Those parties were identified under the heading "List of Corrupt Legal Professionals". The Court found that the father was responsible for the material published on the website. The Court was satisfied that Section 121 of the Act had been breached as he had included the names of the parties, the number of the proceedings and reference to the Court. The Court was satisfied that the published content readily permitted members of the public and particularly any person knowing the family and/or the children to identify the children.

The fact that the details were published on the internet and remained "published" and thereby available for any person, anywhere in the world to access at any time of the day or night on an ongoing basis led the Court to believe there was a need for injunctive restraint.

**The bottom line is, once you type or publish anything on the internet, you lose control over it.**

It was noted by Forrest J that "publication on the internet is quite different to one of publication on the television or radio program or any paper article where the publication is limited in time and place..." He continued "I am satisfied that continuous publication on the internet of material that offends a section and impacts upon the welfare of the children who are subject to the jurisdiction of the Court is able to be restrained by injunction and should be".

The Court also considered that the public attack on the integrity of lawyers representing the mother and children was "deliberately intended to intimidate them into ceasing to act for the mother and the children and to act as a deterrent to others from so acting..." He continued "I consider it made further attack on the proper administration of justice in respect of which the right to be legally represented is a fundamental cornerstone" [58]. An injunction was issued requiring the father to remove material from his website that referred to family law proceedings that he was involved in. The Australian Federal Police were directed to investigate whether the father should be prosecuted.

In the matter of ***Lackey and Mae [2013] FM CA fam 284 (4 April 2013)*** it was found that the father and his family had denigrated the Court, the Independent Children's Lawyer, the Judge, experts who provided Reports in the proceedings, New South Wales Police and the mother by making comments about the proceedings on Facebook. Given the information that was published on Facebook it was apparent to the Court that the father either commented on this information or provided the information to his family and friends via Facebook. The Court deemed it necessary that the mother and the children "be protected as much as possible from further and insidious and corrosive attacks". Orders were made that the father and the father's family remove all reference to the proceedings from Facebook. The father and his family were restrained from publishing or otherwise distributing material relating to the proceedings. The matter was also referred to the Australian Federal Police.

The publication of Family Law proceedings is a serious matter which the Court will address and is punishable by imprisonment. It is imperative that parties refrain from divulging information regarding their matter on the internet or in any other manner.

The Family Court is a forum of impressions. In each of the cases discussed, the party who published inflicted irreparable damage to their own case. It will be no surprise their cases failed and their time with their children was restricted.

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