

The Law Society Disciplinary Powers and your obligations under the *Legal Profession Act. Cont...*

There are now some time limitations to the laying of complaints. Section 473 provides that a complaint made more than three years after the conduct complained of cannot be dealt with (other than to dismiss it or refer it to mediation) unless:

- the Society determines that it is just and fair to deal with it having regard to the delay and the reasons for the delay, OR;
- there is an allegation of professional misconduct and it is in the public interest to deal with the complaint.

These restrictions were absent from the repealed Act.

Contrary to some beliefs, I restate that the Society can (and does) investigate complaints of its own motion: s 471.

Where there are ongoing complaints of a similar nature about a practitioner which would normally be considered as not being of a serious nature, the repeated complaints can themselves amount to a more serious conduct issue as the practitioner is not demonstrating that he or she is “generally competent or diligent”. Again this was not a consideration under the repealed Act.

INFORMATION TECHNOLOGY & THE LAW

Am I going to the moon or pushing a broom?

In the 1997 film ‘Gattaca’, Vincent, aka Ethan Hawke, refused to believe that his life was determined by his DNA. In a time when eugenics was rampant and your DNA determined your position in society, Vincent broke all the rules. Now, just over a decade later, you can get comprehensive genetic information about yourself.

A number of a web-based services offer to help you read and understand your DNA. Users provide a saliva sample using an at-home kit. When returned, the saliva is analysed and using interactive tools you can review the results. You can learn about ancestry, disease risk and the inheritance of physical traits. More information about your DNA is added as new knowledge becomes available, which means you will be continually learning about yourself.

DNA is the most fundamental physical element of a person’s individuality. The Australian Law Reform Commission conducted a two year inquiry looking at the ethical, legal and social implications of genetics producing report 96 called “Essentially Yours: The Protection of Human Genetic Information in Australia”. This report was finalised in 2003 and acknowledged at the time the rapid pace of advances in genetics.

Now, just over four years later, individuals are able to review their DNA on the Internet. The genetic information becoming more available, it is not hard to imagine how this information might be used or misused if it is not properly protected by law and by the holders of genetic information.

As I am writing, the US Senate has unanimously passed legislation



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banning employers and health insurance companies from discriminating against people on the basis of their genes. In Australia, privacy laws already class genetic information as sensitive information.

Service providers take privacy very seriously, and take the time to explain the types of measures taken to protect your genetic information against unauthorised access to or unauthorised alteration, disclosure or destruction of data. The protective measures typically include use of physical, technical and administrative procedures, including:

analysing the sample anonymously (ie. the laboratory does not have your name or other details);

restricting the analysis to DNA only (ie the sample is not analysed for biological or chemical components, markers or agents other than your DNA);

securing the database with firewalls, encryption (both the data and the connections to the Internet site) and the separation of genetic

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information from account information;

employing strict controls on physical access to the data centres;

the conduct of regular internal and external audits of the security systems;

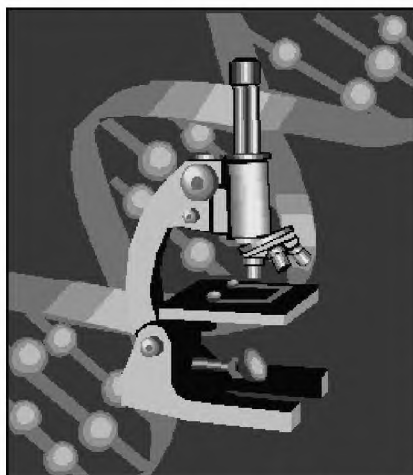
ensuring that external parties will not be given access without consent, except where required by law (the provider will attempt to contact you before such a release unless prohibited by law);

enabling you to request that your account be deleted.

Naturally, there is no guarantee that the security systems employed will never be breached. Further, online access means you take on a level of personal responsibility for security. This means you should ensure you have a complex password and you should be very careful with whom you share your genetic information.

An important consideration when using these kinds of services is that they don't apply Australian law to the delivery of the service. 23andme and Navigenics apply the laws of the State of California while deCodeme applies the laws of Iceland. Clearly, this adds a layer of complication to the decision to use such a service. Further, any dispute with a service provider could be a very difficult and costly exercise. The documentation for using the service includes a privacy statement, a form of consent and terms of use, all of which are in plain English and very comprehensive.

If you do consider opening the book on your DNA, there will be a cost of about \$1,000 US and there are a few things you need to think about: who will you tell about the results, are you prepared to live with the information you receive, will you need any support to deal with the



information and any implications arising from that information? Your DNA test may affect not only you, but your family. If you have a disease and there is no cure (eg. Huntington disease), do you really want to know? Your genetic make-up may reveal or rely on genetic information about members of your family who may not want to know or reveal this information. You can get expert support from counselors who have undergone specific training to help people through the process of genetic testing. No matter what the results, remember, despite all the analysis, "there is no gene for the human spirit."

Links:

DNA web services

www.23andme.com

<http://www.decodeme.com>

<http://www.navigenics.com>

Other information

<http://www.genetics.com.au>

<http://www.biotechnologyonline.gov.au>

<http://www.lawgenecentre.org>

<http://www.austlii.edu.au/au/other/alrc/publications/reports/96/>

AustLII Toolbar

If you use AustLII regularly then the AustLII Toolbar is a must. The Toolbar is essentially a set of bookmarks or links to the major

categories for Australian jurisdictions. You can conduct a search directly from the Toolbar and access other Legal Information Institutes.

If you are using other toolbars, such as Google or Yahoo, then your browser window can get a little cramped. You can simply hide and unhide the toolbar by right clicking. There are versions of the AustLII Tolbar available for Microsoft Internet Explorer and the Mozilla Firefox web browser and other operating systems (eg. Mac and Lynx).

Link:

<http://www.austlii.edu.au/techlib/toolbar/>

National Judicial Conference of Australia seminar in Central Australia

By John McGinness, National Judicial College of Australia

Fourteen local and interstate magistrates attended a Judging in Remote Locations workshop in Alice Springs from 1 to 3 April 2008.

The workshop was designed as an opportunity for judicial officers in remote locations (or on circuit to such locations) to share their knowledge on strategies for dealing with issues that arise from day to day because of their isolation.

Sessions looked at the challenges of professional and personal isolation, working with Indigenous communities, running a multicourt circuit, physical and psychological well-being. Professor Diana Eades (University of New England, NSW) presented a session on Aboriginal English. Chief Magistrate Jenny Blokland led a session on judicial conduct and ethics.