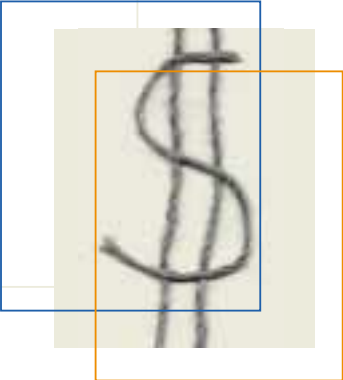




## Preserved at what cost?



Jason Beckett, Senior Manager of Computer Forensics in our Sydney Office explains the dangers of a 'Do-it-Yourself' approach to preserving computer evidence.

For any assignment where computer evidence is involved it is important to be aware of the dangers in attempting to obtain computer evidence without using the right type of expertise.

A recent investigation illustrates this point. In the investigation there was a suggestion that a number of files had been deleted or altered to facilitate a fraud. The Company had utilised its IT staff to copy the files of interest to a separate directory and then onto a number of CD's so that the files could – or so they thought – be preserved for later investigation. Some files had been opened to assess their relevance.

I was engaged approximately two weeks later when the Company's IT staff had been unable to locate any information of interest.

My investigation used recognised forensic techniques; firstly I copied all of the data on the Company servers and computers to a separate hard disk; secondly I copied this data to CD's.

These processes involve mathematical verification to ensure a true and accurate copy had been taken.

On my first examination of the data I discovered the full extent of the 'preservation' that had been undertaken by the Company's IT staff and how the measures they had taken had in fact destroyed much of the potential evidence.

### Copying files to a new directory

The new directory copies of the files created by the Company occupied space on the hard disk the same size as the original files. This in turn overwrote the hard disk space that was once occupied by deleted files or ambient data.

This deleted and ambient data – which may have contained fragments of information relating to the fraud – was therefore lost from the investigation.

### Copying files to a CD

This next task is actually quite complex considering the relative ease with which it can be undertaken by a user.

The process started with a special file being created on the computer's hard disk to hold the files the Company intended to copy to CD. This is called an 'ISO image' and is as large as the total of all the files to be recorded. It is this file that is written to the CD. These ISO image files can be as large as a CD, in excess of 600MB. Again, as with the directory copies, when this ISO image file was written to the computer's hard disk it overwrote any previously deleted data, effectively destroying this as evidence.

With so much data having been overwritten, it is no wonder that in this case the missing documents were never found.

There are a few morals to this story but most importantly:

- If in doubt as to what might be useful to the investigation, get a specialist to take a forensic image first. Doing this sooner rather than later increases the chances of recovery.
- Always work on the forensic copy of the data and never the original. That way the integrity of evidence is preserved.

### In this issue:

- Preserved at what cost?
- Successful prosecution of a fraudulent invoicing scam
- Forensic Accounting & 'CLERP 9'
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- Take a forensic copy sooner rather than later to increase the chances of recovery
- Never work on the original

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# Successful Prosecution of a Fraudulent Invoicing Scam

Jason Frost of our Sydney Office looks at how circumstantial accounting evidence was employed to successfully prosecute the perpetrator of a fraud.

Ferrier Hodgson was recently engaged to prepare an expert accountant's report for a food processing business in PNG. A loss was alleged to have occurred as a consequence of a fraudulent invoicing scam initiated by an employee manager.

The scam involved collusion between the manager and an associate working for a supplier, based in New Zealand. Together they allegedly incorporated an intermediate entity and arranged for supplies to be made at inflated prices and shared in the gains.

The investigation required tracing funds through different countries and currency exchange systems, various bank accounts, properties and credit cards. It was evident that the defendant was operating a "cash economy", which made it almost impossible to directly trace each of the alleged gains to the employee.

We undertook a detailed financial analysis to show that the employee had a greater level of expenditure than his

income from known sources. He claimed that the discrepancy was a result of his winnings from gambling and golf competitions. A high level of correlation was also established between the fraudulent invoices and the manager's unexplained income.

Gzell J rejected the evidence of the defendant and accepted the conclusions of the plaintiff's expert, Michael Potter, noting:

"I infer from the evidence before me that the defendant received portion of the proceeds of the second invoices raised by [third party supplier] against the plaintiff as secret commissions or secret profits".

In this case the technique we employed provided a sufficient amount of circumstantial evidence for Gzell J to conclude that the employee had received the proceeds from the alleged scam. The Plaintiff was awarded costs together with a significant financial sum realised from the sale of a property in which the manager had invested the fraudulently obtained funds.

"I infer from the evidence before me that the defendant received portion of the proceeds of the second invoices raised by [third party supplier] against the plaintiff as secret commissions or secret profits."

Gzell J.

## Forensic Accounting & 'CLERP 9'

Following the release of the latest chapter of the Corporate Law Economic Reform Program ('CLERP 9') the media spotlight has fallen firmly on the issue of Auditor Independence.

The proposals support and reinforce the new standard for professional independence which was adopted by the accounting bodies in May 2002. This 'Professional Statement F1' specifies nine categories of non-audit services which have the potential to threaten an auditor's independence. Of most interest to Forensic Accountants is the "litigation support services" category which entails acting for or assisting a client in the resolution of a dispute or litigation. Where an accounting firm provides

both audit and litigation support services to a client the CLERP 9 proposals will require:

- Separate disclosure in the Company's annual report of fees paid for litigation support services; and
- A statement in the annual report as to whether the audit committee is satisfied that provision of the litigation support service is compatible with auditor independence. This must include an explanation as to why provision of this service does not compromise independence.

These measures are likely to lead to intensified scrutiny of non-audit services provided by multi-service firms and the measures taken by them to prevent and manage independence issues.

### Staff Profile: Jason Beckett

Ferrier Hodgson welcomes its newest staff member, Jason Beckett, as Senior Manager of Computer Forensics, based in Sydney.

For the past seven years Jason headed the High Tech Crime unit of the NSW Police Service. He has presented evidence to the Courts in many fraud, intellectual property, murder and drug matters.

His expertise includes identification and preservation of electronic evidence, sophisticated analysis of evidence and examination of emails and internet usage. This expertise will be a valuable addition to our fraud and financial investigation capabilities.

### About forensics@ferriers...

forensics@ferriers is a newsletter issued by Ferrier Hodgson discussing current issues in the area of Forensic Accounting – litigation support, fraud investigations, financial investigations and computer forensics. For comments please contact john.temple-cole@syd.fh.com.au Alternatively you can read forensics@ferriers on our website.

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