

## THE RIGHT TO PRIVACY – SOUTH AFRICAN AND COMPARATIVE PERSPECTIVES

**C.M. van der Bank**

Vaal University of Technology  
Private Bag X021  
Vanderbijlpark, Gauteng  
South Africa.  
eMail: riana@vut.ac.za  
Tel: +27169509240

### ABSTRACT

**A** *person's right to privacy entails that such a person should have control over his or her personal information and should be able to conduct his or her own personal affairs relatively free from unwanted intrusions.*

*Information protection is an aspect of safeguarding a person's right to privacy. It provides for the legal protection of a person in instances where such a person's personal particulars are being processed by another person or institution. Processing of information generally refers to the collecting, storing, using and communicating of information.*

*The processing of information by the responsible party threatens the personality in two ways:*

*First the compilation and distribution of personal information creates a direct threat to the individual's privacy and*

*Second, the acquisitions and disclosure of false or misleading information may lead to an infringement of his identity.*

*Effective information protection will only be achieved through regulation by legislation*

**Key words:** *Privacy, infringement, reasonableness, action injuriarum and fundamental*

## 1. Recognition of the right to privacy

The privacy of individuals has to be respected. The right to privacy is recognised by social scientists as essential for the preservation of an individual's human dignity, including his physical, psychological and spiritual well-being (Burns, 2001). In legal terms, privacy is described as an individual condition of life characterised by exclusion from publicity (Neethling, Potgieter and Visser, 2005). Even in a constitutional democracy this right can never be absolute.

One of the main problems confronting us in the information era is the threat that technology poses to an individual's right to privacy (Britz and Ackermann, 2006). Privacy is also at the core of our democratic values and therefore an individual has an interest in the protection of his or her privacy.

According to Jerry Kang (Kang, J 1998) the term privacy encompasses a number of ideas which can be put into three clusters:

- spatial privacy- the extent to which a person's individual territorial space is shielded from invasion
- privacy related to choice – the right to make a choice without state interference
- privacy relating to flow of personal information.

There was no sophisticated concept of privacy in the Roman law, but the Roman jurists recognised a number of specific instances where a remedy was provided for a wrong which could be interpreted as an impairment of privacy: for instance, invasions of sanctity of the home. Although privacy concerns are deeply rooted in history, privacy protection as a public policy question can be regarded as a comparatively modern notion. The right to privacy has, however, become one of the most important human rights of the modern age and is today recognised around the world in diverse regions and cultures.

## 2. The protection of privacy

### 2.1.1 International Law

The right to privacy is also dealt with in various other international instruments such as Article 12 of the Universal Declaration of Human Rights of 1948 which states that no one may be subjected to arbitrary interference with his privacy, family or correspondence.

At regional level, a number of treaties make this recognition of the right to privacy legally enforceable. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states:

- 1) Everyone has the right to respect for private and family life, his home and his correspondence.
- 2) There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The American Convention on Human Rights Article 11 and 14 and the American Declaration on Rights and Duties of Mankind contain provisions similar to those in the Universal Declaration and International Covenant.

It is, however interesting to note that the African Charter on Human and People's Rights does not make any reference to privacy rights.

### 2.1.2 National law

In South Africa the right to privacy is protected by both our Common law and the Constitution (Bill of Rights section 2). Section 14 of the South African Constitution, which protects the right to privacy, reads as follows:

Everyone has the right to privacy, which includes the right not to have:

- (a) Their person or home searched;
- (b) Their property searched;
- (c) Their possessions seized; or
- (d) The privacy of their communications infringed.

Section 14 (a), (b) and (c) protects an individual from unlawful searches and seizures, whilst section 14(d) encompasses a broader protection of privacy, similar to the common law *action iniuriarum* of South African law.

The entrenchment of fundamental rights (also the right to privacy) strengthens their protection and gives them a higher status in the sense that they are applicable to all law, and are binding on the executive, the judiciary and the state organs as well as on natural and juristic persons. There is no South African legislation dealing specifically with the protection of the right to privacy. It is therefore important to evaluate the right to privacy in the light of both the common law and the Constitution.

In *S v Nkabinde* the court found that the accused's right to privacy had been violated when the police monitored conversations between him and his legal representatives (*S v Nkabinde* 1998 8 BCLR 996 (N)). Although authorisation had been obtained under the Monitoring Act, the interception of this type of communication is not covered by the Act. Further, the monitoring had continued beyond the date when the authorisation had lapsed.

The entrenchment of the right to privacy in section 14 compels the Government to initiate steps to protect neglected aspects of the right to privacy in South Africa, such as data privacy or the protection of personal information. Section 7(2) of the Constitution provides that the state must respect, protect, promote and fulfil the rights in the Bill of Rights.

### 3. Privacy as an expression of core values

Although the individual's right to privacy is protected in most democratic societies, it cannot be regarded as a natural right like, for example, the right to freedom or the right to life (Britz and Ackermann, 2006). Two reasons are relevant here. Firstly, one should consider that the tendency to protect privacy by statutory means is a relatively recent phenomenon. Most foreign laws dealing with the privacy of individuals were only formulated during the 1960's. Secondly, privacy is a relative notion. Some cultures, for example, value privacy more than other cultures.

The right to privacy is not absolute. As a common law right of personality it is necessarily limited by the legitimate interest of others and the public interest. (Neethling, Potgieter and Visser, 2005).

Core values are the values shared by humanity which are crucial to survival and development. According to Moor the importance of privacy should rather be sought in its relation to the core values of society (Moor, 1997). Core values include aspects such as freedom, security, knowledge, happiness and ability. In this sphere, privacy can be seen as expression of the core values of security and freedom. Privacy then becomes a natural expression of the need for security as societies become bigger and increasingly interactive. It is also inevitable that the desire for privacy will increase dramatically in a highly computerised and networked society, where a great deal of personal and private information is communicated electronically.

In terms of section 39 of the Constitution, when interpreting the Bill of Rights, the values which underlie an open democratic society based on human dignity, freedom and equality, should be promoted. This means that an exercise is required analogous to that of ascertaining the *boni mores* or legal convictions of the community in the law of delict. Of importance is Ackermann J's dictum in *Bernstein ao v Bester NO ao* where he stated: "The nature of privacy implicated by the right to privacy related only to the most personal aspects of a person's existence, and not every aspect within his or her personal knowledge and experience". Neethling criticises this meaning of privacy as too "restrictive". Especially in regard to data protection where individual bits of information viewed in isolation may not be private, but where the sum total is of such a nature that an individual may want to protect it. Thus in principle compiling record and obtaining knowledge thereof constitutes an intrusion into the private sphere (Neethling, 2005).

Hi criticism was validated by Langa DP in *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd ao; in re Hyundi Motor Distriburors (Pty)Ltd v Smit NO ao* where the court held that the statement in *Bernstein* characterises the right to privacy as lying along a continuum, where the more a person inter-relates with the world, the more the right to privacy becomes attenuated. The right to

privacy should therefore not be understood to mean that persons no longer retain such a right in the social capabilities in which they act. Thus, when people are in their offices, in their cars or on mobile telephones, they still retain the right to be left alone by the State unless certain conditions are satisfied.

#### 4. Nature and scope of the right to privacy

Of all the human rights in the international catalogue, privacy is perhaps the most difficult to define. Definitions of privacy vary widely according to context and environment. In *Bernstein ao v Bester NO ao Ackermann J* stated: "The concept of privacy is an amorphous and elusive one which has been the subject of much scholarly debate"( *Bernstein ao v Bester NO AO* 1996 (2) SA 751 (CC); 1996 (4) BCLR 449 (CC). The lack of a single definition should, however, not imply that the issue lack importance. The need to understand the nature of the right to privacy in order to have legal certainty and protection has always been emphasised.

In 1996 Harms JA accepted the following definition of privacy (as proposed by Neethling) in *National Media LTD ao v Jooste* "Privacy is an individual condition of life characterised by exclusion from the public and publicity. The condition embraces all those personal facts which a person concerned has determined him to be excluded from the knowledge of outsiders and in respect of which he has the will that they be kept private".

True democracy implies that personal privacy is protected from state intervention. And yet, owing to the data explosion in this country and elsewhere, the private sector poses an even greater threat to the privacy of individuals. "Big brother" today may be wearing a pinstripe suit and corporate title (Britz and Ackermann, 2006).

The right to privacy can never be a shield to absolute measurements. The state use FICA legislation to involve banks and other institutions in the battle against crime: an employer monitors employees'. Internet activities to ensure compliance with company policies; an individual will provide personal details and may undergo polygraph testing to obtain employment; and credit records are kept to protect interests.

Section 14 will, however, not only have an impact on the development of the common law action for invasion of privacy. It may also create a new constitutional right to privacy. In giving content to the general substantive right to privacy, courts will, in the first instance, be guided by common law precedents. Secondly, they will be influenced by international and foreign jurisprudence.

Recognition of new ideas of the right to privacy may also give rise to new actions for invasion of privacy which will include not only the interests protected by the common law but also a number of important personal interests as against the state.

Every reasonable person will agree that invasions of privacy are justifiable at times, certain very important preconditions apply:

- The invasion must have a legal foundation, such as law which is applied properly or an employment contract.
- The invasion must be reasonable, in other words there must be a relation between method and purpose.
- The information may not be used for a purpose other than the one for which it was obtained.
- All reasonable steps must be taken to ensure the correctness of the information, and it must be updated from time to time.

Neethling has argued that privacy should be regarded as an independent right of personality wider than "dignity", but that for convenience privacy has been delineated... within the *digitas* concept (Neethling, 2005).

## 5. Infringement of the right to privacy

The elements of liability for an action based on an infringement of a person's privacy are in principle the same as any other injury to the personality, namely unlawful and intentional interference with a legally protected personality interest- here the right to privacy.

Although the courts have not analysed the specific meaning of “dignity” and “privacy” a number of crystallised categories of impairments of dignity have emerged from the decisions of the courts (Burchell, 1998).

Ackermann J in *Bernstein* draws a distinction between the two-stage constitutional inquiry into whether a right (such as privacy) has been infringed and then whether the infringement is justified, as opposed to the single inquiry under the common law, as to whether an unlawful infringement has taken place.

### 5.1 Personal Information

The major factor that neutralises claims that information is confidential is that privacy has been waived, for instance where a person applies for employment (especially a position subject to security clearance), an account or a loan. These waivers are not absolute, and a bank can still be taken to task for passing on such information to other commercial institutions.

A Phenomenon of the present time is that information of commercial value is being sold (quite often by the employee within an organisation) to marketers and other people with similar commercial intentions. Many people find it irritating to receive telephone calls and e-mails at work. Employers should provide for this when drafting their disciplinary code by prohibiting the selling or leaking of employer-privy information.

### 5.2 Work situation

An employer cannot claim access to communication-related information about employees at the workplace (detailed billing, e-mails) as of right even though the communication facilities may be provided by the employer. Although the law does make some provision for regulating the interception of communications, the employer must secure a contractual basis for such access in the employment contract per se, or by incorporating certain directives, policies or rules in the employment contract which provide for the monitoring of communications and the policing of Internet behaviour.

Information may be used or communicated only for the protection of the legitimate interest(s) involved, and that the use of information in a manner incompatible with this purpose is wrongful. Accordingly, there should be a duty of confidentiality on a data controller in so far as the processing of information is not in accordance with the defined purpose. Even if it is certain that the processing is for the protection of a legitimate interest, it must still be exercised in a reasonable manner (Neethling, Potgieter and Visser, 2006).

Polygraph testing is another controversial issue which may lead to abuse in what many people regard as the unequal relationship between employer and employee. Polygraph testing is a means of measuring (often hidden) bodily reactions and then drawing conclusions as to whether the verbal reactions to accompanying questions are to believe.

It has been widely accepted by the Labour Court and the CCMA in cases such as *Sosibo & others* and *CTM* (2001) 10 CCMA 2.5.2 that, polygraph testing in the workplace is highly contentious and the admissibility of its results remains moot. The sole reliance by the employer on unspecific polygraph results is insufficient to discharge the onus in terms of section 192 of the Labour Relations Act 66 of 1995 to prove that the dismissal was fair. To discharge this onus, the test of a balance of probabilities is used. To only present polygraph evidence is not enough to show that the dismissal was fair because there is no corroborating evidence.

A person embroiled in a dispute of some kind may declare his willingness to undergo polygraph testing, challenging the adversary to do the same. Exponents say that polygraph testing is an indicator and can never be absolute. Therefore polygraph test results are insufficient, in and of themselves to establish guilt and it

can therefore be said that results of such tests cannot be the sole and only indicator of guilt, other corroborating evidence must be present before reliance can be placed on such evidence for a guilty finding.

The circumstances under South African law which would justify an intrusion into the private sphere will be developed casuistically under the broad, flexible criterion of unlawfulness, and in terms of the constitutional definition of the bounds of privacy, including the interface with freedom of expression (Burchell, 1998).

### 5.3 *Spamming*

The spammer or sender of junk e-mail will usually try and invite the recipient to engage in some electronic deal or visit a certain website, a method often used by pornography and gambling websites. In order to ensure that the recipient will open the message, the spammer will disguise the heading and origin.

Cyber crimes are not limited to the acts as contained in the ECT, but there are also other statutes that are applicable in the prosecution of cyber crimes. For instance, in terms of the Prevention of Organized Crime Act (POCA) and FICA Act, the prevention of all the crimes listed (as applicable to the cyber environment) is highlighted (but in an organized fashion). Additionally, the prohibition of money laundering and other financial related crimes which are done online these days and may also contravene the Exchange Control Regulations.

Also noteworthy is the National Gambling Act and Lotteries Act. In terms of s89 of the National Gambling Act, any form of unlicensed gambling is unlawful and may be imprisoned for period of 2 years. Similarly s57 and s59 of the Lotteries Act, also states that “any unlicensed lotteries or anyone participating in a foreign lottery is liable to a criminal offence”.

With reference to foreign anti-spamming legislation, Ebersöhn concludes that specific actions that constitute or lead to spamming should be outlawed. This includes the prohibition of e-mail address harvesting and the use of false e-mail headers, and the requirement that the subject line should contain an indication that the message contains an advertisement. This will enable service providers to filter incoming messages (and guarantee clients a spamming free service) and allow recipients to delete a message without having opened it (Ebersöhn, 2003).

### 5.4 *Unwanted commercial approaches*

Not all unsolicited commercial approaches are electronic in nature. It is most annoying and time-consuming for working people to receive phone calls from fundraisers or people seeking new business. The least (and perhaps all) that can be done in this regard is for employers to address this by means of codes that prohibit the selling of employee information by employees.

### 5.5 *Whistle – blowing*

*The Protected Disclosure Act* 26 of 2000 is intended to protect employees who “blow the whistle” on employers or fellow employees so that they do not become the object of revenge or intimidation. The measure is yet another in the attack on crime and corruption, and is also based on the fundamental labour rights, including the right to fair labour practices and a safe and trouble-free work environment. An employee who makes a disclosure as set out above will be protected from any occupational detriment for doing so. The employee may not be dismissed, suspended, transferred, withheld benefits or references or disadvantaged in any other way in relation to the workplace.

In *Grieve v Denel (Pty) Ltd* the employee was successful in bringing an urgent application to stop his employer from instituting disciplinary proceedings against him following the preparation of a report on alleged wrongdoings by a senior manager. The court found this to be a protected disclosure, and although the charges did not relate to the intended disclosure, the timing of the charges justified the invoking of the Act.

### 5.6 Privileged information

The interest which is protected must indeed be a legitimate one, in other words, an interest recognised and protected by law. An accused has the right to remain silent, and a witness in criminal or civil proceedings may not be forced to provide answers to questions that might be self-incriminatory and expose the person to civil and criminal liability. As a rule a spouse is a competent but not compellable witness in criminal proceedings against the husband or wife. Exceptions to the rule include charges of assault in the marriage, child abuse and neglect, bigamy, abduction and certain sexual offences.

The important form of privilege is the professional privilege that covers all confidential communications between legal representative and client for the purpose of legal assistance. Thus the prosecution may not use such information to bolster its case, provided the said elements are present, viz. that the communication must have been made in the course of a professional relationship and in confidence. This does not mean that the communication must have taken place with a view to a pending or forthcoming court case. The professional advice of a corporate legal adviser in the ordinary course of his duties will also be shielded in this way.

Privilege is also relevant to freedom of expression in the sense that utterances during "Privilege" occasions such as parliamentary debates and court cases may not be used against a speaker in later defamation proceedings provided the latter did not exceed the bounds of reasonableness.

## 6. The origins: The protection of privacy in the United States

It can be tracked back to an article by Warren and Brandeis published in the 1980 *Harvard Law Review*. The concept of privacy in that country has developed to such a degree that it now embraces not merely the right to seclusion but the right to individual autonomy or free choice – the right to make certain personal decisions relating to marriage, procreation, contraception, family relationship, child-rearing, education and even death (Burchell, 1998).

United States privacy law embodies several different legal concepts. One is the *invasion of privacy*, a tort based in common law allowing an aggrieved party to bring a lawsuit against an individual who unlawfully intrudes into his or her private affairs, discloses his or her private information, publicizes him or her in a false light, or appropriates his or her name for personal gain. Public figures have less privacy, and this is an evolving area of law as it relates to the media.

The essence of the law derives from a *right to privacy*, defined broadly as "the right to be let alone." It usually excludes personal matters or activities which may reasonably be of public interest, like those of celebrities or participants in newsworthy events. Invasion of the right to privacy can be the basis for a lawsuit for damages against the person or entity violating the right. The right of privacy is not specifically mentioned in the United States Constitution or its Amendments and the protection of privacy was, initially at least, a common-law one. However, more recently, as the right has been interpreted by courts to cover not merely freedom to decide what information about oneself can be revealed to a wider public but also to include freedom to make certain intimate personal decisions, some constitutional backing has been sought.

In the United States the same rules apply to privacy as to defamation. Example a public figure has to approve actual malice as well as falsity to recover damages from a newspaper for invasion of privacy. In *Cantrell v Forest City Publishing Co* private individuals can recover for invasions of privacy when newspapers negligently print false statements about them. To make the First Amendment freedom to report the news turn on subtle differences between common-law malice and actual malice is to stand the Amendment on its head. Those who write the current news seldom have the objective, dispassionate point of view - or the time - of scientific analysts. They deal in fast moving events and the need for "spot" reporting. The jury under today's formula sits as a censor with broad powers - not to impose a prior restraint, but to lay heavy damages on the press. The press is "free" only if the jury is sufficiently disenchanted with the

Cantrell's to let the press be free of this damages claim. That regime is thought by some to be a way of supervising the press which is better than not supervising it at all. But the installation of the Court's regime would require a constitutional amendment. Whatever might be the ultimate reach of the doctrine Mr. Justice Black has embraced, it seems clear that in matters of public import such as the present news reporting, there must be freedom from damages lest the press be frightened into playing a more ignoble role than the Framers visualized.

The Warren and Brandeis concept of Privacy (protection of the individual from unwarranted intrusions by the media) has in fact become subsumed, in the United States, into a much broader concept of privacy which incorporates the autonomy of individuals to make personal decisions. Furthermore, the original concept of privacy was not really suited to deal with the threat of organised record-keeping (Burchell, 1998).

## 7. The English experience protection of privacy

In the United Kingdom, it is not possible to bring an action for invasion of privacy. An action may be brought under another tort (usually breach of confidence) and privacy must then be considered under EC law. In the UK, it is sometimes a defence that disclosure of private information was in the public interest. There is, however, the Information Commissioner's Office (ICO), an independent public body set up to promote access to official information and protect personal information. They do this by promoting good practice, ruling on eligible complaints, giving information to individuals and organisations, and taking action when the law is broken.

Bailey, Harris & Jones consider that the threat posed by the computer has declined somewhat (Culcutt Committee report, 1990).

The weakness in the English law approach to privacy is revealed in *Kaye v Robertson*. The case involved Gordon Kaye, a well-known actor who suffered life-threatening injuries in a car accident. Kaye attempted to obtain an order to restrain publication of photographs of the injuries he suffered in the crash. These photographs were obtained by deception when a tabloid journalist entered the hospital while he was undergoing treatment. A friend of Mr Kaye had been granted an interlocutory injunction preventing the editor (Anthony Robertson) and the newspaper (the *Sunday Sport*) from using the material, which they appealed.

Lord Justice Glidewell said "It is well known that in English law there is no right to privacy, and accordingly there is no right of action for breach of a person's privacy. The facts of the present case are a graphic illustration of the desirability of Parliament considering whether and in what circumstances statutory provision can be made to protect the privacy of individuals." In the absence of the right to privacy, Mr Kaye's advisers based their claim on libel, malicious falsehood, trespass to the person and passing off. The Court of Appeal ruled that none of these torts was applicable except malicious falsehood, and on this basis the only remedy available was that the newspaper was prohibited from stating any inference that Mr Kaye had consented to the story.

The academic response to this ruling has been negative, e.g. "*Kaye* remains a compelling demonstration of the limits of both existing English law and of the limitations of an approach that relies upon inadequate existing remedies to protect privacy."

The public concern regarding alleged media involvement in the tragic circumstances surrounding the death of Princess Diana and the imminent incorporation into domestic law of the European Convention on Human Rights, including protection of privacy, can only serve to hasten the introduction of some legal regulation of invasions of privacy in the United Kingdom.

## 8. Safeguarding the right to privacy

Information protection is an aspect of safeguarding a person's right to privacy. The principles based on the ordinary delictual principles as influenced by the Constitution (the principles regarding the *action iniuriarum*). Information protection should be seen merely as a particular application of those principles.

The inherent conservatism of the courts, as well as the fact that the protection of privacy is, in a sense, still in its infancy in South African law, it would be improbable that the application of the information principles by the courts would occur often or extensively enough in the near future to ensure the protection of personal information. The major engine for law reform should be the legislature and not the judiciary, particularly so in this case because the introduction of an information protection regime would merely involve incremental changes of the common law but radical law reform.

The individual should also be able to exercise a measure of active control over his or her personal information. The traditional protective measures would have little value if there is no active individual control over the possessing of personal information. The active control principles, however, differ completely from traditional privacy protection under the *action iniuriarum* and therefore are unique in the field of personality protection.

## 9. Conclusion

Effective information protection will only be achieved through regulation by legislation. The proposed Protection of Personal Information Bill, will have a very wide ranging effect and will substantially improve information handling as well as reduce unwarranted intrusions into privacy (especially by private entities seeking personal gain). The cost of defending one's right to privacy by way of litigation are so high that the average [person cannot afford to do so. Enacting proper legislation will therefore prevent the abrogation of the right to privacy through disuse.

A balance between privacy rights and the requirements for information in normal business operations within the Act will be achieved, especially as it affects the banking sector. Implementation of new processes and systems and changes to client contracts, it is in line with international standards and to this end, is a necessary piece of legislation.

The proposed bill will bring South Africa into line with international requirements and developments, and therefore ensure that South Africa is on par with international best practice.

There is an increase in compliance complexity for businesses that operate globally. A list of principles should be recognised in order to secure the balance between the interest of data subjects and the compliance burden associated with this protection. A balance needs to be maintained between the constitutionally right to privacy and the constitutionally right to freedom of economic activity.

Privacy like dignity and reputation, cannot be viewed therefore in isolation. The rights to an unimpaired personality have to be weighed, against the equally important right of others to express themselves freely.

**References:**

- Britz,H and Ackermann, M Information, Ethics and the Law, Van Schaik, 2006.
- Burchell, J Personality Rights and Freedom of Expression the modern *Actio Injuriarum*, Juta 1998.
- Burns,Y Communications law, Butterworths, Durban, 2001.
- Ebersöhn, G. *Journal for Business law* 12(3) “An analysis of Spam Legislation” 2004.
- Kang, J Information Privacy in “A Cyberspace Transactions” *Stanford Law Review* April 1998.
- Moor, JM Towards a Theory of Privacy in the Information Age. *Computers and Society* 1997.
- Neethling, J., Potgieter, JM and Visser, PJ, Neethling’s Law of Personality, Butterworths, Durban, 2005.
- Neethling, J., Potgieter, JM and Visser, PJ, Law of Delict , Butterworths, Durban, 2006.
- Neethling. J *The Concept of Privacy in South African Law* 2005 SALJ.

**International law**

- African Charter on Human and People’s Rights.
- Article 12 of the Universal Declaration of Human Rights of 1948.
- Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- Harvard Law Review* 1890.
- Justice Report *privacy and the Law, Younger Committee report and the Calcutt Committee report* Report of the Committee on Privacy and Related matters Cmd 1990

**National Law**

- Prevention of Organised Crime Act* 121 of 1998.
- Electronic Communicationa and Transactions Act* 25 of 2002.
- Lotteries Act* 1997.
- National Gambling Act* 7 of 2004.
- The Constitution of South Africa 108 of 1996.
- The Protected Disclosure Act* 26 of 2000

**Cases**

- Bernstein ao v Bester NO AO* 1996 (2) SA 751 (CC); 1996 (4) BCLR 449 (CC).
- Cantrell v Forest City Publishing Co* 419 US (1967).
- Grieve v Denel (Pty) Ltd* [2003] 4 BLLR 366(LC).
- Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty)Ltd ao; in re Hyundai Motor Distriburors (Pty)Ltd v Smit NO ao* 2001 (1) SA 545 (C).
- Kaye v Robertson* [1991] FSR 62 Court of Appeal.
- National Media LTD ao v Jooste*1996b(3) SA 262(A).
- Sosibo & others and CTM* (2001) 10 CCMA
- S v Nkabinde* 1998 8 BCLR 996 (N).