

EXECUTIVE SUMMARY

The Internet has changed how we work, how we access information and how we engage with one another. In this month's issue, we explore the legal implications of social networking, discuss the right the public has to information in terms of the 2008 Companies Act and introduce you to the world's first virtual attorney. For full versions of each of the below articles, visit [our Web site](#).

SOCIAL NETWORKING AT WORK

The use of social media has become an inherent part of how society communicates. However, these pervasive platforms can affect employment relations and, in turn, employment law.

This is exacerbated by the status quo in South Africa, where there is no specific law that governs the use of social media. Employers are faced with the risk of employees not considering or understanding the consequences of their posts and how they reflect on the company they work for. Irresponsible, shaming posts may

constitute an invasion of privacy, cyber-bullying and even hate speech.

Until South Africa implements its own legal guidelines on social media use, employers may use the following principles as a guideline:

- The impact of social media on the Constitutional rights to dignity, privacy and freedom of expression;
- The risks that defamatory or harassing statements may result in vicarious liability for employers;
- The risk of work place harassment and cyber-bullying and the impact of this conduct on the work environment;
- What conduct may justify disciplinary action and even dismissal; and
- That breaches of fiduciary duties and, even possible insider trading, may flow from seemingly innocuous posts on social media is also worthy of reflection.

For more details on how employers can be held accountable for an employee's irresponsible use of social media, with expanded definitions and case examples, read the full article on our [Web site](#).

PUBLIC RIGHT OF ACCESS TO COMPANY RECORDS: WHAT YOU NEED TO KNOW

What rights of access does a member of the public have to the securities register in terms of the 2008 Companies Act? The Supreme Court of Appeal (SCA) in its recent judgment in *Nova Property Group Holdings v Cobbett* (20815/2014) [2016] ZASCA 63 (12 May 2016) has provided welcome clarity on how far this access extends.

Section 8 of the Act states that a person who holds no beneficial interest has a right to inspect or copy the securities register of a profit company, or the members register of a non-profit company that has members, or the register of directors of a company, on paying a specified and limited fee.

Whether section 26 of the Act confers an unqualified right of access to the securities register of a company has been a matter for debate. The *Nova* case, in which Mr Cobbett, an independent

investigative journalist for Moneyweb, requested access to the security registers of Nova Property Group Holdings Limited and two other companies, has resolved the matter.

The court's judgment was in favour of Moneyweb and Mr Cobbett. It held that s. 26 makes it clear that the right of access conferred by s. 26(2) is in addition to the rights conferred by Promotion of Access to Information Act, 2000 (PAIA) and does not need to be exercised in accordance with PAIA. In addition to this, there is no requirement in s. 26(2) that the request for access must be reasonable. The only mention of "reasonableness" is in s. 26(9), which makes it an offence for a company to "fail to accommodate any reasonable request for access, or to unreasonably refuse access."

It was concluded that s. 26(2) clearly grants members of the public and the media the right to obtain access to a company's securities register. Accordingly, the motive with which a person seeks such access is irrelevant. The court went on to state that this unqualified right is "essential for effective journalism and informed citizenry."

In the light of four past conflicting judgments on the proper interpretation of s. 26(2), this is a landmark decision in the public's access to company information.

THE WORLD'S FIRST VIRTUAL ATTORNEY TAKES ON COMMERCIAL LAW

Artificial Intelligence (AI) is no longer the fodder of science fiction movies. The world's first AI lawyer, IBM's AI Ross, has been hired by law firm Baker and Hostetler to assist with their bankruptcy practice. This is rumoured to be the first of many licences to be signed with everyone's new smart attorney.

Ross was built on IBM's cognitive computer Watson. He is able to read and interpret language, answer questions and generate responses supported by references and citations to back up his conclusions. Ross' intelligence is not static. He continually learns as he engages with humans and data.

This new cloud-based technology will not replace existing legal services, but complement them. Ross' primary function is to assist with time-consuming legal research, which cannot be billed for, leaving lawyers with the time to focus on advising their clients. What differentiates Ross as an AI tool is his ability to receive and interpret questions in plain English and connect to the latest legislation around the world.

Whether Ross or AI tools like him will become a regular fixture in law firms remains to be seen. However, the development does illustrate a positive, continuous evolution in technology to benefit firms and their clients.

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