



THIS MONTH'S NEWS

- The **Harty Rushmere** team builds strength by gaining a **new Commercial Associate**.
- The **PoPI Act** and its effect on **Direct Marketing** and **WhatsApp groups**.
- The **legal responsibilities** of **WhatsApp** group administrators.

For further details on any of these stories, check out our website: <http://www.harty.law/>

At Harty Rushmere we are always on the lookout for 'go-getter' commercial attorneys to join our team of dynamic lawyers. We are flexible in our approach as to the basis upon which we work with the right candidates, and we are open to discuss a mutually beneficial working arrangement. This great opportunity is available to experienced self-motivated commercial attorneys in whatever position they are in now (be it sole practitioner, in house legal, medium to large firm or otherwise) who wish to break out and work with a dynamic group of like-minded people in a comfortable and open (yet very professional) environment. Feel free to reach out to us on mail@harty.law or +27(83)6018499.

The PoPI Act and Direct Marketing: Where Do We stand?

Purpose of the Act

The PoPI Act wants to ensure that all South African institutions conduct themselves in a responsible manner when collecting, processing, storing, and sharing your personal information by holding institutions accountable should they abuse or compromise your personal information in any way.

PoPI's impact on Direct Marketing

- The Act aims to regulate the electronic communications aspect of direct marketing. It defines direct marketing as "any approach (in person, by mail or by electronic communication) for the direct or indirect purpose of promoting or offering (in the ordinary course of business) any goods or services to you or requesting you to make a donation of any kind for any reason".
- Direct marketing, according to the Act, includes any form of electronic communication, including automatic calling machines, facsimile machines, SMSs or emails. Unsolicited direct marketing is prohibited, unless "the data subject has given his/her/its consent to the processing or is a customer of the responsible party".

What does this mean for the customer?

Whether or not you have provided consent to be contacted for the purposes of direct marketing, you are entitled to object to the processing of your personal information and/or request such personal information to be corrected, deleted, or destroyed. The responsible party holding your personal information must comply with your request. Failure to do so could result in instituting a civil action for damages against the responsible party for breach of the PoPI Act.

Guidelines for Direct Marketers

- Conduct an audit of the processes used to collect and record personal information.
- Review the interventions already in place preventing personal information from getting lost or becoming unlawfully damaged.
- Define the process of gathering information.
- Take steps to notify the individual that their information is being used and what the information will be used for.

New responsibilities for WhatsApp Group Administrators

- WhatsApp is currently the most widely used messaging app because it offers a cheap, effective communication tool for personal and professional use. WhatsApp groups have become one of the app's most popular features. Whether you consider these groups helpful or irksome, they have become part of our daily lives; from organising children's lift clubs to keeping all members of big work projects informed of developments. WhatsApp has rolled out a new feature, Admin Delete, that gives group administrators (admins) more control over the WhatsApp messages posted in the group.

What does it mean?

This enables admins to moderate the content of the group chats and to delete messages from group members. They can now remove any inappropriate or offensive content posted in group messages. A group admin, who previously only initiated groups and removed or added members, now bears more responsibility to monitor and censor the conversation on the group.

Who is affected?

It will only affect you if you are the authorised "Admin" of a WhatsApp group.

How will it work?

- With just a long press on any message sent in a group, the "delete for all" option will pop up, allowing group admins to delete the message. However, the option is only available for two hours after the message has been posted.
- If you want to check if the feature is already enabled for your account, just try to delete a message sent from another participant within a group where you're an admin: if "delete for everyone" shows up, it means the feature is available for your account.

What are the possible legal implications?

- Group Admins may be held legally liable (as per South African case law) if a group member shares illegal content such as hate speech, racism, or incitement to violence.
- Content that may be regarded as threatening or libellous may also lead to legal action. In South African legal circles, there has long been a debate whether an admin of a WhatsApp group is responsible for the content on that group.
- This update to the app seems to answer that question. If you are able to delete something, and you choose not to, you may become legally responsible for the content. There are, however, still many circumstances that may play a role in the defence, such as whether the admin had access to signal at the time or the size of the group.

What can you do to protect yourself?

It is the responsibility of the group admin to ensure that misleading and/or false information is not shared on their groups. Admins must know the identity of the group members and inform each member what is permitted and what is not permitted when they post messages on the group. Immediately remove members who post inappropriate content.

Harty Rushmere Welcomes New Commercial Associate

Burtram Thomas, Harty Rushmere's new Commercial Associate, attained a B.Com degree in Marketing Management at North-West University, Potchefstroom Campus, in 2014. However, it was while he was doing "vac-work" during university holidays at a well-established law firm in Limpopo that he discovered his keen interest in law so he enrolled for an LLB at the North-West University in 2015. Burtram was awarded membership to the Golden Key International Honour Society for academic achievement during his LLB studies.

Before joining the Harty Rushmere team, Burtram started his legal career at the same Limpopo-based law firm where he gained extensive knowledge in his main focus field of commercial and corporate law while being exposed to various other areas of the law – including legal research, corporate law, estate planning, family law, consumer protection matters, and litigation. Through this experience, Burtram has developed valuable critical thinking skills and has learnt to apply himself to the unique requirements of each project he is tasked with.

Burtram has a keen interest in Intellectual Property Law and is in the process of completing his Trademark Practitioner's Examinations with the South African Institute of Intellectual Property Law. Besides his passion for law, Burtram enjoys being active outdoors. He is an avid sportsman, particularly in golf, cricket and squash.

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