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## Announcements

### Victoria University of Wellington Archival Collection Issue 5: Privacy

The Archival Collection is an addition to the Victoria University of Wellington Legal Research Paper Series that has been under consideration for some time. Covid-19 has caused a slow-down in many areas of human activity. For scholarly publishing, the virus has meant that VUW's Legal Research Paper series has space for older work. We have brought forward the distribution of papers written by Victoria University of Wellington staff from earlier years. To maintain momentum, however, the collection will include recent papers where their topic matches the topic of an issue in the Archival Collection. All papers will remain fully searchable on the VUW pages of SSRN, by both **papers** and **authors**.

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## LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

### VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

#### **"The Case for a Right to Privacy in the New Zealand Bill of Rights Act"**

(2013) 11 NZJPL

*Victoria University of Wellington Legal Research Paper No. 75/2020*

**PETRA BUTLER**, Victoria University of Wellington - Faculty of Law, University of Navarra - School of Law , Institute of Small and Micro States

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The paper explores the difference a right to privacy enshrined in the New Zealand Bill of Rights Act 1990 would make to New Zealand's landscape. While examining the potential impact of a right to privacy, the paper discusses the different treatment privacy receives in a number of jurisdictions. The paper argues

that a right to privacy would allow the courts to explore the value New Zealand society places on privacy and guidance on its treatment within New Zealand's legal landscape.

### "Breach of Confidence and the Misuse of Private Information - How Do the Two Actions Work Together?"

(2010) 15 *Media and Arts Law Review*, pp. 265-273  
*Victoria University of Wellington Legal Research Paper No. 76/2020*

**N. A. MOREHAM**, Victoria University of Wellington - Faculty of Law  
Email: [nicole.moreham@vuw.ac.nz](mailto:nicole.moreham@vuw.ac.nz)

This article examines the relationship between traditional breach of confidence principles and the 'new methodology' in modern English privacy cases looking particularly at three Court of Appeal decisions, *McKennit v. Ash*, *Associated News Papers Ltd v. HRH Prince of Wales*, and *Lord Browne of Madingley v. Associated News Papers Ltd*.

### "Police Investigations: Confidential (Perhaps) but Not Private"

(2019) *Journal of Media Law*  
*Victoria University of Wellington Legal Research Paper No. 77/2020*

**N. A. MOREHAM**, Victoria University of Wellington - Faculty of Law  
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A handful of recent English authorities have held that, up to the point of charge, individuals will usually have a reasonable expectation of privacy in respect of police investigations into their conduct. This article argues this is problematic. It maintains, first, that neither the potential confidentiality of police investigations nor the need to protect a claimant's reputation provides a sound basis for concluding that such investigations should generally be private. Then it argues that the fact that a police investigation into one's conduct is taking place does not sit comfortably with the types of private information usually protected by English courts (e.g. information about one's health or sexual life). Finally, it says the reasonable expectation of privacy in respect of police investigations needs to be reconciled with the well-established common law principle that individuals should not be allowed to suppress evidence of their own wrongdoing.

### "Police Investigations, Privacy and the Marcel Principle in Breach of Confidence"

[2020] *Journal of Media Law*  
*Victoria University of Wellington Legal Research Paper No. 78/2020*

**N. A. MOREHAM**, Victoria University of Wellington - Faculty of Law  
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This article argues that courts wanting to impose liability for the disclosure of information about police investigations into an individual's conduct should apply the Marcel principle in breach of confidence rather than the misuse of private information tort. It argues that the wrong at the heart of these cases is not that private information is disclosed but that sensitive information held by the police has ended up in the hands of the media. It suggests that the Marcel principle is particularly useful in dealing with these types of disclosures since it creates obligations of confidence whenever information of a personal or confidential nature is "obtained or received in the exercise of a legal power or in furtherance of a public duty".

### "Individual Privacy Management"

*Media And Arts Law Review*, Vol. 21, No. 3, p. 315, 2016  
*Victoria University of Wellington Legal Research Paper No. 79/2020*

**MARCIN BETKIER**, Victoria University of Wellington - Faculty of Law  
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The brave new online world in which we live poses a challenge to our privacy. The laws which aim to protect it often rely on the mechanism of notice and consent as a means of authorising data processing. However, this appears to be an inadequate approach since people have difficulty weighing the costs and benefits of data transactions. The article identifies the reasons for this crisis of consent by analysing how the design of the online environment influences the outcome of transactions and shifts the balance towards the stronger party. It also shows which particular characteristics of the online environment are responsible for this imbalance.

Next, the article presents the concept of individual privacy management, which aims to address the described problems. It is a way of thinking about the whole process of data processing using methods derived from the classical school of business management. The article defines the necessary functions of individual privacy management and analyses conditions for their successful implementation. It concludes that individual privacy management is possible to implement and that it seems to be an efficient way to develop privacy protection which, in turn, may raise the level of trust in the digital economy.

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## About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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