



Can I record a conversation?

I am often asked if it is legal to record a conversation without another person's knowledge or consent.

The *Surveillance Devices Act 2007* pretty much prohibits the recording of a private conversation to which the person is a party but does permit recording if it is "*reasonably necessary for the protection of the lawful interests*" of the person who has taken the recording.

A recent decision of the Supreme Court provides some guidance but no definitive answers. The case involved a deceased estate. The deceased had written a will leaving the entirety of his estate to his daughter, but there were a number of contradictory wills made over the course of the deceased's life. There was a dispute regarding the extent of care and assistance provided by the daughter to the deceased.

During the Hearing, one of the parties tried to tender a recording of a conversation between the deceased and another of his children. The recording was made without the knowledge or consent of the deceased. The recorded conversation included comments by the deceased about how often his daughter spent time with him and whether she had discussed moving into his home.

In her Judgment, Her Honour Justice Rees provided a detailed analysis of previous cases in which Courts have found recordings were "*reasonably necessary for the protection of... lawful interests*". Her Honour referred to four considerations a Court should take into account when determining whether a recording should meet the lawful interests' exception in section 7(3)(b)(i) of the *Surveillance Devices Act 2007*:

- i. Whether the purpose of the conversation was to obtain admissions in support of a legitimate purpose;
- ii. Whether it was important to protect oneself from being accused of fabricating a conversation;
- iii. Whether there were other practical means of recording the conversation, for example, reporting the matter to police or making a file note; and
- iv. Whether there was a serious dispute on foot between the parties.

Her Honour admitted the recording into evidence on the basis it was reasonably necessary to protect the person's lawful interests. There was a serious dispute as to the deceased's will at the time the recording was made, and the person who made the recording was seeking to obtain admissions from the deceased. Her Honour ruled that the deceased spoke during the recorded conversation in a calm voice indicating that his answers to various questions were not contrived nor forced.

The "lawful interests" exception could be relied upon by an employee to provide evidence of unfair, unsafe or unreasonable work practices, or of an unfair dismissal. You would however be wise to seek legal advice before pressing record.

If you have sustained an injury in the workplace Toby Tancred can help. He can provide you

with legal advice, investigate your matter and represent you if you need to commence legal proceedings. Toby Tancred is a Law Society Personal Injury Accredited Specialist and has been recognised by Doyle's Guide as a Recommended Work Injury Compensation Lawyer for two years running. Doyle's Guide has also named Toby Tancred Solicitor as a Recommended Asbestos & Dust Diseases Compensation Law Firm. Toby Tancred and his team have the experience, knowledge and ability to help all injured people in difficult times.