

RECORDING OF CONVERSATIONS

Question: May face to face conversations be recorded without consent?

Answer: Yes, but only if the person recording the conversation is a participant in the conversation.

Brief explanation: The interception of communication (which includes recordings) is regulated by the *Regulation of Interception of Communications and Provision of Communication-Related Information Act of 2002* (RICA). RICA is very technical and deals with a wide variety of direct and indirect communications. For the purposes of answering our question, we shall focus only on the recording of conversations. The starting point of RICA is that communications may not be recorded without consent. However, no consent is required if the person who is recording the conversation is a party to the conversation and is not a law enforcement officer.

Effectively, RICA permits unlimited monitoring, interception and recording of conversations by participants in conversations. To date there have been no reported judgements in which this has been challenged on the basis that it violates a person's constitutional right to privacy. In *S v. Kidson*, a criminal case dealing with RICA's predecessor act in 1999, an accomplice to a murder was given a voice-activated tape recorder to hide in his pocket by the police. The accomplice then visited Kidson at her house with the concealed recorder and recorded a conversation in which the details of the planning and execution of her husband's murder were discussed. Kidson's lawyers argued that the recording should not be allowed into evidence as it infringed on the provisions of RICA's predecessor act and infringed on Kidson's constitutionally guaranteed right to privacy. Judge Cameron held that the purpose of the Act was to protect communications from eavesdroppers and not from participants. It looks like the legislature had the same intention with RICA.

Incidentally, the same principles would apply in the case of participants in conversations via telephone or other electronic devices.

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