



IS IT ILLEGAL TO RECORD A TELEPHONE CONVERSATION WITHOUT INFORMING?

Recent events involving the publication, via social media, of a recorded telephone conversation between a journalist and a high-ranking public official leading to the resignation of that official from a number of public offices he held has raised the question: Is it illegal for a journalist or any other person to record a telephone conversation with another person without that person's knowledge or consent?

IS IT A CRIMINAL OFFENCE?

It is not a criminal offence under Belize law for a participant to a telephone call to record a conversation without informing the other party and to share that conversation with third parties. But is it a civil wrong for which a person may be able to obtain monetary and or injunctive relief from the Supreme Court of Belize.?



IS IT A CONSTITUTIONAL WRONG?

The Belize Constitution protects every person from arbitrary or unlawful interference with his privacy, family, home or correspondence. But the breadth of this right extends only to protecting private individuals against potentially intrusive actions of the state, for example, a police officer entering your home without a search warrant. The constitutional right to privacy is only enforceable against the government. One private citizen cannot under the present state of the law sue another private citizen for breaching his constitutional right to privacy.

IS IT A CIVIL WRONG?

In Belize there is no separate, free-standing tort of privacy as exists in the United States. In the case of *Wainwright v Home Office*, the English House of Lords confirmed that no general tort of privacy exists under English law. In the absence of a tort of privacy, the courts rely on a progressive extension of the existing breach of confidence tort to protect privacy matters.

What this means in practice is that individuals might be under an obligation of confidentiality where private information is revealed to them in circumstances where it is clear that the party revealing the information does not intend for it to be shared with a third party, or where they obtain private information without the owner's permission. Such information could include intimate details about one's personal life, financial status, private documents or trade secrets. If information, data or photographs obtained or relayed under such circumstances are revealed to a third party then the injured party may have an action for breach of confidence.

Consequently, provided that the subject of a telephonic or electronic conversation is not of a private nature, or has not been characterized by one of the participants as "confidential" or "off the record", the conversation may be recorded or screenshot without your knowledge and released to third parties without any legal repercussions in Belize.

SIMPLE TEST FOR BREACH OF PRIVACY

In the English common law system, which Belize follows, private materials are increasingly being classified by the courts as "confidential", for which unauthorized publication could constitute breach of confidence.

So how do you know if your right to privacy/confidentiality has been breached?

The test devised by the courts is to ask: **is it a situation in which the person complaining has a legitimate expectation of privacy.** Or: **is it a situation where the person can reasonably expect his privacy to be respected?**

TAKE AWAYS

Before you make or answer your next telephone call consider the following:-

1. The constitutional right to privacy cannot be enforced by a citizen against another citizen. It is enforceable only against the state.
2. In Belize, there is no separate, free-standing tort of privacy.
3. It is not a criminal offence for a party to a telephone conversation to record the conversation and share it.
4. You may be able to sue for publication or dissemination of your private information if it can properly be characterized as confidential material.
5. While it is not illegal for telephone conversations to be surreptitiously recorded and subsequently shared it is not advisable since it may cause irreparable damage between yourself and your colleague.
6. Journalists enjoy special latitude where the conversations they record can be deemed in the public interest to know.
7. Seek legal advice if you feel you might have an action for breach of your confidence.

Prepared by Hector Guerra

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Marine Parade
chambers LLP
attorneys-at-law

The Volta Building, Cor. Gaol Lane
and Marine Parade

www.marineparadechambers.com



(501) 223-3045



info@marineparadechambers.com