



NOVASCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

DISCLOSURE BY THE CROWN IN CRIMINAL CASES

NATURE OF DOCUMENT:	AG DIRECTIVE
FIRST ISSUED:	DECEMBER 23, 1999
LAST SUBSTANTIVE REVISION:	APRIL 19, 2007
EDITED / DISTRIBUTED:	APRIL 19, 2007

NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE “**WORDS & PHRASES**” SECTION OF THIS PART OF THE MANUAL.

DISCLOSURE

1. STATEMENT OF PRINCIPLE

There is a duty on the Crown to make full and timely disclosure to the defence of all relevant¹ information known to the investigator and the Crown Attorney in Criminal Code prosecutions conducted by agents of the Attorney General. This obligation applies to both inculpatory and exculpatory information. In discharging this disclosure obligation, the Crown must respect the rules of privilege.

2. THE RATIONALE FOR DISCLOSURE

Disclosure by the Crown has three main purposes:

- (a) to assist in guaranteeing the accused/defendant constitutional rights to a fair trial and to make full answer and defence;
- (b) to resolve non-contentious and time consuming issues in advance of trial in an effort to ensure a more efficient use of court time and avoid unnecessary proceedings; and
- (c) to encourage the resolution of cases including, where appropriate, the entering of guilty pleas or the withdrawal of charges at an early stage of the proceedings.

3. THE ROLE OF THE INVESTIGATOR

Effective disclosure by the Crown to the defence is dependent upon and requires full and timely disclosure by the investigator to the Crown Attorney. It is incumbent upon the investigator to be aware of the duty of the Crown to disclose all relevant factual information to the defence and to cooperate with the Crown Attorney in order that full and timely disclosure can be provided to the defence. The investigator must bring to the attention of the Crown Attorney confidentiality concerns of which the investigator is aware.

¹ One measure of the relevance of information is its usefulness to the defence. If it is of some use, it is relevant and should be disclosed. Accordingly, information is relevant if it can reasonably be used by the defence either in meeting the case for the Crown, advancing a defence or otherwise in making a decision which may affect the conduct of the defence such as, for example, whether to call evidence [see R. v. Egger (1993), 82 C.C.C. (3d) 193 at 204 (S.C.C.)].

4. THE ROLE OF THE CROWN ATTORNEY

The Crown Attorney bears responsibility for the disclosure provided to the defence. While Crown Attorneys must err on the side of inclusion, they need not produce what is clearly irrelevant. The disclosure of relevant information is subject to a discretion with respect to the timing and manner of disclosure as outlined in Sections 7 and 8 below. Further, Crown Attorneys have a duty to respect the rules of privilege and to protect the identity of informers. All decisions by the Crown Attorney not to disclose on grounds of either privilege or relevance are reviewable by the trial judge. Where the defence requests access to material not in the possession of the investigator or Crown Attorney but in the possession of another agency, government department or other person, the defence should be advised that the request can be made directly to the relevant agency, government department or other person.

5. WHAT MUST BE DISCLOSED

As soon as practicable upon request, the Crown Attorney will make available to the defence the following material:

- (a) a copy of, or an opportunity to copy, the information or indictment;
- (b) a copy of, or an opportunity to copy, a summary of the case, detailing the circumstances of the offence, prepared by the investigating agency;
- (c) a copy of, or an opportunity to copy, all written statements in the possession of the Crown made by the accused/defendant and in the case of verbal statements, a verbatim account of the statement or copies of notes or an audio or video recording of the statement whether favourable to the accused/defendant or not;
- (d) a copy of, or an opportunity to copy, the criminal record² of the accused/defendant and the particulars (offence, date and disposition) of any other criminal record relied on by the Crown;
- (e) copies of, or an opportunity to copy, all written statements made by persons who have provided relevant information to the investigator (where individuals have provided more than one statement a copy, or an opportunity to copy, all statements will be provided). In the case of verbal statements, the investigators' notes or, where there are no notes, a summary prepared by the investigating agency of the relevant information and the name, address and occupation of the person;
- (f) where feasible, a copy of any audio or video recording of a witness'

² "Criminal record" means the C.P.I.C. CNI Want/Record.

statement (if production of a copy of the recording is not feasible, an opportunity to listen to an audio recording or view a video recording, in private, shall be provided);

Note: The privacy of vulnerable witnesses, particularly children and sexual assault victims, must be protected. Where a recording is made of the statement of a vulnerable witness, the provision of a copy of the recording should be subject to an undertaking by counsel for the defence that:

- (i) no person other than an expert retained by the defence will be given possession of the recording;
 - (ii) no further copy of the recording will be made;
 - (iii) the copy will be viewed or heard only by persons involved in the defence of the accused; and
 - (iv) the copy will be returned to the Crown at the conclusion of the proceedings.
- (g) subject to the provisions of the *Youth Criminal Justice Act*, particulars (offence, date and disposition) of the criminal record of an accomplice or an alleged accomplice, whether that person has been charged or not;
- (h) subject to the provisions of the *Youth Criminal Justice Act*, particulars of any information known to the Crown which the defence may legally use to impeach the credibility of a Crown witness, including the criminal record of a Crown witness where the defence requests this information and the record is relevant to an issue in the case or has probative value with respect to the credibility of the witness.

[**Note:** Disclosure of **Police Discipline Records** is the subject of a separate policy issued November 19, 2009. It may be found on the PPS website under the heading "Police Discipline Records - Disclosure (*R. v. McNeil*).]

All benefits or consideration requested, discussed, provided or intended to be provided at any time in relation to a witness or a potential witness must also be disclosed. This direction applies whether or not the request or discussion of benefits was with the witness or potential witness, or with someone on behalf of the witness or potential witness;

- (i) subject to the provisions of the *Youth Criminal Justice Act*, the criminal record of a potential defence witness where the defence requests this information;

- (j) copies of, or an opportunity to copy, all medical, laboratory and other expert reports in the possession of the Crown which relate to the offence, except to the extent they may contain privileged information;
- (k) access to any potential exhibits or other physical evidence in the possession of the Crown for the purpose of inspection, and, where applicable, copies of such exhibits [see Practice Note, below];
- (l) a copy, or an opportunity to copy, of any search warrant and information to obtain relied on by the Crown;
- (m) if intercepted private communications will be tendered, a copy of the judicial authorization under which the private communications were intercepted; access to the log book of interceptions; access to audio recordings made pursuant to the authorization; and a copy of the transcript of the interceptions made pursuant to the authorization when it is available;
- (n) a copy of, or an opportunity to copy, any other document, or portion of a document contained in the investigation file and any notes of the investigator which contain the factual observations of investigators pertaining to the investigation of the alleged offence; and
- (o) notice of any evidence which has become lost or destroyed and a summary of the circumstances surrounding such loss or destruction prepared by the investigating agency.

6. ADDITIONAL DISCLOSURE

It is not possible to anticipate the disclosure requirements in every potential case and disclosure additional to that outlined in section 5 above will sometimes be appropriate. The Crown Attorney has a discretion to make such additional disclosure consistent with the statement of principle and rationale for disclosure expressed above. For example, if information disclosing a violation of the rights of the accused/defendant under the Charter of Rights and Freedoms comes to the attention of the Crown Attorney, it must be disclosed to the defence.

The Crown Attorney is not obliged by this directive to make pretrial disclosure of evidence only relevant in reply unless defence disclosure reveals the relevance of the evidence prior to trial. The obligation upon the Crown is a continuing one and relevant information coming to the attention of the investigator or Crown Attorney following initial disclosure must be disclosed in accordance with this directive.

Even after conviction, including after any appeals have been decided or the time for appealing has lapsed, information coming to the attention of the investigator or Crown Attorney which shows an accused/defendant is innocent or which raises a doubt as to the

guilt of the accused must be disclosed.

7. TIMING OF DISCLOSURE

The Crown is not obligated to provide any disclosure prior to a charge being laid. After a charge has been laid, initial disclosure should occur before the accused/defendant is called upon to elect the mode of trial or to plead. If the Crown intends to rely on the criminal record of the accused/defendant at a bail hearing, the criminal record information available to the Crown must be disclosed to the defence prior to the bail hearing. The Crown Attorney retains the discretion to delay disclosure where there is a legitimate concern for the safety or security of persons who supplied information or where early disclosure might impede the completion of an investigation (such situations should be rare).

8. LIMITING OR DELAYING DISCLOSURE

Disclosure may only be delayed or limited to the extent necessary:

- (a) to comply with the rules of privilege, including informer identity privilege;
- (b) to prevent the endangerment of the life or safety of witnesses, or their intimidation or harassment; or
- (c) to prevent other interference with the administration of justice.

Where a Crown Attorney limits disclosure to comply with the rules of privilege, the Crown Attorney shall so advise the defence. A Crown Attorney who proposes not to disclose any of the items listed in section 5 above must obtain the prior written approval of the Chief Crown Attorney or other person designated by the Director of Public Prosecutions. Any decision by the Crown Attorney to delay or limit disclosure is reviewable by the trial Judge.

9. THE UNREPRESENTED ACCUSED/DEFENDANT

The judges of the Provincial Court have agreed that the judge presiding at the first appearance of an unrepresented accused/defendant will advise the accused/defendant of the right to obtain disclosure from the Crown Attorneys' office. A written notice to this effect will also be provided to the accused/defendant.

The judges of the Supreme Court have agreed that on first appearance in the Supreme Court a statement will be read to unrepresented accused advising them of the right to disclosure from the Crown. The Court will also request information from the Crown with respect to the status of Crown disclosure.

Practice Note* re video recordings and photographs:

Disclosure of video recordings or photographs which are the subject matter of the offence itself, e.g. videotapes which are alleged to be pornographic, is subject to these further restrictions:

- (i) an unrepresented accused shall be given a reasonable opportunity to view the video recordings or photographs in private, in circumstances approved by the prosecutor, but the accused shall not be given a copy of such evidence; and
- (ii) defence counsel shall be given a reasonable opportunity to view the video recordings or photographs in private. If defence counsel asserts that this opportunity does not provide adequate disclosure of such evidence, defence counsel should be given a copy of the video recordings or photographs, subject to the signing of an undertaking as outlined in paragraph 5 (f).

* Practice Note approved by the DPP and PPS Management Committee
August 8, 2002.