

Policy:

Disclosure

Policy Code:

DIS 1

Effective Date:

March 1, 2018

Cross-references:

An accused has a constitutional right to full and timely disclosure by the Crown. Crown Counsel must make disclosure according to law. As a general principle, Crown Counsel has an ongoing obligation to disclose all relevant material in the possession or control of the Crown, whether it is inculpatory or exculpatory. This duty is subject to the Crown's discretion to refuse to disclose information that is protected by privilege or clearly irrelevant.

Crown Counsel should bear in mind that the threshold for relevance is low. If there is any doubt as to the relevance of information it must be disclosed to the accused. An assessment of relevance for the purposes of disclosure should be guided by the following principles:

- relevance is defined in terms of its potential usefulness to the defence
- information is relevant if it can be used in making a decision which may affect the conduct of the defence such as whether to call evidence or conduct further investigations
- relevant information includes not only information related to those matters the Crown intends to adduce in evidence against the accused, but also *any* information in respect of which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defence
- information is relevant if there is a reasonable possibility that it may be used by the defence either in meeting the case for the Crown or advancing a defence

Crown Counsel has some discretion about the timing of disclosure. In all cases, that discretion should be exercised so as to ensure that the prosecution can proceed without unreasonable delay. Disclosure is an obligation which continues throughout the prosecution.

Examples of Material that is Generally Disclosed

What follows is a non-exhaustive list of the information Crown Counsel must generally provide to the defence in every case where it is available and regardless of whether the

Crown intends to refer to it or adduce it at trial. Crown Counsel must exercise professional judgment to determine the manner and degree of disclosure that is necessary and appropriate in a particular case. In particular, Crown Counsel must ensure that any editing of materials disclosed is restricted to only those individual pieces of information that are clearly irrelevant, privileged, or necessary to ensure witness safety.

Where available, the accused should generally be provided with the following:

- a copy of the charging document
- narrative of the circumstances surrounding the offence
- copies of all notes made by members of the investigative agency relating to the offence
- copies of all written statements made by persons with relevant information relating to the offence. If no written statements were made, any notes taken or made by investigators present or conducting interviews of these persons should be disclosed. If no notes were taken, the accused should be provided with a will-say summarizing the anticipated evidence of these persons
- copies of, or an appropriate opportunity to privately view and listen to, any audio or videotaped statements made by any witnesses. The nature and circumstances of the case and of the witness statement will guide Crown Counsel in determining which of these alternatives is most appropriate and the scope of any undertakings that should be obtained to protect legitimate privacy interests
- copies of all written, audio or videotaped statements made by the accused including any notes taken or made with respect to the statements
- particulars of the criminal record of the accused and, if appropriate, any co-accused
- copies of any expert reports relating to the offence, except to the extent that they contain irrelevant or privileged information, whether helpful to the Crown or not. Crown Counsel should be mindful of the notice provisions set out in section 657.3 of the *Criminal Code* if an expert is to be called as a witness or their report is to be tendered as evidence
- copies of all relevant documents, photographs, and audio or videotapes of anything other than a statement of a person, whether or not Crown Counsel intends to introduce them as exhibits in court
- copies of any search warrants relied on by the Crown, the Informations in support, and a list of any items seized pursuant to the warrants

- an appropriate opportunity to inspect any items seized or acquired during the investigation of the offence that are relevant to the charges against the accused
- if intercepted private communications will be tendered, a copy of the judicial authorization or written consent under which private communications were intercepted
- similar fact evidence that Crown Counsel intends to rely on at trial
- particulars of any procedures used to identify the accused outside of court, and any information that may bear on the reliability of identification evidence relied on by the Crown
- upon request, information about the criminal records of material Crown or defence witnesses whose credibility is in issue
- any information in the possession or control of Crown Counsel that the defence may use to impeach the credibility of a Crown witness in respect of the facts in issue in a case, including any prior inconsistent statements or subsequent recantations, the particulars of any benefit or advantage discussed with, promised to, or received by a witness, or any other information known by Crown Counsel to be relevant to the reliability or credibility of the witness
- any additional relevant information received or materially inconsistent statements made by a witness during an interview by Crown Counsel in preparation for trial, in which case the police will generally take a new statement from the witness for the purpose of disclosure or, if inconsistencies are minor or there is insufficient time before a trial, Crown Counsel may provide a letter to defence counsel or make disclosure verbally