



Policy:		
Disclosure		
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DIS 1	December 18, 2023	

An accused has a constitutional right to full and timely disclosure by the Crown. Crown Counsel has an ongoing obligation to disclose to the defence all relevant material in the possession or control of the Crown, whether it is inculpatory or exculpatory, except evidence that is privileged or the disclosure of which is otherwise prohibited by law. The fruits of the investigation "...are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done."¹ The Crown's duty to provide full, fair, and timely disclosure stems from an accused's constitutional right to make "full answer and defence", as a principle of fundamental justice under the *Charter*.²

The threshold for relevance is low: in addition to information that is relevant to the Crown's case, information is also relevant if there is a reasonable possibility that it may be used by the defence in meeting the case for the Crown or advancing a defence, or in making a decision which may affect the conduct of the defence. Crown Counsel's disclosure obligation continues throughout the life of the prosecution and even after it ends.

Crown Counsel should provide disclosure, on request, as soon as practicable once the Information has been sworn and any warrant has been executed. Before making any decision about whether to take a step that may affect their right to make full answer and defence, the accused is entitled to at least the information relevant and necessary for making that decision.³

Crown Counsel has some discretion about the manner and the timing of disclosure, and about the disclosure of private contact information of complainants and witnesses, to help ensure their personal safety. Decisions about the manner and timing of disclosure must be principled and respect the accused's *Charter* right to full and timely disclosure.

1 *Stinchcombe #1* at para 12
 2 *Canadian Charter of Rights and Freedoms*, sections 7 and 11(d); *R v Carosella*, [1997] 1 SCR 80 at para 37
 3 *R v Egger*, [1993] 2 SCR 451 at para 21

Disclosure is a legal obligation rather than a matter of prosecutorial discretion.⁴ The onus to justify non-disclosure falls on the Crown.⁵ Disclosure decisions of Crown Counsel, including to withhold or delay disclosure, and about the form and manner of disclosure, are reviewable by the court. As such, the Crown “must make the defence aware of the existence and nature of the information which it refuses to disclose in order for the defence to be in a position to seek a review”.⁶

Given the time limits on prosecutions established in *R v Jordan*,⁷ Crown Counsel must be prepared to proceed as quickly as possible after a charge is laid to minimize the risk of delay. Any significant delay can result in charges being judicially stayed under the *Charter*. To minimize the potential for delay caused by late disclosure, Crown Counsel should not approve charges before receiving full disclosure except in cases where urgency or public safety are a significant issue.

4 *Krieger v Law Society of Alberta*, 2002 SCC 65 at para 5

5 *R v Egger*, [1993] 2 SCR 451 at para 19

6 *R v Pereira*, 2007 BCSC 1533 at para 57; *Stinchcombe #1* at para 16

7 *R v Jordan*, 2016 SCC 27