



LAW REFORM COMMISSION

Issue Paper

Disclosure in Criminal Proceedings

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About the Commission

The Commission consists of –

- (a) a Chairperson, appointed by the Attorney-General;
- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
- (d) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (e) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
- (f) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
- (g) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
- (h) two members of the civil society, appointed by the Attorney-General.

The Chief Executive Officer has responsibility for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission and taking the minutes of all the proceedings of the Commission.



LAW REFORM COMMISSION

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Introductory Note

1. The Honourable Attorney General has asked the Commission, under section 6 of the Law Reform Commission Act 2005, to review this aspect of the law in the light of developments in UK [Criminal Procedure and Investigations Act 1996, the 1997 Code of Practice and the 2000 Guidelines issued by the Attorney General on disclosure of information in criminal proceedings] and report thereon.
2. This request concerns an important issue in criminal procedure, which is the extent to which the prosecution and the defence must before trial disclose to each other the information pertaining to the case.

The Current Law and Practice

3. An accused party is entitled, by virtue of section 10(2)(c) of the Constitution, to be given adequate time and facilities for the preparation of his defence. This implies there is an obligation on the prosecuting party to make available to the defence the evidence on which the prosecution case is based and other relevant materials in the possession of the prosecuting party.
4. The request for communication of prosecution brief can be made by defence counsel prior to trial by a letter in writing addressed to the Office of the Director of Public Prosecutions or to the prosecutor, as the case may be. The request may also be made by a motion in Court at the start of the hearing of the case, the Court thus ordering the prosecution party to communicating its brief.

5. Our case law suggests there is a duty on the prosecution to disclose even ‘unused materials’. The issue cropped up in *State v Bacha* (1996) SCJ 79 [MR 239], where Sik Yuen SPJ [as he then was] had this to say:

“From the stand point of the defence, the medical evidence of the late wife of accused no 1 would in all probability be relevant but it is the contention of the State that relevance must be linked with admissibility. The general principle on the duty of the prosecution to disclose “unused materials” is that the prosecution is obliged to make available to the defence materials not led in evidence by them which may *assist* the accused.

A similar situation arose in *R v Preston & Ors* (1994) 98 Cr. App. R 405 in which Counsel for the Crown, upon advice from the Attorney-General was of the opinion that it was not his duty to acquaint himself with any intercepted material which might exist for the purpose of considering whether any part of that material need be disclosed on the ground that in any event, such evidence would be inadmissible.

The House of Lords, analysing the situation on appeal had the following to say at P. 423:

In the first place, the fact that an item of information cannot be put in evidence by a party does not mean that it is worthless. Often, the train of inquiry which leads to the discovery of evidence which is admissible at a trial may include an item which is not admissible, and this may apply, although less frequently, to the defence as well as to the prosecution. As the Court of Appeal pointed out in *Ward* (supra) (1993) 96 Cr.App.R. 1, 25, [1993] 1 W.L.R. 619, 645, it is of help to the accused to have the opportunity of considering all the material evidence which the prosecution have gathered and from which the prosecution have made their own selection. In my opinion the test is materiality, not admissibility.

I rule that the statements recorded by the Police from the medical practitioners and para-medical staff, mentioned by learned Counsel for the defence in his address must be communicated to the defence.”

6. The *Bacha case* was decided by one Judge of the Supreme Court. The question remains whether the principle is to be applicable the same way in lower courts. From a practical point of view, if the principle were to be strictly applied in the lower courts, numerous cases of lesser importance could as a result be affected by delay. There might be delay caused by motions for communication followed by argument and also delay caused by the trial being protracted as a result of the canvassing of additional issues raised. However, it seems to make sense that when we are dealing with a principle which has a bearing on fairness of the trial, no distinction should be made as to whether the case is being tried in a lower or higher court.
7. It appears the Office of the Director of Public Prosecutions [DPP] issues time and again directives to prosecuting authorities as to disclosure. There does not seem, however, to be a consistent practice by prosecuting authorities as to the manner in which information is disclosed: in some instances only the statement given by the accused party would be communicated; in other instances the statements of material witnesses may also be communicated; in yet other cases the whole of the prosecution brief may be communicated, including unused materials. This is a matter which can be taken care of by the DPP by issuing clear guidelines. The Honourable Chief Justice may also consider whether there is a need to enacting Rules, under section 198(1) of the Courts Act, for the practice and procedure before any Court of disclosure by prosecution to defence of the case on which it will rely at trial.
8. There is under our law no obligation on an accused party to reciprocally disclose information relating to his case. The accused party is at liberty to call witnesses, without the prosecuting party having any clue as to the purport of their testimony. Equality of

arms between the parties in the conduct of criminal or any other proceedings before court or tribunal is a fundamental human rights principle, which is enshrined in section 10 of our Constitution. It may require of an accused party that he discloses, in certain circumstances, the case upon which he will rely at trial.

Developments in UK Law and Practice

9. There is a central distinction between

(a) the disclosure by the prosecution of its case, that is the evidence upon which it will rely at trial; and

(b) the disclosure of other material pertaining to the case, which it does not intend to use – ‘unused material’.

10. As far as (a) is concerned, the position differs according to whether trial is taking place summarily or in the Crown Court. The extent to which the prosecution is under a duty to reveal its case, so far as trial on indictment is concerned, is dealt with in the *Blackstone Criminal Practice*:

“The defence at trial on indictment are entitled to know in advance of trial the evidence the prosecution intend to call. Most if not all the evidence will in fact have been disclosed by the statements or depositions relied on by the prosecution at the committal proceedings (or served with a notice of transfer). If the

prosecution wish to call evidence they did not use at committal, they are under a duty to serve notice of additional evidence on the defence.”¹

11. There are much more limited obligations relating to summary trial. As pointed out in *Blackstone Criminal Practice*:

“Where the offence is triable either way, the defence may learn the nature of the prosecution case by requesting advance disclosure (see the Magistrates’ Courts (Advance Information) Rules 1985 (SI 1985 No. 601)) ... The main purpose of the information is to assist the defence in determining the mode of trial. Accordingly, the time at which disclosure should be requested and made is *before* the magistrates consider whether the case is more suitable for summary trial or for trial on indictment ...

Where the offence charged is summary, there is no statutory obligation to give advance information. Even so, defence solicitors frequently request it. There is, in practice, a considerable variation in the response of different offices of the Crown Prosecution Service to such requests. It is submitted that the better practice is for prosecutors, when faced with a defence request for the statements of witnesses whom the prosecution will call, to comply with that request. This is likely to ensure that the hearing concentrates upon the issues, and that the court’s time is not wasted while the defence representative obtains instructions from the accused. It also appears to be within the spirit of the prosecutor’s general duty not ‘to attempt to obtain a conviction by all means at his command’ nor ‘to regard himself as appearing for a party’ ...”²

12. The UK Criminal Procedure and Investigations Act 1996, referred to by the Honourable Attorney General in his request, deals with the disclosure by the prosecution of ‘unused

¹ At para. D 12.16 [1997 ed.].

² *Ibid.*, at para. D 19.2.

material’; it also covers the duty of the defence to make disclosure of the case upon which it will rely at trial. The statutory regime is set out in part I of the Act [sections 1-21], as supplemented by the Code of Practice issued under part II of the Act [sections 22 to 27].

13. The relevant provisions of the Criminal Procedure and Investigations Act 1996 have subsequently been amended by the Criminal Justice Act 2003, Part 5. The relevant provisions of the UK Criminal Procedure and Investigations Act 1996, as amended by the Criminal Justice Act 2003, are reproduced as Appendix 1. The rules applicable to disclosure before magistrates’ courts are governed by the Criminal Procedure Rules 2005³, relevant parts thereof are reproduced as Appendix 2.

14. The 1997 Code has subsequently been revised in 2005.⁴ The Attorney General in UK has also issued Guidelines in 2000 and new set of guidelines in 2005 [reproduced as Appendix 3]. Joint Operational Instructions for the Disclosure of Unused Material have also been issued to assist CPS [Crown Prosecution Service] and police officers to perform their disclosure duties consistently and effectively.

15. UK law provides for a staged approach to disclosure. The scheme of the legislation is as follows:

- (a) There is a statutory duty upon the police officer investigating an offence to record and retain information and material gathered or generated during the investigation;

³ SI (2005) No. 384.

⁴ The Criminal Procedure and Investigations Act 1996 (Code of Practice) Order 2005 [SI (2005) No. 985], which revokes the Criminal Procedure and Investigations Act 1996 (Code of Practice) (No. 2) Order 1997.

- (b) The prosecution must provide the accused with “primary disclosure” [Primary disclosure means providing the defence with any prosecution material which they do not intend to use at trial and has not previously been disclosed to the accused, and which in the prosecutor's opinion might undermine the case for the prosecution against the accused. (This is distinct from the obligation on the prosecution to inform the defence of material which it intends to use at trial).] If there is no such material the prosecutor must inform the defence in writing.];

- (c) The defence then has a duty to inform the prosecution of the case which it intends to present at trial [Defence disclosure has two purposes: it assists in the management of the trial by helping to identify the issues in dispute. It also provides information that the prosecutor needs to identify any remaining material that falls to be disclosed at the secondary stage];

- (d) The defence disclosure triggers off a duty on the part of the prosecution to present further material to the defence, “secondary disclosure” [when deciding what to disclose at this stage, the prosecutor will consider the defence statement to see if there is any material not yet disclosed which might be reasonably expected to assist the accused's defence as disclosed by the defence statement.];

- (e) There is a continuing duty of disclosure by the prosecutor;

- (f) The legislation provides for application to be made for disclosure to the courts, when the need arises;

- (g) There are sanctions for non-compliance with the disclosure requirements.

Proposals for Reform

16. The Commission is of opinion that a statutory regime which sets out a staged approach to disclosure is highly desirable. Our proposals for reform are contained in the annexed draft Criminal Procedure (Amendment) Bill. They are, inter alia, that the law should provide for:
- (a) a police officer, or other law enforcement officer, investigating an offence to be under the duty to record and retain information and other material gathered or generated during the investigation;
 - (b) a staged approach to disclosure of unused material by prosecution [initial primary disclosure, followed by subsequent secondary disclosure after accused has disclosed his or her case, together with a continuing duty on prosecutor to disclose after initial disclosure, should the need arise];
 - (c) the disclosure by an accused of the case upon which he or she will rely at trial [a defence statement and a notice of intention to call witnesses];
 - (d) the procedure for an accused to apply for disclosure to the courts;
 - (e) non-disclosure in the public interest of unused material by the prosecution;
 - (f) the information or material disclosed to be treated with confidentiality;
 - (g) the consequences of non-compliance with disclosure requirements, such as delays;
and
 - (h) a Code of Practice to be prepared by the Senior Chief Executive for Home Affairs giving guidelines to police officers and other law enforcement officers, inter alia, as to the manner in which an officer investigating an offence shall record and retain

information and other material gathered or generated during an investigation, and regarding interview of witnesses notified by accused.

Concluding Observations

17. Disclosure is one of the most important issues in the criminal justice system, the application of proper and fair disclosure is a vital component of a fair criminal justice system. We are confident the provisions contained in the Bill would ensure there is a fair system for the disclosure of material, which would not overburden the parties and would enable Courts to focus on all important issues in the criminal trial. Moreover there shall be effective equality of arms between the parties to the proceedings.

18. The Commission is inviting comments from stakeholders on its proposals before it finally reports on this project.

Annex

THE CRIMINAL PROCEDURE (AMENDMENT) BILL

(No of 2008)

Explanatory Memorandum

The object of this Bill is to amend the Criminal Procedure Act to make provision for –

- (a) a duty upon the police officer, or other law enforcement officer, investigating an offence to record and retain information and other material gathered or generated during the investigation;
- (b) a staged approach to disclosure of unused material by prosecution ;
- (c) the disclosure by an accused of the case upon which he will rely at trial;
- (d) the procedure for an accused to apply for disclosure to the courts;
- (e) the non-disclosure in the public interest of unused material by the prosecution;
- (f) the consequences of non-compliance with disclosure requirements; and
- (g) other related matters.

2008

Attorney-General and
Minister of Justice and Human Rights

THE CRIMINAL PROCEDURE (AMENDMENT) BILL

(No. of 2008)

ARRANGEMENT OF CLAUSES

Clause

1. Short title.
2. Criminal Procedure Act amended
3. Commencement

A BILL

To amend the Criminal Procedure Act to make provision for the disclosure of unused material by the prosecution and the disclosure by an accused of the case upon which he will rely at trial.

ENACTED by the Parliament of Mauritius, as follows –

1. Short title.

This Act may be cited as the Criminal Procedure (Amendment) Act 2008.

2. Criminal Procedure Act amended

The Criminal Procedure Act is amended by inserting immediately after section 88 the following new Part IVA–

PART IVA – DISCLOSURE

88A Primary disclosure by prosecutor

- (1) Where an accused is charged with an offence before the Supreme Court or has pleaded not guilty to a charge before a Court other than the Supreme Court, the prosecutor shall–
- (a) disclose to the accused any prosecution material of whatever kind, including in particular information and objects of all descriptions, which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, or
 - (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).

- (2) Where there is more than one accused in any proceedings this Part applies separately in relation to each of the accused.
- (3) For the purposes of this Part, prosecution material is material which is in the prosecutor’s possession, and came into his possession in connection with the case for the prosecution against the accused.
- (4) Where material consists of information which has been recorded in any form the prosecutor discloses it for the purposes of this section—
 - (a) by securing that a copy is made of it and that the copy is given to the accused, or
 - (b) if in the prosecutor’s opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so;and a copy may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded.
- (5) Where material consists of information which has not been recorded the prosecutor discloses it for the purposes of this section by securing that it is recorded in such form as he thinks fit and—
 - (a) by securing that a copy is made of it and that the copy is given to the accused, or
 - (b) if in the prosecutor’s opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (6) Where material does not consist of information the prosecutor discloses it for the purposes of this section by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (7) Material must not be disclosed under this section to the extent that the Court, on an application by the prosecutor, considers it is not in the public interest to disclose it and orders accordingly.

88B Disclosure by accused

- (1) The accused shall, when legally represented, within a reasonable time to be determined by the Court after the prosecution has discharged its obligation under section 88A(1), give a defence statement to the Court and the prosecutor.
- (2) Where there are other accused in the proceedings and the Court so orders, the accused must also give a defence statement to each other accused specified by the Court and within such period as the court may specify.
- (3) The Court may make an order under subsection (2) either of its own motion or on the application of any party.
- (4) Where an accused is not legally represented and is himself conducting his case the Court shall, before the opening of the case for the prosecution-
 - (a) ascertain the prosecution has fulfilled its duty under section 88A(1), and
 - (b) ask the accused to make an oral statement from the dock as to his defence and shall record same.

88C Contents of defence statement

- (1) For the purposes of this Part, a defence statement is a written statement-
 - (a) setting out the nature of the accused’s defence, including any particular defences on which he intends to rely,
 - (b) indicating the matters of fact on which he takes issue with the prosecution,
 - (c) setting out, in the case of each such matter, why he takes issue with the prosecution, and
 - (d) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which he wishes to take, and any authority on which he intends to rely for that purpose.
- (2) A defence statement that discloses an alibi must give particulars of it, including—

- (a) the name, address and date of birth of any witness the accused believes is able to give evidence in support of the alibi, or as many of those details as are known to the accused when the statement is given;
 - (b) any information in the accused’s possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the accused when the statement is given.
- (3) For the purposes of this section evidence in support of an alibi is evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

88D Notification of intention to call defence witnesses

- (1) In accordance with the provisions of section 60, the accused must give to the Court and the prosecutor a notice indicating whether he intends to call any persons (other than himself) as witnesses at his trial and, if so—
- (a) giving the name, address and date of birth of each such proposed witness, or as many of those details as are known to the accused when the notice is given;
 - (b) providing any information in the accused’s possession which might be of material assistance in identifying or finding any such proposed witness in whose case any of the details mentioned in paragraph (a) are not known to the accused when the notice is given.
- (2) If, following the giving of a notice under this section, the accused—
- (a) decides to call a person (other than himself) who is not included in the notice as a proposed witness, or decides not to call a person who is so included, or
 - (b) discovers any information which, under subsection (1), he would have had to include in the notice if he had been aware of it when giving the notice, he must give an appropriately amended notice to the Court and the prosecutor.

88E Further provisions as to disclosure by defence

- (1) Where an accused’s barrister or attorney, as the case may be, purports to give on behalf of the accused a defence statement under section 88B the statement shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

- (2) The judge in a trial before a judge and jury—
 - (a) may direct that the jury be given a copy of any defence statement, and
 - (b) if he does so, may direct that it be edited so as not to include references to matters evidence of which would be inadmissible.

- (3) A direction under subsection (2)—
 - (a) may be made either of the judge’s own motion or on the application of any party;
 - (b) may be made only if the judge is of the opinion that seeing a copy of the defence statement would help the jury to understand the case or to resolve any issue in the case.

88F Secondary disclosure by prosecutor

- (1) This section applies where the accused gives a defence statement under section 88B.
- (2) The prosecutor must—
 - (a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might be reasonably expected to assist the accused’s defence as disclosed by the defence statement given under section 88B, or
 - (b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).

- (3) Material must not be disclosed under this section to the extent that the Court, on an application by the prosecutor, considers it is not in the public interest to disclose it and orders accordingly.

88G Continuing duty of prosecutor to disclose

- (1) This section applies at all times—
- (a) after the prosecutor has complied with section 88A or purported to comply with it, and
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.
- (2) The prosecutor must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which—
- (a) might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, and
 - (b) has not been disclosed to the accused.
- (3) If at any time there is any such material the prosecutor must disclose it to the accused as soon as is reasonably practicable.
- (4) In applying subsection (2) by reference to any given time the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.
- (5) Material must not be disclosed under this section to the extent that the Court, on an application by the prosecutor, considers it is not in the public interest to disclose it and orders accordingly.

88H Application by accused for disclosure

- (1) This section applies where the accused has given a defence statement under section 88B and the prosecutor has complied with section 88G or has purported to comply with it or has failed to comply with it.
- (2) If the accused has at any time reasonable cause to believe that there is prosecution material which is required by section 88G to be disclosed to him and has not been, he may apply to the Court for an order requiring the prosecutor to disclose it to him.
- (3) Material must not be disclosed under this section to the extent that the Court, on an application by the prosecutor, considers it is not in the public interest to disclose it and orders accordingly.

88I Delay in disclosure by prosecutor

A Court shall, on its own motion or on motion of a party, consider whether excessive delays on the part of the prosecutor for disclosing material do not constitute a ground for staying the proceedings for abuse of process, in particular if it involves such delay by the prosecutor that the accused is denied a fair trial.

88J Faults in disclosure by accused

- (1) This section applies where-
 - (a) the accused, who is legally represented, fails to give a defence statement under section 88B(1) or within the reasonable time determined by the Court;
 - (b) sets out inconsistent defences in his defence statement;
 - (c) at his trial—
 - (i) puts forward a defence which was not mentioned in his defence statement or is different from any defence set out in that statement,
 - (ii) relies on a matter which, in breach of the requirements imposed by or under section 88C, was not mentioned in his defence statement,

- (iii) adduces evidence in support of an alibi without having given particulars of the alibi in his defence statement, or
 - (iv) calls a witness to give evidence in support of an alibi without having complied with section 88C(2) as regards the witness in his defence statement; or
 - (d) at his trial calls a witness (other than himself) not included, or not adequately identified, in a witness notice.
- (2) Subject to subsections (3) to (7), where this section applies—
- (a) the Court or any other party may make such comment as appears appropriate;
 - (b) the Court or jury may draw such inferences as appear proper in deciding whether the accused is guilty of the offence concerned.
- (3) Where this section applies by virtue of subsection 1(c)(ii) and the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority, comment by another party under subsection (2)(a) may be made only with the leave of the court.
- (4) Where this section applies by virtue of subsection (1)(d), comment by another party under subsection (2)(a) may be made only with the leave of the court.
- (5) Where the accused puts forward a defence which is different from any defence set out in his defence statement, in doing anything under subsection (2) or in deciding whether to do anything under it the Court shall have regard—
- (a) to the extent of the differences in the defences, and
 - (b) to whether there is any justification for it.
- (6) Where the accused calls a witness whom he has failed to include, or to identify adequately, in a witness notice, in doing anything under subsection (2) or in deciding whether to do anything under it the Court shall have regard to whether there is any justification for the failure.
- (7) A person shall not be convicted of an offence solely on an inference drawn under subsection (2).

88K Public interest in non-disclosure

- (1) At any time—
 - (a) after a court makes an order under section 88A(7), 88F(3) or 88G(5), and
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned,
the accused may apply to the Court for a review of the question whether it is still not in the public interest to disclose material affected by its order.
- (2) The Court, on hearing of any application under section 88A(7), 88F(3), or 88G(5), or under subsection (1), shall afford an opportunity to be heard to any party claiming having an interest in the material who applies to be heard by the Court, and who shows he was involved (whether alone or with others and whether directly or indirectly) in the prosecutor’s attention being brought to the material.
- (3) In such a case the Court must review that question, and if it concludes that it is in the public interest to disclose material to any extent it shall so order.
- (4) Where the prosecutor is informed of an order made under subsection (3) he must act accordingly having regard to the provisions of this Part (unless he decides not to proceed with the case concerned).

88L Confidentiality of disclosed information

- (1) If the accused is given or allowed to inspect a document or other object under—
 - (a) section 88A, 88F, 88G or 88H, or
 - (b) an order under section 88K,

then, subject to subsections (2) to (4), he must not use or disclose it or any information recorded in it.

- (2) The accused may use or disclose the object or information—
- (a) in connection with the proceedings for whose purposes he was given the object or allowed to inspect it,
 - (b) with a view to the taking of further criminal proceedings (for instance, by way of appeal) with regard to the matter giving rise to the proceedings mentioned in paragraph (a), or
 - (c) in connection with the proceedings first mentioned in paragraph (b).
- (3) The accused may use or disclose—
- (a) the object to the extent that it has been displayed to the public in open court, or
 - (c) the information to the extent that it has been communicated to the public in open court;
- but the preceding provisions of this subsection do not apply if the object is displayed or the information is communicated in proceedings to deal with a contempt of court under subsection (7).
- (4) If—
- (a) the accused applies to the Court for an order granting permission to use or disclose the object or information, and
 - (b) the Court makes such an order,

the accused may use or disclose the object or information for the purpose and to the extent specified by the Court.

(5) An application under subsection (4) may be made and dealt with at any time, and in particular after the accused has been acquitted or convicted or the prosecutor has decided not to proceed with the case concerned.

(6) Where—

(a) an application is made under subsection (4), and

(b) the prosecutor or a person claiming to have an interest in the object or information applies to be heard by the Court,

the Court must not make an order granting permission unless the person applying under paragraph (b) has been given an opportunity to be heard.

(7) It is a contempt of court for a person knowingly to use or disclose an object or information recorded in it if the use or disclosure is in contravention of this section.

88M Code of Practice for police interviews of witnesses notified by accused

(1) The Senior Chief Executive for Home Affairs shall prepare a Code of Practice which gives guidance to police officers, and other persons charged with the duty of investigating offences, in relation to the arranging and conducting of interviews of persons—

(a) particulars of whom are given in a defence statement in accordance with section 88C(2), or

(b) who are included as proposed witnesses in a notice given under section 88D.

- (2) The Code must include (in particular) guidance in relation to—
 - (a) information that should be provided to the interviewee and the accused in relation to such an interview;
 - (b) the notification of the accused’s legal representative of such an interview;
 - (c) the attendance of the interviewee’s legal representative at such an interview;
 - (d) the attendance of the accused’s legal representative at such an interview;
 - (e) the attendance of any other appropriate person at such an interview taking into account the interviewee’s age or any disability of the interviewee.
- (3) Any police officer or other person charged with the duty of investigating offences who arranges or conducts such an interview shall have regard to the Code.
- (4) In preparing the Code, the Senior Chief Executive for Home Affairs shall consult the Mauritius Bar Association and such other persons as he thinks fit.
- (5) The Senior Chief Executive for Home Affairs shall cause the Code to be published in the Government Gazette.

88N Duty of police officers during criminal investigations

- (1) A police officer, or other law enforcement officer, investigating an offence shall record and retain information and other material gathered or generated during the investigation.
- (2) For the purposes of this section a criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether—

- (a) a person should be charged with an offence, or
 - (b) a person charged with an offence is guilty of it.
- (3) The Senior Chief Executive for Home Affairs may issue guidelines to law enforcement agencies as to the manner in which their officers shall discharge their obligation under subsection(1).

3. Commencement

This Act shall come into operation on a date to be fixed by proclamation.

Appendices

[Not reproduced]

Appendix 1: Relevant Provisions UK Criminal Procedure and Investigations Act 1996, as amended by Criminal Justice Act 2003

Appendix 2: Relevant Provisions UK Criminal Procedure Rules 2005.

Appendix 3: 2005 UK Attorney-General Guidelines on Disclosure