

**PRACTICE DIRECTION CRIM 1 OF 2010  
ORDERS AS TO DISCLOSURE REQUIREMENTS**

**1. Definitions**

1.1 Words defined in the *Criminal Procedure Act 2004* (“CPA”), s138 and used in this Practice Direction have the same respective meanings as in the CPA.

1.2 The following definitions apply to this Practice Direction:

“Application to proceed without notice” means an application made by a prosecutor without notice to an accused pursuant to CPA s138(4) and in accordance with *Criminal Procedure Rules 2005* (“CPR”) r22.

“Court Officer” means the Associate to the Chief Judge, Manager Trials, Listings Coordinator and Deputy Listings Coordinator, or any person acting in those positions from time to time.

“Substantive application” means an application for an order under CPA s138(3).

**2. Introduction**

2.1 This Practice Direction applies to an application to proceed without notice.

2.2 This Practice Direction also applies to a substantive application the subject of an application to proceed without notice.

2.3 This Practice Direction does not apply to a substantive application by an accused or by a prosecutor on notice to the accused.

2.4 In view of their nature, applications that include an application to proceed without notice will be processed promptly and with complete confidentiality.

2.5 Applications to which this Practice Direction applies will not be disclosed on the daily court list or in any other listings information published by the Court.

**3. Commencement of Applications**

3.1 An application to proceed without notice and a substantive application are each to be made in Form 1 CPR and are to be accompanied by an affidavit and a draft order.

- 3.2 Substantive applications and applications to proceed without notice may be made on the same Form 1 CPR, and rely on the same supporting material.
- 3.3 The substantive application must specify whether the applicant opposes leave being given under CPA s138(4) to disclose to the accused that an order under CPA s138 has been made.
- 3.4 The affidavit may include facts and opinion in support of the application. This does not limit the power of a Judge to receive further information or oral evidence at the hearing of the application.
- 3.5 Before presenting any documents an applicant for leave to proceed without notice must contact a Court Officer, normally by telephone:
  - (a) to give notice of a pending substantive application;
  - (b) to advise that the substantive application will also be the subject of an application to proceed without notice, and that no notice of either application is to be given to the accused pending the outcome of the application to proceed without notice;
  - (c) to make arrangements for a Judge to hear the application to proceed without notice;
  - (d) to inform the Court Officer whether there have been multiple applications and whether a particular Judge has previously had the conduct of the pending or related applications;
  - (e) to inform the Court Officer whether the applicant proposes to exhibit videotape or other recordings to the affidavit so that (if necessary) arrangements can be made for the Judge to view or hear the recordings before the application is heard;
  - (f) to inform the Court Officer whether the applicant wishes any of the procedures set out in this Practice Direction to be varied in that application.
- 3.6 The application, affidavit and draft order must be delivered to the Court in a sealed envelope.
- 3.7 The documents must be handed to the Court Officer who shall without opening the envelope, list the application for hearing and as soon as practicable, inform the applicant of the identity of the Judge, and the time and the place nominated for the hearing.

#### **4. Hearing of Applications and Subsequent Activity**

- 4.1 An application to which this Practice Direction applies will ordinarily be listed before the duty Judge.
- 4.2 Where an application arises in the course of a trial, the applicant must (subject to this paragraph), in the first instance, forward the application to proceed without notice to the Court Officer, who will advise whether the application is to be listed before the trial Judge or the duty Judge. The affidavit in support of the application is to include a submission on whether or not it is appropriate for the trial Judge to hear the application. In cases of urgency, or with the leave of the trial Judge, the application to proceed without notice may be made before the trial judge.
- 4.3 An application to proceed without notice will ordinarily be heard by a Judge in closed court, without notice being given to any person the subject of the application.
- 4.4 If the application is refused, any substantive application must be brought on notice and this Practice Direction has no further application.
- 4.5 If the application is granted, the substantive application will also be heard, by the same Judge, without notice being given to any person the subject of the application, in closed court, at the same sitting as the hearing of the application to proceed without notice.
- 4.6 No person other than the Judge, the Judge's personal staff, a representative of the applicant and a legal representative of the applicant may be present at the hearing unless at the direction of the Judge.
- 4.7 Where the hearing is recorded and transcribed, the transcript of the hearing will be kept by the Court, and will not be made available to the prosecution or any other party save with the leave of the Judge who dealt with the application or the Chief Judge.
- 4.8 If the applicant does not wish the Court to make a transcript of the hearing, the Court Officer must be told prior to the hearing of the application and the grounds for the request must be addressed in the materials filed in support of the application. In the event that there is no transcript of the hearing, the Associate to the Judge hearing the application will ensure that a record is kept of the hearing, for example by digitally recording it and placing the audio file on a CD on the file or by making a full note of what was said at the hearing, which note will be kept by the court with the documents filed in support of the application.
- 4.9 Any notes made by Court staff of the hearing will be kept by the Court, and will not be made available to the prosecution or any other party save with the leave of the Judge who dealt with the application or the Chief Judge.

- 4.10 At the conclusion of the hearing the Judge will, if appropriate, hand the applicant a signed order. All other documents will be securely retained in a sealed envelope by the Court.
- 4.11 Unless the Court orders otherwise, an order made in the absence of the accused is not to be given or disclosed to the accused or his lawyer as required by CPA s 138(5).
- 4.12 The materials relating to an application to which this Practice Direction applies will be retained by the Court and stored in a confidential manner, not on the Court file. The materials will not be made available for inspection by any person unless with the leave a Judge, or as required by law.

**PETER MARTINO**  
**Chief Judge**