



I N S I D E

- 2 Crime, Criminal Justice and the Internet
- 2 Confiscation without Conviction
- 3 Receipt of evidence of electronic records

CASE NOTES

- 3 Jurisdiction – False Accounting
- 4 Jurisdiction – Offshore Gaming
- 4 Corruption – “corrupt purpose”
- 5 Evidence – video recording – hearsay
- 5 Money Laundering – ‘tipping off’ production orders
- 7 Fair trial – access to police docket

Witness Protection: Intimidation of Witnesses and the Rights of the Defence

On 10 December 1997 the Committee of Ministers of the Council of Europe recommended that that member states, in the development of national laws, be guided by principles designed to ensure that the criminal justice system recognise the rights and needs of witnesses, including the right not to be subject to any interference or to be placed at personal risk.

The principles, appended to Recommendation No. R(97) 13, deal with the practical and legislative measures which should be taken to ensure that witnesses may testify freely and without intimidation. Acts of intimidation of witnesses are to be made punishable as separate criminal offences or as part of an offence of using illegal threats. Laws and practices should, subject to legal privileges, encourage witnesses to report any information relating to criminal offences to competent authorities and thereafter agree to give testimony in court. While respecting the rights of the defence, methods which protect witnesses from intimidation resulting from face to face confrontation with the accused should be provided.

There are special principles dealing with measures to be taken in relation to organised crime and include, among other things, the audio-visual recording of witness statements during pre-trial examination; the exclusion of the media and/or the public from all or part of a trial; and the late release of witness identity. Witness anonymity should be available in exceptional circumstances provided that the laws allow a verification procedure and permit the defence to challenge the alleged need for anonymity of a witness, his or her credibility and the origin of the knowledge of the witness. In addition, countries are urged to establish witness protection programmes including the possible establishment of special penitentiary regimes for collaborators who are serving prison sentences.

Measures to be taken in relation to vulnerable witnesses, especially in cases of crime within the family and also the subject of specific principles. These deal with latent intimidation in the family environment and the special needs of children and women who suffer domestic violence. Among the measures recommended in family cases are the provision of a framework for legal, psychological and social assistance as well as care and financial assistance where these are necessary.

In addressing issues of international co-operation, the principles require consideration of the use of modern means of telecommunication to facilitate simultaneous examination of protected witnesses or witnesses whose appearance in the requesting state is otherwise impossible; assistance in the relocation of witnesses abroad and exchange of information between authorities responsible for witness protection programmes.

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Crime, Criminal Justice and the Internet

This special issue of the Criminal Law Review contains interesting articles some of which deal with governance of the Internet in Europe with special reference to illegal and harmful content; the liability of distributors of computer child pornography; the regulation of harassment on the Internet; and the assessment of computer evidence. The whole publication is worthy of note and this summary deals with only a small part of its very useful commentaries.

The article on governance of the Internet advocates a broad political and social governance which does not rely on the presumption that nodal points are anchored primarily in nation states. It concentrates largely on the situation in Europe and suggests that a multilayered system of Internet governance could be made up of global international regulatory solutions devised in organisations such as the UN or the OECD, regional legislation, for example by the European Union, and nation regulation through specialist units in the police or customs. Such measures, it is suggested would be supplemented by self-regulation by Internet service providers and self regulation by end users, such as through software filters. The article goes on to assess the history and effectiveness of European Union initiatives in this area.

The article on the liability of distributors of computer child pornography deals with issues such as the structure and nature of Internet service providers, their corporate liability and the liability of directors, managers and staff either as principals or as secondary parties; the use of electronic mail, the establishment of web sites and newsgroups.

In dealing with the regulation of harassment on the Internet, the authors highlight issues surrounding on-line harassment and ask whether potential victims are adequately protected by existing national laws. The article examines the potential use of laws on stalking, as well as those dealing with telecommunications. In considering the problems of enforcement, the authors deal with the international stalker and the anonymous stalker. They deal also with the problems raised where there are national guarantees of freedom of speech and privacy which have been successfully invoked to overturn legislation designed to control anonymous Internet use.

The authors of the article on the assessment of computer evidence outline in stark detail how previous characterisation of such evidence are now outdated and how many of the assumptions in earlier articles are no longer true. They assess the growth in the use of personal computers, the

increased use of distributed processing, the development of networking and the predominance of the Internet as a public network as factors affecting previous conclusions about the admissibility, reliability and weight of computer evidence. The article deals with common computer forensic techniques including the analysis of material on seized computer hardware, the difficulties associated with transporting large corporate systems, particularly those linked by networks and the determination of the location of evidence of Internet-related offences.

In discussing general principles for evaluating computer evidence the authors suggest that the courts will need to fall back on general principles of evaluation covering authenticity, accuracy and completeness. Other attributes will need to be found in cases where more technical types of evidence are involved and in cases where hacking has been involved there will be a need to ensure that the criminal *modus operandi* has not corrupted the regular operation of the computer.

Confiscation without Conviction

Andrew Rutherford, *New Law Journal*, 4 December 1998.

The author of this article discusses the report issued in November 1998 by a UK Home Office working group on confiscation. The report, entitled "Criminal Assets" proposes the confiscation of assets without any requirement for criminal proceedings. The Report concludes that the total amount of money recovered is a tiny proportion of the sum by which criminals are benefiting from crime and notes the views of police and customs authorities that they regularly encounter cases where there is strong circumstantial evidence of the criminal origins of property but insufficient evidence for a criminal prosecution of the owner.

The Report proposes that existing statutory powers be complemented by *in rem* powers of forfeiture and that property other than cash, such as real estate and jewellery be subject to forfeiture. Recommended safeguards which should be put in place include a requirement that decisions on restraint and forfeiture of non-cash property be taken by the High Court and the civil burden of proof be placed on the authorities rather than on the respondent. This would require the government to prove to the civil standard that property is related to any type of crime covered by the legislation.

The recommendations of the Report are now the subject of public consultation.

NOTE: The Australian Law Reform Commission

is expected to produce its report on amendment of the proceeds of crime laws in that country in the very near future. Like the Home Office working group, The ALRC is also examining the possibility of extending civil forfeiture regimes.

The Receipt of Evidence by Queensland Courts: Electronic Evidence: Report of the Queensland Law Reform Commission, August 1998

The August 1998 Issues Paper of the Queensland Law Reform Commission deals with the capacity of the judicial system, both in its criminal and civil aspects, to receive into evidence information stored and conveyed in electronic, magnetic or similar form. The paper deals with electronic records stored in computer files on floppy and hard disks, e-mail, Internet transactions, compact disks, including CD ROMs, audiotapes, videotapes, magnetic tapes, digital video displays and laserdisks.

The Paper, having reviewed the standard rules of evidence, identifies issues for consideration in areas including

- proving the contents of an electronic record;
- public documents;
- books of account;

- proof of the truth of statement contained in documents;
- statements in documents produced by computers;
- reproductions; and
- admissibility of commonly used electronic records.

Some of the questions asked in the paper, to which no doubt answers will, in due course be provided following public consultation, include:

- 1 whether the secondary evidence rule should apply to electronic records?
- 2 whether a book of account should include a computer file and whether copies of such books should include printouts of computer books of account?
- 3 whether statutory provisions should contemplate that the maker of a statement may be a number of people? and
- 4 what statutory provision should be made for the authentication of particular types of electronic records?

Although the Issues paper does not provide answers to the many questions identified by the Law Reform Commission, it provides a very useful analysis of the laws of many jurisdictions (both Australian and overseas) on some of the issues and discusses in a positive way, the concerns facing many countries seeking to deal with the issue of evidence in the computer age.

C A S E N O T E S

Criminal Law – false accounting – procuring execution of valuable security in Greece – whether English courts have jurisdiction – Theft Act 1968, ss 17(1)(a) and 20(2) (UK)

M operated a maritime insurance business in the UK. The case against him was that he obtained premiums for clients but then either failed to place the insurance covers at all or placed cover for a lesser percentage of the risk than he was instructed to place, or used unacceptable insurers while claiming to use acceptable companies. He was charged:

- with false accounting under s. 17(1)(a) of the Theft Act 1968 in connection with cover notes containing false information;
- procuring the execution of a valuable security contrary to s.20(2) based on the fact that he received cheques issued in Greece on the basis of false cover notes; and
- forgery by having created documents purporting wrongly to bear the stamps of insurance

companies with which he falsely claimed to have placed the insurance.

M argued that there had been no dishonesty or deception because all the parties involved were aware of the position and that there had in fact been an insurance in place, albeit not with the companies stated on the documents.

He was convicted on all counts.

He appealed, arguing inter alia, that:

- (a) since there was no evidence of the use to which the cover notes which were the main subject of the charges, were put, it was wrong for the jury to find that the cover notes were documents "required for any accounting purposes" as required by s.17 of the Theft Act; and
- (b) since the actus reus of the offence of procuring the execution of valuable security under s.20(2) was completed in Greece, the UK courts did not have jurisdiction to try the case.

➔ **Held:** allowing the appeal

1. The jury had been entitled to come to the conclusion that, because the documents set out what was owed by the clients, they were required for an accounting purpose.
2. The "last act or terminatory theory" remains the binding common law in England and Wales. The "comity theory" which finds favour in some jurisdictions (eg. Canada and Hong Kong by way of a decision of the Privy Council) is not good law in England and Wales. Charges of substantive offences are governed by different rules of jurisdiction from charges of conspiracy. The act needed to complete the actus reus, in this case the signing of the cheque, should take place within the jurisdiction". This was stated by Lord Diplock in *Tracy v. DPP* (1971) 1 All ER 110, to be the 'terminatory or 'last act' requirement. This rule is still good law under English law. Since the procurement of the execution of the security had not occurred until the cheques were signed by the company's Directors in Greece, the English courts did not have jurisdiction to try the offence.

The court noted its great concern at the present state of the law. It accepted the comments of the Privy Council in *Liangsirprasert v. US Government* [1990] 2 All ER 866 regarding the need for that law to be modernised in order to meet the growing threat of international fraud and stated that it is deplorable that the law on what should be a straightforward question has been differently determined by two different constitutions of the court. "It is deplorable that in this case we find ourselves forced to conclude that plainly dishonest conduct with a strong connection with this country cannot be tried here."

R V Manning [1998] 4 All ER 876 (Court of Appeal)

Jurisdiction – Money Laundering – Offshore Sports Betting Offence of 'bookmaking' – whether committed within USA

The appellants were part of a business that operated a sports wagering service in Dominica, Jamaica and Dallas (USA) called Spectrum or World Sportbook (WSB). The Dominican and Jamaican offices allowed bets to be placed offshore on sporting events without violating US gambling laws.

Bets were received on the telephone at the Dominican and Jamaican offices. Because Texas law does not allow bookmaking in Dallas, US bettors could call toll-free numbers in Dominica or Jamaica and place their bets. There were other toll-free numbers for Dallas, but these were only for the purposes of obtaining information on the company and their wagering business. Bettors would

telephone the information lines, then they would be sent information packages. Prospective bettors were required to open a betting account into which payments could be made through Western Union or Federal Express. Bets could only be placed by calling the numbers in Dominica or Jamaica.

Between December 1992 and June 1993, police raided and searched all the three offices of the company, seizing, equipment, documents and other evidence. The appellants were charged and fined for various offences against US gaming laws and convicted.

They appealed to the US Court of Appeal for the 5th Circuit.

➔ **Held:** allowing the appeal

1. The US law under which the appellants were charged (18 USC of 1956), required that the illegal gambling activity violates US state laws. Since bets were taken in Dominica and Jamaica, where such betting was legal, there was no violation of Texas law. The appellants took great care to ensure that the betting was not conducted in the US where it would have been illegal.
2. In the absence of direct evidence showing that the bookmaking was carried out in Texas, it could not be accepted in the alternative that the appellants accepted bets and paid out winning from the US and should therefore be convicted. This was because although "the financial transactions might have been essential to the operation, they were not an essential element of the crime of 'bookmaking' as Texas law defined it".

US v. James Truesdale et al, 152F 3d. 443, International Enforcement Law Reporter, Vol. 14, Issue 11 November 1998 p.443.

Corruption – corruptly offering gratification – whether offer of money was for corrupt purpose (Singapore)

The appellant was involved in a traffic accident and drove on without stopping. He was pursued by witnesses. He was charged with corruptly offering the witnesses a gratification of an unspecified sum as an inducement for forbearing to report him to the police for leaving the site of an accident. He was convicted and appealed on the ground that any offer of money was not for a corrupt purpose.

➔ **Held:** dismissing the appeal

The word "corruptly" qualified the offence under s.5(b)(i) of the Prevention of Corruption Act in a significant manner. There had to be a corrupt

element in the transaction itself and there had to be corrupt intent. To determine whether a transaction had a corrupt element required an objective inquiry based on the standard of the reasonable man. The court must infer what the accused intended when entering into the transaction. The ordinary and natural meaning of the word "corrupt" should be applied although not exhaustively. The appellant had intended to escape criminal liability in exchange for money and such a transaction was, to the reasonable man, clearly corrupt. It was a transaction in the nature of a bribe.

The transaction was also an attempt to subvert the course of justice. The appellant had sought to attach a monetary value to the witnesses' integrity and sense of justice. The offer of money was therefore for a corrupt purpose.

Yap Giau Beng Terence v. Public Prosecutor [1998] 3 SLR 656

Evidence – video recording – disabled witness – hearsay – Criminal Justice Act 1988, ss. 23(1), and 26 (UK)

The appellant and a co-defendant were charged with murder and robbery. The victim's son who was an eyewitness was disabled and suffered from a severe speech impediment. The son was interviewed at the police station and a video recording of the interview was made. Because of the son's disabilities the interview took the form of a conversation with a social worker who knew him. The social worker made a transcript of what the witness said or tried to say. The appellant sought the admission of the video recording and transcript into evidence at the trial as first hand hearsay pursuant to s.23 of the Criminal Justice Act 1988. This application was refused by the judge who acknowledged that while admission of the video would be unfair to one of the defendants, its exclusion would result in unfairness to the other. He also refused an application for separate trials and an application for admission of the transcript without the video on the ground that the transcript did not fall within s.23 of the Act.

Section 23, insofar as is relevant, provides that "a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if..." Section 26 requires the leave of the court for the admission of material admissible only under s.23.

➔ **Held:** allowing the appeal.

The video recording was, for relevant purposes, a document; however if it stood alone it would not contain a statement because it can fairly be

described as "incomprehensible" as it was to all but the social worker. For the statement to be comprehended there has to be a transcript or other record. It is entirely appropriate to take into account the availability of the transcript in conjunction with the video recording itself in order to justify producing the video recording in evidence under s.23. As first hand hearsay there has to be a witness to produce the document. In this case that might have been a police officer or the social worker himself. The social worker is also available to give evidence of what the witness had been trying to say and that is akin to the translation of a foreign language. Although not an exact equivalent, the social worker's could give admissible evidence of interpretation of what was being said.

The transcript, being akin to notes made at the time, is not strictly admissible but for practical purposes no distinction needs to be made between a record of the interview which can be introduced into evidence and one which is strictly admissible in its own right. The transcript itself was not a document because it was not a statement made by a person in a document. It was not a document prepared by the witness.

Exclusion of the evidence of the video recording and the transcript of the interview deprived the appellant of evidence to support her defence whereas its admission would not have been unfair to the co-defendant because he could have controverted it by giving evidence himself. The judge should have exercised his discretion under s.26 to admit it. The conviction should be quashed and a retrial ordered.

R. v. Duffy [1998] WLR 1060, Court of Appeal

Money Laundering – disclosure of information – 'tipping off' – Sections 52 & 53 Drug Trafficking Act 1994 and Sections 29 – 32 Criminal Justice Act 1988 (UK)

C brought a civil action against B (a bank) and other defendants, alleging misappropriation of large amount of money by them. He applied ex parte and obtained a Mareva injunction against the other defendants requiring information as to what happened to the money and also a "Norwich Pharmacal" order requiring a disclosure by B of banking documents in C's name and or in the name of the other defendants.

Unknown to C, B had earlier reported to the Economic Crimes Unit of the National Criminal Intelligence Services (NCIS), suspected money-laundering activities as required under sections 52 and 53. If B obeyed the ex parte orders and supplied the information required by C, it would be releasing

information which is likely to prejudice the investigation of the NCIS and be liable for 'Tipping Off'. B sought assurance from NCIS that it would not be prosecuted if it released the information requested under the orders. NCIS insisted that any information released to C would amount to 'Tipping-Off' and warned B not to disclose the required information.

NCIS later made an application under Schedule 1 of the Police and Criminal Evidence Act for an order that B produce to them the information and documents required under the previous orders granted to C. B was in a 'Catch 22' situation in which it would commit an offence (tipping-off) if he complied with the earlier orders and contempt of court if it did not comply. B then applied *ex parte* for the earlier orders to be discharged. The application was granted and C was given liberty to further apply. The court also ordered that court transcripts should be not examined without the court's order.

C then made another application, *inter partes* for the delivery of the information. B's counsel delivered a skeleton argument to the court explaining B's problem. C was informed by the court that B would not comply with its request. No reasons were given by the court to C. C appealed and B took the same course – delivering a skeleton argument to the court in the absence of C. The court requested NCIS to appear before it. C and B were not present when NCIS addressed the court.

In a letter addressed to the Court of Appeal, NCIS's solicitor confirmed that any disclosure of the information requested by C will amount to tipping-off by B and that any revelation of the contents of the letter to any other person other than the court would also constitute tipping-off. They acknowledged the difficulties created by the situation and promised that NCIS would work on guidelines to avoid like problems in the future or ask for practice directions.

The court considered the difficulties that may face financial institutions like B, in cases like this in that they may be deterred from making reports to the authorities. The court also recognised that it would be an abuse of process to prosecute financial institutions for 'tipping-off' if they disclose information in accordance with a court-order, but that the court was also duty-bound to satisfy the interests of litigants. It then pressed NCIS to identify documents which would not affect their investigations if released. NCIS did, and the court found that C's request can be complied with without hampering the investigations by the NCIS.

➔ C's appeal was therefore allowed by consent.

The court of Appeal however thought it

appropriate to issue the following guidance which it thought would result in affording protection for the financial institution and party seeking disclosure without affecting the investigations by the NCIS or other like authorities.

- a. As soon as a financial institution is aware that a party to legal proceedings intends to apply for or has obtained an order for discovery which might involve the institution having to give disclosure of information which could prejudice an investigation it should inform NCIS of the position and the material which it is required to disclose.
- b. The NCIS will then have the opportunity to identify the material which it does not wish to be disclosed and indicate any preference which it has as to how an application or order should be handled. In doing, this it should be borne in mind that usually it will not be necessary to disclose a document or part of a document which refers to the fact of an investigation since this will not be relevant to the issues with which the application for the order is concerned. A case such as the present is likely to cause particular difficulty because the NCIS did not wish the applicant C to know that there was an investigation in progress. However there should be cases whether the NCIS is not concerned about the applicant knowing about the investigation. Where this is the position, it may be sufficient to make the compliance with the order subject to an appropriate undertaking to keep the relevant information confidential.
- c. If NCIS has no objection to partial disclosure the applicant may be satisfied by partial disclosure if it is explained that the alternative is for the matter to be considered by the court. Whether an explanation for the partial disclosure can be given will depend on the attitude of NCIS.
- d. If the restricted disclosure is unacceptable to the applicant then the directions of the court will have to be sought. The extent to which the applicant can be informed of the reasons for the issue being referred to the court will depend on the circumstances. The circumstances will also influence the way in which the matter is brought before the court. The application can be to set aside the order if it was made *ex parte*. Alternatively there can be an application for directions. If the order has not been made the problem can be brought to the attention of the court without the need for a separate application. The court will have to be earned in advance of the difficulties. Where a high degree of confidentiality is required a sealed letter can be written to the judge in charge of the relevant

court setting out the circumstances and that judge can then put in place the necessary arrangements. In this case we found the provision of a skeleton argument to the court alone setting out the background facts and issues and identifying the problem a very convenient way of ensuring that the court is sufficiently informed of the situation.

- e. On the issue being brought before the court the degree to which the applicant can be involved and the extent that it is possible for the issues to be resolved in open court will again depend on the circumstances, but the general approach must be to comply with the ordinary principles to the extent that this is possible. If necessary the strategems which were deployed in this case will have to be used. Where these sort of arrangements are necessary there should always be a transcript prepared and the institution should be required to provide a copy to the applicant when it is informed by the NCIS that there is no longer any requirement for secrecy.
- f. In deciding what order should be made the court will have to decide what evidence it requires. In an obvious case a letter from NCIS will suffice. In other cases their attendance will be required. If the court considers this is justified to achieve justice, the NCIS can be made a party.
- g. It will be for the NCIS (or other investigating authority) to persuade the court that, were disclosure to be made, there would be a real likelihood of the investigation being prejudiced. If the NCIS did not co-operate with the institution (and with any requirements of the court) in advancing such a case, the court could properly draw the inference that no such prejudice would be likely to occur and could accordingly make the disclosure order sought without offending the principle in *Rowell v. Pratt* and without putting the institution at risk of prosecution.
- h. Especially when the applicant cannot be heard it is important that the court recognises its responsibility to protect the applicant's interests. The court must have material on which to act if it is to deprive an applicant of his normal rights. The one criticism which can be made in this case of what occurred in the courts below is that they did not have the material. The court should bear in mind that a partial order may be better than no order. It should also consider the desirability of adjourning the issue in whole or in part since the expiry of a relatively short period of time may remove any risk of the investigation being prejudiced. The NCIS will no doubt wish to co-

operate with the courts in achieving speedy progress as this will be the most productive way of avoiding prejudicing an investigation and protecting the interests of litigants.

C. v. S. The Times, 5 November 1998, Court of Appeal

Fundamental rights – fair trial – access by accused to police docket – privilege

During a trial of the accused who faced counts of high treason or in the alternative sedition or contravention of the Internal Security (General) Act, counsel for the accused sought an order declaring that the privilege which attached to witness statements in the police docket was inconsistent with the provisions of the Constitution of the Kingdom of Lesotho. He also sought an order requiring the prosecution to furnish the accused with witness statements from witnesses already heard and those still to testify.

The relevant part of the Constitution provides that any person charged with a criminal offence shall be afforded a fair hearing and shall be informed as soon as reasonably practicable of the nature of the offence charged. Such person shall be given adequate time and facilities to prepare his defence, shall be permitted to defend himself before the court and shall be afforded facilities to examine the witnesses called by the prosecution and to obtain the attendance and carry out examination of witnesses to testify on his behalf on the same conditions as those applying to witnesses called by the prosecution.

➔ **Held:** allowing the application in part:

This application is a matter of considerable public importance in that it seeks a decisive break between past and future as far as the notion of a fair trial is concerned in this country. The court will therefore seek guidance from other jurisdictions with similar Constitutions to Lesotho because the law of Lesotho should fall in line with international trends.

Courts in Lesotho have traditionally followed the common law principle of privilege, namely that a witness statement is a privileged document and that the accused is not entitled to it. The same privilege has been extended to police dockets.

It is important to bear in mind the English developments in this area and in particular the judgment of Glidewell LJ in *R. v. Ward* [1993] 2 All ER 577 at 601 to the effect that it is of help to the accused to have the opportunity of considering all material evidence gathered by the prosecution and from which it has made its own selection of what evidence to lead. In Namibia the Supreme Court in

State v. Scholtz [1997] 1 LRC 47 settled the proposition that in criminal prosecutions the accused should ordinarily be entitled to the information contained in the police docket including statement of witnesses whether called or not. That case also decided that the state is entitled to withhold any information in the police docket if it satisfies the court that it has reasonable grounds for believing that disclosure might reasonably impede the ends of justice or otherwise be contrary to the public interest.

The Constitutional Court of South Africa in *Shabalala v. AG, Transvaal* [1996] 1 LRC 207 determined that "the blanket docket" privilege was inconsistent with the Constitution of that country to the extent that it protects disclosure regardless of whether or not such disclosure is justified for the purposes of enabling the defence to exercise his right to a fair trial. That court, also recognised, that the prosecution may be able to justify the denial of access on the grounds that it was not justified for the purposes of a fair trial. Similarly, in Canada the courts recognise the accused's right to full disclosure while at the same time cautioning that the obligation to disclose is not absolute. In the United States the court held (*Rovario v. US* (1957) 353 US 53) that "no fixed rule with respect to disclosure is justifiable"

A trial cannot be fair, just and balanced if the prosecution is allowed to keep relevant material such as witness statements close to its chest and thereby spring a surprise on the defence. Placing an accused at a disadvantage does not accord with the tenor and spirit of the right to equality before the

law enshrined in the Constitution. Accordingly, the "blanket docket privilege" stated in *R. v. Steyn* 1954 (1) SA 324 is inconsistent with the Constitution.

Denying the application for discovery of witness statements in respect of witnesses whose evidence has already been heard, the court noted there can be no strict time limits to applications for discovery of witness statements and where an application is made at a later stage there must be adequate explanation for the delay. In this case, counsel for the defence unequivocally told the court that he had no further questions for the witnesses who had already testified.

NOTE: The declaratory order of the court which is set out in the judgment briefly summarised, provides that an accused person is ordinarily entitled to the information contained in a police docket including statements of witnesses whether or not they are to be called at trial. The Crown is entitled to withhold any information contained in a docket if it satisfies the court on a balance of probabilities that it has reasonable grounds for believing that the disclosure might reasonably impede the proper administration of justice or might otherwise be against the public interest. The duty on the Crown shall ordinarily be discharged on service of the indictment and before the accused is required to plead provided that the court shall be entitled, in certain circumstances, to allow the Crown to defer the discharge of the duty to a later stage.

Molapo v. Director of Public Prosecutions High Court of Lesotho, [1998] 2 Law Reports of the Commonwealth 146