AMbush!

Some observations on the vexed issue of disclosure arising from the Judgment of the Supreme Court

in

Director of Public Prosecutions v AM, 2 May 2025

Sequence of Issues to be covered.

1. The background to the appeal.

2. A road map of the judgment.

3. The concept of "*ambush*" as interpreted by the Director of Public Prosecutions post AM.

4. Two pre-trial challenges to the DPP's interpretation of the ambush point with a focus on the defence arguments which have been advanced and the rulings made: –

    - Ruling of Biggs J in **DPP .v. JD & Ors 17 September 2025** and
    - Ruling of Keane J in **DPP .v. OA 14 October 2025**

THE BACKGROUND TO THE APPEAL IN AM

A child complainant, aged 12 at the time of the sexual assault by the Appellant, who was her Granduncle, gave evidence at a trial some seven and a half years later relating to a single incident of abuse.

At no stage did that narrative change from the time of her first complaint – i.e. that it related to a single incident.

In advance of the trial full disclosure was made by the Director. It was believed that there were no counselling records.

At the conclusion of the trial the jury convicted the accused by a 10.2 majority.

At the sentence date it emerged that there was a counselling note from the Kerry Rape Crisis Centre indicating that the abuse "*happened on more than one occasion*". No one, not even the complainant, had been aware of this note which had been made 5 years after the offence.

The accused appealed his conviction on the basis that this was a newly discovered fact, in line with the principles set out in **People (DPP) v. Willoughby [2005] IECCA 4.**

Through his legal representatives he was adamant that the fact of this note should not be flagged to the complainant in the event that he was successful in his appeal. He did not wish to cede any element of surprise in cross examination should there be a retrial.

THE COURT OF APPEAL

When the matter was before the Court of Appeal the focus of the submissions in that court by both the Appellant and the Respondent was to apply the Willoughby principles in making an assessment as to the impact of the newly discovered fact on the fairness of the conviction.

On the issue of not revealing the note to the complainant the Court of Appeal disagreed with the Appellant and, in exercise of its powers pursuant to s.3(3) of the Criminal Procedure Act, 1993, ordered that the complainant be approached

with this new information – the counselling note - and be asked to provide any comment or clarification she so wished as to its accuracy or otherwise.

She subsequently, through a further statement, denied that she had ever complained of anything other than one occasion of sexual assault.

The conviction was affirmed.

THE SUPREME COURT APPEAL

On appeal to the Supreme Court it was certainly the understanding of counsel that the focus of the submissions was the validity of the exercise by the Court of Appeal of its powers under s.3(3).

- The appellant disputed the Court's invocation of section 3 (3) of the Act in making further enquiries as to the newly discovered information and
- claimed that the steps taken had deprived him of his right to cross-examine.

It was evident, however, during the course of the oral submissions, that the Court was much more focused on the issue of the treatment of counselling notes as a disclosure issue in criminal trials in a broader way.

This included:

- disclosure obligations generally
- counselling notes of a complainant
- the signing of the waiver by a complainant – and specifically the content of one of the standard forms used for same
- other non-counselling records in relation to which a complainant would have an expectation of privacy
- and the vexed issue of "ambush"

Of note is that at no stage – either at the Directions hearing, the Case Management hearing or when the Supreme Court issued the Statement of Case (in the context of which it posed specific questions for the parties to respond to

prior to the hearing[1]) did the court engage with the parties on many of the issues which subsequently formed part of the judgment of the court.

This could be seen as a lost opportunity to invite very focused submissions by the parties – defence and prosecution - on many of the issues that are now emerging on foot of this judgment.

It was not really until p 59 of that 87-page judgment that the Supreme Court specifically turned its attention to whether or not the Court of Appeal had in fact erred in exercising its jurisdiction under s.3(3) of the 1993 Act.

BRIEF ROADMAP TO THE MAIN POINTS IN AM

- the prosecution's general duty of disclosure in criminal matters (**para 31)**
- comparison of criminal disclosure with the civil procedure for discovery (**para 35)**
- The Disclosure Directive 2012/13/EU (**para 39)**
- Legislative and judicial developments regarding victims of crime (**paras 41 – 46**)
- Balancing the rights of the accused (to a trial in due course of law) and the rights of victims (privacy, dignity and a zone of private life) (**paras 47 – 49**). **This is where there is reference to the harmonious functioning of the Constitution.**
- Disclosure of Counselling Records and the high level of Constitutional protection afforded to them such that disclosure and/or deployment must satisfy an elevated threshold of relevance and proportionality. **Disclosure must be necessary in the interests of justice**. **(paras 50 – 51)**

[1] Questions were asked relating to the attendance of the counsellor before the Court of Appeal to give evidence, the potential for the defence to call the complainant before the Court of Appeal, the language used by the Court of Appeal in the context of the Willoughby test and the impact of incomplete disclosure on the fairness of a criminal trial- People (DPP) v McCarthy [2007] IECCA 64 – on the instant case.

- Records other than counselling records (such as medical records) which are likely to contain **highly personal and private information** are also in principle within the scope of Constitutional protection (**para 52)**

- Consideration of the law pertaining to disclosure of private records in relation to other jurisdictions – in particular Canadian jurisprudence. (**para 54 et seq**)

- The position in Ireland concerning disclosure of counselling records and specifically the statutory regime pursuant to s.19A of the Criminal Evidence Act, 1992 (**para 67 et seq**)

- The test for disclosure of counselling records– some compelling basis must be established – involving showing that the records are likely to be of real forensic value to the accused's defence (as opposed to the requirement to establish a real risk of an unfair trial). The test appears to be that disclosure must be in the interests of justice. **(para 76)**

- Disclosure of private records other than counselling records. The court noted that victims' privacy interests within the criminal justice process do not require legislation in order to assert their Constitutional rights. There is a high threshold for disclosure of private records. Disclosure must be relevant to a central issue in the case where it will realistically assist the administration of justice. (**para 80 et seq**)

- The court acknowledged that there are certain records in which a complainant has a real expectation of privacy the threshold for disclosure of which is more exacting. Something more than relevance in the **Peruvian Guano**[2] sense is required. (**para 81)**

- A complainant ought not be asked to consent to the disclosure of counselling records without first being afforded an opportunity of reviewing the records and obtaining advice. Consent must be informed. Consent should be the last stage of the disclosure process. (**para 84**)

[2]**(1882) 11 QBD 55**

- The absence of any provision for independent legal advice for the complainant at the time of the decision to waive her right under s.19A is "*problematic"*. There was a suggestion of urgent need for the Oireachtas to revisit the issue. (**paras 85 - 86)**

- **What should have happened on the factual matrix of AM?** - the complainant would have had an opportunity to see and review the record (and then consent or otherwise to its disclosure) if it had been discovered pre-trial.

  In that scenario:-

  - it would have been "*perfectly permissible*" for the prosecution to have interviewed the complainant
  - to have asked her for her observations on the material
  - there could have been non-directional engagement with her in order to provide her with an opportunity to comment on the note
  - but without coaching or seeking to influence her **(para 88 et seq)**

- **AM never had any legal right to have the record disclosed to him without the complainant's knowledge nor any legal right to confront her with it for the first time in cross examination. S.19A prevents that as much as s.3 of the Criminal Law (Rape) Act, 1981 prevents a surprise cross examination on sexual experience. (paras 93 - 94)**

- Consideration of whether or not the Court of Appeal erred and the issue of newly discovered evidence – examination of the Willoughby principles. (**para 95 et seq)**

- Proof of documents to be deployed in cross examination – authenticity issues. Criminal Procedure Act, 1965 (Denman's Act), DPP .v. Diver [2005] IESC 57 (**para 113 et seq)**

- Conclusions including a summary of the findings of the Court. (**para 133 et seq)**

THE CANADIAN COMPARISON

PARAGRAPH 94

It was at paragraph 94 and in the context of the ambush point that Collins J specifically referenced the Canadian case of **DPP .v. JJ [2022] SCC 28** where the accused had launched a challenge to Canadian legislation requiring him to seek the leave of the court prior to **deploying** disclosure material in cross examination.

The attack there had been based on arguments that a requirement on the defence to set out its stall in advance would permit the complainant to tailor his or her evidence - effectively reducing the impact of defence questioning (reflective of the argument made before the Court of Appeal in AM itself).

In **DPP .v. JJ** the Supreme Court of Canada stoutly rejected that argument and emphasised a number of points which appear to have resonated with the Irish Supreme Court in the context of the judgment in AM with specific reference to ambush:

- The right to cross examine was not unlimited.
- It could properly be circumscribed by privacy interests of witnesses.
- Ambushing complainants with their own highly private records at trial can be unfair to complainants and may be contrary to the search for truth.
- The right to make full answer and defence did not include the right to defend by ambush.
- Rejecting a submission of witness tainting, the majority of the court held that providing advance notice to complainants that they may be confronted with highly private information, was likely to enhance their ability to participate honestly in cross examination; they would be better equipped to respond rather than being blindsided by the use of their private records.

THE DPP APPROACH IN RELATION TO THE AMBUSH POINT POST AM.

Following on from the delivery of the judgment in AM the issue arose as to how, from a practical point of view, this ambush point was to be dealt with whether it related to:-

- disclosure material constituting "counselling records", thus coming within s.19A OR
- other records in relation to which there was a high expectation of privacy, as referenced by the Supreme Court in its judgment.

The response from the Office of the DPP was to write to accused solicitors, quoting from the relevant portion of AM (i.e. paragraph 94) and calling on them to indicate clearly what portion, if any, of the disclosure material they intended to put to the complainant in cross-examination.

That letter also confirmed that the gardai would then show the material to the complainant. If the complainant had any additional observations to make on it, those observations would be recorded in statement format.

That interpretation of AM has generated argument from the defence in a number of pre-trial hearings before the Central Criminal Court in recent months.

There have been rulings by Justices Hunt, Ring, Mc Grath, McDermott and Naidoo – but the most substantive rulings to date have been delivered by Justices Biggs and Keane in September and October respectively with each taking wholly opposing views as to what AM dictates.

This presentation looks specifically at two of the recent rulings with a synopsis of some of the defence arguments raised in each case.

DPP .v. JJD & Ors. September 2025 – Ruling of Biggs J

This case involved the disclosure of volumes of material (including Tusla and medical records **but not counselling records**) pertaining to a very vulnerable complainant. Consent had been given before the AM judgment had been delivered but the complainant had not perused her records prior to disclosure and in reality, because of her extreme vulnerabilities, would not really have been in a position to do so unaided.

The Defence submissions resisting any requirement to reveal what disclosure it intended to rely on in cross examination **included** the following:-

1. The comments in AM in relation to ambush were *obiter* (i.e. AM was, factually, not dealing with a s.19A situation because there had been a waiver and thus its observations on the statutory regime were *obiter*)

2. AM should be wholly distinguished from cases where the disclosure material **does not consist of counselling notes** under s.19A.

3. Once consent is given by a complainant then the Constitutional rational as to privacy rights behind AM does not apply.

4. The ruling in **Phipps v Hogan [2008] 3IR 221** is authority for the proposition that there is no onus on an Accused to provide any detailed information to the prosecution.

   This argument is based on the accused's right to a trial in due course of law - specifically Article 34 of the Constitution - and the lack of obligation on an accused to make any form of disclosure.

5. Any such requirement on the defence to provide details of the portions in disclosure upon which they wish or might wish to cross examine upon is a matter ultimately for the Oireachtas.

Biggs J Ruling in JD & Ors.

Biggs J was concerned with the broadness of the language in the DPPs letter… "*clearly indicate which portions of any of the disclosure materials you intend to put to the complaint in cross examination*"….

In her opinion this language was too expansive. The letter (if it was right at all concerning any defence obligations to flag up potential cross examination -and she ultimately decided it was not) should have been confined to materials *carrying an expectation of privacy.*

As to the submission regarding the loss of a right to privacy she quoted from paragraph 81 of AM where Collins J said he would not accept that there is any categorical rule that concerns relating to privacy or privilege disappear when the documents in question have fallen into the possession of the prosecution or that a victims privacy interests disappear in that scenario.

She considered that the ratio of the judgment in AM was with regards to how the Director should engage when dealing with *counselling records* in the future but that the court had also made comments in relation to the extent to which the process envisaged disclosure of records which carry an expectation of privacy.

She emphasised that the focus of AM was the rights of victims in proceedings for a sexual offence.

She was at pains to point out that in the instant case there was a clear point of distinction between it and AM in that the disclosure did not relate to counselling records at all (such records were noted by Collins J - **paragraph 51 -** as enjoying a high level of Constitutional protection which required an elevated threshold of relevance and proportionality).

She noted the reference to the JJ case and stated that in Canada there **was a specific legislative procedure** that required the accused to engage in a process whereby he was to seek the courts approval to **deploy** certain records in his possession. She noted that there is no such legislative requirement in this jurisdiction.

In that regard she pointed to **paragraph 71 of AM** where Collins J acknowledges that in s.19A there is no provision specifically addressing the

deployment of counselling records as distinct from their production to the accused.

Her view on that is that the Supreme Court does not explicitly seek to fill that *lacuna*. (as we will see later Keane J was of the view that *he* could).

Biggs J laid particular emphasis on **paragraph 80** of AM as grounding her subsequent view on the ambush point. Para 80 is the first paragraph in AM under a heading entitled "**Disclosure of Private Records (other than Counselling Records)".**

So, as I understand her ruling, she looked at the contents of the judgment concerning the protection of the rights of victims through the prism of *disclosure by the Director.* What she said was this:

"*It seems to me that the ratio of the judgment relates to the process relating to counselling records in terms of the Director's disclosure of same and use of same and provision of same for the defence and there is a very strong commentary in relation to that same process being applicable to the disclosure process generally , particularly where it relates to documents to which there is an expectation of privacy. To state the obvious from those comments, it seems to me that the Supreme Courts view that the victims' rights can be considered and balanced with the rights of the accused relates to the disclosure process utilised by the Director".*

She stated that AM is about disclosure of counselling records and thus the Director's duties - in other words the focus is not on what the accused is required to do but rather on what the Director is required to do as part of the Director's process.

In relation to the specific factual matrix of AM, Biggs J noted that the Supreme Court "*made it absolutely clear that not only should the complainant have been asked or could she have been asked, the* ***prosecution were duty bound*** *to ask her about that potential inconsistency*".

Harnessing that into her ultimate decision on the ambush point Biggs J linked this in with her views that AM is all about the prosecutor's duty and the prosecutor's process.

In her view that was the background in which that process effectively excludes any defence entitlement to conduct a surprise cross-examination of complainants in sexual offence cases. Essentially it was the Director's job to nullify any such surprise attack – but for Biggs J there was nothing in AM to suggest that it is the duty of the defence to do that work.

Her conclusion on the DPP's letter was that it was incorrect because it suggests a duty to be put on the defence side to put before the Director all material from disclosure that they intend to put to the complainant.

She also emphasised the difference between civil and criminal disclosure/discovery (a point reflected in defence submissions made in the subsequent case of DPP v O.A before Keane J) – noting that in relation to civil matters there was a reciprocal and mutual procedure which does not arise in criminal cases (save with some exceptions imposed by statute and in that regard she referenced paragraph 45 of **W.C v DPP [2024] IESC 48.** She also referred to the following examples of such exceptions:-

- Alibi
- Expert reports
- Bad character evidence
- Information required under the Bail Act S.1A
- S.3(1) of the Offences Against The State (Amendment) Act 1998
- Disclosure regarding confiscation.

According to Biggs J, the procedure to be engaged in by the Director is as follows:-

- It is for the DPP to identify relevant material
- The DPP/gardai then show that material to the complainant
- They then get her/his informed consent

(by way of observation she noted there was nothing radical about that – that has always been the position)

- The complainant/witness must get legal advice prior to waiver because they must give informed consent (*but see above the comments of Collins J in AM regarding the problematic nature of this and the need for legislative intervention)*[3]
- The DPP provides (**in accordance with the line of authority of Dunne and Braddish etc**) what material may be relevant that could either help the defence or damage the prosecution case.
- The Accused never had a right to get irrelevant material.

Accordingly, in the view of Biggs J the complainant should have seen the material that was in fact disclosed (as part of the director's process) and on this basis she would have been on notice of material that might be deployed by the defence.

On the factual basis of JD& Ors itself where the defence had already received the records Biggs J was of the view that:-

- The DPP would have to go through that documentation
- In doing so, the Director should put on her defence hat and determine what is relevant (on a broad understanding of what *might* be relevant)
- **This is not for the defence to do.**
- It was then the Director's duty to show that material to the complainant and indicate that this is what went to the defence.

Biggs J was not confining that exercise to counselling records but extended it to any record where there is an expectation of privacy (to include medical records).

[3] The issue of such legislative intervention is beyond the scope of this presentation.

DPP .v. O.A, Keane J. 14 October 2025

On **14 October 2025** the ambush point raised its head again, this time before Keane J in a case entitled **DPP .v. O.A**

Somewhat similar to JD & Others the background to this case involved the disclosure of close to 1000 pages of material to the accused prior to the decision in AM and with the consent of the complainant.

The issue ventilated before Keane J involved some 37 pages of that disclosure.

Dissimilar to JD & Ors the material here consisted *purely* of counselling notes.

The Director again sought to rely on her letter seeking advance notification of the material within that disclosure upon which the defence might seek to cross examine the complainant. The defence refused to comply with the request from the Director.

Keane J was aware of Biggs J s ruling when determining the issue.

Summary of some of the submissions made on behalf of the Defence in O.A

- AM does not create any obligation on the defence to engage on the issue of counselling records – rather the duty was solely on the Prosecution and the Legal Aid Board. Specifically, there was nothing in AM to impose an obligation on the defence to forensically engage after disclosure has been made.

- The lack of obligation on the defence to forensically engage is acknowledged in **paragraph 35 of AM** which noted the distinction between criminal and civil disclosure/discovery processes where the former was not a procedure based on mutuality.

- Within the criminal arena there was a **disclosure obligation** on the defence *only* by virtue of specific statutory provisions. This is a submission rooted in the dicta of Hardiman J in DPP .v. Phipps.

- The Oireachtas had not, within the context of s.19A, placed any obligation on an accused to forensically engage with the process.

- What was being required of the defence, (i.e. the identification of potential material to be used in cross examination of a complainant) was not forensic engagement – because in reality the issue of ambush was something that a trial judge could keep under review during cross examination in considering whether what was sought to be put in cross examination was irrelevant or inappropriate.

- To require the defence to show its hand by identifying material upon which it might conduct a cross examination of the complainant would be wholly unfair.

- The focus of AM was clarifying the proper approach to be taken in arriving at a waiver/consent in relation to complainant documentation.

It is fair to say that Keane J appeared to set out his stall quite early on in the exchange of submissions citing AM's reference to the need for "**forensic engagement**" by the defence in the context of s.19A even though those words do not appear in the section itself.

He opined that the Supreme Court was "*obviously*" adopting an approach informed by principle – elaborating that by reference to the rights of the defence but also the rights of the complainant to privacy interests in highly sensitive material.

He characterised the defence position of resistance as being one of "*well we've already got the material* [clearly on foot of a waiver, thus disengaging s.19A] *, thank you very much, so we now get the benefit of not having to engage forensically with it*".

Aside from the requirement on the defence to forensically engage – Keane J also looked at the broader principle of the interests of justice.

THE INTERESTS OF JUSTICE

Keane J. also mooted whether it was appropriate to invoke the general discretionary power to make an order in the interests of justice, conferred on a court pursuant **to s.6 of the 2021 Act (Criminal Procedure Act),** to bring about "*the same situation that would have applied had the accused person been required to forensically engage for the purposes of s.19A*."

In looking specifically at the s.19A regime Keane J noted the court was obliged to consider the interests of justice when dealing with an application made under those provisions but he went on to state that it;-

" *It would plainly be talking nonsense if we said outside that specific statutory context there is no basis upon which the Court can consider the interests of justice in the conduct of a trial….there is a constitutional imperative upon the court to afford a fair trial not only to an accused person but to all of the participants in the trial process….that involves a balance*"

In other words, a waiver by the complainant did not prevent the court from applying the same principles of forensic engagement, thus enabling the court to make orders or give directions in the interest of justice.

Unsurprisingly the defence disagreed.

In dealing with the defence submission that the forensic engagement aspect of AM was simply in the context of remarks made by the Supreme Court about s19A, Keane J asked this of the defence:-

"*So we're obliged to extrapolate one way or another that the interests of justice and the requirement for forensic engagement and the constitutionally protected privacy interests in confidential counselling records, they all end at the border of section 19A…..so that the court cannot apply the interests of justice outside that context, cannot have regard to the constitutionally protected privacy interest in sensitive counselling records. ….and cannot fashion an order under s.6 of the 2021 Act which empowers the court to make orders in the interests of justice?*"

He could not accept that to be the case.

Keane J on Biggs J's point that this was all about the Director's process of Disclosure.

When dealing with the submission made to him that the only disclosure obligations on the defence were ones specifically delineated in statute, Keane J took the opportunity to voice his "*bafflement*" with the Biggs J ruling as it related to defence disclosure.

For Keane J this was NOT about disclosure:

He stated that disclosure – in the criminal context – is about the provision of documents or of copies of documents and that was not the Order that the Prosecution was seeking here.

His exact words were as follows:

"There's a slightly fanciful quality to that suggestion; an element almost of absurdity….Ms Justice Biggs appears to have accepted that mischaracterisation, but I'm not sure I can".

In his opinion this was not about the prosecution requiring disclosure of documents from the defence but rather an application by the prosecution to require the defence to **engage forensically.**

Again, referencing the Biggs J decision, Keane J stated that it would be an "*exercise in absurdity"* to have the defence disclose back to the prosecution swathes of documents which had been provided to them by the prosecution.

He went on to state that just because disclosure has already been made (as it had been on the facts before him – and indeed as it had been in JD & Ors) - that does not make any practical difference to the test that he had to apply.

What Keane J made of the Phipps submission

In relation to the defence reliance on the Hardiman dicta in Phipps (relating to a 4E application) that:

"*there was no obligation on an accused to take part in case management which may involve the accused disclosing legal or factual material which he does not wish to disclose. ….and because he is entitled to a trial in due course of law he is not obliged to make any other* ***form of disclosure.*****" [**Emphasis added**]**

This reference to disclosure was essentially grist to the mill for Keane J who believed that the application before him was **NOT** about disclosure.

In further distinguishing **Phipps** Keane J commented that Hardiman J in that case was not being asked to consider a competing Constitutional interest such as

the right to privacy in sensitive counselling documents – which of course it clearly was not.

On that basis he was of the view that what was being stated in Phipps was really more akin to *"an unimpeachable statement of high principle of the rights of the defence in the context of a criminal prosecution".*

For Keane J what Phipps was NOT about and what it did not have to take into consideration was

- the Criminal Justice (Victims of Crime) Act 2017,
- the EU Directive 2012/29/EU that required it to be enacted nor
- was Hardiman J dealing with an exercise in balancing Constitutional interests

Keane J was not impressed by the invocation of paragraph 35 of **AM** regarding the non-mutuality of the disclosure process in the criminal context.

For him, AM had a lot more to say than paragraph 35 and his focus was on the issue of forensic engagement. This was about a rights balancing exercise in the interests of justice.

The defence relied on the role of the trial judge to intervene in cross examination if irrelevant or prejudicial material is put to a complainant.

Keane J despatched that argument by stating that ambush and irrelevance are two different things. He stated that it may be perfectly possible to put relevant material to a witness *and* to ambush them with that material.

"*But what the Supreme Court is saying in AM is, quite aside from issues of relevance, there isn't a right of ambush in cross examination."*

In summary, for Keane J what the prosecution was asking the defence was "*to forensically engage, on an ex post facto basis, in the manner that you would have been required to forensically engage had this been an application under section 19A had there not been a consent or waiver.*

With regard to the submission that there was no legislative provision for what the prosecution was requiring of the defence, Keane J stated that the paramount factor was the fact that the court was dealing with Constitutional issues.

He posed the question - how could the court be powerless in that regard simply because there was no statute to require this exercise from the defence?

He noted that fair trial rights are not absolute. The rights of an accused are of central and pivotal importance in a criminal trial, but they are not the only interests.

All the defence was simply being asked to do was to identify documents – not give chapter and verse such as details of an alibi.

He observed that the prosecution was not asking for a list of the proposed questions in cross examination nor even the lines of cross examination (that would be entirely impermissible) – just a broad indication of particular aspects of the voluminous disclosure that might be relied upon in cross examination.

Ultimately the Order he made was that the defence was not required to indicate a line of cross examination but simply was to identify which of the disclosed documents *may be relied upon* in cross examination.

He expressed his view that in the context of a balancing of rights exercise, the Supreme Court had no hesitation in reading into s.19A a requirement to forensically engage and what Keane J was doing was, in his view, no more than attempting to do the same thing in the interest of justice (outside of the provisions of s.19A) having due regard to both the fair trial rights of the accused person and the privacy interest of the complainant.

He made the order under s.6(8)(f) of the Criminal Procedure Act, 2021.

According to Keane J the procedure to be engaged in was as follows**:-**

The onus was on the prosecution:-

- to consult with the complainant.
- to bring those documents (*identified by the defence*) to the complainant's attention
- in a non-directive way
- to give the complainant a proper opportunity to consider the contents of same
- in order that she might be better equipped to more honestly engage with the cross examination.

As of the date of this presentation the above represents the current state of judicial reasoning on disclosure within the context of AM and specifically on the issue of ambush. As noted, there are diametrically opposed positions adopted. Doubtless the issue is vexed. More reasoned rulings may emerge over the coming weeks or months.

ROISIN LACEY SC.

1/12/2025