

**BRIEF TO THE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

**STATUTORY REVIEW OF THE *DNA
IDENTIFICATION ACT***

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EXECUTIVE SUMMARY

Purpose

The Canadian Resource Centre for Victims of Crime (CRCVC) wishes to:

- recommend to the committee that the collection of DNA samples from individuals suspected of committing crimes, particularly violent crimes, should be undertaken at the time that charges are laid against a suspect (prior to their release on bail);
- recommend that the government create a Missing Persons' Index attached to the National DNA Databank (NDDDB).

Bills C-13 and C-18

- CRCVC supports the broadening of the scope of the NDDDB which occurred with Bills C-13 and C-18.

Privacy of Information/Intrusiveness

- CRCVC supports the handling procedures that protect the privacy of individuals whose DNA has been, is, or will be collected.
- CRCVC maintains that the minor physical intrusion encountered by individual suspects as the result of DNA collection is negligible when weighed against the potential impact said sample may have in preventing further acts of crime.

DNA Collection

CRCVC believes:

- the number of DNA samples included in the NDDDB should **not** be kept to a minimum;
- DNA sample collection should occur at the time charges are laid against a suspect, not upon conviction;
- DNA samples collected prior to suspects' release on bail will act as deterrent to further offences;
- NDDDB should not keep DNA samples of individuals who are not charged or are later acquitted of alleged offences.

Missing Persons' Index

- CRCVC urges the government to create a Missing Persons' Index (MPI) as part of the NDDDB.
- CRCVC believes the creation of an MPI will provide families of missing persons with hope that their loved ones will be found and identified.
- CRCVC believes the creation of an MPI will provide law enforcement agencies with:
 - the ability to identify previously-unidentified remains;
 - evidence that may assist them in solving crimes.

Conclusion

CRCVC urges the government to:

- implement a Missing Persons' Index linked to the National DNA Database;
- enable law enforcement agencies to collect DNA samples from individuals upon laying of charges.

CRCVC believes these measures will provide:

- relief to the families of crime victims;
- increased safety and security for all Canadians.

Introduction

The Canadian Resource Centre for Victims of Crime (CRCVC) is a national, non-profit agency that works to ensure the equitable treatment of crime victims in Canada. Funded by the Canadian Police Association since 1993, the CRCVC is one of the longest standing non-government agencies providing support, assistance and advocacy to victims and survivors of violent crime. The agency did not arise out of a single issue or event. Instead, we strive to voice the concerns of Canadian survivors of many types of violence and criminal victimization.

The CRCVC has long been supportive of the use of DNA technology in order to facilitate obtaining genetic samples from individuals suspected of having committed serious violent offences. We believe the use of DNA technology contributes to a safer society.

DNA is a powerful tool. As of April 27, 2009, the national DNA databank has assisted in 11,651 criminal investigations (crime scene to offender hits), including: 739 murders; 1,556 sexual assaults; 283 attempted murders; 1,358 armed robberies; 6,566 break and entering with intent; committing offence or breaking out; 815 assault (+); and 334 other crimes.¹

Bills C-13 and C-18

When Bills C-13 and C-18 came into force on January 1, 2008, the scope of the National DNA Databank (NDDDB) was expanded. The 2007-08 Annual Report of the National DNA Databank states, “The expansion of DNA offences means more convicted offender samples will qualify for entry into the COI. An increase in entries for the Convicted Offenders Index ultimately means that more crimes will be solved and more offenders brought to justice, all of which contributes to making Canada a safer and more secure place to live.”² The CRCVC is in agreement and continues to support the amendments enacted in 2005 and 2007.

Privacy of information

We support the stringent procedures that govern the handling of biological samples and resulting DNA profiles to ensure that the privacy rights of individuals are protected. However, we do not believe that the privacy rights of offenders should override concerns of public safety for Canadian society.

¹ National DNA Databank Update, April 27, 2009, p. 3.

² DNA Databank Annual Report 2007-2008, p.4.

Intrusiveness

The CRCVC believes the collection of a DNA sample via blood, hair or a swab of oral fluid is a minor intrusion in a physical sense. The victims we work with on a daily basis - sexual assault victims, families of murder victims, etc - feel strongly that the intrusion of a pin prick on one's finger, 6-8 hair samples or a mouth swab is minimal given the potential for the sample to help prevent another person from being victimized.

DNA Collection

The CRCVC does not believe that the number of DNA samples included in the Databank should be kept to a minimum. We believe, and suggest that many Canadians would agree, that DNA samples should be taken at the time charges are laid instead of upon conviction. We feel this will assist in the protection of innocent victims as well as help exonerate the falsely accused.

In the United Kingdom, authorities take samples from suspects upon their arrest. "By the end of 2005 over 3.4 million DNA profiles were held on the (United Kingdom) database (the profiles of the majority of the known active offender population)."³

The reality is simple – the more DNA samples of offenders we submit to the Databank, the more crime we will solve. The CRCVC believes that police must be permitted to take samples when someone is charged with a designated offence, before they are released on bail. We believe this will help to deter the offender from committing further offences while on bail due to the knowledge that their DNA could be linked to their future crimes. We do not believe the Databank should retain DNA samples taken during criminal investigations from people who are not charged or who are later acquitted of alleged offences.

Prior to murdering 11 children, Clifford Olson had over 90 criminal convictions. While in Nova Scotia, he was charged with sexually assaulting a child. He was granted bail and he returned to British Columbia. A warrant was issued, but it was not enforceable outside of Nova Scotia. If authorities were able to take a sample upon the laying of charges, they could then have run the sample through the Databank to see if the suspect in custody (in this case, Olson) might have been involved with other unsolved offences. If any hits were returned, this would have provided

³ "The national DNA database," <http://www.homeoffice.gov.uk/science-research/using-science/dna-database/>, accessed online 3 May 2009.

the basis for justifying a higher priority on locating the offender (i.e., issuing a Canada-wide warrant).

This is not to suggest that a DNA Databank, had it been in existence, would have prevented Olson from murdering 11 children. Rather, it is presented to illustrate a serious flaw in our criminal justice system: most offenders are granted bail and many flee to avoid facing their charges. With no DNA sample to link them to future crimes, they are then free to continue offending in other jurisdictions.

Missing Persons' Index

In 2005, the CRCVC called for a Missing Persons' Index in our brief to the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness regarding Bill C-13. Later that year, we authored a report entitled *DEVELOPING A STRATEGY TO PROVIDE SERVICES AND SUPPORT VICTIMS OF UNSOLVED, SERIOUS CRIMES*. Again, we advocated that the federal government, in cooperation with the provinces, proceed with efforts to create a Missing Persons Index (preferably as part of the National DNA Databank to help identify unknown human remains).

We again urge the government to develop a Missing Persons' Index and we do so with the support of families of missing persons and of non-profit and charitable groups that work on behalf of them. Both Ontario's Missing Adults (www.missingadults.ca) and Victims of Violence Canadian Centre for Missing Children (www.victimsofviolence.on.ca) advocate for amendments to existing legislation for the creation of an index attached to the NDDB.

Benefits to Families with Missing Loved Ones

In the majority of missing person cases, the missing person returns home safely within a relatively short period of time. However, not all cases are resolved as quickly. Some families struggle for years or decades without knowing the fate of their loved one. There are recent cases (see case of Hovey and Jones, pages 5/6), in which older, unidentified human remains have been identified.

Although it is never an easy realization, some families do come to understand that they may not learn the fate of their missing relative for many years to come. Families want to know that everything is being done to locate their missing loved one. A frequent fear is that s/he will be

forgotten or never identified if the family is no longer able to keep up the search. The Missing Person DNA Index provides family members with a measure of relief because it reassures them that by submitting a biological sample, their family member's remains will be identified regardless of where or when they are located.

The CRCVC works with families who have missing loved ones. Almost without exception, the families support the creation of a Missing Persons' Index as part of the NDDDB.

In 2005, there was a Private Member's Bill before Parliament (Bill C-240) that would have expanded the DNA databank to include a National Missing Person's Index. MP Gary Lunn introduced the bill on behalf of one of his constituents, Judy Peterson. Mrs. Peterson's daughter Lindsey had been missing for 10 years at that time and was presumed to have been murdered. On her web site, Mrs. Peterson says,

“Although I can't help being hopeful that Lindsey may still be alive and well, my search for answers has convinced me that the need for a national Missing Person and Found Remains databank is urgent... I believe that Canadians will be as shocked as I was when I realized I could not provide my own DNA sample to be placed in a national databank. If Lindsey had met with foul play, she could be identified through my DNA. My hope was that once she was identified, the murderer would be caught... So you see this legislation is not just about finding missing loved ones. (It) will link victims to crime scenes and give the police the information they need to investigate crimes and keep violent criminals off the street.”

British Columbia mother Glendene Grant knows too well what it is like to yearn for news about a missing loved one. Her daughter, Jessie Foster, disappeared while being forced to work in Las Vegas as an escort. At the time, she was dating a man who allegedly abused her and identified himself as her pimp. Jessie has now been missing for three years.

Mrs. Grant has had first-hand experience with the relief that DNA testing can provide. Her DNA has been tested and disqualified as a match against the remains of an unidentified woman found in Texas. Thus Mrs. Grant continues to believe that her daughter is still alive. Jessie's parents support the need for families to be able to submit DNA samples in Canada, as well as the U.S., to help locate or identify missing persons. Until Jessie is found, "It's hard to be a normal person. My life is nothing but missing and murdered people", says Mrs. Grant.

Benefits to Public Safety

In comparison to other countries, the number of unidentified human remains in Canada is relatively small. This suggests that those remains that tend to stay unidentified present unusual circumstances. At times, only partial skeletons are found. Decomposition, environmental conditions, and animal activity may further contribute to the difficulty in establishing identity, cause and manner of death. However, it needs to be made clear that these remains and biological samples represent an individual – one who is missing from her or his loved ones.

As Mrs. Peterson so clearly notes, identifying human remains involves more than providing answers to families. There are consequences to public safety as well. Whenever human remains are discovered, coroners are required to determine whether death occurred as a result of foul play, suicide, accident or natural causes.

Frequently, discussions about missing persons and unidentified human remains are presented as though identifying the deceased is the final step. This is only true in situations where human remains are identified and the death is determined to be suicide, natural, or accidental. In cases showing evidence of foul play, identifying the victim is a first step for police in apprehending the person(s) responsible.

Unfortunately, there are cases in Canada where huge amounts of investigative efforts are spent in trying to identify the victim, rather than pursuing suspects. DNA technology holds the promise of accelerating the identification process, thereby enabling police to more quickly direct their investigative efforts in identifying the person(s) responsible in the case of homicide. Offenders should not be able to avoid detection simply by taking steps to prevent the identification of the victim.

Two recent cases can be used to demonstrate the importance of knowing a victim's identity in ensuring that public safety is maintained. In the late 1960's the bodies of two males were recovered from rural areas (Schomberg and Coboconk) of Ontario. Based on details recovered at the places of discovery, police believed that a single offender was responsible for the deaths of both men. In 2006, facial reconstructions were created of the men and public assistance was sought to help in their identification. One was identified as Richard Hovey almost immediately. In 2009, the second was identified as Eric Jones. Based on the identifications, police have now been able to re-create timelines around the disappearances of the two men. Police are now faced

with the challenge of compiling evidence against a suspect who is accused of two murders around 1967 and who is currently serving a life sentence for a third murder.

There are also unidentified murder victims located more recently whose killers remain undetected. For instance, the name of a woman found at a rest stop near Guelph, Ontario in 2005 remains unknown. Today, we have the technology and legislation to create a missing person-unidentified human remains databank that may help to identify this woman and re-direct the investigation into locating her killer. Her family is very likely searching for her and missing her. When unidentified remains belong to homicide victims, murderers roam free. This represents a major public safety issue that can be addressed by augmenting the NDDDB to link missing persons with unidentified human remains.

Conclusion

The power of DNA technology has been demonstrated in countless ways – from identifying victims of the World Trade Center attacks to tracing seemingly unrelated sex assaults to a single offender. We believe Canada is in need of a Missing Persons' Index attached to the DNA Databank. A DNA MPI linking unidentified human remains with missing persons would provide police with a powerful tool for use in cases that present unique challenges. Not only would this mean providing immeasurable relief to some families with a missing loved one, it would also enhance the safety and security of Canadians nationwide. Furthermore, as this statutory review demonstrates, discussions surrounding proper retention and destruction of DNA samples can be strengthened through collaborative mechanisms such as this one.