



Privacy safeguards for Canada's DNA database?

The world's first national DNA database was established last year in the UK (PL&B, April 1996, p. 13). In his 1995-96 Annual Report, Canada's Privacy Commissioner, Bruce Phillips, reports on similar developments in Canada and presents his ideas for safeguards.

Last year we reported our recommendations on the proposed bill to allow police to obtain DNA samples from a person suspected of a serious crime. The law was enacted in July 1995.

However, the legislation did not deal with several privacy issues, the most important of which was whether to establish a database of genetic samples or analyses derived from those samples. Early in 1996, the Solicitor General issued a consultation document, *Establishing a National DNA Databank*, that dealt with many of the remaining privacy issues. Our response made several proposals:

- samples should be taken for the database only after the person has been convicted (as opposed to samples taken during the investigation to prove the crime in question). For the "less serious" of these serious offences, a judicial warrant would be needed to acquire the sample for the database. For the more serious offences, taking the sample would be automatic;
- once the analysis of a sample appears on the database, either automatically or by judicial warrant, the police should be permitted access to the database whenever they have DNA evidence from a crime scene that may match a sample taken from the database;
- only the forensic analysis of DNA samples taken from convicted offenders should be kept, not the actual samples. Discarding the actual samples would prevent unrelated secondary uses, including ethically problematic research into genetic links to crime;
- volunteered samples for a criminal investigation (for example, when the police appeal to a community to volunteer DNA to help track down a violent criminal) should be used only for the investigation of the offence in question; the samples and the analysis of the

samples should be destroyed immediately after the donors are exonerated;

- DNA identification information on the database should not be kept indefinitely. It should be destroyed when no longer needed - for example, after the offender has died or a sufficient time has passed (perhaps decades in some cases) and the offender is not likely to re-offend;
- legislation establishing a DNA database should provide for a review of the database operation within two to three years of the legislation coming into force. The review would include a privacy audit.

The privacy audit is particularly important. Two or three years experience with the database should give a good idea of its utility in solving crimes. It will also help to ensure that the database does not become subject to "function creep." We want to avoid an ever-lengthening list of offences for which a DNA database or DNA sampling in criminal investigations is allowed. The pressure to do just that is already present in our society, a product of the very existence of technology and a belief that technology can solve all our woes, if only we let it.

Legislation dealing with these remaining aspects of forensic DNA analysis has yet to be introduced in Parliament. We await any such proposed legislation to ensure that it meets our criteria.

As a final note on this subject, we commend both the Department of Justice and the Ministry of the Solicitor General for recognising privacy issues as among the most significant in the discussion of forensic DNA sampling and DNA databases. We also commend them for involving our office in the consultation process *before* legislation is introduced. Their willingness to discuss the privacy issues with our office ensures a hearing at a time when changes can be accommodated with little political embarrassment.

The Annual Report Privacy Commissioner 1995-96 (ISBN 0-662-62582-X) is available on audio cassette and computer diskette from:
The Privacy Commissioner of Canada, 112 Kent Street, Ottawa, Ontario, Canada K1A 1H3.
Tel: +1 (613) 995 2410 Fax: +1 (613) 947 6850
Contact: Sally Jackson Tel: +1 (613) 995 8566
Internet: <http://infoweb.magi.com/~privcan/>