



HOUSE OF COMMONS
CANADA

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

**Report of the Standing Committee on
Public Safety and National Security**

**Garry Breitkreuz, MP
Chair**

June 2009

40th PARLIAMENT, 2nd SESSION

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has the honour to present its

SECOND REPORT

Pursuant to its mandate under Standing Order 108(2) and its Order of Reference dated April 22, 2009, the Committee has reviewed the *DNA Identification Act* and has agreed to report the following:

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STATUTORY REVIEW OF THE *DNA IDENTIFICATION ACT*

INTRODUCTION

The analysis of deoxyribonucleic acid (DNA) is an integral part of the Canadian judicial system. Because every person's genetic profile is unique¹ and immutable, DNA analysis is a very precise identification method for distinguishing one individual from another. Thanks to DNA analysis, the boundaries of science have been pushed back resulting in remarkable progress in the administration of justice.

The National DNA Data Bank (hereinafter the NDDB) is an extremely effective investigation tool upon which police can rely to further their investigations or exonerate a suspect. The information contained in the NDDB has also prompted the exoneration of persons who have been wrongfully convicted of a crime. The NDDB not only cuts down the length of police investigations, it also makes it possible to resolve more efficiently the many cases that come before the courts. Certainly, the evidence provided by DNA samples encourages “guilty” pleas. It cannot therefore be too strongly stated that evidence of this kind simplifies the administration of justice and allows for significant cost savings.

This report reviews the provisions in the *DNA Identification Act* that establish the NDDB. It highlights the significant contributions made by the NDDB and the relevant forensic laboratories to the efficient administration of justice. It also stresses how crucial it is that additional resources be allocated to the NDDB and forensic laboratories to ensure that the justice system functions as it should.

THE COMMITTEE’S MANDATE AND APPROACH

On February 10, 2009, the Committee began the statutory review of the *DNA Identification Act* (hereinafter the Act), which was passed into law in 1998 and came into force in two stages in May and June of 2000.² Section 13 of the Act states that:

Within five years after this Act comes into force, a review of the provisions and operation of this Act shall be undertaken by any committee of the Senate, of the House of Commons or both Houses of Parliament that is designated or established for that purpose.

1 Only identical twins share the same DNA.

2 Sections 2, 3, and 12 came into force May 8, 2000 -- see SI/2000-37; and sections 1, 4 to 11 and 13 to 25 came into force June 30, 2000 -- see SI/2000-60.

The Committee devoted three meetings to the statutory review in order to determine whether the legislative objectives of the *DNA Identification Act* were being achieved and whether improvements were needed. Between February 24 and April 28, 2009, the Committee heard from representatives of the RCMP, the National DNA Data Bank Advisory Committee, the Department of Justice, the Canadian Association of Chiefs of Police, the Criminal Lawyers' Association, the Office of the Privacy Commissioner of Canada, the Laboratoire de sciences judiciaires et de médecine légale in Montréal and the Centre of Forensic Sciences in Toronto.³

This report sets out the Committee's findings in terms of the strengths and weaknesses of the Act and the administrative framework surrounding the NDDB. It also highlights the exceptional work done by the scientists at the NDDB and in the forensic laboratories. It underscores the urgency of investing additional funds in the forensic laboratories and the NDDB without delay to ensure the proper functioning of the justice in this regard. It proposes recommendations designed to maximize the benefits that forensic science derives from DNA analysis. The report also expresses the Committee's faith in DNA science, and its considered opinion that the NDDB is an extremely useful and important tool for the criminal justice system. The analysis of genetic loci makes possible an almost certain distinction between two individuals. As Diane Séguin of the Laboratoire des sciences judiciaires et de médecine légale told the Committee, when 13 genetic loci are analyzed, the chances of finding a comparable profile are on the order of one person out of 600 billion.⁴

PURPOSE AND PRINCIPLES OF THE ACT

The *DNA Identification Act* established the NDDB in order to help law enforcement agencies identify persons alleged to have committed designated offences⁽⁵⁾ under section 487.04 of the *Criminal Code of Canada* (hereinafter the Code), including those committed before the Act came into force. The Act establishes a framework for the NDDB's structure and administration, and, through provisions in the Code, grants the courts authority to order the taking of samples of bodily substances, for DNA analysis, from offenders convicted of those designated offences.

It is up to the Crown to request a DNA data bank order; whether such an order will be issued lies with the court. In some cases, the Crown must apply for an order to be granted; in other cases, the court is required to make an order. When a DNA sampling is not mandatory, "the court is not required to make the order if it is satisfied that the person has established that the impact of such an order on their privacy and security would be

3 See Appendixes A and B for a list of the witnesses who appeared and the briefs that were submitted to the Committee.

4 Diane Séguin, Deputy Director, Laboratoire des sciences juridiques et de médecine légale, *Evidence*, April 28, 2009.

5 See Appendix C for a list of the current primary and secondary designated offences within the *Criminal Code* of Canada.

grossly disproportionate to the public interest in the protection of society and the proper administration of justice, to be achieved through the early detection, arrest and conviction of offenders.”⁶ Pursuant to section 4 of the Act, it is recognized and declared that:

- a) the protection of society and the administration of justice are well served by the early detection, arrest and conviction of offenders, which can be facilitated by the use of DNA profiles;
- b) the DNA profiles, as well as samples of bodily substances from which the profiles are derived, may be used only for law enforcement purposes in accordance with this Act, and not for any unauthorized purpose; and
- c) to protect the privacy of individuals with respect to personal information about themselves, safeguards must be placed on
 - i) the use and communication of, and access to, DNA profiles and other information contained in the national DNA data bank, and
 - ii) the use of, and access to, bodily substances that are transmitted to the Commissioner for the purposes of this Act.

STRUCTURE AND ADMINISTRATIVE FRAMEWORK SURROUNDING THE NATIONAL DNA DATA BANK

The National DNA Data Bank (NDDB) is located at RCMP Headquarters in Ottawa. It has two main indices of DNA profiles: the Convicted Offenders Index (COI) and the Crime Scene Index (CSI). The COI is an electronic database containing DNA profiles developed from biological samples collected by the police from persons convicted of designated offences. The biological samples are submitted to the NDDB in Ottawa for processing, and the resulting profiles are uploaded and entered in the COI.⁷ The COI is maintained and updated by the RCMP at the NDDB.

The CSI is a separate electronic index containing DNA profiles recovered from biological samples found at the crime scenes of designated offences.⁸ The RCMP forensic laboratories—in Halifax, Ottawa, Regina, Edmonton and Vancouver—and the two forensic laboratories in Ontario and Quebec are responsible for analyzing the biological samples gathered by police at crime scenes and for uploading them to the CSI.

6 Section 487.051(2) of the *Code*.

7 Ronald Fourney, Director, National Services and Research Branch, RCMP, *Evidence*, February 24, 2009.

8 *Ibid.*

Ontario and Quebec are the only provinces in Canada with forensic laboratory facilities that perform their own DNA analysis for the NDDB. The other provinces and territories send their DNA work to the RCMP Forensic Laboratory Services.⁹ All resulting DNA profiles are uploaded to the CSI for comparison with the COI and with other DNA profiles in the CSI.¹⁰

WHAT WE LEARNED

The evidence it heard enabled the Committee to review the case law on DNA. The Committee was informed that “the courts have overwhelmingly accepted the utility of DNA in the criminal justice system”.¹¹ In 2006, the Supreme Court of Canada also affirmed that the taking of a DNA sample “involves a minimal intrusion on the physical integrity of the offender.”¹² With respect to the Act’s utility, the Committee echoes the comments by Justice Charron in *R. v. Rodgers* as cited by Greg Yost, Department of Justice, during his presentation:

There is no question that DNA evidence has revolutionized the way many crimes are investigated and prosecuted [...] The importance of this forensic development to the administration of justice can hardly be overstated.

Overall, witnesses told the Committee that the establishment of the NDDB has improved the administration of justice by helping to focus investigations. Police officers praised the usefulness of DNA evidence and the value of the NDDB in providing links to serial criminals, eliminating suspects and helping to identify new crimes being committed by convicted offenders.

It should be noted, however, that some witnesses expressed different and even opposing positions on the need to extend the scope of the Act to other crimes or to make the taking of DNA samples automatic, citing the possible impact of these changes on privacy rights.

The NDDB has never been the subject of an exhaustive review in terms of cost and time savings — for example, the extent to which consulting the NDDB cuts down on investigation times or secures convictions. When Mr. Ronald Fourney, Director of the RCMP’s National Services and Research Branch, was asked for statistics on the number of exonerations in which the NDDB had played a role, he replied that the privacy protection safeguards in place make it impossible to compile such information. The NDDB’s scientists do not know the source of the samples on which they work, because samples are identified

9 Yves Dufour, Director General, Laboratoire de sciences judiciaires et de médecine légale, *Evidence*, April 28, 2009.

10 Ibid.

11 Greg Yost, Counsel, Criminal Law Policy Section, Department of Justice, *Evidence*, February 24, 2009.

12 *R. v. Rodgers*, [2006] 1 S.C.R. 554.

only by a barcode. Investigators are simply informed that there is, or is not, a correspondence. Only the investigators know the person's identity. This is what Mr. Fourney told the Committee:

Unfortunately, we can't tell you that information, from the National Data Bank perspective, because the very safeguards in place for encoding the samples for privacy and security prevent us from actually knowing the individual who may be involved. To be honest, we can't tell you the number of times we've exonerated an individual based on DNA.¹³

The Committee realizes that it is difficult to quantify the number of exonerations that have taken place thanks to the many correspondences established by the NDDDB. Nevertheless it considers, like most of the witnesses who appeared before it, that the NDDDB is an important tool for exonerating the innocent and focusing police investigations, which means a considerable saving in time and money.

According to Mr. Fourney, more than 11,000 investigations have been assisted by consulting the convicted offender index, including more than 700 murder investigations and more than 1,500 sexual assault investigations.¹⁴

Finally, given the unique nature of DNA and the fact that a person's DNA does not change over time, the Committee wishes to underscore the importance of maintaining proper safeguards governing the handling of the DNA samples contained in the NDDDB in order to ensure that privacy interests of the individuals are protected. Strict controls on the handling of DNA samples and the information derived from them must be maintained and the information within the NDDDB must continue to be used in accordance with the *DNA Identification Act*. All other uses should continue to be strictly prohibited and punishable by law.

CONCERNS RAISED AND SUGGESTED REFORMS

Given that DNA is a powerful forensic science tool that allows for considerable economies in the administration of justice, and that the resources currently allocated to it are insufficient, the Committee, in the following sections, wishes to strongly raise its concerns and propose recommendations for rectifying this situation.

A. Lack of Resources

The Committee finds that funding for the DNA forensic laboratories is currently inadequate, which is causing significant delays in the analysis of DNA samples. Crime solving is directly affected by this. The Committee learned that the current delays are compromising a number of police investigations.

13 Ronald Fourney, *Evidence*, February 24, 2009.

14 *Ibid.*

More specifically, the Committee was told that, as a consequence of inadequate funding, the Quebec and Ontario forensic laboratories are currently unable to analyze crime scene DNA for the designated offences that were added to the list when Bills C-13 and C-18 were passed into law.¹⁵ As a result, the NDDB's usefulness has diminished.¹⁶ The Quebec and Ontario laboratories are in emergency mode. For urgent files, i.e., files involving a serious crime where the suspect has not yet been arrested or has fled, analysis can take up to two weeks. For other files, i.e., in 99% of the cases, police must wait more than a year for the results. The Ontario laboratory has taken the initiative of refusing certain files: Mr. Raymond Prime told the Committee that his laboratory does not accept any extra work arising from the new offences designated since the coming into force of Bills C-13 and C-18, except in cases where public safety is at risk. With respect to the delays at the RCMP Forensic Laboratory Services, the Auditor General of Canada stated in her 2007 report dealing with the RCMP laboratories¹⁷ that:

In the remaining 99 percent categorized as routine, the FLS is unable for the most part to meet the 30-day target it has set for them. While average turnaround times have improved for all other types of analysis, for DNA analysis requests they have worsened — from 91 days in 2003-04 to 114 days in 2005-06 — despite increased spending and additional staff. The backlog of DNA requests is a major contributor to the long turnaround times.¹⁸

The Committee believes that these alarming shortcomings must be rectified and the urgency of the situation must be recognized. Immediate action is imperative. The lack of resources is hampering police investigations and the overall functioning of the justice system. This concern is all the more serious given that implementing the recommendations in this report would lead to an expansion of the COI at the NDDB.

The Committee is also concerned about the need to provide the forensic laboratories with adequate additional financial and human resources, so that they can meet the demands there are currently facing. The scientists who work in these laboratories are highly educated. They also require extensive lab training before they can testify in court as expert witnesses in DNA analysis. The Committee was told that it takes about one-and-a-half to two years of lab training before scientists are recognized as experts in DNA analysis. Mr. Yves Dufour, Executive Director of the Laboratoire de sciences judiciaires et de médecine légale, told the Committee that his laboratory needs at least 30 to 35 new

15 Amendments to the Act were made by the passing of the Act to amend the Criminal Code, the *DNA Identification Act* and the National Defence Act, S.C. 2005 (former Bill C-13) and the Act to amend the Criminal Code, the *DNA Identification Act* and the National Defence Act, S.C. 2007 c. 22 (former Bill C-18), which came into full force in 2008. These amendments added for example all indictable offences under the *Criminal Code* and sections 5, 6 and 7 of the *Controlled Drugs and Substances Act* that are punishable by five years to the list of secondary designated offences and, for the purposes of making a DNA data bank order, have been prosecuted by indictment, removed judicial discretion for 16 offences and expanded the retroactive provisions.

16 Yves Dufour, *Evidence*, April 28, 2009.

17 Report of the Auditor General of Canada, Chapter 7 - Management of the Forensic Laboratory Services of the Royal Canadian Mounted Police, May 2007.

18 *Ibid*, p. 1.

employees to meet the demand resulting from the enactment of Bills C-13 and C-18. He also noted that investments in human resources take time to bear fruit, since about two years of lab training is required.

The Committee concurs with many of its witnesses that additional funding must be provided to the forensic laboratories without delay so they are able to recruit and retain the staff needed to conduct DNA analysis within a reasonable timeframe.

The Committee also learned that, when the public laboratories are too busy, the RCMP sometimes calls on the services of private sector laboratories. The Committee is concerned that the lack of resources and the resultant delays in conducting analysis will result in increased use of private laboratories.

In light of these observations:

RECOMMENDATION 1

The Committee recommends that the Government of Canada maintain the National DNA Data Bank and all associated facilities as a public service and authorize the use of private facilities solely in exceptional overflow circumstances.

RECOMMENDATION 2

In view of the importance of DNA analysis to the administration of justice and the considerable savings it results in, the Committee recommends that the Government of Canada and the provincial governments of Ontario and Quebec recognize the urgency of the situation and immediately allocate additional funding to their forensic laboratories which are responsible for providing DNA analysis to the National DNA Data Bank.

B. Automatic DNA Samples upon Conviction

As mentioned above, prosecutors are currently responsible for applying for DNA samples and the courts for issuing DNA orders. During its study, the Committee was informed of numerous problems with this system. One witness characterized it as “an administratively burdensome and error-prone process.”¹⁹ It was brought to the Committee’s attention that a substantial amount of police time is spent on administrative tasks, such as returning defective orders, asking prosecutors to obtain corrected orders and sometimes obtaining a legal interpretation on whether or not the offence involved

19 David Bird, Counsel, Department of Justice, *Evidence*, February 24, 2009.

qualifies for acceptance in the data bank. Witnesses also noted that applications for DNA orders vary greatly from one region to another. Certain provinces appear to require DNA samples more frequently than others.

To resolve these problems, which have a direct impact on the NDDB, some witnesses urged the Committee to amend the Act to provide for DNA samples to be taken automatically upon conviction. If DNA samples were rendered automatic upon conviction, as is the case in most states in the United States and most European countries, DNA orders would be applied consistently across Canada. Committee members feel that this approach is appropriate.

Greg Yost, Department of Justice, stated that the present registration system produces about 36,000 convicted offender profiles per year. According to departmental estimates, taking a DNA sample automatically upon conviction in the case of all designated offences would lead to about 113,000 profiles per year — a significant increase in the number of profiles.

Although the Committee feels it is necessary to amend the Act to provide for DNA samples to be taken automatically upon conviction in the case of all designated offences, it is important first of all that the NDDB be provided with the additional resources required to accommodate the additional workload that would result from implementing our recommendations. Therefore,

RECOMMENDATION 3

The Committee recommends that the *DNA Identification Act* and related laws be amended to systematically require the taking of a DNA sample upon conviction for all designated offences. However, before proceeding with the amendment, the government must provide the NDDB with the additional resources required to accommodate the increased demand for DNA analysis that would result from taking DNA samples automatically upon conviction.

C. Ensuring the Efficacy of the National DNA Data Bank

The Committee noted that the Act does not mention that the NDDB facilitates the exoneration of the innocent. The only purpose set out in section 3 is to help law enforcement agencies identify persons alleged to have committed designated offences. The Committee is of the view that the goals of protecting society and the administration of justice are well served by the prompt identification, arrest and conviction of offenders, as well as by exonerating the innocent, since the administration of justice seeks to serve the truth.

A person who wants to provide a DNA sample voluntarily in order to prove his innocence should therefore be able to do so. In such a case, law enforcement officers should inform the person that he or she has the right to legal representation and also of the possible implications of his or her action. The substances provided voluntarily and the results of the analysis should be immediately destroyed once it is determined that they do not match the substance found at the scene of the crime.

The Committee also learned that the Act does not apply to Canadians convicted in another country of an offence that is comparable to one on the list of designated offences in the *Code*. While the Committee recognizes that it may be difficult to broaden the application of the Act to those who are shielded from the DNA sample requirements because they were not convicted in Canada, it believes that those found guilty of an offence that is the equivalent of one of the designated offences should be treated the same way they would be treated if they had committed the offence in Canada.

Finally, the Committee feels that the amendments proposed in this report must apply to all those already serving a sentence for a designated offence when the bill is passed. The DNA sample should be taken as soon as possible to ensure that the offender's profile is uploaded and filed in the NDDDB, thereby ensuring its efficacy.

In light of these considerations:

RECOMMENDATION 4

The Committee recommends that the government of Canada:

- **amend section 3 of the *DNA Identification Act* to ensure the purpose of the Act states that the National DNA Data Bank helps law enforcement agencies to identify, arrest and convict persons alleged to have committed designated offences, as well as to exonerate the innocent, given that the administration of justice seeks to serve the truth.**
- **amend the *Criminal Code* to allow a suspect of a designated offence to voluntarily provide a DNA sample for an exoneration test.**
- **broaden the application of the *DNA Identification Act* to require that a DNA sample be taken from a Canadian citizen convicted of an offence abroad that is the equivalent of one of the designated offences in section 487.04.**

- **provide for the retroactive application of the automatic requirement for the taking of a DNA sample stemming from the implementation of recommendation 3 of this report to all those serving a sentence for a designated offence at any time between the coming into force of the amendment and the expiration of the offender’s sentence according to law or his or her release from a correctional facility, whichever comes first.**

D. Addition of a Missing Persons Index and a Victims Index

Some witnesses advocated for the addition of two indexes to the NDDDB, one on victims of crime and the other on missing persons. Such indexes could allow searches of a victim’s DNA against the CSI. The addition of a victim’s index could potentially help solve cases of missing persons as well. Justice Cory, a member of the NDDDB Advisory Committee, pointed out that a balance between proper investigation and privacy issues should be found. Thus, proper safeguards would need to be implemented if such indexes were added to the data bank. The Committee also feels that the use of DNA sampling in these cases should be limited to the function of solving missing persons and victims cases and to searches in the COI. The Committee agrees that there is a need to set up these new indexes. It feels, however, that the action plan must be based on agreements between the provinces, the territories and the federal government. The Committee is aware that certain provinces or territories may prefer to administer their own indexes. In such cases, it will be necessary to ensure that all the indexes are fully compatible with each other. In light of the above:

RECOMMENDATION 5

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety determine the best way of proceeding with the creation of the two additional DNA identification indexes, namely, a Missing Persons Index and a Victims Index.

E. Autonomy of the National DNA Data Bank from the RCMP

Although the structure of the NDDDB seems to be working well at the moment, witnesses told the Committee that it may be beneficial to place the NDDDB under the authority of an independent agency in order to ensure the appearance of impartiality in relation to the police. Justice Cory informed the Committee that “[a]t some time there should be complete independence of the data bank from the RCMP, to take away any

indication or taint of undue influence”.²⁰ He noted, however, that this would be difficult to accomplish given that the NDDDB is currently housed by the RCMP, which also provides security and maintenance services; moreover, these services are not covered by the funding currently provided to the NDDDB. Therefore:

RECOMMENDATION 6

The Committee recommends that the Government of Canada explore whether it would be preferable for the National DNA Data Bank to be completely independent in order to eliminate any perception of partiality.

The Committee also learned that, of the many forensic laboratories responsible for providing DNA analysis to the NDDDB across the country, only two do not belong to the RCMP. The Laboratoire de sciences judiciaires et de médecine légale falls under the responsibility of the Quebec Ministry of Public Safety, while the Centre of Forensic Sciences in Ontario comes under the Ontario Ministry of Public Safety and Correctional Services. The Committee approves of this model, where the organization responsible for DNA analysis is separate from the police, and encourages other governments to move towards it. Therefore:

RECOMMENDATION 7

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety consider the possibility of setting up their own independent forensic laboratories.

CONCLUSION

The Committee shares the views of those who stated that DNA analysis has greatly enhanced the administration of justice. It is one of the greatest breakthroughs of the last century. We also believe in the value of the NDDDB in providing links to criminals, eliminating suspects and helping to associate crimes with offenders in the NDDDB. For investigators, the NDDDB is an effective tool that allows them to bring criminals to justice.

20 Justice Peter Cory, Member, National DNA Data Bank Advisory Committee, *Evidence*, February 24, 2009.

It is unfortunate that no studies have been conducted to demonstrate the considerable savings that the NDDB makes possible. The Committee believes that better records, providing data on the number of secured convictions, confessions and suspects eliminated on the basis of DNA evidence, need to be maintained, for the purposes of future reviews.

The science of genetics is constantly evolving and the Committee believes that Canada can and must be a leader in the field. It is also critical to provide the NDDB and the relevant forensic laboratories with sufficient funding, to ensure the proper administration of the justice system. The Committee is concerned that, as a result of a lack of funding, there will be increased use of private laboratories. The Committee would like to underscore the importance of ensuring that the NDDB and all associated facilities remain public services. Finally, the Committee has every hope that the implementation of this report's recommendations will make it possible to correct the weaknesses that were brought to its attention.

LIST OF RECOMMENDATIONS

RECOMMENDATION 1

The Committee recommends that the Government of Canada maintain the National DNA Data Bank and all associated facilities as a public service and authorize the use of private facilities solely in exceptional overflow circumstances.

RECOMMENDATION 2

In view of the importance of DNA analysis to the administration of justice and the considerable savings it results in, the Committee recommends that the Government of Canada and the provincial governments of Ontario and Quebec recognize the urgency of the situation and immediately allocate additional funding to their forensic laboratories which are responsible for providing DNA analysis to the National DNA Data Bank.

RECOMMENDATION 3

The Committee recommends that the *DNA Identification Act* and related laws be amended to systematically require the taking of a DNA sample upon conviction for all designated offences. However, before proceeding with the amendment, the government must provide the NDDB with the additional resources required to accommodate the increased demand for DNA analysis that would result from taking DNA samples automatically upon conviction.

RECOMMENDATION 4

The Committee recommends that the government of Canada:

- amend section 3 of the *DNA Identification Act* to ensure the purpose of the Act states that the National DNA Data Bank helps law enforcement agencies to identify, arrest and convict persons alleged to have committed designated offences, as well as to exonerate the innocent, given that the administration of justice seeks to serve the truth.
- amend the *Criminal Code* to allow a suspect of a designated offence to voluntarily provide a DNA sample for an exoneration test.
- broaden the application of the *DNA Identification Act* to require that a DNA sample be taken from a Canadian citizen

convicted of an offence abroad that is the equivalent of one of the designated offences in section 487.04.

- provide for the retroactive application of the automatic requirement for the taking of a DNA sample stemming from the implementation of recommendation 3 of this report to all those serving a sentence for a designated offence at any time between the coming into force of the amendment and the expiration of the offender's sentence according to law or his or her release from a correctional facility, whichever comes first.

RECOMMENDATION 5

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety determine the best way of proceeding with the creation of the two additional DNA identification indexes, namely, a Missing Persons Index and a Victims Index.

RECOMMENDATION 6

The Committee recommends that the Government of Canada explore whether it would be preferable for the National DNA Data Bank to be completely independent in order to eliminate any perception of partiality.

RECOMMENDATION 7

The Committee recommends that the federal, provincial and territorial ministers responsible for Justice and Public Safety consider the possibility of setting up their own independent forensic laboratories.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Department of Justice</p> <p>David Bird, Counsel, Legal Services, Royal Canadian Mounted Police</p> <p>Greg Yost, Counsel, Criminal Law Policy Section</p>	2009/02/24	5
<p>National DNA Data Bank Advisory Committee</p> <p>Richard Bergman, Chairperson</p> <p>Peter Cory, Member</p>		
<p>Royal Canadian Mounted Police</p> <p>Ronald M. Fourney, Director National Services and Research</p>		
<p>Canadian Association of Chiefs of Police</p> <p>Derek Egan, Chief Constable</p>	2009/02/26	6
<p>Criminal Lawyers Association</p> <p>Vincenzo Rondinelli, Defence Lawyer</p>		
<p>Office of the Privacy Commissioner of Canada</p> <p>Chantal Bernier, Assistant Privacy Commissioner</p> <p>Lisa Campbell, Acting General Counsel Legal Services, Policy and Parliamentary Affairs Branch</p>		
<p>Centre of Forensic Sciences</p> <p>Jonathan Newman, Deputy Director</p> <p>Raymond Prime, Director</p>	2009/04/28	17
<p>Laboratoire de sciences judiciaires et de médecine légale</p> <p>Yves Dufour, Director General</p> <p>Frédéric Laberge, Director Biology and Administration</p> <p>Diane Séguin, Deputy Director</p>		

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Canadian Association of Chiefs of Police

Department of Justice

Laboratoire de sciences judiciaires et de médecine légale

Royal Canadian Mounted Police

APPENDIX C

LIST OF DESIGNATED OFFENCES

SECTION 487.04 OF THE *CRIMINAL CODE*

“primary designated offence” means

- (a) an offence under any of the following provisions, namely,
 - (i) subsection 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years),
 - (ii) section 235 (murder),
 - (iii) section 236 (manslaughter),
 - (iv) section 239 (attempt to commit murder),
 - (v) section 244 (discharging firearm with intent),
 - (vi) section 244.1 (causing bodily harm with intent – air gun or pistol),
 - (vii) paragraph 245(a) (administering noxious thing with intent to endanger life or cause bodily harm),
 - (viii) section 246 (overcoming resistance to commission of offence),
 - (ix) section 267 (assault with a weapon or causing bodily harm),
 - (x) section 268 (aggravated assault),
 - (xi) section 269 (unlawfully causing bodily harm),
 - (xii) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm),
 - (xiii) section 273 (aggravated sexual assault),
 - (xiv) section 279 (kidnapping),
 - (xv) section 344 (robbery), and
 - (xvi) section 346 (extortion),

- (a.1) an offence under any of the following provisions, namely,
 - (i) section 75 (piratical acts),
 - (i.01) section 76 (hijacking),
 - (i.02) section 77 (endangering safety of aircraft or airport),
 - (i.03) section 78.1 (seizing control of ship or fixed platform),
 - (i.04) subsection 81(1) (using explosives),
 - (i.05) section 83.18 (participation in activity of terrorist group),
 - (i.06) section 83.19 (facilitating terrorist activity),
 - (i.07) section 83.2 (commission of offence for terrorist group),
 - (i.08) section 83.21 (instructing to carry out activity for terrorist group),
 - (i.09) section 83.22 (instructing to carry out terrorist activity),
 - (i.1) section 83.23 (harbouring or concealing),
 - (i.11) section 151 (sexual interference),
 - (ii) section 152 (invitation to sexual touching),

- (iii) section 153 (sexual exploitation),
- (iii.1) section 153.1 (sexual exploitation of person with disability),
- (iv) section 155 (incest),
- (iv.1) subsection 163.1(2) (making child pornography),
- (iv.2) subsection 163.1(3) (distribution, etc., of child pornography),
- (iv.3) subsection 163.1(4) (possession of child pornography),
- (iv.4) subsection 163.1(4.1) (accessing child pornography),
- (iv.5) section 172.1 (luring a child),
- (v) subsection 212(1) (procuring),
- (v.1) subsection 212(2) (procuring),
- (v.2) subsection 212(4) (offence – prostitution of person under eighteen),
- (vi) section 233 (infanticide),
- (vii) section 271 (sexual assault),
- (vii.1) section 279.01 (trafficking in persons),
- (viii) section 279.1 (hostage taking),
- (ix) paragraph 348(1)(d) (breaking and entering a dwelling-house),
- (x) section 423.1 (intimidation of a justice system participant or journalist),
- (xi) section 431 (attack on premises, residence or transport of internationally protected person),
- (xii) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel),
- (xiii) subsection 431.2(2) (explosive or other lethal device),
- (xiv) section 467.11 (participation in activities of criminal organization),
- (xv) section 467.12 (commission of offence for criminal organization), and
- (xvi) section 467.13 (instructing commission of offence for criminal organization),
- (xvi.1) to (xx) [Repealed, 2005, c. 25, s. 1]

(b) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 4, 1983, namely,

- (i) section 144 (rape),
- (ii) section 146 (sexual intercourse with female under fourteen and between fourteen and sixteen),
- (iii) section 148 (sexual intercourse with feeble-minded, etc.),
- (iv) section 149 (indecent assault on female),
- (v) section 156 (indecent assault on male), and
- (vi) section 157 (acts of gross indecency),

(c) an offence under paragraph 153(1)(a) (sexual intercourse with step-daughter, etc.) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read from time to time before January 1, 1988,

(c.1) an offence under any of the following provisions of the *Security of Information Act*, namely,

- (i) section 6 (approaching, entering, etc., a prohibited place),
- (ii) subsection 20(1) (threats or violence), and

(iii) subsection 21(1) (harbouring or concealing), and

(d) an attempt to commit or, other than for the purposes of subsection 487.05(1), a conspiracy to commit an offence referred to in any of paragraphs (a) to (c);

“secondary designated offence” means an offence, other than a primary designated offence, that is

(a) an offence under this Act that may be prosecuted by indictment – or, for section 487.051 to apply, is prosecuted by indictment – for which the maximum punishment is imprisonment for five years or more,

(b) an offence under any of the following provisions of the *Controlled Drugs and Substances Act* that may be prosecuted by indictment – or, for section 487.051 to apply, is prosecuted by indictment – for which the maximum punishment is imprisonment for five years or more:

- (i) section 5 (trafficking in substance and possession for purpose of trafficking),
- (ii) section 6 (importing and exporting), and
- (iii) section 7 (production of substance),

(c) an offence under any of the following provisions of this Act:

- (i) section 145 (escape and being at large without excuse),
- (i.1) section 146 (permitting or assisting escape),
- (i.2) section 147 (rescue or permitting escape),
- (i.3) section 148 (assisting prisoner of war to escape),
- (i.4) subsection 160(3) (bestiality in presence of or by child),
- (ii) section 170 (parent or guardian procuring sexual activity),
- (iii) section 173 (indecent acts),
- (iv) section 252 (failure to stop at scene of accident),
- (v) section 264 (criminal harassment),
- (vi) section 264.1 (uttering threats),
- (vii) section 266 (assault),
- (viii) section 270 (assaulting a peace officer),
- (ix) paragraph 348(1)(e) (breaking and entering a place other than a dwelling-house),
- (x) section 349 (being unlawfully in dwelling-house), and
- (xi) section 423 (intimidation),

(d) an offence under any of the following provisions of the *Criminal Code*, as they read from time to time before July 1, 1990:

- (i) section 433 (arson), and
- (ii) section 434 (setting fire to other substance), and

(e) an attempt to commit or, other than for the purposes of subsection 487.05(1), a conspiracy to commit

- (i) an offence referred to in paragraph (a) or (b) – which, for section 487.051 to apply, is prosecuted by indictment, or
- (ii) an offence referred to in paragraph (c) or (d).

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 5, 6, 17, 25, 26, 28](#)) is tabled.

Respectfully submitted,

Garry Breitkreuz, MP

Chair