

PROVINCE OF ONTARIO
MINISTRY OF ATTORNEY GENERAL

CROWN POLICY MANUAL

March 21, 2005

DNA DATABANKING LEGISLATION

PRINCIPLES

A strong and effective DNA data bank tremendously benefits the criminal justice system. It not only assists law enforcement agencies in identifying persons who have committed crimes but also serves to exclude innocent persons who are wrongfully suspected. The provisions have a number of broad purposes including:

- To deter potential repeat offenders
- To promote the safety of the community
- To detect when a serial offender is operating
- To assist in solving old cases
- To streamline investigations
- To assist the innocent by early exoneration or exoneration of those wrongfully convicted.¹

Experience in other jurisdictions has demonstrated that the more profiles included in a DNA databank, the more effective it is.²

In weighing the competing interests of security of the person, privacy of the individual and the public interest in a strong and effective data bank, an appropriate balance is important. The Ontario Court of Appeal has given us guidance on situations in which a DNA databank order is appropriate.³

1 *R. v. P.R.F.* (2001), 161 C.C.C. (3d) 275, 57 O.R. (3d) 475, *R. v. Briggs* (2001), 157 C.C.C. (3d) 38, 55 O.R. (3d) 417 (Ont.C.A.) (leave to appeal to S.C.C. refused).

2 The United States and Great Britain are two examples of this

3 *R. v. P.R.F.* *supra* note 1.

On balance, I would expect that in the vast majority of cases it would be in the best interests of the administration of justice to make the order under s.487.051(1)(b) and s. 487.052, as the case may be. This follows simply from the nature of the privacy and security of the person interests involved, the important purposes served by the legislation and, in general, the usefulness of DNA evidence in exonerating the innocent and solving crimes in a myriad of situations.

The Supreme Court of Canada has concluded that the DNA warrant provisions pass constitutional muster, and in doing so commented on the usefulness of DNA evidence in the investigation and prosecution of crime.⁴

The Ontario Crown Attorney system has demonstrated leadership in seeking DNA databank orders. Crowns should continue this tradition of making requests in appropriate cases, thus supporting the DNA databank and ultimately, the administration of criminal justice.

⁴ See *R. v. S.A.B.* (2003) 2 S.C.R. 678, 178 C.C.C. (3d) 193.