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Public Consultation on DNA Data Bank Legislation
Department of Justice Canada
Criminal Law Policy Section
284 Wellington Street
Ottawa, Ontario
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Attention: Justice Minister Martin Cauchon

Dear Minister Cauchon:

Re: DNA Data Bank Legislation – Consultation Paper
File # 1500-02-06

You have circulated a consultation paper that raises a number of issues that have been identified over the past two years that the federal DNA Data Bank has been operated under the *DNA Identification Act*. This legislation must balance the protection of individual privacy against public safety.

There is no questioning the importance of this kind of information both in solving crimes and in proving innocence. However, the spectre of every Canadian who has been charged with any kind of offence being “registered” in this database is frightening. Will it one day include shoplifting, simple possession of cannabis, traffic offences? Where will you draw the line? On what basis will the line be drawn?

While genetic information such as DNA profiles is essential for law enforcement purposes, privacy safeguards are of crucial importance. The *DNA Identification Act* involves the mandatory collection of DNA samples without consent. This drastic curtailment of the right of the individual to control information, not only about themselves, but also about their whole family, must only be applied in the most pressing cases. I have always been concerned that the list of offences for which DNA can be required is too broad: one can see a more compelling case for offences involving violence than for offences involving property, for example.

I am also concerned about the potential for this database to expand to become a defacto “national, universal, DNA database”. I am not a statistician, but let me try to give you some examples. According to the Statistics Canada table I have enclosed, in 2001, 994.5 persons per hundred thousand (pph) were convicted of “crimes of violence”. Let’s say these people are all in the Data Bank. If the Data Bank was expanded to include everyone convicted of a “property crime” (i.e. possession of stolen goods), the Data Bank increases by 4,046.5 pph for 2001, a fourfold increase. If the Data Bank was then expanded to include “other criminal code offences”, the size of the Data Bank increases by 2706.4 pph (2001), another threefold increase over a Data Bank populated only by persons convicted of “crimes of violence”.

If the Data Bank was then expanded to include persons convicted under “Federal Statutes” (whatever they are), add another 418.8 pph (2001). Eventually, a Data Bank which, contained DNA of 994.5 pph (“crimes of violence” - 2001) becomes a Data Bank containing the DNA of 8572.5 pph. A lot of us have had some encounter with the law. Can we look forward, one day, to all of us populating this Data Bank? I know this is rather crude sociology, but it illustrates my concern. There must be some known limit to the size of the Data Bank. What are the limits? What are the criteria for adding convictions to the list?

I am equally concerned about the possibility of ‘function creep’: that is, using the Data Bank for purposes other than what was intended. Who else will be given access to the Data Bank? To whom else can law enforcement authorities disclose information in the Data Bank and for what purposes? Could they disclose the information to Revenue Canada, Human Resources Development Canada, drug companies, insurance companies and so on? Surely the answer must be “No”. With all due respect, I am not entirely sure that leaving this Data Bank in the hands of the RCMP is the best idea either.

I would prefer to see it in the hands of an independent agency, which could set conditions for its use. Short of that however, the allowed uses for this Data Bank must be clearly set out and there must be a periodic, independent audit of the Data Bank, regardless of who runs it, to ensure that it is run in accordance with the rules.

In my view, any expansion in the mandatory collection of DNA samples for this Data Bank must be based upon the most compelling justification. I find such justification lacking in this consultation paper. For that reason, I do not support these suggestions for increased scope of collection of samples for the DNA Data Bank.

Many privacy issues are not identified in this consultation paper. For example, there are issues such as harmonization with provincial legislation, transborder data flow, electronic databases and transmissions, retention, storage and disposal of samples and records of analysis, accountability and independent oversight of the data bank. Again, I urge you to create independent oversight for the Data Bank.

I note that this consultation is intended to support the future Parliamentary review that is scheduled for June of 2005. I look forward to participating in the more comprehensive review of this legislation at that time.

Yours truly,

Frank J. Work, Q.C.
Information and Privacy Commissioner

Cc: Mr. George Radwanski, Privacy Commissioner of Canada