



E19 A Multi-Agency Protocol for the Mandated Destruction of DNA Samples (Exemplars) and Results

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The goal of this presentation is to provide information about how Canada has dealt with the issue of the retention and subsequent use of suspect and elimination DNA samples and records; and to describe the development of a multi-agency protocol for the destruction of DNA samples (exemplars) and results in criminal cases and provide information on some of the legal, policy and operational issues requiring consideration during the development of the protocol.

This presentation will impact the forensic community and/or humanity by demonstrating various legal and policy issues have arisen in the forensic science and legal communities in regard to the retention and subsequent use of suspect, elimination and victim DNA samples and records. This presentation provides information on 1) how Canada has dealt with this issue by mandating destruction of DNA samples and records under certain conditions, and 2) the design of a multi-agency protocol in the Province of Ontario to accomplish the destruction. The presentation also provides information on various legal, policy and operational considerations in the protocol design.

This presentation will describe the protocol being used in the Province of Ontario to accomplish destruction of 1) DNA samples obtained under "DNA warrant" or by consent from suspects, accused persons, and other persons of interest in criminal investigations, and 2) the records of forensic DNA analysis of those samples. In addition, the legal/policy and operational considerations involved in the development of the protocol will be discussed.

In Canada, the *Criminal Code* mandates destruction "without delay" under certain specified conditions of the results of forensic DNA analysis and of known DNA samples (exemplars) obtained, either voluntarily or under a "DNA warrant," from suspects, accused persons and other persons of interest in criminal investigations. The main ground for destruction is exclusion of the person as the source of DNA from the "crime scene" ("crime scene" includes the place where the offence was committed, medical samples taken from a victim, anything worn or carried by the victim at the time when the offence was committed, and the body of any person or thing and any place associated with the commission of the offence). For "DNA warrant" samples, destruction must also occur if the person has been acquitted or one year has expired after: discharge after a preliminary inquiry; dismissal, for any reason other than acquittal, or withdrawal of any information charging the person with the designated offence or any other offence in respect of the same transaction; or a stay of any proceeding against the person for the offence or any other offence in respect of the same transaction.

The *Criminal Code* also contains a provision whereby, in the case of samples obtained under a "DNA warrant," a provincial court judge may order that the bodily substances taken from a person and the results of forensic DNA analysis not be destroyed during any period that the provincial court judge considers appropriate, if the judge is satisfied that the bodily substances or results might reasonably be required in an investigation or prosecution of the person for another designated offence or of another person for the designated offence or any other offence in respect of the same transaction.

In designing the protocol a number of legal, policy and operational factors required consideration:

- Records kept by police, Crown counsel and forensic scientists and the nature of the information contained in those records
- Access to information within the criminal justice system
- Possibility of judicial orders delaying destruction of "DNA warrant" samples and results
- Designated officers (police officers with National DNA Data Bank duties) and upkeep of lists
- Timelines for response
- Custody, control and legal ownership of samples



Jurisprudence Section – 2005

- American Society of Crime Laboratory Directors/Laboratory Accreditation Board requirements for case records
- Disclosure (discovery) requirements
- The legal rights of accused persons, suspects, victims and other persons of interest under the *Charter of Rights and Freedoms*
- Case law on lost or destroyed evidence
- The legal meaning of certain terms used in the legislation (e.g., “without delay”)
- Protocols in other provinces/territories of Canada. The basic principles of the protocol are:
- Notification of the other parties by the organization in possession of the information that triggers the need for destruction
- Discussions between police and prosecutors
- In the case of “DNA warrant” samples and following discussions between the police and prosecutors, a decision on whether the Crown will apply for a judicial order to delay destruction
- Notification of the other parties when an order is made to delay destruction
- Notification of the action (destruction or retention) to be taken by the forensic laboratory and the reason for that action
- Confirmation by the laboratory of destruction.

In addition, to facilitate the destruction, changes were made to some of the information captured in records within the Centre of Forensic Sciences and to DNA reports issued by the Centre of Forensic Sciences.

DNA, Multi-Agency Protocol, Destruction