

# CANADÁ

## DNA IDENTIFICATION ACT OF DECEMBER 10th, 1998

An Act respecting DNA identification and to make consequential amendments to the Criminal Code and other Acts

[Assented to 10th december, 1998]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### *Short Title*

1. This Act may be cited as the *DNA Identification Act*.

### *Interpretation*

#### *Definitions*

2. The definitions in this section apply in this Act.

“Commissioner” « *commissaire* ».

“Commissioner” means the Commissioner of the Royal Canadian Mounted Police.

“Designated offence” « *infraction désignée* ».

“Designated offence” means a designated offence within the meaning of section 487.04 of the *Criminal Code* or section 196.11 of the *National Defence Act*.

“DNA” « *ADN* ».

“DNA” means deoxyribonucleic acid.

“DNAprofile” « *profil d’identification génétique* ».

“DNA profile” means the results of forensic DNA analysis of a bodily substance.

“Forensic DNA analysis” « *analyse génétique* ».

“Forensic DNA analysis”, in relation to a bodily substance, means forensic DNA analysis of the bodily substance.

“Young person” « *adolescent* ».

“Young person” has the same meaning as in subsection 2(1) of the *Young Offenders Act*. 1998, c. 37, s. 2; 2000, c. 10, s. 4.

### *Purpose*

3. The purpose of this Act is to establish a national DNA data bank to help law enforcement agencies identify persons alleged to have committed designated offences, including those committed before the coming into force of this Act.<sup>1</sup>

### *Principles*

4. 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 con-

<sup>1</sup> Note: sections 2, 3 and 12 in force may 8, 2000, see SI/2000-37; sections 1, 4 to 11 and 13 to 25 in force june 30, 2000, see SI/2000-60.

viction 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. 1998, c. 37, s. 4; 2000, c. 10, s. 5.

### *National DNA Data Bank*

#### *Establishment*

5. (1) The Solicitor General of Canada shall, for criminal identification purposes, establish a national DNA data bank, consisting of a crime scene index and a convicted offenders index, to be maintained by the Commissioner.

#### *Commissioner's Duties*

(2) The Commissioner's duties under this Act may be performed on behalf of the Commissioner by any person authorized by the Commissioner to perform those duties.

#### *Crime Scene Index*

(3) The crime scene index shall contain DNA profiles derived from bodily substances that are found:

(a) At any place where a designated offence was committed.

(b) On or within the body of the victim of a designated offence.

(c) On anything worn or carried by the victim at the time when a designated offence was committed.

(d) On or within the body of any person or thing or at any place associated with the commission of a designated offence.

#### *Convicted Offenders Index*

(4) The convicted offenders index shall contain DNA profiles derived from bodily substances described in subsection 487.071(1) of the Criminal Code, subsection 196.22(1) of the National Defence Act.

#### *Other Information*

(5) In addition to the DNA profiles referred to in subsections (3) and (4), the DNA data bank shall contain, in relation to each of the profiles, information from which can be established.

(a) In the case of a profile in the crime scene index, the case number of the investigation associated with the bodily substance from which the profile was derived; and

(b) In the case of a profile in the convicted offenders index, the identity of the person from whose bodily substance the profile was derived. 1998, c. 37, s. 5; 2000, c. 10, s. 6.

#### *Communication of Information*

6. (1) On receipt of a DNA profile that is transmitted under subsection

487.071(1) of the *Criminal Code*, subsection 196.22 (1) of the *National Defence Act* or subsection 10 (3) for entry in the DNA data bank, the Commissioner shall compare it with the DNA profiles in the data bank in order to determine whether it is already contained in the data bank and may then communicate, for the purposes of the investigation or prosecution of a criminal offence, the following information to any Canadian law enforcement agency or laboratory that the Commissioner considers appropriate:

(a) Whether the DNA profile is already contained in the data bank; and

(b) Any information, other than the DNA profile itself, that is contained in the data bank in relation to that DNA profile.

#### *Authorized Users*

(2) Information as to whether a person's DNA profile is contained in the convicted offenders index may be communicated to an authorized user of the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police.

#### *Foreign Law Enforcement Agencies*

(3) On receipt of a DNA profile from the government of a foreign state, an international organization established by the governments of states or an institution of any such government or international organization, the Commissioner may compare the DNA profile with those in the DNA data bank in order to determine whether it is already contained in the data bank and may then communicate information re-

ferred to in subsection (1) to that government, international organization or institution.

#### *Communication of DNA Profile*

(4) The Commissioner may, on the request of a law enforcement agency in the course of the investigation of a designated offence, communicate a DNA profile contained in the crime scene index to the government of a foreign state, an international organization established by the governments of states or an institution of any such government or international organization.

#### *Agreement or Arrangement*

(5) Subsections (3) and (4) apply only if the Government of Canada or one of its institutions has entered into an agreement or arrangement, in accordance with paragraph 8(2)(f) of the *Privacy Act*, with that government, international organization or institution, as the case may be, authorizing the communication solely for the purposes of the investigation or prosecution of a criminal offence.

#### *Unauthorized Use*

(6) No person who receives a DNA profile for entry in the DNA data bank shall use it or allow it to be used other than for the purposes of the administration of this Act.

#### *Unauthorized Communication*

(7) No person shall, except in accordance with this section, communicate

or allow to be communicated a DNA profile that is contained in the DNA data bank or information that is referred to in subsection (1). 1998, c. 37, s. 6; 2000, c. 10, s. 7.

#### *Access to Information*

7. Access to information contained in the DNA data bank may be granted to

(a) Any person or class of persons that the Commissioner considers appropriate for the purposes of the proper operation and maintenance of the DNA data bank.

(b) The personnel of any laboratories that the Commissioner considers appropriate for training purposes.

#### *Unauthorized use of Information*

8. No person to whom information is communicated under subsection 6(1) or who has access to information under paragraph 7(a) or (b) shall use that information other than for the purposes referred to in that subsection or those paragraphs.

#### *Crime Scene Index*

8.1 Access to the information in the crime scene index shall be permanently removed, in accordance with any regulations that may be made under this Act, if the information relates to a DNA profile derived from a bodily substance of:

(a) A victim of a designated offence that was the object of the relevant investigation.

(b) A person who has been eliminated as a suspect in the relevant investigation.

#### *Information to be Kept Indefinitely*

9. (1) Subject to subsection (2), section 9.1 and the *Criminal Records Act*, information in the convicted offenders index shall be kept indefinitely.

#### *Access to Information to be Permanently Removed*

(2) Access to the following information in the convicted offenders index shall be permanently removed without delay after.

(a) In the case of information in relation to a person who has been convicted of a designated offence, the conviction is quashed and a final acquittal entered.

(b) In the case of information in relation to a person who has been discharged under section 730 of the *Criminal Code* of a designated offence.

(i) The expiry of one year after the person is discharged absolutely, unless the person is convicted during that year of another offence.

(ii) The expiry of three years after the person is discharged conditionally, unless the person is convicted during those three years of another offence.

(c) to (e) [Repealed, 2000, c. 10, s. 8]. 1998, c. 37, s. 9; 2000, c. 10, s. 8.

#### *Young Offenders, Access to Information Removed*

9.1 (1) Access to information in the convicted offenders index in relation to a young person who has been found guilty of a designated offence under the *Young Offenders Act* shall be permanently removed without delay when the last part of the record in relation to the same offence is required to be destroyed under subsection

45(2), 45.02(3) or 45.03(3) of the *Young Offenders Act*.

*Exception*

(2) Section 9 nevertheless applies to information in the convicted offenders index in relation to a young person's record to which section 45.01 or subsection 45.02(2) of the *Young Offenders Act* applies. 2000, c. 10, s. 9.

*Storage of Bodily Substances*

10. (1) When bodily substances are transmitted to the Commissioner under subsection 487.071(2) of the *Criminal Code* or subsection 196.22(2) of the *National Defense Act*, the Commissioner shall, subject to this section and section 10.1, safely and securely store, for the purpose of forensic DNA analysis, the portions of the samples of the bodily substances that the Commissioner considers appropriate and without delay destroy any remaining portions.

*Change in Technology*

(2) Forensic DNA analysis of stored bodily substances may be performed if the Commissioner is of the opinion that the analysis is justified because significant technological advances have been made since the time when a DNA profile of the person who provided the bodily substances, or from whom they were taken, was last derived.

*Transmission of DNA Profile*

(3) Any DNA profile that is derived from stored bodily substances shall be transmitted to the Commissioner for entry in the convicted offenders index

and no person shall use such a DNA profile except to transmit it under this subsection.

*Access*

(4) Access to stored bodily substances may be granted to any person or class of persons that the Commissioner considers appropriate for the purpose of preserving the bodily substances.

*Use of bodily substances*

(5) No person shall transmit stored bodily substances to any person or use stored bodily substances except for the purpose of forensic DNA analysis.

*Later destruction*

(6) The Commissioner may at any time destroy any or all of the stored bodily substances if the Commissioner considers that they are no longer required for the purpose of forensic DNA analysis.

*Mandatory Destruction in Certain Cases*

(7) The Commissioner shall nevertheless destroy the stored bodily substances of a person without delay.

(a) If the person has been convicted of a designated offence, after the conviction is quashed and a final acquittal entered.

(b) If the person has been discharged under section 730 of the *Criminal Code* of a designated offence.

(i) After the expiry of one year after the person is discharged absolutely, unless the person is convicted during that year of another offence, or

(ii) After the expiry of three years after the person is discharged conditionally, unless the person is convicted during those three years of another offence.

(c) to (e) [Repealed, 2000, c. 10, s. 10].

#### *Where Pardon Granted*

(8) Despite anything in this section, stored bodily substances of a person in respect of whom a pardon, within the meaning of section 2 of the *Criminal Records Act*, is in effect shall be kept separate and apart from other stored bodily substances, and no such bodily substance shall be used for forensic DNA analysis, nor shall the existence of such a bodily substance be communicated to any person. 1998, c. 37, s. 10; 2000, c. 10, s. 10.

#### *Young Offenders, Destruction of Bodily Substances*

10.1. (1) The Commissioner shall, without delay, destroy stored bodily substances of a young person who has been found guilty of a designated offence under the *Young Offenders Act* when the last part of the record in relation to the same offence is required to be destroyed under subsection 45(2), 45.02(3) or 45.03(3) of the *Young Offenders Act*.

#### *Exception*

(2) Subsections 10(6) and (7) nevertheless apply to the destruction of

stored bodily substances of a young person relating to a record to which section 45.01 or subsection 45.02(2) of the *Young Offenders Act* applies. 2000, c. 10, s. 11.

#### *Offence*

11. Every person who contravenes subsection 6(6) or (7), section 8 or subsection 10(3) or (5).

(a) Is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) Is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months, or to both.

#### *Regulations*

12. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act.

#### *Review of Act*

##### *Review of Act by Parliamentary Committee*

13. 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 of both Houses of Parliament that is designated or established for that purpose.<sup>2</sup>

<sup>2</sup> Note: sections 2, 3 and 12 in force may 8, 2000, see SI/2000-37; sections 1, 4 to 11 and 13 to 25 in force June 30, 2000, see SI/2000-60. 1998, c. 37, s. 13; 2000, c. 10, s. 12.

*Report to Parliament**Annual Report*

13.1. (1) The Commissioner shall, within three months after the end of each fiscal year, submit to the Solicitor General a report on the operations of the national DNA data bank for the year.

*Tabling in Parliament*

(2) The solicitor general shall cause the report of the Commissioner to be tabled in each House of Parliament on any of the first 15 days on which that

House is sitting after the Solicitor General receives it. 2000, c. 10, s. 12.

*Consequential Amendments*

14. to 25. [Amendments].

*Coming into Force**Coming into force*

26. This Act or any of its provisions or any provision of an Act enacted by this Act comes into force on a day or days to be fixed by order of the Governor in Council.<sup>3</sup>

<sup>3</sup> Note: sections 2, 3 and 12 in force may 8, 2000, see SI/2000-37; sections 1, 4 to 11 and 13 to 25 in force June 30, 2000, see SI/2000-60.