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## DNA evidence can be faked

Forensic scientists put a fox in the henhouse with these findings



By Robert Todd | Publication Date: Monday, 24 August 2009

There must be an immediate review of cases where DNA evidence helped land a conviction after scientists recently discovered such evidence can easily be fabricated, says a Toronto criminal defence lawyer.

"At the very least there ought to be a cursory review of all DNA cases to see if any of the main players — whether it's from the Crown, including the police, or the defence — had the knowledge, access, or the ability to create fake DNA," says Leo Adler of Adler Bytensky Prutschi, who is a member of the Canadian Society of Forensic Science.



Israeli scientists have shown DNA evidence can easily be falsified and planted before officers investigate a crime scene.

He adds cases involving accused who maintain their innocence should get special attention.

"This is a very early wake-up call, and I would strongly urge the labs to immediately be able to look into this," says Adler.

Scientists from an Israeli life science company that specializes in forensic DNA analysis published the shocking finding in the online scientific journal Forensic Science International: Genetics. Their findings show DNA evidence can easily be falsified and planted before officers investigate a crime scene.

The scientists are from the company Nucleix Ltd., which has developed technology to help investigators identify fake DNA.

In a release announcing the discovery, the company said, "standard molecular biology techniques, such as polymerase chain reaction (PCR), molecular cloning, and more recently available whole genome amplification, enable anyone with basic equipment and limited know-how to synthesize unlimited amounts of artificial (in vitro) DNA with any desired profile."

Adler says there have always been concerns that individuals might attempt to "create" forensic evidence. For example, there have been incidents of fingerprint forgery, and in the case of wrongfully convicted Guy Paul Morin, an attempt was made to plant a cigarette butt, says Adler.

In the O.J. Simpson case, defence lawyers argued evidence was planted, including blood used for DNA evidence. "So it's not unusual to have efforts to get around, or to be able to deal with forensics," says Adler.

David Rose of Neuberger Rose LLP, who has written a book on DNA evidence, says the test offered by Nucleix is important, and labs should use it.

But he says he doesn't believe the finding raises the spectre of wrongful convictions. Contrary to claims from Nucleix, Rose says the scenario proposed by the company would require extremely sophisticated equipment and a "very talented" scientist.

"What it probably implies is that as the technology to replicate DNA becomes more readily accessible, then the idea that your DNA can be in a variety of locations is going to become more commonly accepted," he says.

Rose suggests there are much easier ways to frame someone using DNA than the technique outlined by the Nucleix study.

"It's a lot easier for someone to follow you around, grab a Coke can you've had, perform a bank robbery, and leave the can of Coke at the crime scene. Bingo, your DNA's at the crime scene." Adler says what's most shocking about this finding, however, is that it deals with the manufacturing of DNA. He suggests the findings are a wake-up call to forensic science labs.

He says labs must guard against any presumptions on evidence, noting that Ontario's justice system has been rocked by poorly scrutinized expert evidence — most notably involving forensic pathologist Dr. Charles Smith.

While there is plenty of certification and examination for lab technicians, Adler says "the real test" for them comes when the authorities come and say they have DNA that belongs to a specific suspect in a murder case, and request a test. That could prompt tests based on potentially faulty assumptions.

"This is simply another field, and there has been too much idol worship, if you will, about DNA," says Adler. "I long ago said there are going to be ways that DNA will be defeated, or that DNA can be used to fool people — and this is what's happening."

Adler says labs must conduct their tests free of any assumptions and techniques must be developed to assist that process.

Ricardo Federico, a co-chairman of the annual Canadian Symposium on DNA Forensic Evidence at

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Osgoode Hall Law School, says the finding is "disturbing and worrisome." He is eager to see a peer review.

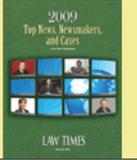
Federico says the discovery also prompts questions about privacy and the international exchange of such evidence. "When it comes to fabricating a crime scene in a foreign jurisdiction, the level of competence for other countries is important," he says.

Adler says there is clearly a need to reassess the power of DNA evidence. "Every time that we think we're so smart because we have a foolproof system, somebody shows us that we're not," says Adler. "It's an excellent lesson to always remember."

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