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Rose and Goos

DNA — *A Practical Guide*

This work will serve as a complete resource for those involved in the investigation, prosecution and defence of charges involving DNA evidence.

This release features updates to Chapters 4 (Obtaining a Sample from a Suspect), 5 (Trial Issues), 6 (Post-Conviction DNA Sampling).

Highlights

- **Obtaining a Sample from a Suspect — Voluntary Samples — Police Seizure of a Biological Sample in the Possession of a Doctor or Medical Professional without a Warrant** — The accused was being treated in hospital for cuts sustained during the police's dynamic entry to his dwelling for the purposes of executing a search warrant relating to a homicide investigation. While at the hospital, the detective asked the accused for consent to seize a blanket that had his blood on it, and explained that a positive match of the blanket to DNA found at the crime scene would lead to charges against him. The accused ceded the blanket, and a DNA match was found. The Court of Appeal dismissed the accused's appeal. The trial judge refused to exclude the evidence, despite having found the consent not to be valid and the accused's s. 8 *Charter* rights to have been violated, since the seizure was neither invasive nor intrusive: *R. v. Stewart*, 2018 BCCA 76, 2018 CarswellBC 496 (B.C. C.A.).

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- **Trial Issues — Jury Instructions —** According to the Court of Appeal for Ontario, when DNA evidence inculpates the accused, the burden of proof does not shift — the burden is always on the Crown, and the accused has no obligation to explain DNA evidence. In this instance, the Crown overstated the probative value of the DNA evidence and mischaracterized the nature of the bodily fluid in which the evidence had been found — the trial judge erred by not correcting for the Crown's overstatement and mischaracterization, via instructions to the jury. Consequently, the Court of Appeal overturned the accused's conviction: *R. v. J.S.*, 2018 ONCA 39, 2018 CarswellOnt 1560 (Ont. C.A.).