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A Professional Services Corporation Governmental Affairs Attorneys At Law

Tim Schellberg tims@smithallinglane.com and Lisa Hurst lhurst@smithallinglane.com of Smith Alling Lane, P.S. provide nationwide governmental affair services to PE Biosystems. As part of the firm's representation weekly reports are generated which identify recent state and federal legislation and news articles. PE Biosystems has authorized Smith Alling Lane to make these reports available to anyone that requests them through this web site.

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The July 21, 2000 DNA legislative and media report is listed below.

These reports are prepared by Tim Schellberg and Lisa Hurst of Smith Alling Lane (253) 627-1091, on behalf of PE Biosystems. Text of legislation can be obtained by following the appropriate state-link at this site: http://www.ncsl.org/public/sitesleg.htm. Please see the appropriate media website for the newspaper articles.

COMMENTS

DNA databases received a considerable amount of press. North Carolina is considering legislation that would allow DNA samples to be taken from certain felony arrests. The Virginia report linking burglary and rape has been released and was carried by several papers around the nation. Legislators from around the country attended a workshop on DNA issues, which may directly result in new legislation next year. Canada's national database came online on June 30 and is receiving a great deal of both praise and criticism.

Backlogs in Alabama are said to be reaching a 21-month delay. Mention was also made of backlog problems in Illinois. In Virginia, a US Senate candidate is recommending that Congress fund state DNA databases and backlogs at \$150 million. Florida was highlighted in two articles for its strong history of funding for DNA analysis. Police in England and Australia will be getting more money for DNA testing.

Missouri is using STR testing for the first time in a criminal case. California, Florida, Maine, Virginia, and Iowa had articles on "cold hits" from their databases. Florida used its database to help solve two crimes in the Bahamas. Colorado has solved an old case through new DNA testing.

British police are facing a criticism that US law enforcement would like to have – recent studies show that of 900 recent database matches, 30 were not followed up on.

In post conviction news, leaks on the Texas reprieve indicated that the post conviction tests further implicate the inmate. Numerous papers around the country carried articles on persons recently exonerated and on those seeking DNA testing from prison.

STATE LEGISLATION

Forensic DNA

- 1. Alaska SB 192 Appropriates 207,100 to the Department of Public Safety for crime lab equipment replacement.
- 2. New Jersey AB 2705 Provides for post conviction DNA testing in death penalty cases if identity was at issues during trial.
- 3. North Carolina SB 165 would require DNA samples for certain felonies upon arrest or conviction.

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 South Carolina HB 4775 – 2001 Budget Bill provides 240,001 for the Law Enforcement Division's DNA Database Program.

Genetic Privacy

Delaware SB 348 – Defines the term "genetic condition" to conform to federal law.

NEWS ARTICLES

Forensic DNA

- 1. "Texan's test says guilty." US News & World Report, July 31, 2000. Test results from post conviction DNA analysis conducted for death row inmate Ricky McGinn are reported to further implicate him as the culprit. McGinn is the only death row inmate who has been granted a reprieve during Texas Governor George Bush's five-year term. Studies show that post conviction DNA analysis upholds the jury's conviction 60 percent of the time. Defense lawyers still claim victory in getting Gov. Bush to acknowledge that there may be problems with the criminal justice system.
- "GOVERNMENT SPENDING REVIEW: Straw sees funds helping to boost police." Financial Times (London), July 19, 2000.
 Police funding in London will increase 3.8 percent per year for the next three years. Extra funds will be spent on a wide range of police needs, including "improved DNA technology to help police meet new tough targets for reducing burglary and care crime."
- 3. "DNA tests accepted as criminal evidence." Mainichi Daily News, July 19, 2000. For the first time, the Japanese Supreme Court has ruled that DNA test results are acceptable as evidence in a criminal trial. In this case, the culprit confessed to the rape and murder of a toddler, but later retracted his confession despite DNA evidence that conclusively linked him to the crime. The culprit argued that the DNA testing was "invalid." The Court stated "Theoretically, the testing is extremely accurate."
- "Police investigating rapes Waterboro may have committed outside Maine." The Associated Press State & Local Wire, July 18, 2000.
 - Police in Maine use CODIS to link a man to at least four rapes. Authorities believe the man could also be responsible for sexual assaults as far away as Massachusetts. A break in the case came after a girl identified the man as her attacker from a photograph the other three rapes had been linked to one another but no attacker had been identified. The man had been arrested in previous years for drug possession, harassing phone calls, and for soliciting sex from an undercover police officer.
- 5. "Spokane serial killings defendant charged with two more deaths in Tacoma." The Associated Press State & Local Wire, July 18, 2000.
 - The suspected serial killer in Spokane, Washington (already charged with eight murders) has now been charged with two additional killings in another part of the state. One of the victims was linked to the suspect through DNA evidence found on her body.

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- 6. "DNA kits offer indelible IDs for kids." St. Petersburg Times, July 18, 2000. Kids-DNA (of Florida) offers DNA sample kits to parents who are interested in preserving a sample of their child's DNA. Kits are sold for about \$19 and analysis is conducted by private labs in Tennessee and Boston for about \$200. However, most parents do not opt to have the sample analyzed immediately. The Florida Law Enforcement Department says collecting these samples is a good idea and points out that 40 hospitals in the state currently offer parents a sample from newborns.
- 7. "DNA clears son in death of couple." The Washington Times, July 18, 2000. DNA evidence has cleared the adopted son of a couple murdered three years ago in Virginia. Unfortunately, the sample that was collected from the crime scene evidence was not large enough to be submitted to the state's DNA database it met only five steps of the thirteen-step process. However, police believe they have a large enough sample to accurately identify the culprits when they are found.
- 8. "GOP platform highlights." The Associated Press State & Local Wire, July 17, 2000.

 The West Virginia Republican Party platform includes an initiative to allow residents to vote on reinstating the death penalty "where the aggravating factors outweigh mitigating factors and where there is 100 percent certainty of the perpetrators through DNA evidence."
- 9. "A Summary of Illinois News." The Associated Press State & Local Wire, July 17, 2000. An Illinois inmate is asking a judge to release physical evidence for DNA testing in order to prove his innocence. An answer is expected later this summer. At least 62 inmates across the country have been exonerated through post conviction DNA testing, but in six of 10 cases post conviction DNA testing only further confirms the inmate's guilt.
- 10. "Allen proposes \$150 million expansion of criminal DNA database The Associated Press State & Local Wire, July 17, 2000.
 Former Virginia Governor George Allen currently challenging Sen. Chuck Robb for one of Virginia's US Senate seats has proposed \$150 million initiative to encourage states to collect DNA samples from all convicted felons, to participate in CODIS, and to clear up analysis backlogs. Virginia's database of 120,000 offenders accounts for about a quarter of the national database and has been key in solving 180 crimes. Sen. Robb has said that he also favors expanding CODIS.
- 11. "Flood of DNA evidence in Florida has fans, foes." The Miami Herald, July 17, 2000. Many in Florida were happy recently when DNA was used last week to successfully match a US resident to two crimes committed in the Bahamas. It is the first time DNA has been used to link an American suspect to a foreign crime. The article discusses several successes that Florida has had with its database and how consistent funding has been an important facet of getting all the samples entered into the database (\$2 million this year). However, "Big Brother" concerns are at the debate on how much further to expand DNA database collections. Proposals to collect from all arrestees have gotten the ACLU worried. Article also contains a somewhat detailed description of the 3700 Genetic Analyzer.

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- 12. "Battle brews over DNA data bank." The Ottawa Citizen, July 17, 2000.

 Police in Canada are attempting to obtain samples from as many convicted offenders as allowed by law for the new national database, but defense attorneys are challenging them at every turn. In addition to persons convicted of certain crimes that are required to give samples (such as murder, aggravated assault, and violent sex crimes), police may also ask for permission to collect samples in certain other cases, such as criminal negligence and impaired driving causing death or bodily harm, possession of child pornography, robbery, and assaulting a police officer, breaking and entering, assault and failure to stop at the scene of an accident.
- 13. "State has backlog in evidence testing, which delays trials." The Associated Press State & Local Wire, July 16, 2000. Alabama is estimated to have a 21-month backlog in DNA testing. In a recent trial, a defendant in a murder case questioned whether his constitutional right to a speedy trial had been violated because of the delay in DNA analysis. The judge allowed the murder case to stand, but the chief deputy district attorney said the backlog "is about to reach critical mass." The director of the Alabama Forensics Department was scheduled to meet with circuit judges from around the state to discuss the backlog issue and funding solutions.
- 14. "Budget to boost DNA testing." AAP Newsfeed, July 16, 2000.

 The Queensland (Australia) police will receive \$1.9 million for a DNA program in the state budget.

 The funding will allow the state to establish its own DNA database and join the national database with the other states. The database is expected to help solve sex crimes, but they also have high expectations of improving the "clear-up" rate for other offenses, as demonstrated by England's experience. In England, the property crime clear-up rate rose from 12 percent to 40 percent after the database was started.
- 15. "Legislators debate latest public policy." Chicago Sun-Times, July 16, 2000.

 At the National Conference of State Legislatures in Chicago, legislators from across the nation met for discussions and over 150 work sessions. Among these work sessions was one entitled, "Capital Punishment on trial." Legislators learned of issues related to post conviction testing, and also heard from a Virginia legislator who spoke of the successes Virginia has had with their DNA database. The Utah Senate President was reported to be taking "careful notes."
- 16. "Parolee still hopes DNA clears him." The Houston Chronicle, July 16, 2000.

 A parolee in Texas is hoping that a DNA test will clear his record. The DA has voiced no opposition to the parolee's pursuit of further DNA testing. The article goes on to discuss the difficulty with achieving full exonerations even when DNA tests exclude the person from the crime, because of the lack of appropriate mechanisms in the criminal justice system.
- 17. "More rely on miracle' of DNA test; Power to convict, exonerate." Sunday Telegram, July 16, 2000. A Boston inmate has been released after 10 years in prison when DNA tests proved he did not commit the crime. Advocates for post conviction testing say the tool should eventually help restore faith in the criminal justice system, "even as it rights its wrongs."

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- 18. "Crown seeks DNA sample." Calgary Herald, July 15, 2000.

 Prosecutors in Canada are seeking a DNA sample from a man convicted of possessing child pornography. The legislation permitting a judge to allow such a collection is only two-weeks old. The judge will rule on the request for DNA in October.
- 19. "DNA results not in favor of Texan inmate given Bush reprieve." The Dallas Morning News, July 15, 2000.

Leaked results from post conviction DNA analysis appear to further implicate the inmate. The inmate was the first person in 5 years to be granted a reprieve by Gov. Bush. Test results concluded that a hair found inside the victim's body came from the inmate, or one of his maternal relatives (no relatives were ever suspected in the crime). Defense attorneys responded to the results by focusing on the larger issue of assured access to post conviction DNA testing. The FBI is largely being blamed for the leak (the results were under a gag order), but the agency denies it was the source.

20. "Program creates IDs to help missing kids." The Florida Times-Union (Jacksonville, FL), July 15, 2000.

Police in Orange Park, Florida, in conjunction with a local hardware store and security company, are sponsoring a program for parents to have their children photographed, fingerprinted and to secure a lock of hair for DNA testing. Parents will typically place the kit someplace safe and hope they never have to use them. Police are glad to know that they may have some substantial evidence if a local child ever disappears.

- 21. "Police DNA failure lets criminals go free." The Times (London), July 15, 2000. Police in England are under fire for not pursuing up to 10 percent of matches that are made through the DNA database. Police DNA experts admit to a "black hole" that seems to occur when results are sent back to local jurisdictions. This "black hole" seems to occur most commonly on the more widespread crimes of car theft and burglary. Police have been warned that they must make better use of DNA technology.
- 22. "DNA test irrelevant, court finds." The Daily Oklahoman, July 14, 2000. In Oklahoma, new DNA tests that forced a stay of execution for a convicted murderer have been deemed irrelevant by the state Court of Criminal Appeals. Tests found that a drop of blood from blue jeans admitted at trial belonged neither to the inmate not to the victim. The court ruled that the results do not exonerate the inmate, but rather show that the jeans have no relevance to the case.
- 23. "Thousands in DNA testing to catch killer." The Daily Telegraph (London), July 14, 2000. In England, thousands of men are being asked to volunteer DNA samples in order to narrow the field of possible suspects in a rape/murder case. Detectives are asking up to 10,000 men to come forward for the purposes of elimination.
- 24. "Police may test syringes for DNA." The Dominion (Wellington), July 14, 2000. New Zealand police may test blood found in syringes that were dumped near a playground in order to track the user. Local children were found playing with up to 300 dirty syringes and needles. All the children have been tested for HIV and hepatitis. Several children suffered needle pricks and one drank from a syringe. Police have a national database of drug users and are considering testing the syringes against the database for a match.

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- 25. "Defence Slams DNA Databank." The Ottawa Sun, July 14, 2000.

 Canadian defense lawyers are bashing the new federal DNA database which came into effect on June 30. They claim that the three-hour time frame that it currently takes to collect blood samples from offenders is too long, and that the time will only increase once such sampling is no longer under the national spotlight. They also worry that it could be used unfairly in future investigations.
- 26. "Gilmore Faces Decisions As Inmates Seek DNA Tests." The Richmond Times Dispatch, July 14, 2000.
 - Virginia Governor Gilmore will need to make a decision shortly as to whether to order DNA testing for two men facing imminent execution. The decision by fellow Republican Governor Bush to force testing in a Texas case has cleared the way for Gilmore to make a similar decision without facing heavy criticism from the right wing. However, Gilmore may suffer much politically if he did not order the tests, since both parties are strong supporters of the death penalty in Virginia.
- 27. "DNA Links Pompano, Bahamas Rapes." Sun-Sentinel (Fort Lauderdale, FL), July 14, 2000. Police in Florida have linked a rape in Pompano, Florida to two rapes committed in the Bahamas, and a suspect has been arrested based on his matching genetic profile. The DNA sample was obtained from the suspect when he was arrested for possession of a fake license and for obstructing justice. It is the first time Florida and the Bahamas have connected separate cases in the two countries.
- 28. "Poll shows U.S. Senate race in Missouri close." The Associated Press State & Local Wire, July 13, 2000.
 - A Missouri prosecutor plans to use STR testing on DNA evidence, despite objections from the defense. STR has been used in Missouri to test for paternity, but has not been used in a criminal case. The tests showed that the suspect could not be excluded as the source of saliva found on two cigarette butts at the crime scene.
- 29. "Bill Seeks To Stall, Examine Sentences Death Penalty." The Columbus Dispatch, July 13, 2000. Some Ohio lawmakers have introduced a bill that would impose a moratorium on the death penalty while the state's criminal justice system is studied. The appropriate use of DNA technology in post conviction appeals is mentioned as a particular point of interest.
- 30. "Man gets life for assaulting 10-year-old at bus stop." The Virginian-Pilot (Norfolk, VA), July 13, 2000. Virginia's DNA database links a man to five sexual assaults on children. The man was not previously a suspect in the case. The man's DNA was first collected upon his conviction for a rape in 1997.
- 31. No Title. The Associated Press State & Local Wire, July 12, 2000.

 California's DNA database is used to link a man to a rape and burglary committed in 1998. The man was arrested in 1999 on a suspicion of prowling charge and permitted police to obtain a DNA sample from him at that time. Due to the backlog, the sample was only recently analyzed and entered into the database, where a match was made. The man is now suspected of another rape in the same apartment building and will likely be charged with that crime as well.

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- 32. "DNA tests free man held in jail since April in Trinity Park rape." The Herald-Sun (Durham, NC), July 12, 2000.
 - A homeless man in Durham who was arrested on rape, burglary and kidnapping charges was recently released when DNA tests excluded him as a possible culprit. The man was arrested after the victim identified him as matching the description of the attacker.
- 33. "Iowa Awaits Florida Inmate Tied to Woman's 1995 Death." Omaha World-Herald, July 12, 2000. A Florida inmate is being extradited to Iowa in connection with a 1995 murder. A DNA sample from the Iowa crime was matched against Florida's DNA database, where the inmate's sample resided from a child sexual assault conviction. The inmate confessed to the murder upon questioning.
- 34. "Man admits rape that led to mass DNA screening." The Record (Bergen County, NJ), July 12, 2000. Australia's first "DNA dragnetting" case that led to the arrest of a man for rape and burglary has now further resulted in the suspect's guilty plea. During the DNA screening, more than 600 men in a small Australian village donated their DNA sample in order to be excluded from the suspect list. Police promised to destroy the samples after the testing was completed.
- 35. "Trial scheduled in 21-year-old slaying after DNA analysis." The Associated Press State & Local Wire, July 11, 2000.

 In Colorado, DNA evidence is being used to solve a 21-year-old murder case. The crime evidence had been carefully kept, but DNA testing was only recently conducted with new technologies. The primary suspect is currently in prison serving time on a rape conviction.
- 36. "Prosecutors leery of DNA cases." The Detroit News, July 11, 2000.

 Some prosecutors are reluctant to release evidence that could result in exoneration. The Innocence Project usually fights with prosecutors and judges over such release. Prosecutors cite factors such as victim's rights as reasons for not releasing evidence. The also refer to sample contamination that could result in false exclusions or an indeterminate analysis.
- 37. "Privacy Issues Raised; State may add DNA testing for suspects." Morning Star (Wilmington, NC), July 11, 2000.
 - A bill in the North Carolina legislature would begin a pilot project in three counties to allow police to take DNA samples for certain violent crimes upon arrest. At this time, the legislation would allow the samples to remain in the database, even if the suspect is never convicted. The bill was thought to have considerable support in the Senate, but with the session ending, it is not likely to pass this year. However, with the support it has gathered, it could be revisited in January when the new session begins.
- 38. "Man arrested for indecent exposure is charged with old murder." The Associated Press State & Local Wire, July 10, 2000.
 - A Georgia man who was arrested for indecent exposure gave a DNA sample to police. The sample was sent to the state crime lab where it was matched against a 1999 murder / rape / burglary crime.

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- 39. "DNA Test Leads to Release of Kentucky Inmate." Lexington Herald-Leader, July 10, 2000. An inmate in Kentucky has been released after serving seven years on a 70-year prison term for rape and attempted rape convictions. He is the first inmate to be exonerated in Kentucky through DNA testing. A group of local ministers raised the money to have the DNA tests conducted.
- 40. "Four Ohio State U. student deaths still baffle police." University Wire, July 10, 2000. Police have been unable to solve four 1998 murders committed in Columbus Ohio. Two prisoners have confessed to the crimes, but DNA analysis, plus lack of significant knowledge of the crimes, has eliminated the would-be murderers. Columbus police are hopeful that when they come online with CODIS, some of their unsolved crimes will get resolved.
- 41. "Study: Many rapists were thieves first Results may lead to taking." USA Today, July 10, 2000. A recently released Virginia study concludes that 40 percent of men arrested for rape began their criminal careers in property crime, such as burglary and petty theft. The study is expected to prompt more calls for expansion of DNA databases. The Virginia study supports a study in Britain that found that three-quarters of all rapists started off as burglars, and an ongoing study in Florida is finding that half of their rapists were burglars first.
- 42. "Sex crime laws under review." The Bismark Tribune, July 9, 2000.

 The North Dakota legislature may consider several revisions to its sex crimes statutes when they reconvene in January. Among the list of possible revisions is a measure to extend the statute of limitations for rape cases from three to seven years in order to take better advantage of DNA technologies.
- 43. "Lab pushed on Roseland DNA tests; Results still could take weeks." Chicago Sun-Times, July 9, 2000.
 - DNA tests from murders in a Chicago neighborhood have been moved to the top of the state lab's priority list after public and political pressure has been brought to solve the crimes. However, it could still take two months for the results to be finalized. Several hundred lesser-known cases will likely languish for several months, at least, due to the state's significant backlog.
- 44. "Highlights of proposed Democratic platform." The Associated Press, July 8, 2000.

 The national Democratic Party platform includes a provision that "In death penalty cases, DNA tests should be used in all appropriate circumstances and defendants should have effective assistance of counsel.
- 45. "Judge orders samples taken sex offenders must submit fluids to DNA bank." The Edmonton Sun, July 8, 2000.
 - Judges in Alberta, Canada order to first two of an expected 300 DNA samples that will be taken over the next few months for inclusion in the new national database. Prosecutors are moving quickly to obtain samples from those offenders who are scheduled to be released soonest.

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46. "DNA." Gannett News Service, July 8, 2000.

Article on Florida Department of Law Enforcement's collection of DNA samples from burglars. A state representative was quoted as saying that burglars often end up committing more serious crimes of rape and murder. Thus far, Florida has linked 10 DNA profiles to crimes in other states. FDLE is expected to collect 20,000 samples from burglars currently in the prison system, and another 20,000 from burglars expected to enter the system this year. The estimated cost is \$200,000 per year.

- 47. "Crime & Justice." The Washington Post, July 7, 2000.

 A man in Virginia has been linked by the state's DNA database to a murder committed in 1992. The man was released from prison in February 1999 after serving time for a robbery conviction.
- 48. "RCMP opens data bank of DNA from criminals." The Gazette (Montreal), July 6, 2000. Canada's new national database is expected to catch the guilty as well as exonerate the innocent. The price tag for establishing the database was \$10.6 million, with an annual budget of \$5 million. Police are restricted from taking samples from suspects only samples from certain convicted offenders may be taken without a court order.

Genetic Privacy

- 49. Editorials. New Jersey Law Journal, July 17, 2000.

 Argues in favor of acting swiftly to protect genetic information from insurers and employers. While the
 - author acknowledges that passing legislation may seem premature in light of the fact that we are likely years away from widespread use genetic information to detect health problems, it is not unfeasible that the issue could begin to emerge before proper safeguards are in place.
- 50. "How can Congress reverse the impact of genetic discrimination on employment and health insurance opportunities?" Roll Call, July 17, 2000.
 Article written by US Rep. Ney (R-OH). States that Congress' inaction on addressing the genetic information concerns of citizens is leading to a backlash on health research because people are not willing to undergo testing. If Congress does not act soon to provide some assurances to the public that their genetic health information can not be used against them to discriminate in insurance or employment practices, then real progress on genetic research and potential cures will suffer.
- 51. "Nondiscrimination Laws Critical to Genetic Future." Roll Call, July 17, 2000. Article by US Rep. Slaughter (D-NY). Rep. Slaughter is the primary sponsor of federal legislation that would prohibit insurance companies and employers from discriminating based on genetic information. This article gives case studies in support of her bill, as well as quotes from the Human Genome Project and Celera in support of her efforts.
- 52. "PRIVACY: Senator Predicts Three-pronged Medical Privacy Plan." National Journal's Technology Daily, July 14, 2000.
 - US Sen. Frist (R-TN) is suggesting that Congress address medical privacy as three separate bills instead of in one package. The first measure would be similar to what the Senate recently passed for genetic discrimination. Another measure would expand Clinton's recent electronic privacy rules to include paper documents. Lastly, further restrictions would come on an insurer's use of a customer's personal data. Frist sees this piecemeal approach as more effective.

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- 53. "Insurers Shy Away From Human Genome." National Underwriter Life & Health/Financial Services Edition, July 10, 2000.
 - Several US insurance groups claim that none of their members have expressed an interest in obtaining genetic testing information for a basis of who should be covered. Insurance companies are expected to reap considerable more direct benefits over the next few years from low-key efforts to study viruses and bacteria, rather than from efforts to decode the human genome. However, several states have already adopted a law that prohibits insurance companies from using genetic information in insurance decisions.
- 54. "Congress Slow To Put A Lid On Genetic Data." Sun-Sentinel (Fort Lauderdale, FL), July 10, 2000. Article discusses the possibilities for abuse of personal genetic information, especially by banks. Recommends that readers call their congressmen to urge support of legislation sponsored by Rep. Slaughter.
- 55. "Big insurer wants genetic information on clients." The Vancouver Sun, July 10, 2000."

 A large insurer in Canada has publicly stated that they would use individual genetic information when assessing client risk as it becomes available, and further suspects that other insurers will follow suit. A federal law in Canada limits the collection, sue and disclosure of personal information to what would reasonably be considered an appropriate use, but there is significant controversy brewing over the definition of "reasonable."