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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 the case law and commentary in Chapters 4 (Obtaining a Sample from a Suspect), 5 (Trial Issues), and 6 (Post-Conviction DNA Sampling).

Highlights

- **Obtaining a Sample from a Suspect — Surreptitious Collection of Samples: The Discarded or Throwaway Item — Discard of Sample while Suspect not in Custody** — The accused, who resided in Michigan, was under investigation for a murder in Ontario. Canadian investigators enlisted the assistance of American counterparts, who then recovered a bottle of beer that the accused had consumed and had abandoned. Upon receipt of the bottle, the Canadian investigators submitted it for forensic investigation and found the accused's DNA to match DNA found at the crime scene. The court held the warrantless seizure of the accused's DNA for analysis to have violated his rights under s. 8

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of the *Charter* — the court, however, did not exclude the evidence from trial, since the police had acted in good faith and in accordance with the requirements of the law in existence at that time: *R. v. Bhogal*, 2020 ONSC 7327, 2020 CarswellOnt 19797 (Ont. S.C.).

- **Trial Issues — Jury Instructions** — According to the Court of Appeal for Ontario, where the accused's DNA was found on an inculpatory item, the connection between the accused and the crime will depend on the existence of other evidence capable of establishing the accused's contact with the item at the relevant time and place: *R. v. Spencer*, 2020 ONCA 838, 2020 CarswellOnt 18949 (Ont. C.A.).