

"Source: *Investigative Tests, Working Paper 34, 1984.*

Department of Justice Canada.

**Reproduced with the permission of the Minister of Public
Works and Government Services Canada, 2007."**

Table of Contents

I. INTRODUCTION	1
II. TYPES OF INVESTIGATIVE TESTS	5
A. Passive Acquiescence Tests	5
(1) Simple Body Inspection Tests	6
(a) Lineups and Showups	6
(b) Examination for Peculiar Marks	7
(c) Medical Examination	7
(d) Photography	8
(e) Fingerprinting	8
(f) Dental Impressions	8
(g) Physical Measurements	8
(2) External Substance Removal Tests	9
(a) Gunshot Residue Tests	9
(b) Hair Examination	10
(c) Fingernail Scrapings	11
(d) Skin Washings	11
(3) Internal Substance Removal Tests	11
(a) Blood Tests	12
(b) Saliva Samples	12
(c) Urine Samples	12
(d) Semen Samples	13
(4) Tests in Which Substances Are Administered	13
(a) Narcoanalysis	13
(b) Administration of Other Drugs	13
B. Tests That Require the Active Participation of the Subject	14
(1) Physical Performance Tests	14
(2) Handwriting Comparison	14

(3) Breathalyzer Test	15
(4) Polygraph Examination	16
(5) Spectrographic Analysis	17
(6) Psychiatric Examination	17
(7) Hypnosis	19
 III. EVIDENTIARY USES OF INVESTIGATIVE TEST RESULTS	 21
A. Physical Evidence of Identity	21
(1) The Nature of the Clue	22
(2) The Procedure Employed in the Analysis	24
(3) The Circumstances of the Case	27
B. Eyewitness Evidence of Identity	27
C. Physical Evidence of Criminal Conduct	29
D. Lay Opinion Evidence of Criminal Conduct	30
E. Confessions	32
F. Inculpatory Statements Admissible for Other Purposes	 34
G. Leads	35
H. Expert Evidence of Disposition/Identity	36
I. Expert Evidence to Counter Defences	38
J. Expert Evidence Damaging Credibility	39
K. Physical Evidence to Counter Defences	41
 IV. THE LAW APPLICABLE TO THE ADMINISTRATION OF INVESTIGATIVE TESTS	 43
A. Criminal Procedure	43
(1) Statutory Provisions	43
(2) The Common Law	45

B.	Liability for Conducting Investigative Tests	50
(1)	Statutory Provisions	50
(2)	Evidentiary Consequences	51
C.	The Canadian Charter of Rights and Freedoms	52
(1)	Protection against Self-Incrimination	53
(2)	Security of the Person	55
(3)	Unreasonable Search or Seizure	55
(4)	Cruel and Unusual Treatment or Punishment	56
D.	Penal Consequences of the Accused's or Suspect's Failure to Co-operate	56
E.	Evidentiary Consequences of the Accused's or Suspect's Failure to Co-operate	57
V.	ISSUES AND GUIDELINES FOR THE STATUTORY REGULATION OF INVESTIGATIVE TESTS	61
A.	Prohibited Investigative Tests?	61
B.	Grounds for Investigative Testing	62
C.	Procedural Safeguards	65
(1)	Warnings	65
(2)	Maximum Privacy	66
(3)	Qualified Personnel	66
(4)	The Presence of Counsel	66
(5)	The Presence of One's Own Physician	66
(6)	Additional Optional Tests	67
(7)	Independent Sample Analysis	67
(8)	Destruction of Records and Samples	68
D.	The Consequence of Violation of Procedural Requirements	69
E.	Ensuring the Subject's Co-operation	70
F.	Liability of Persons Conducting Investigative Tests	72

G. Liability for Failure to Conduct Investigative Tests	73
H. Alcohol, Drugs and Driving Offences — Special Considerations	73
(1) The Problem	74
(2) The Alternatives	75
(a) Expanding the Category of Body Substances That May Be Required	75
(b) Methods of Enforcement	78
I. Our Recommendations	81
(1) General	81
(a) Definitions	81
(b) Procedure	84
(2) Alcohol, Drugs and Driving Offences	88
(3) Safeguards	93
ENDNOTES	97
BIBLIOGRAPHY	159