

The Honourable Judith C. Beaman,  
Commissioner

L'honorable Judith C. Beaman, Commissaire

Commissioner's Statement on the Release of *Harmful Impacts: The Reliance on Hair Testing in Child Protection*, Report of the Motherisk Commission, February 26, 2018

Good afternoon.

I would like to acknowledge that we are meeting on the traditional territory of the Haudenosaunee, the Métis, and most recently, the territory of the Mississaugas of the New Credit First Nation. The Toronto area is still home to many Indigenous peoples from across Turtle Island. We are grateful for the opportunity to meet in this territory.

Today, the Report of the Motherisk Commission is being released. It is the result of intensive work over the past two years and the input of many individuals and organizations. There are a few I would like to recognize, in particular.

I would like to thank the youth, parents, and other caregivers who shared with us their stories about how they were affected by the Motherisk hair testing. We were moved by their experiences and inspired by their courage and resilience.

Thank you, Attorney General Naqvi, and thank you, Minister of Children and Youth Services Couteau, for both your ministries' support of the Commission.

I would like to thank my Lead Commission Counsel, Lorne Glass, and my entire staff team for their hard work and strong commitment to child welfare. Their unfailing dedication and support were essential as we worked on very difficult and heartrending issues each day.

Finally, I would like to thank the Ontario Association of Children's Aid Societies and all of the individual societies across the province. I recognize that the Commission's need for documents and information placed additional pressure on them. Without their cooperation and commitment, we could not have carried out our mandate.

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In January 2016, the Ontario government asked me to establish a Review and Resource Centre—the Motherisk Commission—to assist people in Ontario whose lives had been affected by the hair testing conducted by the Motherisk Drug Testing Laboratory at The Hospital for Sick Children in Toronto. The Commission operated independently of government and was not in any way associated with children’s aid societies or SickKids.

My mandate was a response to The Honourable Susan E. Lang’s Independent Review of the Motherisk Laboratory in 2015. Justice Lang found that the hair strand drug and alcohol testing that it conducted was “inadequate and unreliable” for use in child protection legal proceedings. She concluded that the use of this evidence had “serious implications for the fairness of those proceedings.”

Based on data provided by SickKids, Justice Lang reported that between 2005 and 2015, the Motherisk Laboratory tested more than 24,000 hair samples for drugs and alcohol. The samples were taken from over 16,000 different individuals for child protection purposes.

This Commission’s guiding principles included working with children and youth to ensure that their voices were heard. Our principles also required us to ensure meaningful participation by Indigenous and racialized communities. Indigenous and African Canadian families are overrepresented in Ontario’s child protection system. The Truth and Reconciliation Commission of Canada and One Vision One Voice in Ontario have illuminated for all of us the history and legacy of systemic racism in child welfare.

We undertook outreach and communications to connect with Indigenous and racialized communities. We also reached out to youth, parents, and other people who were directly affected by the testing or involved with the child protection system.

The Commission’s role was to review individual child protection cases between 1990 and 2015, and to provide information, and referrals to counselling services and legal advice. Over the past two years, we reviewed 1291 cases from children’s aid societies across the province. This final tally is higher than the number of cases indicated in my Report. We were still reviewing cases at the time of writing.

We made every effort to identify and review all cases involving Motherisk hair testing, originating in Ontario, where children were permanently removed from their families and were under the age of 18 at the time of our review.

Reliance on hair testing in child protection work and legal proceedings, which went on for about 20 years, was manifestly unfair and harmful—whether or not it substantially affected the outcome of individual cases.

The testing was imposed on parents and other caregivers who were among the poorest and most vulnerable members of our society. There was scant regard for due process or for their rights to privacy and bodily integrity.

Most of the parents who were tested were powerless to resist. They told us that they submitted to the testing under duress, in fear of losing custody of or access to their children. In some of the cases we reviewed, parents were told explicitly that this would be the consequence if they did not submit to testing. People experienced the testing, particularly repeated testing, as intrusive, stigmatizing, demoralizing and demeaning.

Children’s aid society workers play a sensitive dual role. They help parents to develop their strengths to improve their parenting, and at the same time, they monitor them to ensure that they are adequately caring for their children. To do this, workers need to build trusting relationships with the parents and families they work with.

Societies used the testing to determine parents’ credibility, and to investigate suspicions of substance use. Many societies insisted that parents achieve abstinence. This tipped the scales heavily toward the societies’ monitoring role. It damaged these important relationships and it made parents dealing with substance use issues reluctant to reach out to their workers for help.

The child welfare system is vitally important to children and families, but it is a system under pressure. Child protection workers bear a heavy burden of responsibility for the safety of children. They must assess risk and make difficult decisions about what would be in a child’s best interests. As the Ontario Association of Children’s Aid Societies wrote in their submission to us:

*The use of a forensic tool, understood to be credible and reliable, and promoted through a division of a world renowned medical facility such as The Hospital for Sick Children, was seen [to] provide a quick, trustworthy solution to ensuring child safety.*

In April 2015, the Ministry of Children and Youth Services directed children’s aid societies to stop using hair testing, and SickKids shut down the Motherisk Laboratory. However, as we learned through our discussions, since that time, there has been an increase in urine testing for drug and

alcohol use from a number of different sources. Like the Motherisk hair tests, by and large these tests are being admitted into evidence without proper scrutiny.

Children's aid societies offered the hair testing as expert evidence in legal proceedings that determined whether children were in need of protection, and if so, who should care for them. The discovery that unreliable test results were used as expert evidence in these proceedings, for so many years, undermines the public's confidence in the fairness of our justice system—particularly with respect to how it treats vulnerable people.

Child protection law has special rules of evidence. The rules recognize the urgency of protecting children and making decisions about their care as quickly as possible. However, the relaxed approach to admitting the Motherisk test results, in the cases we reviewed, pushed these less rigorous standards of evidence beyond what could reasonably be considered necessary or fair.

As we reviewed individual cases, we identified and documented recurring patterns. Those patterns revealed how the laws and rules in child protection functioned to permit the flawed testing to be used for so long. We also saw how parents lacked the information and support they needed to advocate more strongly for themselves and their families.

Even in cases where the impact of the testing was substantial, the people affected have only a remote chance of achieving a satisfactory legal remedy. This was deeply troubling to us. We set out to engage many different partners and communities in a dialogue about making changes to prevent another failure like Motherisk. We believed that such a dialogue could meaningfully address the issues we were identifying in the file reviews. We also believed that it would help us fulfill our mandate to help people who were affected by the testing.

We looked to restorative justice as a model for our process. It allowed us to work with others to investigate the systemic issues we had identified, share our perspectives, and together develop solutions. Over 250 people were involved in our process. They included people and communities affected by the testing, as well as child welfare workers, social workers, substance use treatment providers, lawyers, judges, academics, scientists, and community workers. Many of the Recommendations in this Report evolved from our restorative process.

Over the past two years, SickKids, the Ontario government, and the Ontario Association of Children's Aid Societies have all taken important actions to address issues raised by the flawed Motherisk testing. But I believe that further changes are needed.

I have recommended a number of amendments to the legislation and rules governing the use of expert evidence in child protection, as well as changes to strengthen the representation of parents. I have also recommended enhanced education for judges on their important role as gatekeepers for expert evidence in the child protection context.

I have added my voice to many others who have called on the federal government to immediately provide adequate funding to First Nations for band representatives. I believe that there is also a role for the provincial government in supporting their ongoing training needs. The Ontario government should move quickly, in consultation with Métis and Inuit peoples, to determine how they will be funded to participate in child protection proceedings under the new child welfare legislation.

I have made recommendations to strengthen the representation of parents involved in child protection proceedings and provide them with additional support. Additional support would come from system navigators, peer mentors, and social workers to assist parents' counsel. All of these supports would be provided independently of children's aid societies.

I have also made recommendations to help parents dealing with substance use issues. These include enhancing family-inclusive treatment options. They also include strengthening partnerships between child welfare workers and substance use treatment providers. And I have recommended that children's aid societies continue to involve parents and youth in dialogue and decision making. They must also be supported to continue to work toward achieving equity in the child welfare system.

I have suggested changes to strengthen the practice of social work and the practice of child protection law. Finally, I have recommended that a stakeholder advisory committee be established to advise the government on the implementation of the Recommendations in my Report. The committee would also organize an annual child protection summit.

I recognize that implementing some of these changes will add pressures and new procedures to our already busy child protection and legal systems. Some of them will require additional funding. However, I believe these changes are vital. We must bear in mind the harm that the Motherisk hair testing caused to families, and the damage it did to the credibility of our child protection and legal systems.

In 56 cases, I determined that Motherisk test results had a substantial impact on the decisions made. Behind every one of these 56 cases, families were broken apart. Relationships among children, their siblings, parents, and extended families and communities were damaged or lost.

Parents and other caregivers in these cases will find it difficult to obtain a remedy through the courts that would give them access or greater access to their children. Even if they are successful, they will have lost precious years with them. The decisions we make in child protection are often devastating and irrevocable. That is why it is critical that only reliable evidence and a fair process be used in the service of making those decisions.

There is no certainty in child protection. The Motherisk hair testing seemed to offer that certainty, but it failed us. We must be much more careful about how we use expert evidence. We must provide more support to child protection and legal partners to challenge its reliability. And we must listen more carefully to children, youth, and parents about what they need and want.

It is my hope that through the counselling and legal services the Commission offered, and through our restorative process, some of the families harmed by the Motherisk testing will begin to find peace and healing. Some people who were affected by the testing may still wish to seek counselling. For this reason, I have recommended that free counselling services continue to be available, upon request, for three more years.

Many of my Recommendations focus on encouraging partnerships and dialogue among the people and sectors involved in child protection. All of them are essential in developing solutions to the systemic issues that led to the reliance on the Motherisk hair testing. Through our restorative process, I saw genuine commitment to the sustained collaboration needed to bring about the changes I have recommended. I propose my Recommendations as steps toward ensuring that no family will experience similar harm in the future.

It has been a privilege to serve as Commissioner. My Lead Commission Counsel is available to answer your questions.

Thank you.