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MINISTRY OF CHILDREN AND YOUTH SERVICES

**POLICY DIRECTIVE: CW004-15 Directions Related to Certain High Priority Cases
Involving Motherisk Drug Testing Laboratory (MDTL) Hair Testing**

Following the release of the Lang Report and pending the government's appointment of an Independent Commissioner recommended in that report, this policy directive is issued under s. 20.1 of the *Child and Family Services Act (CFSA)* to direct Children's Aid Societies (CASs) in the interim to take certain immediate actions relating to recommendations addressed to CASs in the Lang Report.

EFFECTIVE DATE:

This policy directive will come into effect on the date of its issuance.

INTRODUCTION:

On December 17, 2015, the Honourable Susan Lang's review of the Motherisk hair analysis program at the Hospital for Sick Children (Lang Report) was released to the public.

The findings included the following:

- The hair-strand drug and alcohol testing used by MDTL between 2005 and 2015 was inadequate and unreliable for use in child protection and criminal proceedings.
- Between 2005 and 2015, MDTL operated in a manner that did not meet internationally recognized forensic standards.
- The Hospital for Sick Children did not provide meaningful oversight over MDTL.
- The use of MDTL hair-testing evidence in child protection and criminal proceedings has serious implications for the fairness of those proceedings and warrants an additional review.

The report made a number of recommendations relating to child protection cases where individuals and their families were potentially affected by flawed Motherisk hair-strand test results. The recommendations include the appointment of an Independent Commissioner to assist individuals who may have been affected by Motherisk's flawed hair testing methodology.

The report provided recommendations to children's aid societies (CASs) relating to immediate actions they should take on certain high-priority cases. In relation to these high-priority cases, paragraph 29 of Chapter 11 on "Recommendations" states:

... [W]ith the support of the Ministry of Children and Youth Services, child protection agencies should immediately identify any cases involving MDTL [Motherisk Drug

Testing Laboratory] hair-testing results that remain open and where the child has not yet been placed for adoption. In such circumstances, child protection agencies should contact the parents or their lawyers to advise them of the potentially flawed hair-test results and the creation of the Second Review. Child protection agencies should also assess these cases without regard to MDTL test results unless and until those results are confirmed, if they can be. In addition, child protection agencies should provide a complete copy of the unredacted file to the RRC [Review and Resource Centre] as soon as possible. This process must be expedited and be given the highest priority following the release of this Report.

The purpose of this Directive is to address high priority cases requiring immediate action by CASs prior to the appointment of an Independent Commissioner.

Nothing in this Directive prevents CASs from taking other immediate actions as they consider necessary to address the recommendations affecting child protection cases in the Lang Report.

REQUIREMENTS:

1. CASs shall immediately identify all open cases involving a positive MDTL hair-strand test, regardless of the date or subject of the test, in which a CAS intends to place a child for adoption or in which a child has been placed for adoption but an adoption order has not yet been made.
2. In those cases, CASs shall notify, in writing, the affected parent(s) and/or their counsel and advise them of:
 - i) the Lang Report and how to access it (where appropriate provide a copy);
 - ii) the potentially flawed hair test result(s) by MDTL; and
 - iii) that the government will be appointing an Independent Commissioner.

Where the child is an Indian or a native person, CASs shall also notify a representative chosen by the child's band or native community.

3. CASs shall assess the identified cases in light of concerns raised by flawed MDTL test results as described in the Lang Report. For example, MDTL test results may have been used not only as evidence of alcohol or drug use, but also as evidence of a parent's credibility. Paragraphs 30 and 31 in Chapter 9 of the Lang Report on "MDTL and Child Protection" provide the following examples of how MDTL tests were used at various stages of the proceedings:

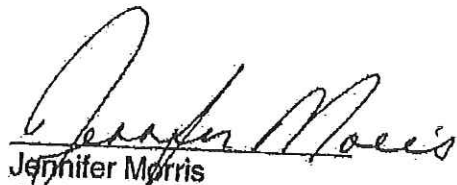
- To confirm suspicions of drug and alcohol use;
- To obtain an accurate level of use;
- To test a caregiver's credibility;

- o To monitor levels of drug and alcohol use over time and assess a parent's compliance with terms and conditions for access to a child;
 - o As a term of a court order;
 - o As significant evidence of a caregiver's drug or alcohol use, or the exposure of children to drug use;
 - o To encourage a parent or caregiver to consent to agency intervention, including a temporary care order; and
 - o As evidence in temporary care hearings held after an apprehension.
4. After assessing each file and considering any responses received from the parties that had been notified, CASs shall inform the notified parties of the status of the file and plan for the child. The CASs shall also consider the need for notification of any other affected or interested parties, including the child and/or the Office of the Children's Lawyer, concerning the status of the file and plan for the child.
5. CASs shall prepare a copy of the identified case files for submission to the Independent Commissioner as contemplated by the Lang Report.

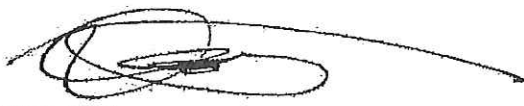
Reporting

6. Please confirm in writing to your Program Supervisor by January 15, 2016 that your society is meeting the requirements of this directive and is addressing the high priority cases.

ISSUANCE OF POLICY DIRECTIVE CW004-15: December 17, 2015



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