

## MOTHERISK COMMISSION

### Review and Resource Centre

#### Case Review and Remedy Determination Process

##### General

1. The Commission shall operate in accordance with the *Public Inquiries Act*, R.S.O., c. P.41 (the “Act”) and pursuant to Order in Council 4/2016 (the “Terms of Reference”).
2. Subject to the Act and the Terms of Reference, the conduct of and procedure to be followed by the Commission is under the control and discretion of the Honourable Judith C. Beaman (the “Commissioner”).
3. The Commissioner may amend these Rules of Procedure (“Rules”) or dispense with compliance of these Rules, as she deems necessary.
4. The Commission’s activities will be divided into two phases as follows:
  - a. **Phase One:** the Commission will focus on reviewing cases which it has identified as high priority cases and those for which a member of the public has sought a review.
  - b. **Phase Two:** the Commission will undertake a comprehensive outreach strategy with the objective of inviting affected individuals to apply to the Commission for one or more of the services offered at the Review and Resource Centre. This strategy will include focused outreach to Indigenous and Racialized communities and to children and youth.

##### Definitions

5. In these rules,

“affected persons” refers to the following categories of individuals

  - (i) Children whose families were involved with child protection agencies in part because of concerns arising from a positive hair strand drug test result from the Motherisk Drug Testing Lab (“MDTL”) operated by the Hospital for Sick Children;
  - (ii) The siblings of children referred to in (i) above;
  - (iii) The biological parents of the children referred to in (i) above; or,
  - (iv) The adoptive parents of any of the children referred to in (i).

- (v) Any other person who offered a plan for the children referred to in (i) above in any court case, or dispute resolution process relating to the children, including, but not limited to:
  - a. Negotiation
  - b. Mediation
  - c. Family Group Conferencing.
- (vi) Individuals who have one or more of the children referred to in (i) above in their care and custody pursuant to a customary care agreement, a kinship placement or a custody order.
- (vii) The child's band or native community where a child referred to in (i) is identified as an Indian or native person as defined in the Child and Family Services Act R.S.O. 1990 c. C.11 (the "CFSA").

"file review", in cases where a children's aid society initiated an application under the *Child and Family Services Act*, R.S.O. 1990 c. C.11 (the "CFSA") means the review of the materials that were filed with the court and led to the final outcome in the case, including, but not limited to:

- (i) Applications
- (ii) Plans of Care
- (iii) Answers and Plans of Care
- (iv) Conference Briefs
- (v) Affidavits
- (vi) Minutes of Settlement
- (vii) Statements of Agreed Fact
- (viii) Endorsements, Reasons for Order/Judgments.

"file review" in cases where a matter was resolved by way of an agreement without the initiation of a child protection case means the review of the information which led to children's aid society involvement included in that society's files, including but not limited to:

- (i) the intake file compiled by the children's aid society;
- (ii) the family services file, if any, compiled by the children's aid society; and,
- (iii) a copy of the agreement between the children's aid society and a parent or parents.

"high priority cases" refers to the following categories of cases:

- (i) Cases where a child had been placed for adoption and the adoption was finalized during the period December 17, 2015 to February 22, 2016 (the date of the Commissioner's Order to the CASs to release to the Commission all unredacted files related to the high priority cases);
- (ii) Cases where a child has been placed for adoption but the adoption has not been finalized;
- (iii) Cases where a custody order under section 57.1 of the CFSA was made during the period December 17, 2015 to February 22, 2016 (the date of the Commissioner's Order to the CASs to release all unredacted files related to the high priority cases);
- (iv) Cases where a child has been made a Crown ward and is in the care of a society but has not yet been placed for adoption;

- (v) Cases where a child is a Crown ward and is in the care of a Society and an application for a custody order under section 65.2 of the CFSA is pending;
- (vi) Cases where an application is pending in court to make a child a Crown ward or for a custody order under section 57.1 of the CFSA; and,
- (vii) Cases where a customary care or kinship arrangement was made and where Motherisk testing results were relied upon.

“substantial impact” when referring to a positive Motherisk test means that the test materially affected the outcome of the case having regard to one or more of the following factors:

- (i) The creation of a status quo with respect to the child’s living arrangements;
- (ii) The position of the children’s aid society respecting the direction of the case;
- (iii) The decision of the court.

### **Review Process**

- 6. Counsel will undertake a file review to determine the role that Motherisk evidence played in the case.
- 7. Following the review, Counsel will prepare a summary of the case, together with a recommendation as to next steps, for the Commissioner.
- 8. After reviewing the summary, the Commissioner will make one of the following determinations:
  - a. The Motherisk testing did not have a substantial impact. In this case, all parties requesting the review will receive a letter advising them of the findings. In matters where permanency planning has been put on hold, the Commissioner will authorize the children’s aid society involved to take whatever future steps are necessary to plan permanently for the child.
  - b. The Motherisk testing had a substantial impact. Following this determination, Counsel will ascertain the identity of and take all reasonable steps to locate all affected parties and will make arrangements to notify them.
  - c. It remains unclear what role the Motherisk testing played in the outcome. Following this determination, further information will be gathered to help clarify the role that the Motherisk testing played. Such information may include but not be limited to, case notes, reports, assessments and court transcripts.

### **Reconsideration**

- 9. An affected person or children’s aid society who disagrees with the Commissioner’s determination may request a reconsideration of the matter within 30 days of being advised of the Commissioner’s determination.

10. An affected person or children's aid society seeking a reconsideration may file any further material that they consider appropriate in support of their request for a reconsideration. Such material will be provided to the other parties to the original court case where it is feasible to do so, and those parties will be invited to respond to the additional material within a time frame to be determined by the Commissioner should they wish.

### **Notification to Affected Persons**

11. Where the Commission determines that the Motherisk testing did not have a substantial impact on a case, the Commission will not notify affected persons unless the person has contacted the commission and requested the review of the file.
12. Where the Commission determines that the Motherisk testing did have a substantial impact on a case, the Commission will take steps to notify all affected persons.
13. The Commission may engage mental health professionals or trusted community advisors to assist with this notification.

### **Determination of Services Offered**

14. The Motherisk Commission has established a Review and Resource Centre which has the capacity to provide legal file reviews, counselling assistance, legal referral and alternative dispute resolution services.

#### *Services Offered Where No Substantial Impact*

15. Where the Commissioner determines that the Motherisk testing did not have a substantial impact on the outcome of the case, affected persons will be offered the following services:
  - a. Counselling assistance
  - b. A meeting with the Commissioner and/or review counsel to discuss the outcome.
  - c. A reconsideration of the file review
  - d. Any other services the Commissioner deems appropriate, having regard to the fundamental principles set out in the Terms of Reference.

#### *Services Offered Where Substantial Impact*

16. Where the Commissioner determines that the Motherisk testing did have a substantial impact on the outcome of the case, affected persons will be offered the following services:

- a. Counselling assistance
- b. A meeting with the Commissioner and/or review counsel to discuss the outcome
- c. Legal referral
- d. Funding for legal services
- e. Any other services the Commissioner deems appropriate, having regard to the fundamental principles set out in the Terms of Reference.

*Access to Alternative Dispute Resolution Services*

17. Where the Commissioner determines that the Motherisk testing did have a substantial impact on the outcome of a case and one or more affected persons wishes to attempt to resolve any issues arising from this determination with one or more other affected persons, and all parties agree, the parties shall be offered access to a mutually agreeable dispute resolution process.