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MINISTRY OF CHILDREN AND YOUTH SERVICES

POLICY DIRECTIVE: CW001-15 Use of and Reliance on Hair-Strand Drug and Alcohol Testing

This policy directive is issued under s. 20.1 of the Child and Family Services Act (CFSA) to provide direction to children’s aid societies (CASs) on the use of and reliance on hair-strand drug and alcohol testing in the course of providing child protection services.

EFFECTIVE DATE:

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

INTRODUCTION:

By Order in Council 143/2014 dated November 26, 2014, the Lieutenant Governor in Council appointed the Honourable Susan Lang to undertake a review of the adequacy and reliability of the immunoassay hair-testing methodology utilized by the Motherisk laboratory at the Hospital for Sick Children between 2005 and 2010 for use as evidence in child protection and criminal proceedings.

In response to a recommendation from the Honourable Susan Lang, the government of Ontario has determined that it is desirable to expand the mandate of the independent review and extend the review until December 15, 2015.

The intent of this policy directive is to provide direction to CASs on the use of and reliance on hair-strand drug and alcohol testing.

REQUIREMENTS:

1. CASs shall not use or rely on hair-strand drug and alcohol testing in the course of providing child protection services.

   Reporting

2. By April 30, 2015, each CAS shall confirm in writing to the ministry that upon issuance of this directive it ceased use of and reliance on hair-strand drug and alcohol testing in the course of providing child protection services.
MINISTRY OF CHILDREN AND YOUTH SERVICES

ISSUANCE OF POLICY DIRECTIVE GW001-15: April 22, 2015

Aryeh Oftehman
Assistant Deputy Minister
Policy Development and Program Design Division
Ministry of Children and Youth Services

Rachel Kampus
Assistant Deputy Minister
Service Delivery Division
Ministry of Children and Youth Services
Statement from Attorney General on Next Steps in Response to Motherisk Report
December 22, 2015 2:00 P.M.

Today Attorney General Madeleine Meilleur made the following statement regarding the selection of an independent commissioner to assist individuals who may have been affected by Motherisk's flawed hair testing methodology:

"Our government continues to be deeply concerned by the Honourable Susan Lang's findings regarding the adequacy and reliability of hair tests conducted at the Motherisk laboratory.

We are committed to moving as quickly as possible to help those who may have been impacted by the laboratory's flawed testing practices. That's why I wish to announce that the Honourable Justice Judith C. Beaman has agreed to lead an independent commission that will provide support to people who have been affected by a Motherisk hair test.

Justice Beaman was first appointed to the bench of the Ontario Court of Justice in 1998 and has led a distinguished career presiding over Ontario's criminal and family courts in the Toronto and Ottawa areas. Rising to the rank of Regional Senior Justice for Eastern Ontario in 2008, she has served as a per diem judge since January 2014.

Over the coming weeks, my ministry will work with Justice Beaman to finalize the commission's mandate and the resources needed to support its work. These details will be set out in an Order in Council, which will be made available to the public.

I would like to take this opportunity to thank Justice Beaman for agreeing to take on this challenging role. I am confident that the families impacted by Motherisk's flawed testing practices will get the support they need and deserve under her leadership.

In the meantime, we recognize that many potentially impacted people will have questions. Anyone who believes that they may have been impacted by a Motherisk test can call 1-855-235-
8932 for short-term counselling assistance and to request that their name be provided to the commissioner."

LEARN MORE

- **Read the Province’s response upon receiving the final report of the Motherisk Hair Analysis Review**
- **See a timeline of events related to the Honourable Susan Lang’s independent review into the Motherisk laboratory**
- **Learn more about interim services available to those who believe they were impacted by a flawed Motherisk hair test**

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Emilie Smith  
Communications Branch  
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Appendix 1c:
MCYS directive to CASs to identify high priority cases, December 17, 2015

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;
- 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;
- As a term of a court order;
- As significant evidence of a caregiver's drug or alcohol use, or the exposure of children to drug use;
- To encourage a parent or caregiver to consent to agency intervention, including a temporary care order; and
- 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**

Jennifer Morris
Assistant Deputy Minister/A
Policy Development and Program Design Division
Ministry of Children and Youth Services

Rachel Kampus
Assistant Deputy Minister
Service Delivery Division
Ministry of Children and Youth Services
Appendix 1d:
MCYS memorandum to CASs re: Motherisk policy update, May 18, 2016

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DATE: May 18, 2016

MEMORANDUM TO: Children’s Aid Society Board Chairs
Children’s Aid Society Executive Directors

FROM: Rachel Kampus
Assistant Deputy Minister, Service Delivery Division

Jennifer Morris
A/Assistant Deputy Minister, Policy Development and Program Design Division

SUBJECT: Motherisk Policy Directive CW004-15 Update and Expectations for Submission of Adoption Finalization Documentation

This memorandum is to provide an update on Policy Directive CW004-15 as well as to outline the ministry’s expectations regarding the submission of adoption finalization documentation to the regional office for sign-off where a positive Motherisk hair strand test has been noted.

Policy Directive CW004-15

Effective immediately, the interim Policy Directive CW004-15 Directions Related to Certain High Priority Cases Involving Motherisk Drug Testing Laboratory (MDTL) Hair Testing, is no longer in effect now that the independent Commissioner has been appointed and has begun her own communications with children’s aid societies (CASs).

On December 17, 2015, in response to the Lang Report and pending the government’s appointment of an independent Commissioner, the MCYS issued policy directive CW004-15 as
an interim measure to direct CASs to take immediate actions relating to certain high-priority cases as recommended in the Lang Report.

Effective January 15, 2015, by Order in Council 4/2016, the Lieutenant Governor in Council established a Commission (the "Motherisk Commission") and appointed Justice Judith Beaman as an independent Commissioner to support and assist persons affected by the flawed Motherisk test results.

As part of her mandate, the Commissioner is authorized to,

offer early advice or guidance on high priority cases, including those cases identified as high priority by children's aid societies, and review individual child protection cases that may have been affected by Motherisk hair tests between 1990 and 2015, on request or on her own initiative.

The Motherisk Commission has now established its operations and is carrying out its mandate. The Commissioner is engaging with CASs regarding the types of cases and documents she requires from CASs. On February 24, 2016, the Commissioner issued an order requiring CASs to "release complete electronic or paper copies of the unredacted case files, which have been identified by herself and by the Children's Aid Societies as high priority cases, to the Motherisk Commission as soon as possible." This order includes files identified in accordance with policy directive CW004-15.

As the Commissioner has also asked the Ministry to restate her list of high priority cases:

1. Cases where a child had been placed for adoption and the adoption was finalized during the period December 17, 2015 to today;
2. Cases where a child has been placed for adoption but the adoption has not yet been finalized;
3. Cases where a custody order under section 57.1 was made during the period December 17, 2015 to today;
4. 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;
5. 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 is pending; and
6. Cases where an application is pending in court to make a child a crown ward or for a custody order under section 57.1.

the ministry understands that CASs are providing the requested files to the Commission.

In light of the above, the interim period the Directive was intended to bridge has passed, and Directive CW004-15 is no longer in effect.

In support of the Motherisk Commission's work, the ministry reinforces the need for CASs to continue their cooperation with the Commission.
As custodians of child protection case files that may be required by the Motherisk Commission, it is the ministry’s expectation that CASs will continue to comply with the directions provided to them by the Motherisk Commission during the course of its mandate.

Policy Directive CW001-15 (issued April 22, 2015) continues to be in effect and CASs are not to use or rely on hair-strand drug and alcohol testing in the course of providing child protection services.

Submission of Adoption Finalization Documents to the Regional Office

It has come to the ministry’s attention that adoption documents have been submitted to the ministry for finalization that include notes of a positive Motherisk hair-strand test result. It is the ministry’s expectation that prior to the submission of these documents to the ministry that CASs have submitted these cases to the Motherisk Commission for their review, per the Commission’s February 24, 2016 order.

Following the Motherisk Commission’s review of these cases, adoption finalization documents that note a Motherisk hair strand test may be submitted to the ministry. Submitted packages must include written confirmation from the CAS that the Motherisk Commission has concluded its review and provided the opinion that the case can proceed towards finalization.

Thank you for your due diligence in this matter. Should you have any questions or concerns, please contact your regional Program Supervisor.

Rachel Kampus
Assistant Deputy Minister
Service Delivery

Jennifer Morris
A/Assistant Deputy Minister
Policy Development and Program Design
Appendix to Chapter 2: Mandate and Principles
Appendix 2a:
Commission Order in Council (Terms of Reference), January 13, 2016

WHEREAS the Honourable Susan Lang was appointed by Orders in Council1543/2014 dated November 26, 2014 and 449/2015 dated April 22, 2015 to undertake an independent review into the adequacy and reliability of the hair-strand drug and alcohol testing utilized by the Motherisk laboratory at the Hospital for Sick Children (“Motherisk”) between 2005 and 2015;

WHEREAS one of the matters that she was asked to consider was the possible need for an additional review or process with respect to specific cases or classes of cases;

WHEREAS the Honourable Susan Lang delivered her final report to the Attorney General on December 15, 2015;

WHEREAS she concluded that the hair-strand drug and alcohol testing utilized by the Motherisk laboratory was inadequate and unreliable for use as evidence in child protection and criminal proceedings;

WHEREAS she recommended that a commissioner be appointed to lead a Review and Resource Centre to provide comprehensive support and services to persons who were potentially affected in past child protection proceedings by a Motherisk hair test;

WHEREAS it is considered desirable and in the public interest for the Ontario Government to assist individuals who may have been affected by Motherisk's flawed hair testing methodology in proceedings under Part III of the Child and Family Services Act, R.S.O. 1990, c.C11;

WHEREAS section 3 of the Public Inquiries Act, 2009, S.O. 2009, c. 33, Sched. 6 (the "Public Inquiries Act") authorizes the Lieutenant Governor in Council to appoint a commissioner to inquire into any matter of public interest;
AND WHEREAS it is considered advisable to set out the terms of reference for such process and advice;

THEREFORE it is ordered as follows:

Commission

1. A Commission is established and Justice Judith C. Beaman is appointed as a commissioner under section 3 of the Public Inquiries Act (the "Commissioner"), effective as of January 15, 2016;

Mandate

2. The Commissioner shall:

   a. in consultation with the Attorney General, establish and lead a Review and Resource Centre which will offer appropriate support and assistance to persons affected by the Motherisk test results, including information, counselling assistance, legal advice and alternative dispute resolution;

   b. design and implement a process to identify and notify affected persons so that they may have access to the services and support offered by the Review and Resource Centre and ensure a process to allow for meaningful participation by Indigenous and racialized communities;

   c. offer early advice or guidance on high priority cases, including those cases identified as high priority by children's aid societies, and review individual child protection cases that may have been affected by Motherisk hair tests between 1990 and 2015, on request or on her own initiative;

   d. determine the eligibility criteria for and the level and type of services to be made available to affected persons based on the circumstances of the particular case; and,

   e. engage, as may be appropriate, with parties and stakeholders who would have an interest in the effective operation of the Review and Resource Centre and the completion of the Commissioner's mandate.

3. The Commissioner shall endeavor to conclude her mandate and deliver a final report to the Attorney General summarizing her activities within 24 months after the establishment of the Commission.
4. In discharging her mandate, the Commissioner will be guided by the following fundamental principles:

   a. the current best interests of any affected children and youth must be taken into account;

   b. in so far as practicable, the Commissioner should work to maintain and ensure the confidentiality of records relating to child protection proceedings, including court files, exhibits, court transcripts, child protection files, and adoption records;

   c. the Commissioner should discharge her duties efficiently and in a manner consistent with the need to pursue an expeditious and just resolution of the serious concerns associated with the reliance on Motherisk evidence in child protection proceedings;

   d. the Commissioner should work with children and youth to ensure that their voices, both individually and collectively, are heard; and

   e. the Commissioner should give particular consideration as to the outreach and notification necessary to allow meaningful participation by Indigenous and racialized communities.

5. The Commissioner shall perform her duties without expressing any conclusion or recommendations regarding the potential civil or criminal liability of any person or organization. The Commissioner shall further ensure that the conduct of the review does not in any way interfere or conflict with any ongoing investigation or proceeding related to these matters.

6. In accordance with the Public Inquiries Act, 2009, the Commissioner shall obtain all records necessary to perform her duties and, for that purpose, may require the production of information that is confidential or inadmissible under any Act or regulation.

7. The Commissioner shall ensure that any disclosure of records and other materials balances the public interest and the privacy interests of affected children and families.

8. Where the Commissioner considers it necessary, she shall impose conditions on the production of information in order to protect the confidentiality and privacy interests of any affected persons.
9. The Commissioner shall follow Management Board of Cabinet directives and guidelines and other applicable government policies unless, in the Commissioner's view and having regard to her mandate, it is not possible to follow them.

10. In delivering her final report to the Attorney General, the Commissioner shall ensure, in so far as practicable, that it is in a form appropriate for public release, consistent with the requirements of the Freedom of Information and Protection of Privacy Act and other applicable legislation.

11. The Commission may invite and review submissions in writing from any First Nations, Metis and/or Inuit organizations or members respecting the services and support of the Review and Resource Centre.

12. The Commissioner shall be responsible for translation and printing and shall ensure that her final report is delivered in English, French, Cree, Ojibway, Oji-Cree and Mohawk at the same time, in electronic and printed versions.

The Ontario Government

13. The Attorney General shall, in consultation with the Commissioner, set a budget for the fulfillment of her mandate.

14. All ministries and all boards, agencies, and commissions of the government of Ontario shall, subject to any privilege or other legal restrictions, assist the Commission to the fullest extent possible, including producing documents in a timely manner, so that the Commission may carry-out its duties.

15. The Attorney General shall make the Commissioner's final report available to the public as soon as practicable after receiving it.

Recommended by

Concurred by

Approved and Ordered by

Attorney General
Chair of Cabinet
Date
Administrator of the Government
Appendix 2b:
Order in Council granting extension to the Commission, December 17, 2017

WHEREAS the mandate originally set out in English in Order in Council number O.C. 4/2016 dated January 13, 2016, and in French in Order in Council number O.C.1194/2016 dated August 4, 2016, and pursuant to which Justice Judith C. Beaman was appointed as a commissioner under section 3 of the Public Inquiries Act, 2009, has been completed except for the reporting requirements thereunder and the winding up of the Review and Resource Centre;

AND WHEREAS the Commissioner has requested an extension in order to complete the translation and printing of her final report;

NOW THEREFORE it is ordered that O.C. 4/2016 and O.C.1194/2016 be amended effective the date this Order in Council is approved and ordered by replacing paragraphs 3 and 12 as follows:

3. The Commissioner shall deliver a final report summarizing her activities in English and French as well as an executive summary of her final report in Cree, Ojibway, Oji-Cree and Mohawk, to the Attorney General, no later than February 28, 2018. The Commissioner shall deliver the full report in Cree, Ojibway, Oji-Cree and Mohawk as soon as practicable thereafter. The Commissioner shall not accept any requests for services beyond January 15, 2018.

12. The Commissioner shall be responsible for translation and printing and shall ensure that the executive summary of her final report is delivered in Cree, Ojibway, Oji-Cree and Mohawk at the same time as the English and French report, in electronic and printed versions, with the full report in Cree, Ojibway, Oji-Cree and Mohawk to follow as soon as practicable thereafter.

O.C./Décret: 2429/2017

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EN CONSÉQUENCE, il est ordonné que les décrets numéros 4/2016 et 1194/2016 soient modifiés, les modifications prenant effet le jour où le présent décret est approuvé et pris, par le remplacement des paragraphes 3 et 12 par ce qui suit :

3. La commissaire remettra au procureur général, au plus tard le 28 février 2018, un rapport final résumant ses activités, en français et en anglais, ainsi qu’un résumé de son rapport final, en cri, en ojibway, en oji-cri et en mohawk. La commissaire produira ensuite, le plus tôt possible, le rapport complet en cri, en ojibway, en oji-cri et en mohawk. La commissaire n’acceptera aucune demande de services après le 15 janvier 2018.

12. La commissaire sera responsable de la traduction et de l’impression. Elle veillera à ce que le résumé de son rapport final soit produit en cri, en ojibway, en oji-cri et en mohawk en même temps que les versions française et anglaise du rapport, sur support électronique et papier, et à ce que le rapport complet soit, le plus tôt possible par la suite, produit en cri, en ojibway, en oji-cri et en mohawk.

Recommended: Attorney General
Recommandé par : Le procureur général

Concurred: Chair of Cabinet
Appuyé par : Le président/la présidente du Conseil des ministres

Approved and Ordered: DEC 1 4 2017
Approuvé et décrété le :

Lieutenant Governor
La lieutenante-gouverneure
Appendix 2c:
Commissioner’s order on confidentiality and non-disclosure, April 11, 2016

ORDER

WHEREAS, as per the Public Inquiries Act, the Order in Council 4/2016, dated January 13, 2016, established the Motherisk Commission and provided for the appointment of Justice Judith C. Beaman as the Commissioner, effective January 15, 2016;

AND WHEREAS, the individuals and their families potentially affected by the flawed Motherisk Drug Testing Laboratory hair strand test results were the subjects of or parties to Child and Family Services Act proceedings;

AND WHEREAS, as per Commissioner Beaman’s order, dated February 24, 2016, Children’s Aid Societies of Ontario were ordered to release complete electronic or paper copies of the unredacted case files that were identified as high priority cases by herself and by the Children’s Aid Societies of Ontario;

AND WHEREAS, paragraph 4b of the Order in Council 4/2016 states:

In discharging her mandate, the Commissioner will be guided by the following fundamental principles:

... b. in so far as practicable, the Commissioner shall work to maintain and ensure the confidentiality of records relating to child protection proceedings, including court files, exhibits, court transcripts, child protection files, and adoption records;

... AND WHEREAS, paragraph 8 of the Order in Council 4/2016 states:

Where the Commissioner considers it necessary, she shall impose conditions on the production of information in order to protect the confidentiality and privacy interests of any affected persons;
AND WHEREAS, subsection 45(8) of the Child and Family Services Act, (R.S.O. 1990, c. C.11 as am.) prohibits the direct or indirect identification of a child in proceedings under the Act:

45(8) PROHIBITION: IDENTIFYING CHILD – No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child’s parent or foster parent or a member of the child’s family.

THIS COMMISSION ORDERS THAT:

The following are protected from disclosure:

i) All records relating to child protection proceedings, including court files, exhibits, transcripts, agency files, and adoption records reviewed by the Motherisk Commission; and

ii) All documents and digital, photographic, and audio records created by the Motherisk Commission in their review of the child protection cases.

Publication of any information that would identify the child or the child’s family is prohibited.

ORDERED at Toronto, Ontario, this 11th day of April, 2016

The Honourable Judith C. Beaman
Commissioner
Appendix to Chapter 3: Information, Outreach and Communications
Appendix 3a: Sample outreach materials

Post card (front)
MOTHERISK COMMISSION

Do you know someone whose hair was tested for drugs and/or alcohol and used by the Children’s Aid Society?

If yes, we may be able to help and it’s completely confidential. The Motherisk Commission offers:
• Information
• Counselling
• Legal referral
• Mediation Services

Please contact us:
info@motheriskcommission.ca
1-844-303-5476 (toll free)

Website and Social Media:
www.motheriskcommission.ca
www.facebook.com/motheriskcommission/
Twitter: @motheriskcomm
What is the Motherisk Commission?
The Commission is an office set up by the government of Ontario. Its job is to help people who were affected by the hair testing done by the Motherisk Lab at SickKids hospital in Toronto. The office was set up in January 2016 and will be closed down in January 2018.

What was wrong with the testing?
The hair tests were supposed to tell children's aid societies, lawyers and judges whether a person had used drugs or alcohol. The problem was that these tests were not done properly. An investigation in 2015 found that the tests were inadequate and unreliable.

Who was affected by the hair testing?
Many people were affected by the testing, including children, youth, biological parents, adoptive parents, wider families and communities. It is very likely that Indigenous and African-Canadian people were most affected because they are overrepresented in the child welfare system.

What is the Motherisk Commission doing?
The Commission is reviewing individual child protection cases that involved Motherisk Lab testing to see if the tests had a major impact on the decisions made by children's aid societies and the court. If they did, the Commission helps the families find a lawyer to see if they can change anything in the situation with their child or children.

The Commission refers people who were affected by the testing to counselling support. Counselling is voluntary, free and available close to where people live.

The Commission is also holding meetings to talk to many different people involved in this issue—youth, children's aid workers, social workers, community organizations, lawyers and others. We want to understand better how the Motherisk testing problem happened and how we can prevent it from happening again. What we learn through these meetings will help us write our final report to the government in January 2018. If you have ideas, please share them with us through our website: www.motheriskcommission.ca.
Appendix 3b: Outreach list for mandate and services

The Commission met with or presented to the following individuals and organizations, primarily in 2016, to share information about our mandate, services, and the status of our work.

42nd Annual all-Ontario Chiefs Conference
360°kids
Aboriginal Justice Advisory Group/Debwewin Jury Review Implementation Committee
Aboriginal Legal Services
The Action Group on Access to Justice
Adopt4Life
Adoption Council of Ontario
Adoption Resource Exchange
Anishinabek Nation 2016 Grand Council Assembly
Anishinabek Nation Child Well-Being Working Group
Association of Iroquois and Allied Indians
The Association of Legal Aid Plans of Canada
Association of Native Child and Family Service Agencies of Ontario
Barrie Native Friendship Centre
Chiefs of Ontario
Chiefs of Ontario Political Confederacy
Child Protection Lawyers’ Primer Conference
Children in Limbo Task Force (Sparrow Lake Alliance)
Children’s Aid Society of Toronto Youth Advisory Committee
Community Action for Families
Community service providers for racialized communities (Mississauga, Oshawa, Toronto)
Covenant House Toronto
Defence for Children International – Canada
Elevate NWO
Family Lawyers Association, 311 Jarvis Open Bar Series
Ganohkwarsa Family Assault Support Services
Hamilton Regional Indian Centre
Chief Ava Hill, Larry Longboat and Council, and band representatives, Six Nations of the Grand River
The Hospital for Sick Children
The Indian Friendship Centre (Sault Ste. Marie)
Ininew Friendship Centre (Cochrane)
Jamaican Canadian Association
Kapuskasing Friendship Centre
Kunuwanimano Child and Family Services 2016 Annual General Meeting
Chief R. Stacey Laforme and Council, Mississaugas of the New Credit First Nation
The Law Society of Upper Canada
Legal Aid Ontario
Grand Council Chief Patrick Wedaseh Madahbee, Anishinabek Nation
Mnaasged Child and Family Services
Nogdawindamin Family and Community Services
N’Swakamok Native Friendship Centre (Sudbury)
Office of the Children’s Lawyer
Office of the Provincial Advocate for Children and Youth
Ontario Association of Children’s Aid Societies and many individual societies across the province
Ontario Bar Association
Ontario Counsel for Children’s Aid Societies
Ontario Court of Justice
Ontario Court of Justice, 2016 Annual Family Law Program
Ontario Federation of Indigenous Friendship Centres 2016 Annual General Meeting
Ontario Ministry of Children and Youth Services
Ontario Ministry of Community Safety and Correctional Services
Ontario Ministry of Indigenous Relations and Reconciliation
Ontario Ministry of the Attorney General
The Ontario Native Welfare Administrators’ Association
The Ontario Native Women’s Association
The Honourable Debra Paulseth
The Provincial ADR Advisory Committee 2016 Provincial ADR Symposium
Ryerson University Law Practice Program
Chief Dean Sayers, Batchewana First Nation
Elder Gilbert Smith, Aboriginal Justice Elders Council
Superior Court of Justice Family Law Conference
Chief Paul Syrette and Council, Garden River First Nation
Thunder Bay Indigenous Friendship Centre
Timmins Native Friendship Centre
Toronto Aboriginal Agencies Network
Toronto Council Fire Native Cultural Centre
Weechi-it-te-win Family Services
York Region Resiliency Committee
Youth in Transition Program (Hamilton, Guelph, Toronto, Sault Ste. Marie, Simcoe/Muskoka, Sudbury, Waterloo)
Appendix 3c: Advertising campaigns

2016 Advertising campaign

Print

Asian Connections, a weekly newspaper serving the South Asian community (two quarter-page ad insertions in October).

Midweek, a daily newspaper serving the South Asian community based in Brampton (two display insertions in October).

Métis Voyageur, a newspaper published five times a year by the Métis Nation of Ontario (quarter-page ad insertions in October and December).

NOW Magazine, a weekly Toronto news and entertainment print and online magazine (two half-page ad insertions in October).

Share, a weekly community print and online newspaper serving the Black and Caribbean community in the GTA (two one-quarter page insertions).

Sing Tao Daily, the Toronto edition of a Hong Kong-based daily newspaper serving the Chinese community (two large ad insertions).

Toronto Caribbean Newspaper, a biweekly print and online publication serving the Caribbean community in the Greater Toronto Area (two quarter-page ad insertions).

Toronto Sun, a daily Toronto newspaper (classified ad, September).

Turtle Island News, a weekly, mainly online publication serving Ontario’s Indigenous communities (two quarter-page ad insertions).

Two Row Times, a print and online publication serving the Six Nations Indigenous community (two half-page ad insertions).

Windspeaker, a mostly digital, nationwide, semi-monthly Indigenous news publication (two three-column ad insertions).

Radio

CFGI-FM, an Indigenous community station based on Georgina Island (October 16).

CHRY-FM, a community station based at York University, popular with African Canadian residents in the Jane-Finch area of Toronto (November 16).

CHRZ-FM, an Indigenous community station known as Rez 91.3 in Wasauksing, near Parry Sound (October 16).

CKFG-FM, a community station serving an urban, adult, Black audience in the Greater Toronto Area.

CKTI-FM, an Indigenous community station known as The Eagle, serving Kettle and Stony Point reserves (October 16).
2017 Advertising campaign

Print (one insertion only, February/March 2017)

*Métis Voyageur*, a newspaper published five times a year by the Métis Nation of Ontario.
*Turtle Island News*, a weekly, mainly online publication serving Ontario’s Indigenous communities.
*Two Row Times*, a print and online publication serving the Six Nations Indigenous community.
*Windspeaker*, a mostly digital, nationwide, semi-monthly Indigenous news publication (leader board/banner ad).

Radio

CHRZ-FM, an Indigenous community station known as Rez 91.3 in Wasauksing, near Parry Sound.
CFGI-FM, an Indigenous community station based on Georgina Island.
CKTI-FM, an Indigenous community station known as The Eagle, serving Kettle and Stony Point reserves.
Appendix to Chapter 4: Background to Child Protection in Ontario
Appendix 4a: “Best interests of child”

“Best interests of child” in the Child and Family Services Act

Paramount purpose

1 (1) The paramount purpose of this Act is to promote the best interests, protection and well being of children.

Best interests of child

37 (3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

1. The child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child’s physical, mental and emotional level of development.
3. The child’s cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family.
6. The child’s relationships and emotional ties to a parent, sibling, relative, other member of the child’s extended family or member of the child’s community.
7. The importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity.
8. The merits of a plan for the child’s care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.
9. The child’s views and wishes, if they can be reasonably ascertained.
10. The effects on the child of delay in the disposition of the case.
11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.
12. The degree of risk, if any, that justified the finding that the child is in need of protection.
13. Any other relevant circumstance. R.S.O. 1990, c. C.11, s. 37 (3); 2006, c. 5, s. 6 (3); 2016, c. 23, s. 38 (18).

Where child an Indian or native person

(4) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child’s cultural identity. R.S.O. 1990, c. C.11, s. 37 (4).
“Best Interests of Child” in the *Child, Youth and Family Services Act*

**Paramount purpose**

1 (1) The paramount purpose of this Act is to promote the best interests, protection and well-being of children.

**Best interests of child**

74 (3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

(a) consider the child’s views and wishes, given due weight in accordance with the child’s age and maturity, unless they cannot be ascertained;

(b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child’s cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and

(c) consider any other circumstance of the case that the person considers relevant, including,

(i) the child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,

(ii) the child’s physical, mental and emotional level of development,

(iii) the child’s race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,

(iv) the child’s cultural and linguistic heritage,

(v) the importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family,

(vi) the child’s relationships and emotional ties to a parent, sibling, relative, other member of the child’s extended family or member of the child’s community,

(vii) the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity,

(viii) the merits of a plan for the child’s care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,

(ix) the effects on the child of delay in the disposition of the case,

(x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and

(xi) the degree of risk, if any, that justified the finding that the child is in need of protection.
Appendix to Chapter 5: Review of Individual Cases
Appendix 5a:
Case Review and Remedy Determination Process (Rules of Procedure)

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**

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**

16. 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.
Appendix 5b: Reasons for decision in Judicial Review

DIVISIONAL COURT FILE NOS.: 357/16, 358/16 and 359/16
DATE: 20161118

ONTARIO
SUPERIOR COURT OF JUSTICE DIVISIONAL COURT
SHAW R.S.J., MOLLOY and PATTILLO JJ.

BETWEEN
Y.M.
Applicant

– and –
COMMISSIONER JUDITH BEAMAN
Respondent

AND BETWEEN:
C.T.
Applicant

– and –
COMMISSIONER JUDITH BEAMAN
Respondent

AND BETWEEN:
C.R.
Applicant

– and –
COMMISSIONER JUDITH BEAMAN
Respondent

Julie M. Kirkpatrick, for the Applicants

William C. McDowell and Mariam Moktar, for the Respondent

HEARD at Toronto: November 14, 2016 at Toronto
REASONS FOR DECISION

MOLLOY J:

The Application Before the Court

[1] Each of the applicants has brought a judicial review application seeking various forms of relief against Commissioner Judith Beaman. Each of the applicants is a mother and each has lost custody and control of a child or children in proceedings commenced by the Children’s Aid Society (C.A.S.) in which, in some measure, one of the factors involved in the case was testing of hair follicles to determine drug use by the Motherisk Drug Testing Laboratory at Toronto’s Hospital for Sick Children.

[2] Subsequent to the child protection proceedings in which all three applicants were involved, the validity and reliability of the Motherisk Laboratory testing methods were discredited by court decisions1 as well as by a report by the Honourable Madam Justice Susan Lang, who had been appointed by Order in Council to conduct an Independent Review of the Motherisk Laboratory. Justice Lang’s Report was released on December 15, 2016. Among the Report’s recommendations was the establishment of a Second Review to examine individual cases that may have been affected by the Motherisk Laboratory’s flawed hair testing methodology and to provide resources to those individuals to permit them to make informed decisions about any steps that might be available and appropriate.

[3] Acting on this recommendation, the Government of Ontario, by Order in Council dated January 15, 2016, established the Motherisk Commission and appointed Commissioner Judith Beaman to head the Commission. The mandate of the Motherisk Commission included a review of individual child protection cases that may have been affected by Motherisk hair tests between 1990 and 2015, on request or at the initiative of the Commissioner.

[4] Each of the applicants’ cases was considered by the Motherisk Commission. Each of the applicants objects to the extent to which they were involved in or permitted to participate in that process. Each alleges breaches of principles of natural justice and procedural fairness and seeks orders of this Court compelling the Commissioner to do certain things in that regard.

[5] The respondent denies any breach of procedural fairness or natural justice. However, the respondent also argues that this Court ought not to deal with the merits of those arguments at this stage, but rather should dismiss the applications as being either premature or, with respect to C.R., moot.

[6] For the reasons set out below, all three applications are dismissed. The applications by Y.M. and C.T. are premature. They are at liberty to bring a further application after the process before the Commission has been exhausted if they are not successful in obtaining the relief to which they believe they are entitled. The application by C.R. is dismissed as moot.

1 Notably, R. v. Broomfield, 2014 ONCA 725, in which the Ontario Court of Appeal quashed criminal convictions for administering cocaine to a child based on new evidence admitted on the appeal discrediting the methodology and reliability of evidence from the Motherisk Laboratory that was relied upon at trial.
Publication of the Names of the Mothers and Children

[7] Each of the applicants, and their children, have been the subject of child protection proceedings to which the provisions of the Child and Family Services Act2 (“CFSA”) apply. Section 45(8) of the CFSA provides:

No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child’s parent or foster parent or a member of the child’s family.

[8] At the outset of the hearing before this Court, counsel for the Commissioner raised an issue as to whether there should be a publication ban with respect to information that would tend to identify the parents, children or families involved in the child protection proceedings. He noted that there was a reporter present from the Toronto Star who was interested in reporting on the proceedings and who proposed to publish the names of two of the mothers. Both of these mothers had previously given interviews to the Toronto Star and had been the subject of Toronto Star articles about the Motherisk hair testing. Both of these women were also the subject of other media coverage in the past. In these media stories, the names of the two mothers were disclosed, with their consent, but not the names of their children.

[9] The Toronto Star reporter, Ms. Mendleson, was given the opportunity to consult legal counsel on this issue. Although legal counsel was not available to speak to the matter, Ms. Mendleson did get advice and made submissions on the right of the Toronto Star to publish the names of these two mothers based on: (1) the public interest issues involved; (2) the waiver of the two women whose names would be published; and (3) the fact that this information was already in the public domain. She relied on the Supreme Court of Canada’s landmark decision in Dagenais.3

[10] After considering the matter, we advised Ms. Mendleson that we considered the principles in Dagenais did not apply. We further advised that we did not see a need to make a specific non-publication order in this matter as in our view s. 45(8) of the CFSA was mandatory and continued to apply.

[11] On further review, I remain of the view that s. 45(8) of the CFSA is determinative. It is a statutory and mandatory direction that no information can be published that would tend to identify, not just the children, but also the parents and family involved in the child protection proceedings. There is no provision in the legislation for any waiver of that prohibition, whether by the court or any of the individuals involved.

[12] Dagenais involved an application by four individuals (who were facing criminal charges for sexual abuse of young boys) seeking an injunction restraining the CBC from publishing a mini-series dealing with similar subject matter. The order was made by a Superior Court judge as an exercise of common law discretion. There was no statutory publication ban involved. That is a very different case from this one.

2 Child and Family Services Act, R.S.O. 1990, c, C.11.
As far as I have been able to determine, the only case dealing directly with the CFSA publication ban is a decision of Aston J. holding that s. 45(8) cannot be waived. He held, in *P.(R.) v. Children’s Aid Society of Lanark (County) & Smiths Falls (Town)*,4 at para. 7:

Section 45(8) of the *Child and Family Services Act*, R.S.O. 1990, c. C.11 [as amended] (and its predecessor), provides "no person shall publish or make public information that has the effect of identifying a child who is ... the subject of a proceeding or the child's parent or foster parent or a member of the child's family."

There is no provision in the Act whereby the child, upon attaining the age of majority, or the child's parent, foster parent or other member of the child's family, can waive this legislative provision. The plaintiff's agent, Ms. Kerr-Hepworth, did not cite any authority that would support the granting of the order sought. These claims are therefore dismissed. [Emphasis added]

Although the Divisional Court reversed Justice Aston’s decision on appeal, they did so on other grounds and did not comment on s. 45(8).5

[14] There are a number of other legislative provisions, both provincial and federal, prohibiting publication of information, but typically these allow for waiver in specified circumstances. For example, s. 99(1) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, prohibits the publication of information tending to identify a young person in a provincial offence hearing. Section 99(3), however, specifically makes an exception for young persons who disclose the information themselves. This indicates that where the Ontario legislature intends to permit waiver, they specifically provide for it in the statute.

[15] Similarly, in the federal context, s. 110(1) of the *Youth Criminal Justice Act*, S.C. 2002, c. 1, prohibits the publication of information identifying a young person ‘dealt with’ under the Act, subject to certain exceptions. Section 110(3) specifically allows a young person to publish information that would identify themselves after they reach the age of 18 years. A youth may also apply for an order permitting the publication of identifying information before they reach 18 years of age under s. 110(6). Section 111(1) of the *YCJA* prohibits the publication of information identifying young victims and witnesses. Section 111(2) specifically allows a youth to publish the information themselves once they reach the age of 18, while the parents may publish the information if the youth is deceased. Section 111(3) allows a youth to apply to publish the information before reaching the age of 18.

[16] There are a number of provisions of the *Criminal Code* that provide for publication bans upon the application of a victim, witness, or party, with the issuance of the ban then being subject to the discretion of the judge. However, for child pornography offences, s. 486.4(3) provides for an automatic publication ban for information identifying a victim or witness under the age of 18. Unlike other publication bans in the *Code*, a s. 486.4(3) publication ban is not discretionary, and there are no exceptions. No provision is made for waiver. In this sense, it is similar to s. 45(8) of the CFSA.

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4 *P.(R.) v. Children’s Aid Society of Lanark (County) & Smiths Falls (Town)*, 2006 CarswellOnt 9830 (S.C.)
5 see 2008 CarswellOnt 4280 (Div. Ct.)
[17] Section 486.4(3) of the Criminal Code was considered by Campbell J. of the Nova Scotia Provincial Court in R. v. B(K)6. In that case, media lawyers sought a revocation of a publication ban issued under s. 486.4(3) on the grounds that it conflicted with the YCJA, which, as explained above, permits waiver. Justice Campbell commented, at para. 23, “[s]ection 486.4(3) of the Criminal Code dealing with the mandatory ban in child pornography cases does not include a provision for a waiver by victims, parents or anyone else.” Justice Campbell ultimately concluded that s. 486.4(3) does not conflict with the YCJA. Implicit in Justice Campbell’s reasons is the assumption that if waiver were permitted under s. 486.4(3), then Parliament would have specifically provided for it, as they did in the YCJA.

[18] Although not binding on this Court, I consider the reasoning in these cases to be sound. In my view, the parties are not free to waive s. 45(8) of the CFSA, and this Court has no power to authorize publication that would contravene it. For that reason, the names of the applicants in this decision have been initialized.

**The Mandate of the Motherisk Commission**

[19] The Order in Council (“OIC”) establishing the Motherisk Commission sets out its mandate as being: (a) to establish a Review and Resource Centre to offer “appropriate support and assistance to persons affected by the Motherisk test results, including information, counselling assistance, legal advice and alternative dispute resolution”; (b) to design and implement a process to notify affected persons; (c) to offer early advice and guidance identified by children’s aid societies as high priority and review individual child protection cases that may have been affected by Motherisk tests between 1990 and 2015 on request or on the initiative of the Commissioner; (d) to determine eligibility criteria for and the level and type of services to be made available to affected persons; and (e) engage “as may be appropriate” with interested parties and stakeholders.

[20] The OIC specifically provides that the Commissioner shall not express any conclusion or recommendation regarding potential civil or criminal liability of any person.

[21] The Motherisk Commission was established under the Public Inquiries Act7 and the Commissioner has the authority to establish rules and guidelines for the Commission. The Process Rules established by the Commission, and published in August 2016, provide for two phases: (1) Reviewing cases identified as high priority and those for which a member of the public has sought a review; and (2) Undertaking outreach inviting affected individuals to apply for resources offered at the Commission’s Review and Resource Centre. With respect to the file review process, the OIC directs the Commissioner to determine whether the Motherisk testing had a “substantial impact.” This is a defined term in the Process Rules, as follows:

6 R. v. B(K), 2014 NSPC 24, 345 N.S.R. (2d) 203
7 Public Inquiries Act, 2009, S.O. 2009, c. 33, Sch.6
“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; and

(iii) The decision of the court.

[22] The Process Rules provide that after the file review, the Commissioner will make one of three determinations:

(1) That the Motherisk testing did not have a substantial impact (in which case all parties requesting the review are to be advised of the finding and, where permanency planning has been put on hold, the Commissioner will authorize the CAS to take whatever further steps are necessary to plan permanency for the child);

(2) That the Motherisk testing did have a substantial impact (whereupon the Commission is to take reasonable steps to locate the parties and notify them); and

(3) Where the role of the Motherisk testing is unclear, further information is to be gathered, including but not limited to case notes, reports, assessments and court transcripts.

[23] The Commissioner, in accordance with her mandate under the OIC, established a Review and Resource Centre, which has the capacity to provide legal file reviews, counselling assistance, legal referral and alternative dispute resolution services. Under the Rules, where it is determined that the Motherisk testing did not have a substantial impact, the services available are counselling assistance, a meeting with the Commissioner and/or review counsel to discuss the outcome, reconsideration of the file review, and any other services the Commissioner deems appropriate having regard to the Terms of Reference in the OIC.

[24] Where the Commissioner determines that the Motherisk testing did have a substantial impact on the outcome of the case, Rule 16 provides for affected persons to 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; and,

(e) Any other services the Commissioner deems appropriate, having regard to the terms of Reference.
Rule 9 provides that an affected person who disagrees with the Commissioner’s determination may request reconsideration within 30 days of being advised of the decision. Further, an affected person or children’s aid society seeking reconsideration may file further material in support of their request.

**C.R.’s Application is Moot**

The Commissioner reviewed C.R.’s case and issued a letter dated April 11, 2016 in which she stated that, “Although it was not the only evidence supporting the decision, it is clear the results of the Motherisk testing were a significant factor leading to the decision made in the case involving [C.R.]’s children.” The full panoply of resources available from the Review and Resource Centre were made available to C.R., including the opportunity for counselling, legal referral, funding for legal services and alternative dispute resolution.

C.R. objects to the wording of the Commissioner’s letter and takes the position that there is no basis for the statement that the Motherisk results were “not the only evidence” supporting the decision. She seeks judicial review on the basis that she was not given the opportunity to make oral and written submissions, was not provided with all of the material upon which the Commissioner relied in reaching her determination, and was denied a hearing.

C.R. was fully successful before the Commissioner. It is not necessary to engage in an analysis of the procedural fairness and natural justice standards required of the Commissioner at the various stages of the Commission’s process. Regardless of whether there was a denial of procedural fairness (about which I make no finding), C.R. has obtained everything she could obtain from the Commission within the Commission’s mandate. It is only the result of a decision that can be the subject of judicial review, not peripheral words in the reasons that have communicated that result. It is not the function of the reviewing court to rewrite the reasons of the tribunal, nor is judicial review available merely to attack extraneous words in a decision.

C.R. feels affronted by the reference to there being other factors involved in her losing her children. However, it is clear from the decision of the judge who decided the child protection proceedings that there were, in fact, other things he took into account. In my view, C.R.’s application is moot. She has already obtained a favourable ruling from the Commissioner and has access to all of the resources to which she was entitled. In any event, the remedies sought here are discretionary. I would not exercise my discretion to make any of the orders sought in this situation.

I note that the Commissioner has agreed that C.R. may have 30 days to seek reconsideration of her decision in order to seek to have the language to which she objects removed. I leave that to C.R. and the Commissioner. There is no basis for this Court to intervene.

Accordingly, her application is dismissed.

**Y.M.’s Application is Premature**

Y.M.’s child has been placed in the final custody of her natural father. This occurred after family court proceedings were brought by the father, but in which the C.A.S. was involved. The C.A.S. supported the father’s plan and relied upon positive Motherisk tests as evidence that Y.M. was abusing alcohol. Evidence
from Motherisk was introduced in the family court proceedings. When a final custody order was made in favour of the father on August 2, 2013, the C.A.S. withdrew its child protection application. The final custody order stipulated that Y.M. would have unsupervised day time access each Sunday from 12:00 to 5:00 p.m. and each Wednesday from 7:00 to 8:00 p.m. The order further provided that graduated overnight access is to begin at such time as Y.M. provided a Motherisk hair follicle test showing minimal or no alcohol consumption for a three month period, proving that there is no evidence that this would otherwise be contrary to the child’s best interests.

[33] To date, Y.M. has not sought an order varying the access terms of the custody order.

[34] Y.M. requested that the Commissioner review her case. The Commissioner obtained the files from the C.A.S. and conducted a file review. The Commissioner determined on September 20, 2016 that further information was required in relation to the court proceeding, including a transcript of a hearing that took place on October 9, 2012, and has requested those documents. The final review has not yet been concluded. No decision has been made as to whether the Motherisk testing was a substantial factor in this case, and no determination has been made as to what resources will or will not be made available to Y.M.

[35] Y.M. seeks judicial review of the Commissioner’s decision and seeks relief in the nature of mandamus compelling the Commissioner to receive written and oral submissions from the applicant prior to making a decision. She also originally sought an order compelling the Commissioner to provide her with disclosure of all documents sought and received by the Commissioner and an order compelling the Commissioner to order transcripts of the applicant’s proceedings.

[36] As a general principle, a court will not interfere in ongoing proceedings before an administrative tribunal. Absent exceptional circumstances, parties must exhaust all remedies available in the administrative process before turning to the courts. The rationale for this principle is well-summarized by Stratas J.A. in *C.B. Powell Limited v. Canada (Border Services Agency)* as follows (at paras. 31-32):

Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.

8 These latter two forms of relief may now be moot as the Commissioner has sought transcripts and provided some materials to the applicant.

9 *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61
This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway: see, e.g., Consolidated Maybrun, supra at paragraph 38; Greater Moncton International Airport Authority v. Public Service Alliance of Canada, 2008 FCA 68 at paragraph 1; Ontario College of Art v. Ontario (Human Rights Commission) (1992), 99 D.L.R. (4th) 738 (Ont. Div. Ct.). Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker’s findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience: see, e.g., Consolidated Maybrun, supra at paragraph 43; Delmas v. Vancouver Stock Exchange (1994), 119 D.L.R. (4th) 136 (B.C.S.C.), aff’d (1995), 130 D.L.R. (4th) 461 (B.C.C.A.); Jafine v. College of Veterinarians (Ontario) (1991), 5 O.R. (3d) 439 (Gen. Div.). Finally, this approach is consistent with and supports the concept of judicial respect for administrative decision-makers who, like judges, have decision-making responsibilities to discharge: Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 48.

[37] The exceptional situations in which courts will intervene in the midst of an administrative tribunal’s process are rare, absent a true issue of jurisdiction (which clearly does not arise here). Typically, concerns about procedural fairness and natural justice are not sufficient to warrant intervention. In Harelkin v. University of Regina,10 the Supreme Court of Canada recognized that the manner in which the university dealt with a student breached principles of natural justice, but nevertheless held that the courts were not entitled to intervene until the student had exhausted his internal remedies, which included the right of appeal to the university senate.

[38] Likewise, the Ontario Court of Appeal held in Volochay v. College of Massage Therapists of Ontario11 that the Divisional Court was “wrong in principle” in quashing decisions of the College’s investigatory bodies prior to Mr. Volochay exhausting his right of appeal to the Health Professions Appeal and Review Board (“HPARB”). This was so notwithstanding findings that the College had breached principles of procedural fairness and natural justice, which the Court of Appeal found did not constitute “exceptional circumstances,” particularly in light of the availability of an adequate remedy from HPARB.

[39] In this case, there are no exceptional circumstances warranting intervention at this stage. The Commissioner is still in the process of reviewing the file. It is not for this court to dictate, prior to any decision, how the Commissioner should go about that task. Such an intervention would be completely inconsistent with principles of judicial deference to administrative tribunals. Further, after the Commissioner makes a decision, Y.M. has a right to seek reconsideration and to file any additional materials upon which she relies with the Commissioner for her consideration. It may be the case that, after all avenues before the Commission have been exhausted, Y.M. will have received everything to which she believes she is entitled. If so, that will be the end of the matter. If not, she may then seek judicial review, which can be conducted with the benefit of a full record of all proceedings before the Commission.

10 Harelkin v. University of Regina, [1979] 3 S.C.R. 561
11 Volochay v. College of Massage Therapists of Ontario, 2012 ONCA 541; see also C.B. Powell, supra, Note 9 at para. 33
Accordingly, this application is dismissed as premature.

**C.T.’s Application is Premature**

C.T.’s daughter was made a Crown ward without access for purposes of adoption after a child protection trial and pursuant to the Order of Hardman J. dated December 15, 2015. That decision is currently under appeal. It would appear that the child was apprehended by the C.A.S. because of Motherisk hair testing that showed the presence of marijuana and cocaine for both C.T. and her child. C.T. contends this was the only basis upon which the C.A.S. acted. Motherisk results were introduced at the trial. However, in her reasons for decision, the trial judge referred to *R. v. Broomfield*\(^{12}\) and the Independent Review being conducted by the Honourable Madam Justice Lang and held (at para. 162) that “given the concerns raised by the investigation, it is not possible for the court to rely on any of the tests filed to establish on their own the presence or absence of any drugs in the samples tested.”

C.T.’s case was identified by the C.A.S. as being a high priority and the file was sent to the Commission for review. Based on the file review, the Commissioner determined that the Motherisk testing did not have a substantial impact on the outcome of the case and advised the C.A.S. (by letter dated March 31, 2016) that there was “no reasonable basis related to [Motherisk] testing to question the legal process on the existing status quo of the child” and that the C.A.S. was “at liberty to take whatever future steps are deemed to be in the children’s best interest.”

This letter was not initially provided to C.T., but she was advised of the result in April 2016, both orally and in writing. The Commissioner offered to provide counselling services, but C.T. has not taken advantage of that offer.

Initially, the C.A.S. attached the Commissioner’s letter as an exhibit to an affidavit and filed it in the appeal from the wardship Order made by Hardman J. However, upon the objection of counsel for C.T., that affidavit was withdrawn and the Commissioner’s letter is now the subject of a motion by C.A.S. to adduce it as fresh evidence on the appeal. It is for the appeal court to determine whether or not the Commissioner’s opinion as to the role of the Motherisk testing on the result in the case is relevant and admissible evidence on the appeal. It does not form a basis for judicial review in this court.

C.T. objects to the Commissioner’s determination that the Motherisk testing was not a significant factor in her case. She alleges that in reaching that determination the Commissioner failed to properly apply principles of procedural fairness and natural justice. Prior to commencing this judicial review application, C.T., through her counsel, advised the Commissioner of the appeal from the decision of Hardman J. and asked the Commissioner to review the material filed on the appeal, including the transcripts of the trial. The Commission responded that if C.T. requested reconsideration under the Rules, the Commissioner would review that material as part of the reconsideration. Instead, in July 2016, C.T. commenced this judicial review application.

At the present time, the appeal of the wardship order is being held in abeyance while the parties are seeking to resolve the issues through an ADR process external to the Commission. While this is ongoing, C.T. does not want the Commissioner to be involved. Although provided for in the Rules for filing a reconsideration request has expired, the Commissioner, through her counsel, has undertaken to extend the time to 30 days after the outcome of the appeal, although it would also be open to C.T. to file her reconsideration request earlier if she wishes.

\(^{12}\) *Supra*, Note 1.
[47] C.T. has failed to exhaust all avenues of redress within the Rules of the Commission. That being so, her application is premature and is dismissed.

**Conclusion and Order**

[48] In the result, all three applications are dismissed. No findings are made with respect to the merits of any of the applications. The respondent does not seek costs, and none are awarded.

MOLLOY J.

I agree:

SHAW R.S.J.

I agree:

PATTILLO J.

**Released:** November 18, 2016

DIVISIONAL COURT FILE NOs.: 357/16, 358/16 and 359/16
DATE: 20161118 ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

SHAW R.S.J., MOLLOY and PATILLO JJ.

BETWEEN:

Y.M.

Applicant

– and –

COMMISSIONER JUDITH BEAMAN

Respondent

AND BETWEEN:

C.T.

Applicant

– and –

COMMISSIONER JUDITH BEAMAN

Respondent

AND BETWEEN:

C.R.

Applicant

– and –

COMMISSIONER JUDITH BEAMAN

Respondent

REASONS FOR DECISION

MOLLOY J.
Appendix 5c:
Lead Commission Counsel’s letter to CASs re: high priority files,
July 18, 2016

MOTHERISK COMMISSION
The Honourable Judith C. Beaman, Commissioner

COMMISSION MOTHERISK
L'honorable Judith C. Beaman, Commissoire

SENT VIA EMAIL AND REGULAR MAIL

July 18, 2016

Dear Executive Directors and Legal Counsel:

I hope that you are all well and that you are enjoying the summer. The Commission staff are busy reviewing files and planning the Commission’s outreach campaign which will be in full swing starting in the fall.

It has recently been brought to my attention that some children’s aid societies may not be interpreting category 4 of the high priority list in the way that the Commission intended. You will recall that category 4 reads as follows:

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.

The concern is that some children’s aid societies may have interpreted this wording such that only cases where a Crown Ward is being considered for adoption have been sent to the Commission. I wish to clarify that the Commission wishes to see all files which employed Motherisk hair testing involving children who have been made Crown Wards even if there is no plan to place a child for adoption.

In my review of files, it would appear that most children’s aid societies have interpreted category 4 correctly but out of an abundance of caution, I would ask that you ensure that all of your staff involved in preparing cases to send to the Commission have an accurate understanding of category 4.

Thank you for your continuing cooperation with and support for the Commission. Please feel free to contact me by telephone (416) 212-0526 or email lorne.glass@motheriskcommission.ca if you have any questions.

Yours very truly,

Lorne Glass
Lead Counsel

400 University Avenue
Suite 1800A
Toronto, Ontario M7A 2R9
info@motheriskcommission.ca
Appendix 5d:
Commissioner’s letter to CASs re: customary care files, June 3, 2016

MOTHERISK COMMISSION
The Honourable Judith C. Beaman, Commissioner

COMMISSION MOTHERISK
L'honorable Judith C. Beaman, Commissaire

June 3, 2016

Dear Executive Directors and Legal Counsel:

I write to thank you for the work you and the staff at your agencies have done to identify and organize the files that you have sent to the Motherisk Commission for our review. To date we have received files from 37 of the 47 children’s aid societies in the Province of Ontario and five other societies have advised us that they have no files that fit the criteria we established for high priority files. There is one agency that has told us that they have files to send to us that we have not yet received but there are still 4 agencies that we have not received replies from.

The Motherisk Commission recognizes the great amount of extra work that is required to identify the files that are considered by us to be high priority. As the Commissioner, I am aware that the Ministry of Children and Youth Services has made some money available to assist your agencies, although I am also aware that the money provided may not be enough to pay for 100% of your extra costs. I hope that this will not stop you from continuing to identify files that fit the criteria we set for high priority files and that you will continue to send these files to us as you become aware of them.

To date we have received approximately 425 files that are considered high priority and we have been able to review and close about one-third of these. In addition, there are another 30 files where some questions have been asked of the agency and once these questions are answered, those files can be closed. There have been 7 files where we have found there to have been a substantial reliance on the Motherisk hair test results and in those cases we are working with the agencies, parents, children and others to move them forward so that the children in these cases are not caught in limbo.

There are two groups of files that we have not been receiving to date and which we believe we should be receiving. These files are those in which customary care agreements have been entered into by parents, children and others that have led to the children being removed from the care of a parent on the basis in whole or in part of Motherisk hair testing results.

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The Motherisk Commission is aware that some of these customary care agreements may have been created and entered into as a resolution of a court proceeding, while others may have been created and entered into prior to or instead of a court proceeding being commenced. In both of these situations, the Motherisk Commission wishes to receive these files.

As you are aware, we have been asking for the legal files so that we are able to review exactly the same documents and see the same information as that of the judge who made the decisions in a case. In cases where a customary care agreement was used as the resolution of a court proceeding, we want the same documents.

In cases where the customary care agreement was entered into prior to or instead of a court proceeding being commenced, we will need to see and review the file of the agency in order to know the basis for the customary care agreement being required and why it was agreed to by the parent(s). In addition, it may be necessary for us to contact the parent(s) and others to get information from them about how and why the customary care agreement was necessary.

We are aware that there may be a great many files that we will now have to review that deal with customary care agreements, but we believe that this is necessary in order to carry out the mandate set out in the Order in Council that established the Motherisk Commission. I believe that in situations where a child has been removed from a parent due to a substantial reliance upon Motherisk hair testing results, then that parent and that child and others deserve to have the case reviewed to see if some action should be recommended, whether that be legal, counselling or some remedy available through the ADR services of the Motherisk Commission.

We are also aware that this request for these files to be provided to the Motherisk Commission may cause you to have questions and if so, I invite you to contact Lorne Glass, Lead Counsel of the Commission, or me.

I again want to thank you for the work you all have been doing and hope that the work of the Commission has not and will not impede in any way the great work you are doing for children in this Province.

Yours very truly,

Judith C. Beaman
Commissioner
Appendix 5e: Commissioner’s order to CASs re: high priority files, February 22, 2016

THE MOTHERISK COMMISSION OF INQUIRY
The Honourable Judith C. Beaman, Commissioner

ORDER

WHEREAS, as per the Public Inquiries Act, the Order in Council 4/2016, dated January 13, 2016, established the Motherisk Commission of Inquiry and provided for the appointment of Justice Judith C. Beaman as the Commissioner, effective January 15, 2016;

AND WHEREAS, paragraph 6 of the Order in Council 4/2016 states:

In accordance with the Public Inquiries Act, 2009, the Commissioner shall obtain all records necessary to perform her duties and, for that purpose may require the production of information that is confidential or inadmissible under any Act or regulation;

AND WHEREAS, the Children’s Aid Societies in Ontario are the custodians of the Child and Family Services Act, (R.S.O. 1990, c. C.11 as am.) cases files in which individuals and their families were potentially affected by flawed Motherisk Drug Testing Laboratory hair strand test results;

AND WHEREAS, the Ministry of Children and Youth Services released a policy directive: CW004-15 Directions Related to Certain High Priority Cases Involving Motherisk Drug Testing Laboratory (MDTL) Hair Testing to all Children’s Aid Societies on December 17, 2015;

AND WHEREAS, as part of the policy directive CW004-15, the Ministry of Children and Youth Services directed the Children’s Aid Societies to immediately identify any cases involving MDTL hair testing results that remain open and where the child has not yet been placed for adoption and to contact the parents or their lawyers to advise them of the potentially flawed hair test results and the creation of the Motherisk Commission of Inquiry.
AND WHEREAS, in order to fulfil the Motherisk Commission’s mandate and to perform her duties as per Order in Council 4/2016, Commissioner Judith C. Beaman requires complete copies of the unredacted files that have been identified as high priority cases by the Children’s Aid Societies in Ontario;

THIS COMMISSION ORDERS THAT:

The Children’s Aid Societies in Ontario shall release complete electronic or paper copies of the unredacted case files, which have been identified by the Children’s Aid Societies as high priority cases, to the Motherisk Commission on Inquiry as soon as possible but no later than 14 days following receipt of this Order.

ORDERED at Toronto, Ontario, this 22nd day of February 2016

The Honourable Judith C. Beaman
Commissioner
WHEREAS, as per the Public Inquiries Act, the Order in Council 4/2016, dated January 13, 2016, established the Motherisk Commission and provided for the appointment of Justice Judith C. Beaman as the Commissioner, effective January 15, 2016;

AND WHEREAS, paragraph 6 of the Order in Council 4/2016 states:

In accordance with the Public Inquiries Act, 2009, the Commissioner shall obtain all records necessary to perform her duties and, for that purpose may require the production of information that is confidential or inadmissible under any Act or regulation;

AND WHEREAS, the Children’s Aid Societies in Ontario are the custodians of the Child and Family Services Act, (R.S.O. 1990, c. C.11 as am.) case files in which individuals and their families were potentially affected by flawed Motherisk Drug Testing Laboratory hair strand test results;

AND WHEREAS, the Ministry of Children and Youth Services released a Policy Directive: CW004-15 Directions Related to Certain High Priority Cases Involving Motherisk Drug Testing Laboratory (MDTL) Hair Testing to all Children’s Aid Societies on December 17, 2015;

AND WHEREAS, as part of the Policy Directive CW004-15, the Ministry of Children and Youth Services directed the Children’s Aid Societies to immediately 1) identify all cases involving MDTL hair testing results in which a Children’s Aid Society 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; and 2) contact the parents or
their lawyers and advise them of the potentially flawed hair test results and the creation of the Motherisk Commission;

AND WHEREAS, Order in Council 4/2016, authorizes Commissioner Beaman to require all Children Aid Societies in Ontario to release information pertaining to such other high priority case files in which Motherisk hair testing was conducted as she deems appropriate;

AND WHEREAS, in order to fulfil the Motherisk Commission’s mandate and to perform her duties as per Order in Council 4/2016, Commissioner Judith C. Beaman requires complete copies of the unredacted files that have been identified as high priority cases by herself and by the Children’s Aid Societies in Ontario.

THIS COMMISSION ORDERS THAT:

The Children’s Aid Societies in Ontario shall release complete electronic or paper copies of the unredacted case files, which have been identified by herself and by the Children’s Aid Societies as high priority cases, to the Motherisk Commission as soon as possible but no later than 14 days following receipt of this Order.

ORDERED at Toronto, Ontario, this 24th day of February 2016

[Signature]

The Honourable Judith C. Beaman
Commissioner
Appendix 5g:
Lead Commission Counsel’s letter to CASs re: FRANK files,
December 22, 2016

Executive Directors and Chief Executive Officers

Dear Sir/Madam:

I hope that this letter finds you well. I wish to thank you again for working in partnership with the Commission to locate and provide to us all of the files from your agency which fit into our definition of high priority cases. As this year winds down, I am pleased to report that Commission counsel have reviewed nearly all of the more than 500 high priority files received to date.

As you know, the Commission's mandate requires the Commissioner to work with “affected persons”. Those specifically identified are children and youth and individuals from Indigenous and racialized communities. The Commission is required to ensure that their voices are heard and that they be granted meaningful participation in the process.

To that end, the Commission conducted an extensive outreach campaign into these communities. The Commissioner has also met with numerous stakeholders to receive input about her mandate and, in addition, has consulted research about the needs of adopted children and those in foster care. From this work, she has learned of how critically important it is, from a psychosocial perspective, for children who have been removed from their families to know their story.

As a result of these efforts, the Commissioner has determined that she must take proactive steps to review the files of children who were made Crown Wards, who are currently under the age of 18 and whose case involved Motherisk testing. She concluded that it was not possible to devise an outreach strategy that would effectively target children, many of whom may not know that substance abuse was a concern in their case or that the Motherisk testing was used as evidence.

Although it is unlikely that there will be a legal remedy for affected persons in these cases, the Commissioner has determined that her remedial scope must include sharing this information with affected children, in a manner that is appropriate to their age, their stage of development and their current circumstances. This sharing of information could range from a letter being placed in the child's file to a meeting with the child and the child's support person.
A number of stakeholders made compelling arguments for reviewing files involving Motherisk testing where children were made Crown Wards but are now over the age of 18. The Commissioner balanced these arguments against the societies’ fiscal and workload constraints and the view that the Commission would come to the attention of these individuals through its outreach and advertising campaigns. She has determined that the Commission will not review these cases unless an individual or group comes forward to ask for a review. In any event, it is the Commissioner’s intention to ensure that a letter be placed in every crown ward file where a Motherisk test was used explaining the Motherisk Review and the activities of the Motherisk Commission.

Working closely with the Ministry of the Attorney General and with the approval of the Superior Court of Justice and the Ontario Court of Justice, the Commission was able to cross-reference the data from the Motherisk Lab with the court’s data management system for family law cases (the FRANK system). We have now compiled a list of cases from the FRANK system which identify cases by court location, the child’s name and in most cases the child’s date of birth.

I am enclosing for your review a list of cases where we believe your agency was the Applicant. The list is password protected and we will send the password to you separately. I would ask that you please check your records for these cases and that you provide the legal materials contained in them to the Commission. The case list is attached to the electronic version of this message. You will receive this letter in hardcopy as well.

Given the time constraints on the Commission and the volume of cases that remain to be reviewed, we ask that in preparing these cases to send to the Commission, you highlight where the Motherisk testing is referenced in the file. In particular, it would be helpful if you would identify the paragraphs in the pleadings where the testing is referred to, whether the evidence is an exhibit to an affidavit and, where there are reasons, whether the judge referred to the testing.

Thank you for your anticipated cooperation. Please do not hesitate to contact me if you have any questions or wish to discuss this matter further.

Yours truly,

Lorne Glass
Lead Counsel | 416-212-0526 | lorne.glass@motheriskcommission.ca
c. Senior Counsel, Directors of Services
Appendix 5h: 
Commissioner’s letter to CASs re: files on adopted children, April 3, 2017

The Honourable Judith C. Beaman, 
Commissioner

L'honorable Judith C. Beaman, Commissaire

April 3, 2017

Dear Executive Directors and Chief Executive Officers:

I am writing to clarify and respond to a few issues that have been brought to the Motherisk Commission's attention. I would also like to provide you some new information about sharing children's letters with adoptive parents.

Phase II Files
Since my letter to you dated December 22, 2016, regarding the production of additional files containing Motherisk Laboratory hair testing, the Motherisk Commission has received correspondence from a number of Children's Aid Societies seeking further clarification.

Some agencies have inquired about the necessity of providing the Commission with a copy of court files where the children have been adopted. We made the decision to seek these Phase II files after careful consideration and consultation because we recognized that this new requirement would impose an additional burden on you.

We are reviewing these additional files to determine whether the hair tests were overly relied upon by the agency or the courts, and to provide information to affected children and their families about our findings in their particular cases. We received expert clinical advice that all children, whether they are adopted or not, need to have access to their history. The Motherisk Laboratory hair testing situation is an important part of their story.
Children’s Letters
As you know, in my letter dated March 20, 2017, we sought your assistance to place hard copies of letters on the files of the children whose reviews we have conducted. Recently, we have heard from a number of executive directors that agencies’ files are now being placed on the CPIN system, and that this will result in the elimination of paper files.

We agree that it makes more sense to have the personal letters from me to the children scanned into the electronic files of children. The important thing is for children to be able to access these letters in the future should they choose to look at their files. Please treat this letter as permission to scan and upload all children's letters sent to your agency, to date and in the future, onto the children's CPIN electronic files. We would ask that this attachment be viewable only by the agency staff who created the digital file.

Sharing Children’s Letters with Adoptive Parents
The Motherisk Commission has also had a number of submissions from groups associated with adoptive parents. They have requested that we give these parents a copy of the letter addressed to their child. The adoptive parents believe that this will better enable them to know what to expect and be prepared to assist their child process the information, when they learn about the impact of the hair testing in their case. We agree that this, too, makes good sense.

Where the hair testing did not play a substantial role, we will rely on the societies to place the children's letters on their files. We will not be contacting the children directly. We do not see the need to unsettle children with the information where the hair testing was not determinative, as it would be highly unlikely to lead to any change in their lives.

In situations where the child has been adopted, we ask the agency to forward a copy of the children’s letter to the last-known address of the adoptive parents to reassure them that no further action will be taken in regard to their children by the Motherisk Commission.

The need to contact children directly, whether they are in care or in adoptive families, will only arise where the Motherisk Commission has determined that the hair testing played a substantial role in the determination of their case. This represents a tiny minority of the files we have reviewed. The Commission will be guided by the advice of the caregivers or adoptive parents as to how and when it is most appropriate to reveal this information to their children.

Contact Information for Adoptive Parents
Some of you have raised concerns about the legality of releasing to the Motherisk Commission the contents of the Phase II files, and of disclosing identifying information related to adoptive families. In order to assuage your unease about releasing this information to the Commission, I have issued an order, which you will find enclosed, requiring you to provide this information to us.
I would like to emphasize that the Commission is only seeking information pertaining to the names of the adoptive parents, their last known addresses and telephone numbers, together with the children's post-adoption names. The sole purpose for obtaining these details is to inform the children and adoptive parents about the findings of the Commission, where we have determined that the hair testing played a substantial role in the child's file. Rest assured that these details will be kept strictly confidential.

Once again, please accept my sincere thanks for your ongoing cooperation in assisting me to carry out the mandate of the Motherisk Commission.

Sincerely,

Judith C. Beaman
Commissioner

c. Senior Counsel/Directors of Services

Encl.
Appendix 5i:
Commissioner’s order to CASs to produce files on adopted children, April 3, 2017

ORDER

WHEREAS, pursuant to the *Public Inquiries Act*, the Order in Council 4/2016, dated January 13, 2016, established the Motherisk Commission and provided for the appointment of Justice Judith C. Beaman as the Commissioner, effective January 15, 2016;

AND WHEREAS, paragraph 2(a) of Order in Council 4/2016 provides:
The Commissioner shall, in consultation with the Attorney General, establish and lead a Review and Resource Centre which will offer appropriate support and assistance to persons affected by the Motherisk test results, including information, counselling assistance, legal advice and alternative dispute resolution.

AND WHEREAS, paragraph 2(b) of Order in Council 4/2016 provides *inter alia*:
The Commissioner shall design and implement a process to identify and notify affected persons so that they may have access to the services and support offered by the Review and Resource Centre;

AND WHEREAS, paragraph 6 of the Order in Council 4/2016 states:
In accordance with the *Public Inquiries Act, 2009*, the Commissioner shall obtain all records necessary to perform her duties and, for that purpose may require the production of information that is confidential or inadmissible under any Act or regulation;

AND WHEREAS, the Family Court Case Management System operated by the Ministry of the Attorney General for family courts in Ontario (the “FRANK” system) contains information which may assist the Commissioner in identifying affected persons;

AND WHEREAS, in fulfillment of a previous order dated October 25, 2016, the Ministry of the Attorney General provided the following information to the Motherisk Commission:
The names and dates of birth of subject children in cases under the *Child and Family Services Act, R.S.O., 1990 c. C-11* where a court made a final order of Crown Wardship between January, 1998 and December 31, 2015 and where the children in these cases were subsequently adopted;

400 University Avenue
Suite 1800A
Toronto, Ontario M7A 2R9
info@motheriskcommission.ca
www.motheriskcommission.ca

400 Avenue University
Bureau 1800A
Toronto (Ontario) M7A 2R9
info@motheriskcommission.ca
www.motheriskcommission.ca
AND WHEREAS the Motherisk Commission compared this information to the information in the database provided by the Motherisk Drug Testing Lab (the “MDTL”) for the purpose of locating cases where it is believed that MDTL test results were obtained and children were adopted;

AND WHEREAS the Motherisk Commission has prepared a list of these cases by court location and has disseminated these lists to the children's aid societies in Ontario.

NOW THEREFORE THIS COMMISSION ORDERS THAT:

1. Each children's aid society in Ontario review the list it has received and provide, in electronic format, where possible, all files that appear on the list that are in its possession.

2. Each children's aid society report to the Commission any cases that are on the list it has received but are:
   a. not in its possession;
   b. are not believed to involve the use of a hair strand test from the MDTL; or
   c. did not result in the adoption of a subject child or children.

3. Upon request of the Motherisk Commission, each children's aid society in Ontario provide the names and last known addresses of the adoptive parents of the subject children in these files together with the children's post-adoption names.

ORDERED at Toronto, Ontario, this 3rd day of April, 2017

The Honourable Judith C. Beaman
Commissioner
Appendix 5j: Commissioner’s letter to children in substantial impact cases

The Honourable Judith C. Beaman, Commissioner

L’honorable Judith C. Beaman, Commissaire

[date]

Name of child
c/o Name of Executive Director or Chief Executive Officer
Name of Children’s Aid Society
Street address
City, ON Postal code

Dear [first name of child],

My name is Judith Beaman and I am the Commissioner of the Motherisk Commission. The Commission was set up by the government of Ontario to review court cases of families that involved hair testing done by the Motherisk Laboratory at the Hospital for Sick Children in Toronto.

These hair tests were intended to tell children’s aid societies, lawyers and judges whether a person had used drugs or alcohol. The problem was that these tests were not carried out properly. A review in 2015 found that the tests were inadequate and unreliable. If you want to find out more about the investigation, you can look at the “Report of the Motherisk Hair Analysis Independent Review” by The Honourable Susan E. Lang (http://www.m-hair.ca/).

My job is to review court cases where the hair tests were used as evidence. When I review a case, I have to decide whether the test had a major impact on the decisions made by the children’s aid society or the court. In these cases, I contact the family to help them get legal advice or other support.

One of the cases I reviewed was that of your biological family. I looked at all of the documents that were filed with the court, the Children’s Aid Society and other parties. I also read carefully and considered the decisions made by the judges who dealt with your case when it was in court.

It is impossible to be sure whether the Motherisk test results were accurate or not because they were unreliable. However, it was clear to me that the hair test results were relied upon...
too heavily by [name of CAS] and by the court in the decisions made about your care. We reached out to your biological mother and father to offer them information and support.

I am very sorry to give you this information and realize you may find it upsetting, but I thought that you may want to know about this part of your history. I asked [name of CAS] to put this letter in your file so you would have this information if you chose to look at your file one day.

The Commission was set up for a term of only two years. At the beginning of 2018, I will be submitting a report on our work to the government. After that, the Commission will be closed down. Currently our website is www.motheriskcommission.ca, but by the time you read this the website may not be active. However, the Motherisk Commission report will still be available online. I hope it will be helpful to you.

I wish you all the best.

Yours very truly,

Judith Beaman
Commissioner
Appendix 5k:
Commissioner’s letter to children in non-substantial impact cases

The Honourable Judith C. Beaman, Commissioner

L'honorable Judith C. Beaman, Commissaire

[date]
Name of child
c/o Name of Executive Director or Chief Executive Officer
Name of Children’s Aid Society
Street address
City, ON  Postal code

Dear [first name of child],

My name is Judith Beaman and I am the Commissioner of the Motherisk Commission. The Ontario government set up the Commission to offer legal and counselling support to people affected by the hair testing done at the Motherisk Lab at the SickKids Hospital in Toronto.

The hair tests were supposed to tell children's aid societies, lawyers and judges whether a person had used drugs or alcohol. The problem was that these tests were not done properly. An investigation in 2015 found that the tests were inadequate and unreliable. If you want to find out more about the investigation, you may want to look at the “Report of the Motherisk Hair Analysis Independent Review” by The Honourable Susan E. Lang (http://www.m-hair.ca/).

My job is to review court cases where the hair tests were used as evidence. When I review a case, I have to decide whether the test had a major impact on the decisions made by the children’s aid society or the court. In these cases, I contact the family to help them get legal advice or other support.

One of the cases I reviewed was that of your family. I looked at all of the documents that were filed with the court. I also read carefully and thought about the decisions made by the judges who dealt with their case when it was in court.

It is impossible to be sure whether the Motherisk test results were accurate or not because they were unreliable. However, I believe that the court and [name of CAS] did not rely too
much on these test results in your family’s case because there were other reasons for their decisions.

I thought that you may want to know about this part of your history. I asked the [name of CAS] to put this letter in your file so you would have this information if you chose to look at your file one day. I wanted you to know that although the Motherisk Lab test results should not have been used, I do not believe they changed the outcome of the case involving your family.

The Commission was set up for a term of only two years. At the beginning of 2018, I will be submitting a report on our work to the government. After that, the Commission will be closed down. Currently our website is www.motheriskcommission.ca, but by the time you read this the website may not be active. However, the Motherisk Commission report will still be available online. I hope it will be helpful to you.

I wish you all the best.

Yours very truly,

Judith Beaman
Commissioner
Appendix 5I: Commissioner’s letter to CASs re: amended children’s letter policy, June 7, 2017

June 7, 2017

Dear Executive Directors and Chief Executive Officers:

I am writing to you about our revised process for children’s letters.

As you know, the Commission’s goal is to inform children and youth who were affected by the Motherisk Laboratory testing about what we found when we reviewed their particular file. In our future correspondence with you, we will continue to include letters to the children involved and request that you place the letters on the electronic or paper file that your agency would produce should a child request to view their records.

We learned recently that one of our letters caused distress to a child, we believe, as a result of the way it was shared by the parent. As far as possible, we want to avoid similar situations from occurring again.

Therefore, we sought further advice and rethought our process for sharing copies of the children’s letters with parents, both biological and adoptive. We no longer wish to share actual copies of the children’s letters with parents. Instead, we wish to inform parents that the children’s letters are on file at the CAS and give them a sense of what the letters contain. We now believe that the safest place for the children’s letters is in the CAS file and in the context of all the other documents in the file.

Cases of non-substantial impact

In the large majority of cases, the Motherisk testing did not have a substantial impact on the decision making in the file. In these cases, I previously asked you, in my April 3, 2017 letter, to forward a copy of the children’s letter to the last-known address of the adoptive parents. I now request that you do not forward copies of the children’s letters to the adoptive parents.
Instead, we have drafted a standard letter to the adoptive parents for you to share in situations where the child has been adopted. (Please see enclosed or attached.) We will be providing this letter to you electronically. Could you please fill in the missing information (i.e. child’s name/children’s names, name of your agency), date and address it, and send it directly from your agency, as the need arises to inform adoptive parents of the Commission’s findings.

Cases of substantial impact

In the small minority of files where we found that the Motherisk testing had a substantial impact on the outcome of the case, we will continue to be guided by the advice of the child’s caregivers as to how and when to share this information with their child. There is no change in the process for agencies from my letter of April 3, 2017. However, the Commission will not be sending copies of the children’s letters to either the adoptive or the biological parents.

Ongoing file reviews

Thank you for all your time and effort in sending us files for review. Please continue to send us your high priority and Phase II files so that we can review them all and let you know our findings, without needing an extension to the Commission’s mandate beyond 2017.

Please do not hesitate to contact me if you have questions. I would like to thank you for all your support to the Motherisk Commission and for your flexibility in helping us to change our processes as we learn and respond to feedback.

Sincerely,

Judith C. Beaman
Commissioner
c. Senior Counsel/Directors of Services

Encl.
Dear Adoptive Parent:

I am sending you this letter on behalf of the Motherisk Commission.

The Ontario government set up the Motherisk Commission to offer legal and counselling support to people affected by the hair testing done by the Motherisk Laboratory at the Hospital for Sick Children in Toronto.

The hair tests were intended to tell children's aid societies, lawyers and judges whether a person had used drugs or alcohol. However, an investigation in 2015 found that the tests were inadequate and unreliable for legal purposes. If you want to find out more about the investigation, you may wish to look at the “Report of the Motherisk Hair Analysis Independent Review” by The Honourable Susan E. Lang (http://www.m-hair.ca/).

The Motherisk Commission’s mandate is to review individual child protection cases where the hair tests were used as evidence. The purpose of the review is to determine whether the Motherisk test results had a substantial impact on the decisions made by the children's aid society or the court.

One of the cases the Commission reviewed was that of [name of child or children]. The Commission looked at all of the documents that were filed with the court. They also read carefully and thought about the decisions made by the judges who dealt with the case when it was in court.

It is impossible to be sure whether the Motherisk test results were accurate or not because they were unreliable. However, the Commission believes that the court and [name of CAS] did not rely too heavily on these test results in this case because there were other reasons for their decisions. The Commission now considers this case closed and will be taking no further action.

The Commission received advice from social workers and other professionals who work with children and youth. They emphasized the importance of children and youth knowing their full history. For this reason, the Commission has asked us to put a letter in your [child's/children's] file, explaining that the Motherisk testing was not reliable and that the Commission was set up to help people who were affected by it. The letter informs them that the Commission reviewed their family's file and found that the test results did not play a substantial role in their particular case. This information will be available to your [child/children] if they choose to look at their file in the future.

If you would like more information about the Motherisk Commission, please visit www.motheriskcommission.ca, or contact the Commission by email, at info@motheriskcommission.ca, or by telephone, at 416-212-0560 or toll free 1-844-303-5476.

The Commission was set up for a term of only two years. At the beginning of 2018, it will be submitting a report on its work to the government and will be closed down shortly after that. If you need assistance at any time, please contact [CAS contact info].
Appendix to Chapter 6: Observations from the Review of Individual Cases
Appendix 6a: Sample Motherisk invoices

![Sample Motherisk invoice image]

<table>
<thead>
<tr>
<th>MATRIX</th>
<th>DRUG</th>
<th># TESTS</th>
<th>UNIT PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hair</td>
<td>Cocaine</td>
<td>1</td>
<td>75.00</td>
<td>75.00</td>
</tr>
<tr>
<td>Hair</td>
<td>Benzoylcegonine</td>
<td>1</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Hair</td>
<td>Methamphetatine/MDMA</td>
<td>1</td>
<td>50.00</td>
<td>50.00</td>
</tr>
<tr>
<td>Hair</td>
<td>Opiates</td>
<td>1</td>
<td>50.00</td>
<td>50.00</td>
</tr>
</tbody>
</table>

Amount Due: $175.00 CAD

Please forward payment quoting invoice number to:
The Hospital for Sick Children
Attention: Research Accounting
555 University Avenue
Toronto, Ontario M5G 1X8

Please direct invoice inquiries to 416-813-7654 x2674 / Please direct result & interpretation inquiries to 416-813-8572

TERMS: Payment due on receipt of this invoice.
<table>
<thead>
<tr>
<th>MATRIX</th>
<th>DRUG</th>
<th># TESTS</th>
<th>UNIT PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hair</td>
<td>FaVE (alcohol)</td>
<td>1</td>
<td>150.00</td>
<td>150.00</td>
</tr>
</tbody>
</table>

**AMOUNT DUE:** $150.00 CAD

Please forward payment quoting invoice number to:
The Hospital for Sick Children
Attention: Research Accounting
555 University Avenue
Toronto, Ontario M5G 1X8

Please direct invoice inquiries to 416-813-7654 x2674 / Please direct result & interpretation inquiries to 416-813-8572

**TERMS:** Payment due on receipt of this invoice

**PAYMENT STUB:**

<table>
<thead>
<tr>
<th>Invoice #</th>
<th>Sample #</th>
<th>Amount Due</th>
<th>Amount Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$150.00 CAD</td>
<td></td>
</tr>
</tbody>
</table>
Appendix to Chapter 8: Counselling Services
Appendix 8a: Client confirmation letter

[Date]

[Name]
Street Address
City, ON Postal Code

Dear [Name]:

This letter is to confirm that the Motherisk Commission has referred you to counselling services.

Your counsellor’s name and address are:

As we discussed, you will have the opportunity to meet with your counsellor to discuss your situation and the time you both believe that counselling will be required. The Commission will provide counselling services to you at no cost, for up to two years.

It is important for you to attend the sessions which you and your counsellor have scheduled. The Motherisk Commission will allow for up to three missed sessions without agreed upon notice during the course of counselling. After that, counselling services will be withdrawn.

Please find enclosed information regarding the Motherisk Commission, including frequently asked Questions and Answers. I hope you find the counselling service of assistance. I am available if you have questions or concerns. Please contact me at 416-212-0524 or 647-286-9246 or email me at Celia.Denov@motheriskcommission.ca.

Yours truly,

Celia Denov
Director of Counselling Services
Appendix 8b: Counsellor confirmation letter

The Honourable Judith C. Beaman, Commissioner

[Date]
[Name]
Street Address
City, ON Postal Code

Dear [Name]:

I am writing regarding the counselling support funding being made available to you by the Motherisk Commission. We are committed to working with you to facilitate access to counselling for those who are affected by the issues raised through the Motherisk Laboratory hair testing. As background for your counselling work, I am providing some materials related to the kinds of counselling support available and the process to follow. These include:

- a brief overview of the Commission and its mandate;
- responses to some frequently asked questions (FAQ);
- information on the process regarding approval of requests for counselling;
- a discussion of forms; and
- billing information.

Individuals who request counselling support will also receive a package that includes the same overview and FAQ material.

We have tried to design an approach that minimizes administration, while maintaining safeguards for public funds. We very much appreciate your willingness to work with the Commission to provide counselling services to those affected by Motherisk testing concerns. If you have any questions, please do not hesitate to call me at 416-212-0524 or 647-286-9246 or email me at Celia.Denov@motheriskcommission.ca.

Yours truly,

Celia Denov
Director of Counselling Services
Appendix 8c: Information re: counselling

The Motherisk Commission has made arrangements for those affected by the hair strand testing conducted by the Motherisk Laboratory at the Hospital for Sick Children to have access to counselling support. Counselling support is intended to assist individuals who have reached out to the Motherisk Commission to address their difficulties or concerns. It is understandable, given the issues being addressed at the Motherisk Commission, that some individuals will have need of this counselling support.

One key aspect of counselling support is personal choice. If a person wishes to have counselling, they can choose the type of provider who will offer that service. Ensuring the right relationship in therapy is important, and part of that relationship is allowing a person to select the right counsellor to assist them. As a result, as long as the person providing counselling support is approved by the Commission as qualified, an individual can choose his or her own counsellor. If a person wishes to have counselling support, but does not know how to find that service, the Commission's Director of Counselling Services will provide them with a referral to a suitable counsellor. The Director of Counselling Services will have informed the potential service provider that they may be contacted by someone affected by the Motherisk Commission, so that there will be quick access to help.

Another important part of counselling support through the Motherisk Commission is privacy. The Commission will keep confidential all records related to requests for counselling support. The Commission will not have therapeutic records. The staff of the Commission will not know, for example, what is discussed at counselling support sessions. Every effort will be made to handle requests for counselling support in a way that respects personal privacy and dignity.

The last key element of counselling support through the Motherisk Commission is a straightforward and helpful administration process. Public money will be spent, so there must be some processes to ensure good stewardship. For those seeking counselling, however, the emphasis will always be on helping them to get access to counselling support.

Forms are simple. Providers of counselling will be expected to assist an individual to develop a personal counselling plan, and will provide a report to the Commission about basic matters, such as the number of sessions, or the type of counselling. Once a plan is in place, the Commission will pay approved counselling services directly. Travel to appointments for
counselling will be reimbursed within Government of Ontario guidelines, where required and approved.

Anyone who is interested in counselling support from the Motherisk Commission can request a private appointment. Please call the Motherisk Commission at 1-844-303-5476.
COMMONLY ASKED QUESTIONS AND ANSWERS
ABOUT COUNSELLING SUPPORT

Who can have counselling support?
Anyone is eligible whose child protection matter may have been affected by hair strand testing by the Motherisk laboratory at The Hospital for Sick Children in Toronto. This may also include immediate family members of those affected, of any age.

What kinds of counselling are available?
Individuals who qualify for counselling support can choose both the type of counselling and the service provider who is right for them, provided that the chosen person is approved by the Commission as a qualified counsellor. Individuals can choose a psychiatrist or psychologist, social worker, therapist, or person with other forms of counselling designation. The Commission's Director of Counselling Services will assist those who are interested in counselling, but are unsure what type of counselling might meet their needs, to find a qualified counsellor.

What will be paid for counselling?
Payments will be made directly to a qualified counsellor for an amount up to $200 for a one-hour session with a psychologist, and up to $150 for other qualified counsellors, depending on their experience in their field. However, if the usual rate charged by the service provider is less, then this lower amount is to be invoiced.

What about travel costs?
Those who need to travel within Ontario to and from counselling are eligible to recover the cost of driving a personal vehicle at provincial government mileage rates. Actual bus, train or taxi costs may be recovered by providing original receipts to the Commission, along with a Travel Expense Claim (Form 5). Only the most economic form of travel will be reimbursed (e.g. bus or driving where possible and not taxi).

How long will counselling be available?
Funding for counselling will be available for up to a two-year period from the time an individual begins.

What is the first step to obtaining counselling?
If you are interested in counselling, please call the Motherisk Commission. The process is straightforward, confidential, and supportive. You will be given a private time to speak with the Director of Counselling Services, over the phone or in person, at a time convenient to you. You
will obtain information about a possible service provider, and the process will be explained to you.

**What is the approval process for counselling?**
A consent form will be mailed to you which will ask for your consent for referral to counselling. You will be asked to return that form in the stamped self-addressed envelope. Once that is received by the Commission, you will be referred to your chosen service provider to discuss a counselling plan. Your service provider will send the Commission a separate confidential form to report on the estimated time required for counselling. Once approved, individuals and their chosen service provider will receive a written response.

**Will the Commission pay for initial meetings to discuss a counselling plan and for a report prepared by a prospective service provider?**
Yes. A counsellor or service provider will be paid at their regular rate for three hours of counselling, for the purpose of discussing a personal counselling plan with you and preparing a form for approval by the Commission.

**How will payment work? Will there have to payment “up front”?**
No. Once an individual's counselling plan has been approved in writing by the Commission, the service provider will bill the Commission directly every month for services provided.

**Will anyone know who has accessed counselling support?**
An individual's request and/or approval for counselling will be kept strictly confidential at the Commission. No other party, counsel, or member of the public is entitled to any information about who has or has not requested counselling, or who is receiving counselling. No one, other than you and your counsellor, will be provided with any information as to what transpired during any of your private sessions. This information is strictly confidential to you and your counsellor.

**Does an individual receiving counselling have to keep it secret?**
No. It is his or her decision whether to let others know, or to keep it private. However, the Commission will keep the information confidential.

**Will individuals ever be contacted about counselling?**
Toward the end of the Commission, individuals and service providers may be contacted and asked for feedback about the process of counselling support throughout this Commission. The details and content of sessions would not be revealed, as that information is strictly confidential between an individual and their counsellor or service provider. However, feedback on whether individuals feel they are benefitting from counselling and whether they would be interested in continuing with counselling may be an important factor for the Commission to consider when it comes to making recommendations as a result of this Commission.

**If you are thinking about counselling in relation to the Motherisk Commission, but are uncertain as to who is covered and what is available, please contact the Commission’s Director of Counselling Services at 416-212-0524 or 647-286-9246**

*Celia.Denov@motheriskcommission.ca.* Having a telephone conversation does not mean you have to apply for counselling. You can receive information about the process, and can decide if you are interested when you are ready.
FORM 2: SERVICE PROVIDER REPORT

1. Client Information:
Last Name: ____________________________________________
Given Name: ____________________________________________
Any other name used: ____________________________________________
Address: ____________________________________________
Apt.Suite: ____________________________________________
City: ____________________________________________
Province: ____________________________________________
Postal Code: ____________________________________________
Telephone: ____________________________________________
Birthdate (dd/mm/yyyy): ____________________________________________

2. Service Provider Information:
Name of service provider: ____________________________________________
Name of any related organization (e.g. hospital, clinic, practice):
__________________________________________________
Address: ____________________________________________
Suite: ____________________________________________
City: ____________________________________________
Province: ____________________________________________
Postal Code: ____________________________________________
Telephone: ____________________________________________
3. Type of Practice (please check one)
Psychiatrist ___
Psychologist ___
Therapist ___
Counsellor ___
Social Worker ___
Other (specify) ___

4. Please attach a resume or outline of qualifications and/or experience

5. Please describe the type of proposed counselling or therapy to be provided (e.g. group therapy, one-on-one counselling, and combination).

6. Please indicate the likely frequency of therapy or counselling.

7. Please indicate the recommended number of sessions.

8. Please indicate the period of time for therapy or counselling. (At present, the Commission is permitted to provide counselling support for up to 2 years from the date of intake approval.)

9. Please indicate the location of therapy or counselling services.

10. Please indicate the rate per session.
I met with _____________________________ in assessing his/her needs for Counselling Support related to the Commission and prepared this report.

Signature: ________________________________
Date: ________________________________
Client Number: ________________________________

Return to:

400 University, Suite 1800A, Toronto, ON M7A 2R9
Appendix 8f: Letter to clients re: approval for counselling

The Honourable Judith C. Beaman, Commissioner

[Date]

[Name]
Street Address
City, ON Postal Code
Dear [Name]:

Re: Motherisk Commission Counselling Plan

Thank you for your interest in counselling services offered through the Motherisk Commission.

Your counselling plan report from (Service Provider) was provided to me. Thank you for working with your counsellor to develop this report.

I am enclosing a copy of the plan so that you will have your own copy. Your counsellor has also been advised that this plan is approved.

Please note that it is your responsibility to attend your scheduled counselling sessions. Please note the Motherisk Commission can approve only three missed appointments. After that, unfortunately the Commission cannot continue to pay for counselling sessions.

I wish you the very best in your counselling.

Yours truly,

Celia Denov
Director of Counselling Services

L'honorable Judith C. Beaman, Commissaire

[Date]

[Name]
Street Address
City, ON Postal Code
Dear [Name]:

Re: Motherisk Commission Counselling Plan

Thank you for your interest in counselling services offered through the Motherisk Commission.

Your counselling plan report from (Service Provider) was provided to me. Thank you for working with your counsellor to develop this report.

I am enclosing a copy of the plan so that you will have your own copy. Your counsellor has also been advised that this plan is approved.

Please note that it is your responsibility to attend your scheduled counselling sessions. Please note the Motherisk Commission can approve only three missed appointments. After that, unfortunately the Commission cannot continue to pay for counselling sessions.

I wish you the very best in your counselling.

Yours truly,

Celia Denov
Director of Counselling Services
The Honourable Judith C. Beaman,  
Commissioner

[Date]

[Name]
Street Address
City, ON Postal Code
Dear [Name]:

Re: Motherisk Commission Counselling Plan

Thank you for forwarding your counselling plan for [initials of client]. Your plan has been approved and we have advised your client as well.

The Motherisk Commission is grateful for your assistance in providing counselling services to our client. Please do not hesitate to contact me at 647 286 9246 or at celia.denov@motheriskcommission.ca if I can be of further assistance to you.

Please be aware of the Commission's policy regarding missed appointments. As indicated in our policy material forwarded to you, the Motherisk Commission can pay its reduced fee for up to three missed appointments where there has not been appropriate notice by the client. After three missed appointments the Commission would unfortunately have to terminate its funding for counselling for that client.

Thank you again for your assistance to your client and to the Motherisk Commission.

Yours truly,

Celia Denov
Director of Counselling Services
Appendix to Chapter 9: The Restorative Process
Appendix 9a: Our Restorative Process

OUR RESTORATIVE PROCESS
The Motherisk Commission has made significant progress since it was established in January 2016. We have identified and reviewed individual child protection cases; undertaken outreach to groups and communities that may have been affected, including children and youth, racialized communities and Indigenous communities; and offered information and counselling to individuals and families affected by flawed hair drug and alcohol testing done by the Motherisk Drug Testing Laboratory.

What we have learned so far
Through our work so far, we have learned that the use of unreliable hair testing for legal purposes has resulted in deeply-felt harms by the children and parents who were directly affected, and has had harmful impacts on wider families and communities. While every situation is different, we have heard from people who feel that pursuing legal remedies is not adequate to express or to address the harms they have experienced, or are continuing to experience.

In our discussions with child protection, legal and community partners, we have recognized that many others who are committed to the safety and wellbeing of children have been affected through their involvement in cases that used hair testing from the laboratory. The discovery that flawed evidence was used for over 20 years has also undermined the public’s confidence in the child protection and legal systems.

Our legal review of hundreds of individual child protection cases from across Ontario has given us a unique vantage point to see some of the broader systemic and institutional issues which may have contributed to the reliance on testing done by the laboratory. Indigenous peoples and African-Canadians are overrepresented in the child protection system and are therefore, more likely to have been affected by the Motherisk testing.

Reviewing individual cases is a critical part of the Commission’s work and will continue until the end of our mandate. The restorative process described below will help us work with others to address the needs and questions that we are identifying through the reviews.

Restoring relationships and confidence
Building on what we have learned so far, we are undertaking a process to examine and further understand the systemic and institutional issues that led to this problem and identify strategies to overcome them collectively. This process will help us fulfil our mandate to offer support and assistance to people affected by the flawed hair testing and to engage with parties and stakeholders who have an interest in our work.

The purpose of the process is to examine the past, not to lay blame, but to build understanding and lay the foundation for a better future. We hope that it will help strengthen relationships among people working in child protection and begin to restore confidence in the system.

What we are doing
We are providing meaningful opportunities for people who have been affected by flawed hair testing to share their experiences and tell their stories in a safe way. Their knowledge will help us understand better what happened and contribute to making a difference in the future.
We are facilitating dialogue among individuals and organizations that we have identified during the course of our work. They bring diverse experiences and viewpoints and include people and communities who were affected by the testing, and child protection, legal, government and community partners.

We are holding small meetings with specific sectors or communities. These include meetings with youth and youth advocates, Indigenous people and racialized people. What we learn from these meetings will help us develop the agendas for larger meetings. The larger meetings will bring people together from different sectors to share their perspectives, develop mutual understanding and inform how we move forward. Participants from the smaller meetings will also be invited to participate in these meetings.

**Discussion themes**
We have organized the larger meetings around six key themes that we think are important to understanding the Motherisk testing issue:

- Role of scientific evidence in child protection cases;
- Legislative, procedural and justice system issues;
- Strengthening child protection legal practice;
- Substance use and parenting;
- Strengthening social work practice;
- Systemic issues affecting children’s aid societies.

We are also interested in hearing about any other issues related to the Motherisk testing that are important to people.

**Developing better understanding**
Through the participation of many voices, we hope to develop a better understanding of:

- What happened and to whom?
- Why it happened?
- Why it should matter to everyone concerned about the wellbeing of children and families?
- What changes are needed to prevent it from happening again?

What we learn through this restorative process will form part of the Commission’s final report to government.
Appendix 9b: Outreach list for restorative process

The Commission reached out to the following individuals and organizations, primarily in 2017, to discuss our restorative process and to seek input on potential areas for recommendations. Also included are those who sent us written comments.

Aboriginal Legal Services
Across Boundaries
Addiction Service Providers Working Group
Addictions and Mental Health Ontario
Adopt4Life
Adoption Council of Ontario
African Canadian Legal Clinic
Association of Iroquois and Allied Indians
Professor Nicholas Bala, Faculty of Law, Queen’s University
The Honourable Justice Peter T. Bishop, Ontario Court of Justice
Floydeen Charles-Fridal
Chiefs of Ontario
Child Welfare Organizing Project, New York City
Children in Limbo Task Force
Community Action for Families
Dr. Emma Cunliffe, Peter A. Allard School of Law, The University of British Columbia
The Honourable George Czutrin, Senior Family Justice, Superior Court of Justice
Defence for Children International – Canada
Dennis Franklin Cromarty High School
Professor Gary Edmond, UNSW Law, Sidney, Australia
Elevate NWO
Factor-Inwentash Faculty of Social Work, University of Toronto
Family Lawyers Association
Fraser Advocacy
Family Rules Committee
Professor Judy Finlay, Faculty of Community Services, Ryerson University
Health Canada
The Hospital for Sick Children
Jamaican Canadian Association
The Jean Tweed Centre
Justice for Children and Youth
Professor Shelley Kierstead, Osgoode Hall Law School
The Kingston House of Recovery for Women and Children
The Law Society of Upper Canada
Professor Jennifer Llewellyn, Schulich School of Law, Dalhousie University
McMaster University School of Social Work
Mothercraft – Breaking the Cycle
The Honourable Lise T. Maisonneuve, Chief Justice, Ontario Court of Justice
The Honourable Wendy B. Malcolm, Senior Family Justice, Ontario Court of Justice
Office of the Children’s Lawyer
Office of the Provincial Advocate for Children and Youth
Ontario Association of Child Protection Lawyers
Ontario Association of Children’s Aid Societies and many individual societies across the province
Ontario Association of Social Workers
Ontario Bar Association
Ontario College of Social Workers and Social Service Workers
Ontario Human Rights Commission
Ontario Ministry of Children and Youth Services
Ontario Ministry of Indigenous Relations and Reconciliation
Ontario Ministry of the Attorney General, Aboriginal Justice Division
Sally Palmer, Emeritus Faculty, School of Social Work, McMaster University
Ryerson University Law Practice Program
Professor Gemma Smyth, Faculty of Law, University of Windsor
Tabono Institute
Taibu Community Health Centre
Tungasuvvingat Inuit
Ujima House – Young and Potential Fathers
Women & HIV/AIDS Initiative (WHAI)
Women’s Health in Women’s Hands
Valarie G. Waboose, Faculty of Law, University of Windsor
Youth Wellness Hubs Ontario
Appendix 9c: Letter to introduce the restorative process

The Honourable Judith C. Beaman, Commissioner

Month date, year

Ms. / Mr. First Name Last name
Address
City, ON Postal Code

Dear Ms. / Mr. Last name:

I am writing to update you on the work of the Motherisk Commission and to ask for your involvement in a restorative process we will be undertaking over the next five months. The enclosure provides more information about this process.

The Ontario government established the Motherisk Commission a year ago to lead a Review and Resource Centre to review individual child protection cases and provide support for people who were affected by flawed hair testing done by the Motherisk Drug Testing Laboratory at the Hospital for Sick Children. In her independent review, released in December 2015, Justice Lang found that the hair strand drug and alcohol testing done by the laboratory was inadequate and unreliable for legal purposes.

Over the past year, we have made significant progress in reviewing individual cases, undertaking outreach, and offering legal referral and counselling to people who have been affected by the flawed hair testing.

Our review of hundreds of child protection cases from across Ontario has given us a unique vantage point to identify some of the broader systemic and institutional issues which may have contributed to the reliance on testing done by the laboratory in child protection social work practice and as evidence before the court.

We are developing a process to share what we have learned, facilitate dialogue on these broader issues from many different perspectives and learn from you. The purpose of the process is to examine the past, not to lay blame, but to build understanding and lay the foundation for a better future. We hope that it will help strengthen relationships among all
parties involved in the child protection system and begin to restore confidence in the system.

To begin the process, we will be meeting individually with key legal, child protection, government and community partners to obtain their input. Subsequently, we will bring people together from different sectors or communities to share their perspectives, develop mutual understanding and inform how we move forward.

Staff from the Commission will be in touch with your office shortly to request a meeting. Thank you in advance for your participation in this important work.

Yours very truly,

Judith C. Beaman
Commissioner

Encl.
Appendix 9d:
Commissioner’s order re: confidentiality of meetings, April 24, 2017

ORDER

WHEREAS, pursuant to the Public Inquiries Act, the Order in Council 4/2016, dated January 13, 2016, established the Motherisk Commission and provided for the appointment of Justice Judith C. Beaman as the Commissioner, effective January 15, 2016;

AND WHEREAS, paragraph 4b of the Order in Council 4/2016 states:

In discharging her mandate, the Commissioner will be guided by the following fundamental principles:

... 

b. in so far as practicable, the Commissioner shall work to maintain and ensure the confidentiality of records relating to child protection proceedings, including court files, exhibits, court transcripts, child protection files, and adoption records;

... 

AND WHEREAS, paragraph 8 of the Order in Council 4/2016 states:

Where the Commissioner considers it necessary, she shall impose conditions on the production of information in order to protect the confidentiality and privacy interests of any affected persons;

AND WHEREAS, the Commissioner will be hosting meetings with affected individuals and stakeholders in the child protection system to discuss systemic issues which may have led to the admission of unreliable evidence in child protection cases and to help restore confidence in the child protection legal system (the “Restorative Justice Meetings”);

AND WHEREAS, The Commissioner believes that in order for the Restorative Justice Meetings to be productive and meaningful, participants should be able to respectfully and freely offer their comments and insights;

AND WHEREAS confidentiality is necessary to achieve the objectives of the Commission by ensuring and candid participation;

400 University Avenue
Suite 1800A
Toronto, Ontario M7A 3R9
info@motheriskcommission.ca
www.motheriskcommission.ca
THIS COMMISSION ORDERS THAT

1. Participants at the Restorative Justice Meetings are free to use the information received in the meetings but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

2. The information shared, if reported by the Commission in subsequent communication and in the final report, will be reported without attribution.

ORDERED at Toronto, Ontario, this 24th day of April, 2017.

[Signature]

The Honourable Judith C. Beaman
Commissioner
Appendix 9e: Confidentiality policy for meetings

MOTHERISK CONFIDENTIALITY POLICY
RESTORATIVE JUSTICE MEETINGS

1. The Motherisk Commission, led by the Honourable Judith C. Beaman, was established pursuant to Order-in-Council 4/2016 to offer appropriate support and assistance to persons affected by the Motherisk test results.

2. In accordance with the Commission’s mandate, Commissioner Beaman is reviewing child protection cases from across the province of Ontario and has met with numerous parties and stakeholders who were impacted by the Motherisk evidence or who have an interest in the effective operation of the Review and Resource Centre and the completion of the Commissioner’s mandate.

3. The Commissioner has been guided by the following principles in discharging her mandate:
   a. The current best interests of any children and youth must be taken into account;
   b. In so far as practicable, the Commissioner should work to maintain the confidentiality of records received by the Commission;
   c. That she execute her duties efficiently and in a manner consistent with the need to pursue an expeditious and just resolution of the serious concerns associated with the reliance on the Motherisk evidence in child protection proceedings;
   d. That she work with children and youth to ensure that their voices, both individually and collectively are heard; and
   e. That she give particular consideration as to the outreach and notification necessary to allow meaningful participation by Indigenous and racialized communities.

4. In the course of discharging her duties, the Commissioner has developed an appreciation of the harm caused by the Motherisk evidence to parents, children, extended family members, communities and to the justice system.
5. The Commissioner has concluded that affected individuals and the stakeholders in the justice system may benefit from participating in meetings to discuss systemic issues which may have led to the admission of unreliable evidence in child protection cases and to help restore confidence in the child protection legal system (the “Restorative Justice Meetings”).

6. The Commissioner is hosting Restorative Justice Meetings to offer affected persons and stakeholders the opportunity to talk about the harm with one another, to reflect on systemic issues and to offer comments and insights which may assist the Commissioner in developing recommendations for inclusion in her final report.

7. The Commissioner believes that in order for the Restorative Justice Meetings to be productive and meaningful, participants should be able to respectfully and freely offer their comments and insights. Confidentiality is, accordingly, essential to the operation of the Commission’s mandate in this respect.

8. In order to ensure the candour necessary for a meaningful discussion while protecting the confidential nature of the communications, the meetings shall be subject to the Chatham House Rule. When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

9. The Commissioner and her staff will not disseminate the information obtained in these meetings except in follow up meetings that are subject to the obligations set out in this Policy and subject to paragraph 8 above and in the final report.

Commissioner Judith C. Beaman
Appendix 9f: Invitation to the Symposium

Dear X:

I am writing to invite you to the “Motherisk Commission Symposium: Lessons Learned and Moving Forward.” The Symposium will be held over one and a half days, on Tuesday, September 12, 2017 (8:30 am to 5:00 pm) and Wednesday, September 13, 2017 (8:30 am to 1:00 pm), in downtown Toronto (DoubleTree by Hilton Hotel, 108 Chestnut Street).

The Symposium is the culmination of the Motherisk Commission’s restorative process of reflection and dialogue that we embarked on in early spring. The purpose of this process is to examine the systemic and institutional issues that led to the Motherisk hair testing problem, in order to identify strategies to prevent something similar from happening again in the future.

Over the past few months, we have met with groups and communities who have been most affected by the Motherisk testing—youth, Indigenous peoples and racialized people—as well as parents, youth advocates and children’s aid societies. We took what we learned from these important conversations to organize meetings with child protection, legal, government, community and other partners. These meetings were organized around topics, such as the use of scientific evidence, justice system issues, and parenting and substance use. In total, about 250 people participated in these meetings.

The Symposium will bring together a larger group of people, many of whom attended one or more of the earlier meetings. It will be an opportunity to share with you what we have learned through these meetings and to work with you to assess and refine the key ideas we heard for potential recommendations. The Symposium will be focused on solutions, cross-sector collaboration and looking forward beyond the Commission’s mandate, which ends in

The Honourable Judith C. Beaman, Commissioner

L’honorable Judith C. Beaman, Commissaire
January 2018. Our deliberations will inform my final report and recommendations to the Ontario government.

In choosing participants for the Symposium, we strove to achieve fair and diverse representation of affected communities and sectors (e.g. legal, child protection, social work, treatment, academia, etc.) from different parts of the province. We also wanted to manage the number of participants to ensure that there would be sufficient time to explore ideas in greater depth and hear all perspectives. We are inviting you personally because of your experience, contributions and area of expertise and hope that you will be able to attend. If you cannot attend and wish to suggest an alternate, please give us a call to discuss.

Please RSVP to Mathura Karunanithy at 416-212-0560, (toll free 1-844-303-5476) or mathura.karunanithy@motheriskcommission.ca by Friday, August 4, 2017, to let us know if you can join us for the Symposium or if you have any questions. In August, we will be sending you an agenda, with location details, and some brief reading material to provide context for our discussions.

The Motherisk Commission is happy to cover your expenses, according to Ontario government guidelines. We have enclosed information on eligible travel and accommodation costs and ask that you provide receipts, where needed, so that we can process your reimbursement quickly. For those coming from out of town, we have reserved 20 rooms for September 11th and 12th at the DoubleTree by Hilton Hotel. We will offer these rooms on a first come, first served basis. Please let us know if you will need hotel accommodation when you RSVP and we will arrange your room on your behalf. Please also let us know if you have any accessibility or special dietary needs.

I am looking forward to the Symposium and very much hope that you will be a part of it.

Yours very truly,

Judith Beaman
Commissioner

Encl.
Motherisk Commission Symposium: Lessons Learned and Moving Forward

Tuesday, September 12, 2017 (full day) & Wednesday, September 13, 2017 (half day)
DoubleTree by Hilton Hotel, Mandarin Ballroom, Lower Level, 108 Chestnut Street, Toronto

Agenda

**DAY 1**

Objective: Discuss the merits and challenges of strategies related to the use of scientific evidence and supporting families, and identify the most promising ideas.

8:00 - 9:00  BREAKFAST
9:00 - 9:20  Welcome and Opening Remarks
            Commissioner Judith C. Beaman
9:20 - 9:30  Symposium Overview
            Facilitators
9:30 - 9:45  Introduction to Theme 1: Ensuring the Reliability of Scientific Evidence in Child Protection
9:45 - 10:45 Theme 1: Small group discussions
10:45 - 11:00 BREAK
11:00 - 11:45 Theme 1: Group reports and plenary discussion
11:45 - 12:45 LUNCH
12:45 - 1:00  Introduction to Theme 2: Supporting and Empowering Families: Access to Legal Information and Independent Support
1:00 - 1:15  Brief presentations on individual examples of supporting parents and families
<table>
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<th>Time</th>
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<tr>
<td>1:15 - 2:00</td>
<td>Theme 2: Plenary discussion</td>
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<tr>
<td>2:00 - 2:15</td>
<td>BREAK</td>
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<tr>
<td>2:15 - 2:30</td>
<td><strong>Introduction to Theme 3: Supporting and Empowering Families:</strong> Enhanced Substance Use Treatment Options</td>
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<tr>
<td>2:30 - 2:45</td>
<td>Brief presentations on individual examples of family-centred treatment</td>
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<tr>
<td>2:45 - 3:30</td>
<td>Theme 3: Small group discussions</td>
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<tr>
<td>3:30 - 4:15</td>
<td>Theme 3: Group reports and plenary discussion</td>
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<tr>
<td>4:15 - 4:30</td>
<td>Wrap-up of Day One</td>
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**Agenda**

**DAY 2**

*Objective: Discuss the merits and challenges of strategies for collaborating across sectors and identify the most promising ideas.*

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<tr>
<th>Time</th>
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<tbody>
<tr>
<td>8:00 - 9:00</td>
<td>BREAKFAST</td>
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<tr>
<td>9:00 - 9:15</td>
<td>Recap of Day 1 and Plan for Day 2 Facilitators</td>
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<tr>
<td>9:15 - 9:30</td>
<td><strong>Introduction to Theme 4: Sustaining and Enhancing Collaboration Across Sectors</strong></td>
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<tr>
<td>9:30 - 10:30</td>
<td>Theme 4: Small group discussions</td>
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<td>10:30 - 10:45</td>
<td>BREAK</td>
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<td>10:45 - 11:30</td>
<td>Theme 4: Group reports and plenary discussion</td>
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<td>11:30 - 11:45</td>
<td><strong>Moving Forward</strong> Commissioner Judith C. Beaman</td>
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<tr>
<td>11:45 - 12:00</td>
<td>Wrap-up of Day Two</td>
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<td>12:00</td>
<td>ADJOURN</td>
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Backgrounder

Motherisk Commission Symposium: Lessons Learned and Moving Forward

Background and Symposium Overview

Thank you for agreeing to participate in the Motherisk Commission's Symposium. You and the other participants represent a broad cross-section of young people, parents and others who were affected by the Motherisk testing, child welfare workers, lawyers, academics, scientists, and community workers. All of you share a desire to safeguard children and ensure that families get the help they need.

The Commission has seen the child welfare system in Ontario from the point of view of both individuals and the system itself. At our Symposium, we will share with you what we have learned. We will also discuss how the child protection system could be improved to make it less vulnerable to potential miscarriages of justice. The Symposium will be forward-looking and focused on solutions. We hope the discussion we begin there will continue long after the Commission closes its doors and delivers its report to the government in January 2018.

Establishment and Principles of the Commission

The Ontario government established the Commission following the Independent Review conducted by Justice Susan Lang.

Justice Lang found that the hair testing by the Motherisk Laboratory at the Hospital for Sick Children was inadequate and unreliable for use as evidence in child protection proceedings. She recommended establishing a Commission to act as a Review and Resource Centre to review individual child protection cases and to provide information, counselling assistance, legal referral, and alternative dispute resolution to people affected by the testing.

The Commission’s guiding principles include working with children and youth to ensure that their voices are heard. They also include giving particular consideration to the outreach and notification necessary to allow meaningful participation by Indigenous and racialized communities, both of which are overrepresented in the child protection system.

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1 Justice Lang found that the hair testing by the Motherisk Laboratory at the Hospital for Sick Children was inadequate and unreliable for use as evidence in child protection proceedings. She recommended establishing a Commission to act as a Review and Resource Centre to review individual child protection cases and to provide information, counselling assistance, legal referral, and alternative dispute resolution to people affected by the testing.

The Commission’s guiding principles include working with children and youth to ensure that their voices are heard. They also include giving particular consideration to the outreach and notification necessary to allow meaningful participation by Indigenous and racialized communities, both of which are overrepresented in the child protection system.

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File Reviews

We are reviewing individual child protection cases to determine if the Motherisk hair testing had a substantial impact\(^2\) on their outcome and to assist the people who were affected. In the first phase, we reviewed cases that children's aid societies identified as "high priority." These were cases with recent or pending final decisions such as a custody, Crown wardship, or adoption order. We also reviewed cases involving Motherisk testing where the parties entered into a Customary Care agreement.

In the second phase, we are reviewing cases we identified through the Ontario Court Case Tracking System. In these cases, legal remedies are less likely because many of the children are older and have been adopted. We are also reviewing cases that come to our attention through reported court decisions, the media or other sources, and individuals who contact the Commission to request a review.

In total, we have reviewed 936\(^3\) individual cases to date. Of these, Motherisk test results had a substantial impact on the outcome in 46\(^4\) cases. In the large majority of cases, there was other evidence to support the decisions of children's aid societies and the court.

Outreach

In the summer and fall of 2016, we travelled throughout the province to meet with interested groups and raise awareness of the Commission and the support and services we offered. Many of these meetings were with First Nations, racialized communities, youth and their advocacy organizations. We also connected with and sent our posters and other materials to children's aid societies, women's shelters, drug and alcohol treatment centres, community health centres, social assistance offices, hospitals, and the Ministry of Education.

The Restorative Process

The use of unreliable hair testing for legal purposes resulted in harm to children, parents and others who were directly affected. It also had harmful impacts on broader families and communities. In many cases, the pursuit of a legal remedy is inadequate to address these impacts. We developed a restorative process to acknowledge the harm done and to help address the underlying issues that may have contributed to the reliance on testing.

\(^2\) "Substantial impact" means that a positive Motherisk test materially affected the outcome of a case having regard to one or more of three factors: the creation of a status quo with respect to the child's living arrangements; the position of the CAS respecting the direction of the case; and the decisions of the court. (Commission's Rules of Procedure, 5).

\(^3\) As of September 5, 2017

\(^4\) As of September 5, 2017
We engaged affected parties and their advocates, child protection workers, lawyers, judges, academics, community workers and others in a dialogue. We held over 30 meetings involving more than 250 people. We organized these meetings around various topics to consider the Motherisk issue from different perspectives:

- Challenges regarding the use of scientific evidence in child protection proceedings;
- Education and professional development opportunities for child protection lawyers;
- Factors relating to the legislation, the rules and the general operation of the justice system, which may have contributed to the problem;
- Support and training for social workers and in particular social workers who work in child welfare;
- Systemic issues affecting children's aid societies; and
- Appropriate and timely supports and services for parents dealing with substance use issues.

**What We Heard**

Groups who are overrepresented in the child welfare system spoke of how the Motherisk problem made worse an already difficult relationship with children's aid societies. Indigenous groups told us that what happened with the Motherisk testing harked back to the residential schools era and the Sixties Scoop. African-Canadian community groups told us that it was one example of targeting their community because of racist assumptions about drug use. The children and youth we spoke to, many of whom grew up in care, said that their families of origin were important to them and that they needed to maintain that connection even if their parents could not care for them. Parents said that they felt that they had no other choice but to submit to the hair testing. People who were affected told us that what happened with Motherisk was a violation of trust.

Analyzing the feedback, we found that most people agreed on the following issues:

- There are factors unique to child welfare cases that inhibit vigorous challenging of expert evidence (e.g. timelines, lack of resources);
- The law and rules governing child protection are challenging for parents, particularly those who are trying to address substance use issues;
- The lack of ongoing training and support for lawyers who practise in this area makes it difficult for them to gain the expertise to deal with challenging cultural, legal and evidentiary issues;
- There is a preference both in children's aid society decision-making and in the court for scientific evidence over clinical observations by children's aid society workers;
- Child protection workers and the court frequently use evidence of substance use as a proxy for evidence of parenting capacity;
• There is an inherent conflict in the dual role that children’s aid societies play in supporting and monitoring families;
• There is a lack of coordination between children’s aid societies and supportive services for parents, such as substance use treatment services;
• There are biases in the system that lead to over-monitoring of Indigenous and African-Canadian families; and
• Children’s voices and perspectives are often left out of decision-making.

The Symposium

The ideas we have chosen for discussion at the Symposium are the ones we believe are the most complex and require the diverse input of participants, debate, and refinement. These ideas involve the cooperation of many partners to implement them. However, we encourage you to identify any other proposals or questions that you believe should be raised at the Symposium.

It is important to note that in each of the themes below, a central concern is ensuring that proposed solutions are critically assessed from the perspectives of children and youth and Indigenous and racialized communities.

Theme 1: Ensuring the Reliability of Scientific Evidence in Child Protection

Rules and legislation
Many of the problems with evidence are related to the rules and legislation and the unique context of child protection cases. For example, scientific evidence is frequently used in child protection proceedings well before a matter goes to trial. We saw many examples where the Motherisk test results were appended to a worker’s affidavit supporting a temporary care and custody motion or to a summary judgment motion. There is no provision in the rules or legislation that specifically addresses the admissibility of scientific evidence in these motions. We have been following up with government and legal partners about possible changes to the legislation and rules.

Education and training
There is a need for ongoing education on the use of scientific evidence, particularly in child protection. Recommendations from the Inquiry into Pediatric Forensic Pathology in Ontario called for better education, training, and support for lawyers and judges in cases involving scientific evidence. Justice Lang reiterated the importance of these recommendations in her Independent Review. There have been several educational initiatives for the judiciary

and legal profession in response. We applaud these initiatives and we are exploring other education and training opportunities.

**Building bridges between law and science**

In our meetings, science and law were described as separate cultures with too few bridges between them. At the Symposium, we would like to discuss strategies to build bridges to improve the reliability of expert evidence.

In a forthcoming paper, Dr. Emma Cunliffe of the University of British Columbia's Peter A. Allard School of Law and Dr. Gary Edmond of the University of New South Wales School of Law propose a Canadian justice and science commission. It would be an interdisciplinary body incorporating legal, scientific and research expertise. The original proposal is focused on improving the reliability of expert evidence for criminal proceedings, but it could be expanded to include the forms of expert evidence commonly used in child protection proceedings. The proposed commission would publish reports, presumptively admissible in court, reviewing the empirical evidence that underlies forensic science techniques and other expert evidence. It would also suggest standards for the admissibility of new scientific methods, and it would promote and monitor reform in the forensic sciences. Its mandate could extend to investigating the operation of cultural or racial bias in forensic science and expert testimony. The commission could educate legal, law enforcement and child protection professionals, as well as forensic scientists and technicians.

A stepping-stone toward such a commission could be a website or other open access resource centre offering published studies and other information about scientific testing and evidence in child protection cases. All parties could use it to help them understand the reliability and application of scientific methods. It could also include guides for cross-examining experts and other resources for counsel. Although this might provide counsel with some tools and information about potential reliability issues, there are drawbacks. The material would be presumptively inadmissible in court and without assistance from scientists, much of it could be difficult for lay litigants and lawyers to interpret. In addition, such a resource would not help promote the culture change we envision below.

**Changing the culture**

We believe a culture change is needed to encourage careful scrutiny of scientific evidence by child protection workers and counsel, parents' counsel and the court. Child protection does not have a culture of scrutinizing evidence like the criminal justice system has. There are many reasons for this, including the focus on forward-looking plans of care, the pressures of time and scarce resources, different standards of proof, and the absence of a presumption of innocence.

Child protection is also perceived differently from criminal justice in law school and in the public imagination. Unlike criminal law, there are no mandatory child protection law
courses. Miscarriages of justice in child protection do not receive the same attention as wrongful criminal convictions.

Lawyers who represent parents told us that they do not have enough training and mentorship opportunities. They also face the difficulty of having to manage non-legal aspects of cases, such as assisting clients to access housing, health and treatment services, and many other community services and supports.

We would like to discuss options for enhancing the profile of child protection law and encouraging careful examination of scientific evidence in child protection proceedings.

Some promising practices and ideas include an organization of parents’ counsel currently being formed (similar to the Criminal Lawyers’ Association), enhanced continuing education and resources for child protection counsel, more public legal education on child protection, and joint training on expert evidence and evidence generally (e.g. for CAS, parents’ and children’s counsel).

**Discussion Questions**

1(a) How could we help bridge the divide between the law and science?
- What would be the merits of a justice and science commission or a similar body?
- What would be the barriers to establishing it? How could they be overcome?
- What other strategies would facilitate collaboration between the legal and scientific fields to help ensure the reliability of evidence?

1(b) How could we begin to change the culture in child protection to encourage all parties to more carefully scrutinize scientific evidence?
- How can we enhance legal education in child protection?
- How can we raise the profile of child protection and educate the public about the risks and consequences of miscarriages of justice in this area?

**Theme 2: Supporting and Empowering Families: Access to Legal Information and Independent Support**

The Motherisk laboratory has been closed, but we heard that other testing methods (e.g. urine screening, fingernail testing, ankle bracelet monitoring) are being used or considered. We would like to explore approaches to better assist families struggling with substance use issues and reduce reliance on potentially misused and costly drug and alcohol testing.
Better access to legal information

We heard that parents and other caregivers often have little knowledge of their legal rights and do not typically obtain legal advice early enough in the process to help them make informed choices, including responding to requests for drug and alcohol testing.

| Ideas for increasing parents’ access to legal information include child protection information centres housed at the courthouses (similar to the Family Law Information Centres⁶), a manual on parents’ legal rights,⁷ information sessions for parents involved with child protection agencies, and a website with videos and guides for parents, including accessible material for parents whose first language is not English or French or who have low literacy.⁸ |

Independent support

The dual role of child protection workers—providing support to families and monitoring them—was consistently identified as a challenge both by workers and by parents who were affected by the testing. Many people saw a need for support services for families, independent of children’s aid societies. In particular, we clearly heard about the need to enhance the cultural and social context awareness of professionals working with Indigenous and racialized families in order to promote trusting relationships and assist them with the unique challenges they face.

| Ideas include system navigators (similar to Family Court Support Workers who assist victims of violence to navigate the family court system⁹) and peer mentors (e.g. parents who have experience with the child protection system). Band representatives provide legal and social work support for parents and families in First Nations communities. They have called on the federal government to reinstate funding for the program. |

Discussion Questions

2(a) How can we improve parents’ access to legal information and advice?

- How can we ensure that they receive information and advice at their first interaction with a children’s aid society?
- How can we ensure that they provide fully informed consent for drug and alcohol screening?

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⁶ More information on these centres can be found here: https://www.attorneygeneral.jus.gov.on.ca/english/family/infoctr.php
⁷ Community Legal Education Ontario (CLEO) has a fact sheet for parents about children’s aid societies, but no manual about legal rights or the child protection process currently exists for parents.
⁸ The Justice Education Society of British Columbia has an excellent legal information website, although it does not have material on child protection. http://www.justiceeducation.ca/
⁹ A description of the program can be found here: https://www.attorneygeneral.jus.gov.on.ca/english/ovss/family_court_support_worker_program/
2(b) What is the best way to provide additional support to parents beyond children’s aid societies? Specifically, how could a system navigator role and network of peer mentors be established?

- What would be the challenges in implementing them? What would it take to overcome the challenges?
- What other strategies could provide parents with additional support?
- In any strategy, how could we ensure that the unique needs of Indigenous and racialized families are met?

**Theme 3: Supporting and Empowering Families: Enhanced Substance Use Treatment Options**

In our meetings, we heard about the difficulties parents have accessing services to address substance use. In particular:

- The limited availability of appropriate and timely treatment options, especially in rural and remote parts of the province;
- The lack of culturally appropriate services for Indigenous and racialized communities; and
- The shortage of family-centred treatment services that allow children to remain with their parents.

At the Symposium, we would like to explore ways to establish or scale up promising practices and programs that exist in the province or in other jurisdictions.

For example, Kingston General Hospital’s Rooming-In Program for infants born to opioid-dependent mothers is a promising program. In other hospitals, infants are admitted to intensive care units and separated from their mothers. In this Kingston project, mothers and their infants receive assessment by a multi-disciplinary team, education, support, and a private room to permit uninterrupted bonding. The program has resulted in shorter hospital stays and improved neonatal and maternal outcomes. Another promising program is Portage Mère-Enfant in Quebec, a residential treatment program that allows pregnant women and mothers to attend residential treatment with their children.

**Discussion Questions**

3(a) Given the current reality of limited drug and alcohol treatment services, should parents be given priority in accessing services?

3(b) What steps can we recommend to begin to increase family-centred treatment options?

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10 Learn more about this program here: http://www.cfp.ca/content/61/12/e555.
11 Learn more about this program here: https://portage.ca/en/quebec/mother-child-program/.
What other strategies could improve substance use treatment services for parents?

In any strategy, how could we ensure that the unique needs of Indigenous and racialized families are met?

Theme 4: Sustaining and Enhancing Collaboration across Sectors

Many institutions and organizations play a role in delivering child welfare services. Some of the proposals we are considering require resources that may seem unavailable. However, most organizations have some capital, whether in the form of funding, human resources, or bricks and mortar, that could help achieve some of the proposals we will discuss at the Symposium.

Collaboration has long been a key feature of the child protection system. For example, it was the theme of a significant province-wide project of the Ontario Association of Children's Aid Societies in 2005-2006. In our discussions, we heard that there is a need for three types of collaboration in particular: scientists and legal professionals, legal professionals and child protection workers, and child protection workers and substance use treatment providers.

One idea to promote collaboration in child protection is a centre of excellence. This could build on the work of the national Centre of Excellence for Child Welfare, which was funded by the Public Health Agency of Canada from 2000-2010. It could identify and disseminate research, promote promising collaborative practices, and connect individuals and agencies from the many disciplines responsible for assisting and protecting parents and families.

Other interesting collaborative initiatives exist in Ontario and in other jurisdictions, such as the co-location of services to assist families dealing with violence in Waterloo. Through a previous initiative funded by the Ministry of Children and Youth Services (MCYS), substance use treatment experts were embedded in intake and family service teams in Toronto.

At the Symposium, we would like to explore these and other possibilities for collaboration at the service delivery level and at the system level.

Discussion Questions

12 Materials related to this project can be found here: http://www.brantfacs.ca/agency-tools-reference-documents/oacas-collaboration-project/


14 Family Violence Project of Waterloo Region (http://fvpwaterloo.ca/)

4(a) How can we build and sustain collaboration, specifically across the child protection, legal and scientific communities, and with groups and communities most affected by the child welfare system?

4(b) What challenges have you experienced in creating and sustaining positive collaborations?

4(c) What opportunities exist in your organization to collaborate with other players in the child welfare system?

4(d) What strategies can we use to help ensure that collaboration continues past the close of the Commission? Would a centre of excellence be helpful? What alternatives might there be to such a centre?
Appendix 9h: Symposium summary notes

Motherisk Commission Symposium
RE-CAP OF THEMES FROM DAY 1
September 12, 2017

Theme 1: Ensuring Reliability of Scientific Evidence

General
- Desire for shared access to relevant information
- Take into account special nature of child protection proceedings
- Establish what we mean by science
- Don’t let the science overpower the clinical
- Be alert to the interplay between systemic racism and the use of scientific evidence

Justice and Science Commission
- Some support for the concept but proceed with caution
- Could help in standardizing use of testing and scientific evidence
- For it to be trustworthy, must be representative, collaborative, accountable and independent
- Implementation issues: representation of affected parties; cost; equity lens; harm reduction focus
- Concerns to be addressed in developing the commission concept:
  - Could obscure the real issue which is capacity to parent; minimize the importance of other important evidence on that issue; reinforce current child protection culture and overreliance on scientific evidence
  - Lack of trust in institutional solutions. Find human solutions for institutional problems
  - Potential inequitable access to the information
  - Privacy and confidentiality issues
  - Risk of information flowing directly from a third party to the judge without challenge vs need to make the information accessible
  - Diversion of limited resources
  - Status of commission could replicate problems associated with Motherisk testing
    - Risk of a one-dimensional solution to a multi-dimensional problem.
- One suggested alternative: create a broadly accessible website or resource

Changing the culture and raising the profile of child protection
- A fundamental culture shift is required; give equal weight to input from community as well as legal profession, science
• Cultural change should proceed from the perspective of anti-racism along with accountability
• When you get out of school you should be able to work in a culture that values what you learned; culture shift required
• It is not about training, it is about understanding; change the language we use
• Use traditional and social media to communicate accurate information about child protection
• Families most affected should be part of educating professionals and the public

**Education and child protection**
• Legal education that builds capacity to challenge scientific evidence, that addresses underlying assumptions, and helps people to understand systemic racism and its impact
• Access to mentorship throughout legal careers
• Collaboration with scientific and medical community in legal education
• Compulsory child welfare education for law and social work students and continuing education for child protection lawyers and workers

**Theme 2: Supporting and Empowering Families: Access to Legal Information and Independent Support**

**General**
• Clear consensus about need for supports for family and child throughout the process
• Support for reinstating the band rep program
• Focus on early stages of relationship
• Work to make social workers part of collaborative relationship, recognizing power imbalance and dichotomy in role of CAS workers
• Build relationships between CAS and community organizations before crisis; Engage with groups who work with Indigenous and racialized communities.
• Network of parents, children, youth – advocates – online resources
• Increase parental and child voice within CASs, with increased oversight
• Empower people and promote services that are already there, e.g. dispute resolution processes.

**Navigators**
• All of us in crisis do better when we have supports
• Assign a parental advocate or navigator from the beginning; importance of support from people with similar experience
• Support families and children to navigate the system and access legal information
• Navigators need to be independent of CAS and separately funded
Legal Information and advice

- Large power imbalance between families and CAS; getting people legal information and advice can help to alleviate that
- Greater support needed from Legal Aid Ontario, e.g. certificates, education, mentoring
- Lack of First Nations access to legal representation
- Early access to legal information is important; not necessarily from a lawyer; could be from peer-led organization

Theme 3: Supporting and Empowering Families: Enhanced Substance Use Treatment Options

Focus

- Focus in deciding on approach must be on what builds parental capacity, not just on the substance use
- Emphasis on harm and risk reduction as opposed to abstinence
- Don’t focus exclusively on substance use; recognize other strengths and vulnerabilities within the family
- Look at substance abuse through a different lens, medical
- Reassess our belief that treatment is sole means of ensuring child safety; focus on ways to keep families safe without always going to treatment

Keeping families together

- Offer a range of options to keep families together; not just residential treatment
- Ensure ongoing access to the child while parent receives services, as in Kingston program; outcomes usually better if there is bonding and maintenance of relationships
- Focus on family centred treatment and healing, including in-home supports

Indigenous communities

- Respect for Indigenous community processes
- Culturally aligned programs; community delivered and controlled
- Be open to Indigenous approaches that can be highly effective
- “Treatment” is the wrong terminology; it’s about healing

Racialized communities

- Avoid ideology, assumptions, stereotypes that affect racialized communities
- Evidence based research that challenges embedded assumptions
- Anti-oppression lens
Approaches

- Multi-disciplinary approaches
- Central access points for services
- Triage and assessment tailored to the needs of individual family; assessment tool.
- Be respectful of informal supports – can be more successful than formal treatment
- Provide practical supports that are needed and that build relationships, with or without treatment
- ADR, healing component as early intervention
- A range of expertise, including cultural competency, should be employed at the time CAS considers what healing is required and what family would benefit from.

Barriers

- Address the tight timelines and waiting lists that are often impediments to effective treatment; adjusting timelines to enable treatment
- Don’t force people in remote communities to travel to other communities to get service

Priority access to treatment for parents

- Possibly, but recognize parents have to be ready for treatment which meets their needs
- Risk of perverse incentive to choose treatment option
- Inappropriate to tie return of children to treatment success
Theme 4: Sustaining and Enhancing Collaboration across Sectors

- Engage child protection in a different way in methadone program. Previously oppositional. Now we encourage clients to speak with CAS directly instead of us doing it. Much more receptive and collaborative approach from the CAS workers. Took 17 years to get it close to perfection.

- Find out who our allies are. Get mothers to report back on their experience with organizations and lawyers. Presented at a harm reduction conference. Connected with organizations starting with a harm reduction philosophy – shared values.

- Colocation of workers. Connectivity tables at various agencies to discuss cases. Facilitators help to identify supports and build support networks. Not the only CAS doing this kind of work.

- Multi-disciplinary players in the county involved re: drug issues.

- Connection between CAS, public health, VAW sector, adult addictions program. Work with moms who have substance use issues. Work together to develop a community plan. Results in not having to bring babies into care on birth.

- A community led project for the first time. Learned to be deferential to will of the community, African Canadian community. Capacity to lead. For communities with dire outcomes in child welfare, oppressive, default practices. Critical that the community endorses One Vision One Voice.

- Mind map: Under child welfare services, there should be a Native organization in Ontario: Association of Native Child and Family Service Agencies of Ontario (ANCFSAO) – they should be recognized in the chart. They are the indigenous equivalent of OACAS.

- Ontario Native Council on Justice. Did work with the legal profession and collaboration with social agencies. Developed Ontario Native Justice of the Peace program. Approved by Chief Judge of Ontario. Role was to hear Aboriginal cases before the court. Travel to remote areas instead of First Nations people coming to urban centres.

• Collaborate with key players in child welfare to provide support. Together, we work in best interests of the child. In regions we become navigator for parents who want support and local community services. We advocate for families at CAS and schools. We are here to build bridges. Strength in partnership. We are a peer model. Adopt for Life.

• Willingness of local CAS to collaborate, Kingston. Planning to establish a treatment centre to allow women to reside for 6 months to a year in a therapeutic setting with their children. Long way to go to make it more than just an idea. Support and openness is there. Funding challenge.

• Medical profession invites judges and lawyers to speak about issues. Can there be a symposium to address the interface of the medical profession in legal system.

• Mind map: Where are the schools as organizations supporting children? School social workers. Collaboration with schools, strong connections to parents and children – need to be part of the thinking.

• Hustle – invited local organizations in for open discussion about what they do in the community and what the lawyers can pull from them. What organizations are the parents involved in? Free flow discussion. Allowed an opening for discussion.

• Obtain a commitment. Not just about making a contact, but have a commitment to maintain open communication.

• Recognize that Indigenous approaches to dispute resolution are based on collaboration. It is at the root of what we do as a community. Everyone in the circle can speak without interruption – equal. In child welfare, our goal is not to go to court, to help the family restore. Indigenous philosophical principles. Work interconnectedly to support each other. We bring in spirit and ceremony to our work. A common vision, value everyone equally, keep families together, restorative.

• Students Commission of Canada. Four pillars: respect, listen, understand and communicate. Often people speaking with youth don’t do that. Second tenet: youth voice must be heard. Important for family welfare. We are supportive of the mother but need more emphasis on what the child wants.

• Struggle with transparency, having the society be open and honest with parents. In 2013, when I gave birth to my daughter, people knew she would be apprehended – except me. Need to be at the table. Get beyond abstinence and treatment for everyone. Who needs to be at the table to support harm reduction efforts? Northern CASs can learn from best practices of other CASs in the province.

• Ontario Association of Child Protection Lawyers; didn’t exist before. Hustle works collaboratively with us. Want to see a real effort to collaborate across all the areas
we have discussed over the past two days. We need to learn and to teach each other.

- First Nations should be a category in all of them on mind map. Money goes to other organizations. Indigenous communities should be mentioned in all sections, not just its own capacity. We have the capacity to parent our own children. When I ask to be consulted, CAS doesn’t react well. Share their policies and procedures. Make sure that we are recommended in all 13 areas.

- So important to hear the voices of people in the trenches. I heard an Indigenous mother say that I could have a full time person in my home for all the money going to programs.

- Restorative justice process: great concept, we need to do this. Need universal access to preventative programs at early stage, before CAS involved.

- Mind map: Add school board. They should be here. Add doctors. We need to see more doctors and medical. This is a great venue, glad to be here, so glad I came, difficult for me to be here. Like to see more kids too.

- Collaborate with children themselves.

- Caution around people’s privacy interests. Cavalier about protecting privacy of children.

- Combined two programs. One is a networking program where community members and families are connected. Combined with family safety initiative: collaboration with service providers, family members. Family-driven solutions to child safety. CAS is a participant and facilitator to bring the system together.

- Opportunity for patients, services for families.

- Experiences of foster children after they are in care. Tried to find my two foster sisters. No help to do that. Collaboration to help children find out about their history.

- Help children to say what they need and want, to facilitate a conversation.

- Brings together judges, lawyers, mental health professionals, professors of law and social science to talk about post-separation and child protection. Annual conference over 2 days. Oct 19 has an item on addiction and family breakdown.

- Legal aid – community led or informed strategies include Aboriginal justice, mental health, racialized communities.
ADVICE TO THE COMMISSION

- Talk about the level and way collaboration operates. Happens at the individual level, front line collaboration, and institutional/formal collaboration, collaboration across professions, and province-wide collaboration.

- To make collaboration work at the local level after people move on or money runs out. How to sustain over time?

- Dual role of protection workers and survivors. Take out policing function from support function? No. CAS has to do both. Figure out how to be collaborative within that model.

- Solution to dual function if impractical to split the two functions: build out two programs across the province. Forever Connections. Working with families to have a fall back support network post-CAS.

- More government money for counselling for kids involved in CAS and to eliminate waiting lists for kids’ counselling.

- Government ministries should come together to build a wrap-around approach to services for children. Requires funding.

- In-home supports for kids and families, like tutoring, counselling, parenting. Eliminate group homes entirely. Applause.

- Get ODSP when become involved with CAS – a full-time job.

- Need for oversight. Could be a commission or ombudsman that holds CASs accountable.

- Dual role of the society: you can dissolve the role of the CAS to police and apprehend. Can’t be collaborative when they have that role. Families will share more fully.

- Role of band representative, interact with CAS. The CAS has resources; I don’t.

- How to take local projects, evaluate and roll them out on a larger scale. Track long-term outcomes. How have we helped children and family over a period of 5 or 10 years? We need to get better at that.

- There is a cost to collaboration, to bring people together.

- Recommend funding reinstatement immediately for band rep program.

- Normalizing the fact that systemic racism, colonialism, oppression are present and real in all of our systems. Collaboration won’t work if people are discredited on that basis.

- Engage with provincial advocate’s office.

- Ensure that the Commission’s report is shared and not forgotten. Lessons learned need to be shared and implemented. It should be a report that people use and take reference from.
• Use the UN’s idea of translating UN rights into a child friendly model. Young people need to understand what is happening and how it affects them.

• How to get input from service users and clients into program development? Getting people on the board is not always useful – management level. Treatment and child protection agencies and others need to develop client councils at staff level, and that there is a feedback loop between them and management.

• An annual conference like this would be a good idea. See how we are moving ahead.

• Collaboration is hard to do. Re-examine our collaborative processes to make sure they are working.

• An ombudsman for parents of children in care would be valuable. They currently have no place to go.

• First Nations approach to healing circles. Move that concept into other services for other people.

• Inconsistency in policies among child protection agencies, e.g. re: seeing records.

• Collaboration with community means organizations must rethink themselves. Replace the idea of leadership in organizations with stewardship. Rethink leadership and right use of organizational power. Use it in a loving way with communities. Think more about what an organization stands for as opposed to outcomes and measures. Different responsibility to the communities we serve and how to engage them. Marginalized communities have lack of access to power and don’t have the infrastructure or money to get it. Give resources to the community so they can do what they do very well. Trust and honour that they can do it: brilliant, righteous and ready to do it for themselves. Applause.

• Early intervention. Prevention. Cross-section to all sectors. The Commission should ask all sectors to say what they are doing for prevention.

• Least invasive crisis intervention program that is family and child focused and led. Multi-disciplinary team circle modeled on Indigenous healing model. Implement across the board to everyone. A holistic approach.

• Funding collaboration. Scrap the system or work with the system we have?

• There is a lot of community based collaboration – could it be province wide? What do we have in place that we could fund that could implement collaboration to help the system improve? Do we want to create another layer in administration in addition to CAS or fund CAS to implement collaborative approaches that we want? Use what we have and make it better.

• People working with families come to court more widely.

• Require identification of collaterals working with families. Need reasonable caseloads.
• Equity and balance of power – making sure even unrepresented parents have all the information and support.

• Risk that collaboration between organizations and agencies could potentially add to adversarial nature.

• Mandated structural colocation or community hub. Makes collaboration more possible. Focus on front-end solutions and avoid damaging court proceedings, but some cases need court. Bring multi-disciplinary group to address and disseminate information on pitfalls that can lead to miscarriage of justice. Look at preparation of expert witnesses, etc. Not a Toronto-centric initiative.

• ADR is not optional in some jurisdictions. Reason to do that here?

• For experts testifying in court, change the law to let them get access to transcripts of their testimony to learn from it and improve the next time.

• Collaboration works if there is true equity around the table. In family conference, sometimes CAS leaves the room. Role of lawyers and judiciary in balance of power.

• It’s about compassion, understanding of the affected person.

• Collaboration is great as an ideal, but shouldn’t become a further means of monitoring parents.

• Collaboration does not solve oppressive system we live in.

• Create an independent review commission that assesses any potential protection issues. A preventative initiative so that CAS cases don’t go awry or out of control. This commission would help to address a lot of the issues we talked about. Somewhere you could go without being penalized.

SUMMARY
• Costs of collaboration; band rep reinstatement; case loads
• Dual role of social workers
• Income support for families to participate
• Make families and children true partners
• Better evaluation, lessons learned
• Accountability and oversight
• Building the community’s capacity to play a role, and trusting them to do it
• Normalizing impact of colonialism, racism, oppression
• Documents child friendly
• Keeping the dialogue going
• Learning from Indigenous models
• Recognize collaboration is at different levels
• Transparency; access policies
• Prevention, in home support, less intrusive
• Northern communities collaboration
• Expanding who is in the room