



Order in Council  
Décret

Executive Council  
Conseil exécutif

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation de la personne soussignée, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil exécutif, décrète ce qui suit :

WHEREAS the Honourable Susan Lang was appointed by Orders in Council 1543/2014 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;

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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, Métis 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

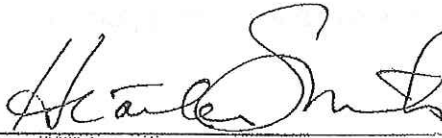
  
\_\_\_\_\_  
Attorney General

Concurred

  
\_\_\_\_\_  
Chair of Cabinet

Approved and Ordered

JAN 13 2016  
Date

  
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Administrator of the Government