



**INDEPENDENT REVIEWER'S STATEMENT ON RELEASE OF THE REPORT,
DECEMBER 17, 2015**

Good afternoon.

On November 26, 2014, the Province of Ontario established the Independent Review of the Motherisk Drug Testing Laboratory at Toronto's Hospital for Sick Children and appointed me as the Independent Reviewer. I delivered my Report to the Attorney General on December 15, 2015.

This Report required intensive work by many people. I particularly thank counsel to the Independent Review; the renowned forensic toxicologists who advised the Review; and the individuals, organizations, counsel, and youth who contributed greatly to my understanding of the issues and their implications.

In October 2014, the Court of Appeal for Ontario in *R v Broomfield* identified a "genuine controversy" in that case concerning the reliability of the hair analysis opinion provided by the Motherisk Laboratory. That case led directly to the appointment of this Independent Review.

The controversy about the reliability of forensic evidence was reminiscent of issues raised in the 2008 Report of the Inquiry into Pediatric Forensic Pathology in Ontario, led by Commissioner Stephen Goudge. In both the Goudge Inquiry and this Independent Review, the challenged experts were part of the Hospital for Sick Children. In both cases, the experts' association with a world-class hospital undoubtedly provided users

with assurance about the reliability of their opinions. The Goudge Report highlighted the tragedy caused by flawed forensic pathology evidence. This Review identifies flawed forensic toxicology evidence, this time emanating from the Hospital's Motherisk Laboratory.

I have concluded that the Motherisk Laboratory's hair-strand drug and alcohol analysis between 2005 and 2015 was inadequate and unreliable for use in child protection and criminal proceedings.

From 2005 to 2010, the Laboratory employed a preliminary screening test that specifically cautioned users about its limitations. Despite this caveat, the Laboratory represented that this preliminary test could both identify and quantify drugs in hair. It could not. Also, the Laboratory fell short of meeting international forensic analytical standards in other important ways that I describe in my Report. Finally, the Laboratory lacked expertise in the interpretation of the purported test results, which it frequently misinterpreted or overinterpreted.

The Laboratory also did not meet internationally recognized forensic standards for the period between 2010 and 2015, even after it moved to what it referred to as the "gold standard" of confirmation testing for certain drugs of abuse and implemented other improvements. In those years, the Laboratory's analytical procedures remained flawed, and it continued to misinterpret and overintepret its results.

Despite extensive testing for child protection agencies, neither the Laboratory nor the Hospital appears to have appreciated that the testing was forensic in nature or that it was required to meet forensic standards. At no time did the Hospital provide meaningful oversight over the Laboratory.

These hair-testing results were used primarily for child protection purposes. Parents interacting with child protection agencies are often among the most vulnerable members of our society. They frequently deal with multiple challenges, including poverty,

inadequate housing, mental and other health concerns, and, sometimes, substance abuse. A child's removal from parental care affects the fundamental relationship between child and parent, with serious consequences for both. In the circumstances, it is imperative that evidence relied on by child protection agencies in seeking the removal of children from parental care be adequate and reliable.

According to data provided by the Hospital, more than 9,000 individuals tested positive between 2005 and 2015. In the vast majority of cases, the Laboratory's hair test results were only one piece of evidence available to assess protection concerns. However, there will be cases where flawed test results were given significant weight and may have had a material affect on the outcome in several ways, including by adversely reflecting on a parent's credibility. In all the circumstances, I have concluded that the Laboratory's flawed hair-testing evidence had serious implications for the fairness of child protection and criminal cases. A further review is warranted.

I have recommended that, as expeditiously as possible, the Province of Ontario establish a second review. A Commissioner should be appointed to ensure that support is provided to those who may have been affected by the Laboratory's flawed test results. The Commissioner, through a resource centre, would ensure immediate comprehensive access to resources that will provide individuals (children, adults, and youth) with both emotional support and the information they need to make an informed decision about any appropriate next steps. These resources should include, at no charge, appropriate counselling, legal advice, alternative dispute resolution services, and parenting assessments.

I have recommended that the Province of Ontario ensure that any second review be provided with sufficient resources to fulfill its mandate. As well, child protection agencies, other justice-system institutions, and institutions supporting youth should be provided with the resources needed to deal with the implications of the flawed evidence. These resources will provide a compassionate, effective, efficient, and expeditious response for the individuals affected by the flawed evidence. In addition, I believe, it will

lead to resolutions and dispositions that are in the best interests of the affected children and their families.

The people of Ontario are justly proud of the Hospital for Sick Children, which is one of the world's leading children's hospitals. I am confident that the Hospital will reflect on what went wrong at the Motherisk Laboratory and within its own institution. As well, I am confident that all participants in the justice system will act with renewed vigilance and education to protect against the future use of flawed evidence for forensic purposes.

Thank you. It has been a privilege to serve as the Independent Reviewer. My counsel, Linda Rothstein and Rob Centa, will be available to answer your questions.