

**SUBMISSIONS OF THE FAMILY LAWYERS ASSOCIATION  
on the MOTHERISK HAIR ANALYSIS INDEPENDENT REVIEW**

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on the MOTHERISK HAIR ANALYSIS INDEPENDENT REVIEW**

**I. INTRODUCTION**

The Family Lawyers Association (FLA) was formed over 20 years ago as a response to the legal aid funding crisis of the mid-1990s. Since its inception the FLA also has made submissions on behalf of its membership on a diverse range of issues. In the last year alone, the FLA has made submissions in writing and in person on the pre-budget consultations, made written submissions on the five year review of the *Child and Family Services Act*, met with the Attorney General about legal aid funding, and has met with Legal Aid Ontario about multiple issues affecting its membership.

In addition, the FLA board has representatives on the various Bar and Bench organizations in Toronto (311 Jarvis, 47 Sheppard and 393 University), the Association for Sustainable Legal Aid, the Treasurer's Liaison Committee of the Law Society of Upper Canada and the Family Law Advisory Committee of Legal Aid Ontario. Many FLA members including its board are lawyers with extensive experience in family and child protection law. Several FLA members are former counsel for child protection agencies or belong to specialized panels such as the Personal Rights Panel of the Office of the Children's Lawyer.

It is from this breadth of experience and knowledge that the FLA presents these submissions.

**II. BACKGROUND INFORMATION AND DATA**

The FLA relies on three sources of information: (1) FLA membership responses to an online survey conducted in February 2015 specifically about hair testing and experiences with Motherisk Drug Testing Laboratory; (2) Interviews with experienced family law and child protection lawyers; and (3) Information based on the professional experience of the authors of these submissions.

### **1. FLA membership responses to online survey**

The FLA sent out a short survey to its membership to determine the experiences of its members with respect to hair testing and the work of Motherisk Drug Testing Laboratory. The survey was designed to be a short online survey and not an “in-depth” questionnaire. A summary of the survey responses has been attached as Appendix “A” to these submissions.

The survey received 55 responses, a higher participation rate than typically seen when the membership is surveyed on other issues. The level of response and our feedback from members generally suggests that this is an issue of primary importance to them. The survey was used as a basis for further investigation and interviews with specific members selected for their professional experience in child protection law.

### **2. Interviews with experienced child protection lawyers**

After completion of the online survey, and upon receipt of the questions posed by the Review Team, the FLA approached members well known in the field of child protection. The purpose of approaching these practitioners was to obtain their professional insight into the questions posed by this Review. Members who agreed to participate provided written comments or were interviewed in person or on the phone.

### **3. Professional Experience of the Authors**

The authors of these submissions are experienced practitioners in the child protection field. Collectively, the authors have represented parents, grandparents, extended family, children, aboriginal bands and child protection agencies. During the course of their work, the authors have encountered the use of hair testing, and specifically hair testing from Motherisk Drug Testing Laboratory.

### **III. USE OF HAIR TESTING IN CHILD PROTECTION CASES**

#### **1. Introduction**

The use of hair testing in child protection cases is prevalent and significant. Prior to this Review being initiated, hair testing had been used in virtually all cases where there was a mere *suspicion* of drug use. In some cases, such testing played a pivotal role in prompting the court to separate children from their families.

Although the current Review only deals with the problems uncovered about testing performed at Motherisk, it is important, given the significance of such testing generally, that safeguards are put in place to ensure better transparency, accountability, and accuracy of all drug testing intended to be used for child protection cases.

The focus of this Review is on child protection cases; however, it should be noted that in some instances hair testing is also done in custody and access cases. The concerns about the use and reliability of testing in custody and access cases are similar to those in child protection.

#### **2. Survey Results on Prevalence and Significance of Hair Testing**

In the online survey, approximately one fifth of the respondents indicated that fifty per cent (50%) or more of their child protection cases involved hair and drug testing. Given the number of child protection cases that are before the court each year, this number is significant.

In addition, and most troubling, eighty-five per cent (85%) of the respondents indicated that hair and drug tests were very significant in determining whether to return a child to his or her family, and a further fifteen per cent (15%) of respondents indicated that hair and drug tests were moderately significant. No respondent indicated that hair testing was insignificant to determining whether to return a child to his or her family. Clearly, hair testing is perceived as an important and significant tool in child protection cases.

### 3. Circumstances Under which Hair Testing is Used

Hair testing is used for the following purposes in a child protection case:

- a. To confirm suspicions of drug and alcohol use: in some, but not all, cases, mere suspicion of drug and alcohol use may trigger a request for a hair test;
- b. To confirm level of use: hair testing has been presented as a means to accurately describe and predict a caregiver's level of addiction;
- c. To test a caregiver's credibility: hair testing (or the failure to submit to testing) has been used as evidence of a client's insight, trustworthiness and credibility with respect to their drug use;
- d. To monitor levels of drug and alcohol use over time: hair testing is sometimes used for case planning purposes or to establish what is termed a "benchmark" of use; hair testing may be sought to confirm an increase or decrease in consumption, which may in turn influence the child protection agency or the court's decision to return the child;
- e. As a term of supervision under a Supervision Order: prior to this Review, child protection agencies routinely requested and courts routinely ordered hair testing as a term of supervision; if the result is positive, then the child may be removed from the home and brought into care;
- f. As significant evidence of a caregiver's drug or alcohol use or the exposure of children to drug use prior to court proceedings being commenced; and
- g. Significant evidence of a caregiver's drug or alcohol use or the exposure of children to drug use on an apprehension or motion;

- h. As significant evidence of a caregiver's drug or alcohol use or exposure of children to drug use at a motion for summary judgment or a trial for Crown Wardship.

In most circumstances, the parent has little choice but to submit to a request for a hair test. When a parent objects to a hair test, an adverse inference is automatically drawn about that parent. In some cases, a parent's refusal to undergo a hair test has led to further intrusion by the child protection agency, whether through further state supervision or wardship.

In some circumstances, hair testing has also been used prior to a court case being commenced. Sometimes, while still working voluntarily with a parent, a children's aid society may ask that parent undergo a hair test. These results and any drug counselling information about the parent are then shared with the child welfare agency, who will act on it. The parent is never given an opportunity to seek independent legal advice about this request.

It should be noted, however, that in most child protection cases, hair testing is not normally the only factor driving a decision to intervene in the family. As noted by one practitioner, a hair test that shows drug use is often confirmation of other observations and information already known, but not always. Similarly, very rarely is a hair test the only factor that would lead to Crown wardship. A positive result would usually be paired with other factors – missing access visits, not following through with referrals and the like.

#### **IV. SIGNIFICANCE OF HAIR TESTING**

##### **1. Commencement of the proceeding or apprehension**

While hair testing alone usually does not lead to a final order for Crown Wardship, it may form the basis for intervention by the child protection agency at an early stage of the

proceedings. This is because hair testing is often relied on as significant and material evidence for apprehension of children.

The use of hair testing on apprehensions is particularly problematic as there is often no opportunity for parents' counsel to test or object to the use or accuracy of the testing. Under the *Child and Family Services Act*, an application must come before the court within five days of a child's apprehension. Usually at that time, parents are not even represented by counsel. Although they have the assistance of duty counsel at court, they do not have the opportunity to gather the necessary information to respond to the child protection agency's evidence on an apprehension beyond a bald denial of the allegations. Often, decisions at this early stage are made on the basis of the agency's evidence alone. A positive hair test may therefore be a significant and almost incontrovertible piece of evidence at the beginning of a case.

The evidence provided by a children's aid society at an early stage is significant because it affects the tenor and trajectory of the case. If the parents have difficulty locating counsel or gathering evidence, the child may languish in foster care for months before a temporary care and custody hearing is argued. At that time, the parent may not only be facing a positive hair test, but also a disadvantageous status quo. Furthermore, even if children are successfully returned later in the proceedings, they and the parents will have inevitably sustained trauma and heartbreak as a result of the initial apprehension.

Given the significance of hair testing as evidence at the beginning of a child protection application, it is important at that early stage that the society's evidence is reliable, accurate and trustworthy. The recent problem with Motherisk puts all of that evidence in serious question.

## **2. Summary judgment for a final order**

Hair testing is not only a material factor, but a determinative factor in summary judgment motions. One practitioner interviewed indicated that in her prior job as counsel for a



child protection agency, a series of positive hair tests was frequently the basis for a decision to proceed to a final order on the basis of a summary judgment motion. The consequences of this type of decision, made virtually entirely on a hair test result are enormous because at summary judgment, the society will often seek the most intrusive order possible, Crown Wardship.

When faced with summary judgment, parents may find themselves unable to adequately respond. The legal test on summary judgment is that there must be a triable issue on a central issue in the case. The case law has been quite clear that at this stage, parties must put their best foot forward, and that a mere denial is insufficient. The problem arises because in the face of the expert testimony, the parent's only possible response to a positive hair test is often "mere denial". The parent is unable to meaningfully challenge the results of the hair test and if drug use is a major part of the child protection agency's case, then the parent will most likely fail.

### **3. Hair testing encourages confusion between "use" and "parenting"**

Although a hair test result is rarely determinative, it is almost always a material factor. The hair test is a significant evidentiary hurdle for a parent to overcome. Unlike observations by social workers and other witnesses, hair tests are imbued with a sense of infallibility and objectivity. A negative hair test can be damning, particularly where the parent continually (and adamantly) denies use. Hair testing is therefore not only evidence of a parent's drug or alcohol use, but also the tool from which a parent's insight, judgment and credibility are assessed.

In addition, too often, hair testing conveniently allows social workers and courts to confuse the issue of "use" and "parenting". As noted by one practitioner interviewed for this Review, the test would tell you if a person used. It would not (and could not) tell you if it affected their parenting. Despite this distinction, there is frequently a conflation between the two in that drug use is often incorrectly equated with poor parenting

An example of this confusion between “use” and “parenting” occurs when social workers and courts demand “clean” drug use before return of a child to her parents. While drug use is never risk-free, courts and children’s aid societies need to determine, on a case-by-case basis, whether such risk can be prevented or ameliorated by a supervision order. As noted by one experienced child protection lawyer, the use of the test does not reflect current treatment of substance abuse which focuses on harm reduction as opposed to total abstinence. Instead, children’s aid societies and courts demand “zero” use, which is unrealistic and in some cases impossible. The consequence of this for the child is significant. By demanding “zero” use, children are left in foster care until the parent can attain that target. The results are significantly lengthier stays by children in foster care, and in some cases, permanent removal from their family unit.

Too often, courts and social workers have leapt to the conclusion that a parent is unsuitable simply as a result of his or her drug use alone. This over-reliance on drug testing is extremely prejudicial because it usurps the role of social work. Often, the court and the child welfare agency will refuse to return a child or increase access to the child on the mere fact of a positive drug test. This may be the case despite the existence of evidence of positive parenting (e.g. parents attending at visits not under the influence, no reports of drug use or misbehaviour from the community, close attachment with the child). The mere fact of a positive hair test can therefore derail any discussion about whether, despite the drug use, the risk to the child can be managed appropriately.

## **V. KNOWLEDGE OF THE SCIENCE UNDERPINNING THE HAIR TESTING**

Many FLA lawyers felt that they did not have sufficient knowledge of the science underpinning hair testing. This is not surprising, nor should it be considered a criticism of the child protection bar. Most lawyers are not trained as scientists, and even those with science backgrounds are usually unqualified to interpret hair testing results. Given the role of testing in child protection cases, it is the responsibility of the child protection agency who is presenting the evidence to provide enough information for the court and

parents' counsel to determine whether the testing is accurate and reliable. This has not been the usual practice.

There has been very little continuing legal education in this area. In Toronto, there have been two Open Bar programs at the 311 Jarvis courthouse in which Motherisk was involved: "Parenting Under the Influence" on Jan 11, 2010 and "What you Need to Know About Fetal Alcohol Spectrum Disorder" on Nov. 4, 2013. While many members felt the presentations helped them to understand the work of Motherisk, most agree that the presentations did not in any way suggest that testing was anything but sound or subject to any unreliability.

## **VI. MOTHERISK DRUG TESTING LABORATORY**

### **1. Reputation of Motherisk**

Although hair testing, in general, is imbued with a sense of infallibility and objectivity, hair testing performed by Motherisk is even more so. Various FLA members have noted that prior to this Review, Motherisk's drug testing results was seen as the "gold standard" of proof of drug use. The drug testing results were accorded much deference by counsel and judges. Concerns were raised only rarely and often without success.

The reputation of the drug testing done at the Motherisk laboratory is further bolstered by its link to a world-renown hospital and experts. Needless to say, the Hospital for Sick Children is a world leader in pediatric care and medicine. This reputation similarly enhanced the reputation of the Motherisk Drug Testing Laboratory. If a choice between testing at Motherisk versus another commercial lab is offered, Motherisk drug testing is invariably chosen as more reliable.

In addition, Motherisk has touted itself as *the* laboratory of choice for drug hair testing for litigation purposes. It has never disclosed to FLA members that it is not an accredited forensic lab, and merely a clinical lab. It has not provided any information as to the

differences between the two types of laboratories. It has encouraged the perception that its testing is accurate and reliable for forensic and court purposes.

## **2. Frequency of Use of Motherisk for Drug Testing**

FLA members report that overwhelmingly, Motherisk is the laboratory of choice for drug hair testing. In the online survey, 83% of respondents indicated that 80-100% of their cases which involved drug testing used the Motherisk Drug Testing Laboratory.

The majority of respondents to the survey are in Toronto. Given that the agencies in Toronto are some of the busiest in the province, it is reasonable to assume that Motherisk conducts most of the drug testing for child protection purposes in the province.

## **3. Working with Motherisk**

In most cases, contact with Motherisk is initiated by the agency requesting the test. The child protection worker will call Motherisk and advise them of a need for testing for a particular client. The client will then be asked to attend at Motherisk's laboratory to provide a hair or urine sample. It is not clear if clients are asked to sign any disclosure agreements or waivers in this process. This information is certainly not routinely provided to counsel.

Clients do not appear to be told about any of the limitations in the test, nor does there appear to be any pre-screening done with the test to determine if other factors may be present that could skew the test results.

There is no information about who actually conducts the test. The "known" experts at Motherisk are Joey Gareri and Gideon Koren. The test results received by FLA members do not include information for a contact person, although some FLA members have reported that they have spoken to Mr. Gareri on occasion on the telephone.

In the few cases where counsel have spoken with Mr. Gareri or have seen him testify, they have noted that he is pleasant to work with and appeared knowledgeable about hair testing. None of our members have reported significant interactions with Dr. Koren.

Given the lack of readily available contact information for staff at Motherisk, many parents' lawyers may not be aware that they are able to contact staff directly. Generally, parents' lawyers do not speak with Motherisk staff and most of the communication with Motherisk is left to the child protection worker or counsel for the agency.

In addition, while FLA members who have interacted with Motherisk have found them helpful in assisting the lawyer to understand the test results, in each case, the lawyer had to be pro-active about contacting Motherisk and identifying issues or concerns about the test. A lawyer who is less experienced or who has limited knowledge of the science is at a significant disadvantage.

#### **4. Presentation of Results by Motherisk**

The results of drug testing performed at the Motherisk Drug Testing Laboratory are generally presented in a chart format. It is not clear from the chart whether all the raw data is presented. It is important to note that often, this is the only official information received from Motherisk about the client's test results. This format has not changed significantly over time.

As the results chart shows, the only interpretive information provided is the name of the substance, the segment of hair tested, whether the substance tested is "negative" or "positive", the concentration of the substance in the sample, the report date, and a legend of some of the acronyms/signs used. The only limitations noted are found at the bottom of the results chart which reads:

CLINICAL INFORMATION (applicable to neonates only):

A positive neonatal hair or meconium result indicates in utero exposure to the respective drug(s) or alcohol during third trimester of pregnancy. Negative results

do not conclusively rule out drug or alcohol exposure.

A positive FAEE (alcohol) meconium test result (i.e. greater than 2 nmol/g) indicates a risk of Fetal Alcohol Spectrum Disorder (FASD); neurodevelopmental follow-up is recommended. The FAEE (alcohol) meconium test does not constitute a diagnosis of FASD. Please note; false- positive FAEE meconium tests may occur if the sample is collected more than 24 hours after delivery due to bacterial contamination. Negative results do not conclusively rule out alcohol exposure:

No other warnings or expressed limitations in relation to the results or methodologies used are included with the results sheet.

Prior to this Review, the actual interpretation of the results never or were very rarely provided to counsel in an official report authored by staff at Motherisk. Instead, an interpretation, if any, was usually provided in the form of hearsay statements found in the body of an affidavit sworn by the child protection worker. On rare occasions, a further interpretive “chart” is provided noting that certain ranges of concentration may indicate low, moderate, or high usage. Again, no warnings or expressed limitations were ever included.

The FLA membership has expressed a strong dissatisfaction with the presentation of the test results, and many practitioners in fact noted that the results were presented as “absolute truths”. Even more troubling is the results of the FLA online survey, where 87.5% of respondents indicated that they received the explanation of the results in an affidavit in less than 50% of the time. It appears that often, courts are being asked to rely on the results document alone, without any interpretation (formal or otherwise), in adjudicating the presence and level of drug use in caregivers.

Since this Review was called, Motherisk has provided a more detailed explanation of the test results when *specifically* asked to do so. Attached at Appendix “B” is a sample of one such explanation provided by Motherisk. These reports have only been provided since the recent controversy about Motherisk’s hair-testing procedure and accuracy arose and only in limited circumstances. In fact, none of the members interviewed for this Review disclosed having received such a report in any of their cases to date. One

particular member noted that receiving an official explanation letter or report from Motherisk has “always” been an issue prior to this time.

## **5. Judicial treatment of Motherisk results**

The FLA membership expressed dissatisfaction with the judicial treatment of test results. FLA members felt that overwhelmingly courts accepted the test results provided by Motherisk Drug Testing Laboratory and that once a test had been introduced into evidence, the court continued to rely on further testing to monitor a parent’s progress almost to the exclusion of other evidence or factors.

The FLA members that have attempted to challenge the Motherisk hair test results have been invariably unsuccessful. Some members reported that courts have discouraged challenges to hair test results, viewing such challenges as a “waste of court time”, and urging the parties to resolve the litigation on the basis of the test results.

## **6. Challenging Motherisk analysis**

The following are a few reasons why it is difficult to challenge results from the Motherisk Drug Testing Laboratory:

- a. Lack of supporting documentation: Beyond the test results in chart format, Motherisk routinely fails to provide any other documentation about their testing methodology or procedure. If such documentation is available, it is certainly *never* automatically provided to parents’ counsel.
- b. Lack of information about accreditation: Motherisk has never automatically disclosed that it is not an accredited forensic lab. In fact, it has never automatically disclosed what types of accreditations apply to its laboratories and the significance of such accreditations.

- c. Lack of funding to test such evidence: Given the reputation of Motherisk, any challenge of Motherisk would require expert evidence. Funding for such evidence is extremely rare, particularly given the cost-cutting environment operated by Legal Aid Ontario. In order to obtain such evidence, counsel would need to point to specific aspects of the testing that are suspect, a task that is difficult given that most counsel are not trained to interpret drug testing results.
- d. Lack of other facilities or type of testing that is accepted by the courts: Some members have reported that in some circumstances, clients committed to “disproving” the Motherisk results have attended at multiple urine screens over a significant period of time. This type of challenge is not always successful, however, because urine screens are also susceptible to manipulation and are seen by courts as being “less reliable”.

## **VII. ADDITIONAL CONCERNS ABOUT MOTHERISK**

### **a. Limitations with Alcohol Hair Testing**

Many FLA members noted that in addition to Motherisk’s drug testing analysis, they also have serious concerns about its hair test for alcohol consumption. Various members have noted that Motherisk’s hair analysis for alcohol are often inconsistent with urine screen results.

Some FLA members have also raised the issue of whether the current alcohol consumption test provided by Motherisk is of any real utility to courts. This is because the current Motherisk test results for alcohol consumption do not show the difference between binge drinking and heavy extended use. However, it must be noted that nowhere on the result page provided by Motherisk is there a warning that this is a limitation of the test. Inexperienced social workers and lawyers would be left with an impression that the test results are able to definitively show a pattern of alcohol use.



Finally, some members have indicated that hair products can and do affect the accuracy of hair test results for alcohol. This limitation is also not expressly noted in the results provided by Motherisk.

**b. Impartiality of Motherisk**

Some members have also expressed concerns about the alignment of Motherisk with children's aid societies in the province. The following factors contribute to this view:

- a. As noted above, Motherisk is the laboratory of choice for many children's aid societies, and in particular, the agencies in Toronto. There is a perception, whether accurate or not, that most of Motherisk's drug testing revenue comes from child welfare agencies. There are no published statistics as to from which sources Motherisk derives its revenues.
- b. When Motherisk staff (usually Mr. Gareri) testify at trial, he is called by the children's aid society as its witness. Typically, there are no prior meetings between Motherisk staff, the parent and the agency to discuss the results and answer questions.
- c. Motherisk's board of directors includes representatives of children's aid societies.
- d. It has been the experience of some FLA members that Motherisk will refuse to provide supportive services (e.g. drug counseling) when the children's aid society has advised that it will be seeking Crown Wardship. The reason provided by Motherisk is that it has "limited resources"; however, from an outsider's point of view, it appears that Motherisk takes direction from the agencies.
- e. When the current controversy about Motherisk's drug testing methodology arose, Motherisk defended itself in a letter written to the Ontario Association

of Children's Aid Societies (OACAS). That letter did not provide detailed information about its current testing methodology. (Motherisk did offer to meet with the FLA; however, the FLA did not receive the same information as had been provided to the OACAS.)

## **VIII. CONCLUSION**

### **1. Hair Testing a Significant Intrusion on Parents**

Although the focus here is on the impact a hair test may have to a legal case, one must not forget that hair testing is also extremely significant to the parent on a personal level. The following are some of the personal consequences that flow from a reliance on hair testing in child protection cases:

- a. Hair testing infringes on a person's right to privacy. By definition, the results of hair tests are personal information that is sensitive in nature. A hair test can reveal a person's medical history, history of addiction, current drug abuse, alcoholic intake, association with others who use such substances.
- b. The results of hair testing can be embarrassing. Hair tests are used in a courtroom where a person's private life is exposed to judges, lawyers, staff, family, friends and supports.
- c. The results of hair testing may be potentially incriminating.
- d. Orders for hair testing may be coercive. When faced with the choice of either losing one's child or performing a hair test, most parents will choose the hair test.

Hair testing has significant legal and personal consequences to a litigant. It is therefore in the interests of justice for such testing to be performed in an accurate manner. Results, interpretations and methodologies need to be made transparent. Testing should also only

be ordered where absolutely necessary. Without these safeguards, there is a very real possibility that there will be miscarriages of justice. In the child protection field, these miscarriages of justice are particularly serious for families and children.

## **2. Questions about Motherisk Testing**

The current review has left many FLA members with questions about Motherisk's work. From the perspective of the FLA, these questions need to be clearly answered in order for everyone including judges, lawyers, child welfare agencies and parents to retain faith in tests performed at Motherisk and other laboratories. The recent suspension of Motherisk's drug testing facility for non-research use is also of concern and further raises questions as to how many results have been compromised or inaccurately reported, including results after 2010.

Some of the questions that the FLA membership requests that Motherisk answer are as follows:

- a. What are the specific changes that have been made between 2010 and the present to testing procedures?
- b. How are current procedures in compliance with forensic standards used worldwide?
- c. Is Motherisk properly qualified to perform forensic as opposed to clinical hair analysis?
- d. Do the scientists at Motherisk understand their role as "experts" to the court?
- e. What is the error rate for the type of testing used by Motherisk currently and in the past?
- f. What methodology is used to test for each specific substance? Are they the same?
- g. What methodology is used to test for exposure versus ingestion of drugs? Are they the same?
- h. What are the limitations in the testing for each substance?
- i. Are there other valid methodologies that are being used worldwide? What are their strengths and limitations?
- j. What factors may lead to an inaccurate result?

- k. What is the educational background and training of the persons performing the analysis and interpreting the results?
- l. How much of Motherisk's revenue come from children's aid societies? What is its relationship with the children's aid societies in the province?

### **3. Current Use of Motherisk Drug Testing Laboratory in the Courts**

Since this Review has been called, courts have been reluctant to order hair testing at Motherisk or any other laboratory. At the Ontario Court of Justice in Toronto, for example, members have reported that judges are refusing to grant requests for hair testing. Counsel have also been quicker to question the necessity and usefulness of hair testing in general.

It is unclear when, if ever, hair testing will again be an accepted form of testing in child protection cases. This would be unfortunate since, if accurate, judicious use of hair testing may assist in moving a case forward and may assist in safety planning for a child.

This recent controversy involving Motherisk has also prompted a deeper reflection about whether there is an over-reliance on this form of testing to determine parenting ability and risk to children. Guidelines with respect to the use of drug testing in child protection cases would be helpful not only to the agencies, but also to parents' counsel.

If hair testing is to be relied upon as an accepted form of testing, then the questions posed above must be answered. Counsel, child protection agencies and the courts must divest themselves of the notion that absolute truths may be derived from a lab test result. Participants in the legal system must be educated in the limitations of scientific testing in general and be prepared to ask questions. Legal aid needs to be available not only to fund counsel but also to provide supports for counsel, including access to experts, in order to challenge the results.

### **4. Further Review Required**

Although the current Review only deals with hair testing performed at Motherisk between 2005 and 2010, it is the position of the FLA that given the current importance of hair testing in child protection cases, there remain significant unaddressed questions that need to be dealt with by a neutral third party. Safeguards need to be put in place to ensure that there is better transparency, accountability and accuracy of *all* drug testing intended for use in court. While a review of the cases between 2005 and 2010 conducted by Motherisk is helpful, it does not address any of the current problems that plague Motherisk or the use of such tests by courts and child protection agencies.

The concern, virtually unanimously expressed by the FLA membership is about modern testing. Finding out about mistakes made five to ten years ago, although it may correct the record, is not very helpful in the context of child protection as the court is not likely to return a child who has been permanently removed from a caregiver. If there are problems with the current testing performed by Motherisk, then that needs to be known and addressed so that current cases before the court do not repeat the same mistakes.

Given the importance of drug testing to child protection cases, it is in the interests of justice that a comprehensive review be conducted. A further review should examine drug testing in child protection work, not only as conducted by Motherisk but also other laboratories that provide such testing to child welfare agencies and courts. In addition, such review should focus on the acceptable uses of hair testing as evidence in child protection cases as well as the obligation of experts, children's aid societies, and parent's counsel to present the science in a way that would allow for meaningful inquiry. Without such a review, it will be difficult to ever rely on or use hair testing in child protection cases.



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## Motherisk General Survey

[Summary](#) [Design Survey](#) [Collect Responses](#) [Analyze Results](#)

### CURRENT VIEW

[+ FILTER](#) [+ COMPARE](#) [+ SHOW](#)

### No rules applied

Rules allow you to FILTER, COMPARE and SHOW results to see trends and patterns. [Learn more](#) >

### SAVED VIEWS (1)

Original View (No rules applied)

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### EXPORTS

### SHARED DATA (1)

Shared Data 1: Anyone with the Link

RESPONDENTS: 55 of 80

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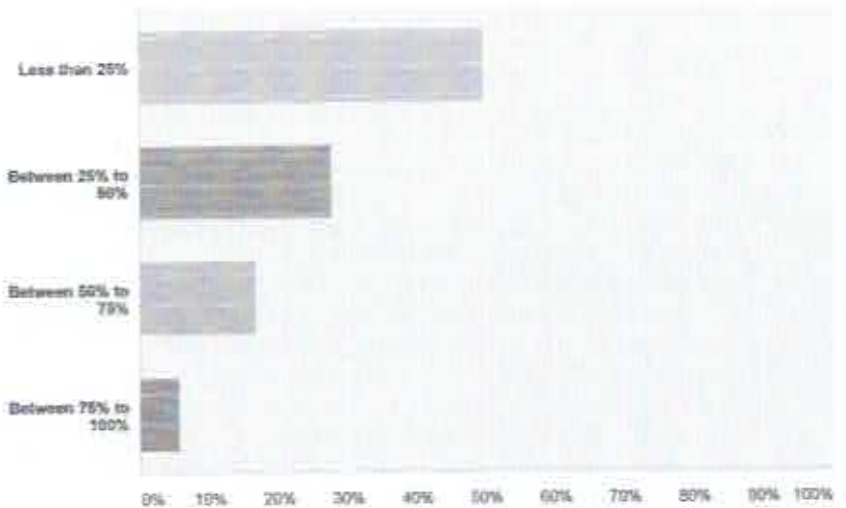
### PAGE 2

Q1

[Customize](#) [Export](#)

### What percentage of your child protection files involves drug testing?

Answered: 54 Skipped: 1



Answer Choices	Responses
Less than 25%	50.00% 27
Between 25% to 50%	27.78% 15
Between 50% to 75%	16.67% 9
Between 75% to 100%	6.56% 3
Total	54

### PAGE 3

Q2

[Export](#)

Please provide a percentage breakdown of the laboratories you or the Children's Aid Society have used in your child welfare cases:

Answered: 21 Skipped: 24

Answer Choices	Responses	Percentage	Count
Motherisk	Responses	95.24%	20
Accu-metric	Responses	48.28%	10
Gamma-Dynacare Medical Laboratories	Responses	25.81%	5
Other	Responses	25.81%	5

Q3

Export

**If "other" please specify the name of the laboratory used.**

Answered: 4 Skipped: 51

● Responses (4) [Text Analysis](#) & [My Comments](#)

**PRO FEATURE**

Use text analysis to search and categorize responses; see frequently-used words and phrases. To use Text Analysis, upgrade to a GOLD or PLATINUM plan.

[Upgrade](#) [Learn more >](#)

Categorize as...  Filter by Category

Showing 4 responses

Unknown

3/3/2015 2:27 PM [View respondent's answers](#)

Various family doctors urine tests

3/3/2015 10:48 AM [View respondent's answers](#)

Ontario Substance Abuse Detection

3/3/2015 10:15 AM [View respondent's answers](#)

I don't know

3/3/2015 9:21 AM [View respondent's answers](#)

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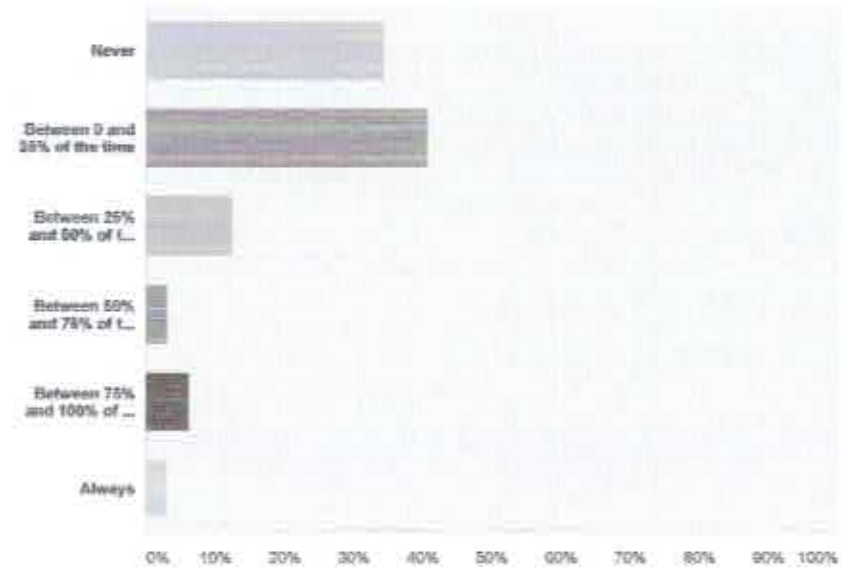
Q4

Customize

Export

**With respect to your cases involving hair testing by Motherisk or other laboratory, how often do you receive an explanation of the results in an affidavit sworn by the Children's Aid Society Worker?**

Answered: 12 Skipped: 23



Answer Choices	Responses
Never	34.38% 11
Between 0 and 25% of the time	40.63% 13
Between 25% and 50% of the time	12.50% 4
Between 50% and 75% of the time	3.13% 1
Between 75% and 100% of the time	6.25% 2
Always	3.13% 1
Total	32

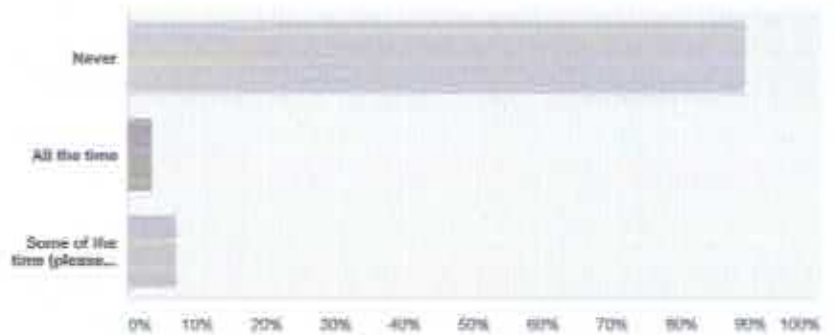
PAGE 5

Q5

Customize Export

**With respect to your cases involving hair testing by Motherisk or another laboratory, how often do you receive a full expert report with explanation about methodology and limitations with the test results?**

Answered: 28 Skipped: 27



Answer Choices	Responses
Never	85.29% 25
All the time	3.57% 1
Some of the time (please advise us which laboratory provided the	Response: 7.14% 2



report(s) and estimate how often you receive a full export report in such cases):

Total

29

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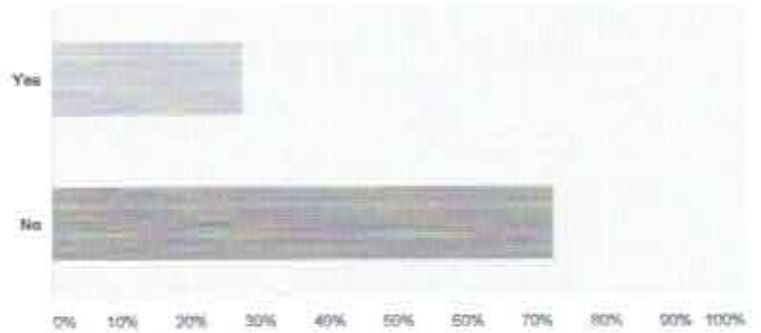
Q6

Customize

Export

### Have you ever challenged a drug test performed by Motherisk?

Answered: 29 Skipped: 20



Answer Choices	Responses	
Yes	27.69%	5
No	72.41%	21
Total		29

Q7

Export

### If yes, how did you go about challenging the test and what was the result of the challenge?

Answered: 5 Skipped: 47

Responses (5)

Test Analysis

My Categories

PRO FEATURE

Use text analysis to search and categorize responses; see frequently-used words and phrases. To use Test Analysis, upgrade to a GOLD or PLATINUM plan.

Upgrade

Learn more >

Categorize as...

Filter by Category

Smart Responses

5

Showing 5 responses

had accometrics repeat the test results similar  
3/3/2015 6:03 PM [View respondent's answers](#)

Requested another test by another agency  
3/3/2015 6:30 AM [View respondent's answers](#)

Court accepted Motherisk without question despite evidence of flaws in methodology and protocols and procedures.  
3/3/2015 6:23 AM [View respondent's answers](#)

contested it & asked questions about reliability. Result:0  
3/3/2015 9:06 AM [View respondent's answers](#)

Obtain alternate testing from another service provider.  
2/17/2015 2:34 PM [View respondent's answers](#)

I had the client go for regular blood tests and urine test. The results were that the society did not rely upon the motherisk results.  
2/12/2015 7:15 AM [View respondent's answers](#)

The issue was hair drug. It was more of a discussion that led to another test.

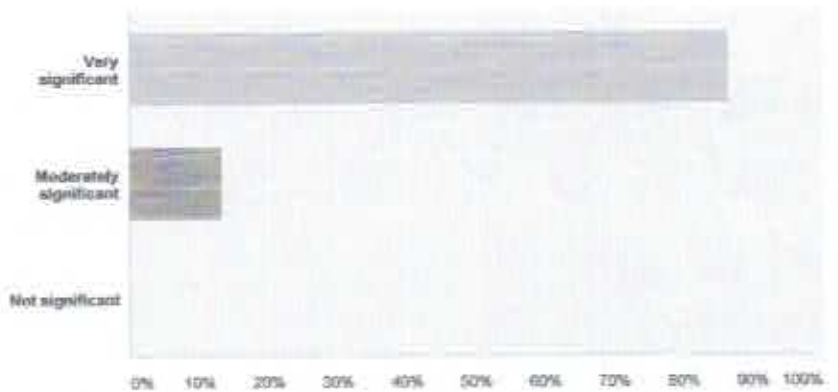
PAGE 7

Q8

[Customize](#) [Export](#)

**From your perspective, how significant are hair and drug tests in determining whether to return a child or remain involved with a family?**

Answered: 30 Skipped: 25



Answer Choices	Response	
Very significant	86.67%	25
Moderately significant	13.33%	4
Not significant	0.00%	0
Total		29

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Q9

[Export](#)

**The following information is collected for statistical purposes only.**

Answered: 27 Skipped: 28

Answer Choices	Response	
Name	Responses	0.00% 0
Company	Responses	0.00% 0

## SurveyMonkey Analyze - Motherisk General Survey

Field	Responses	Percentage	Count
Address	Responses	0.00%	0
Address 2	Responses	0.00%	0
Name of Family Court that you regularly appear in	Responses	100.00%	27
City or Town where you predominantly practice	Responses	100.00%	27
Year of call	Responses	100.00%	27
Country	Responses	0.00%	0
Email Address	Responses	0.00%	0
Phone Number	Responses	0.00%	0

Q10

Export

**Optional: If you would like to be contacted about the FLA's submissions to the Motherisk review, please provide your contact information below or contact the FLA directly.**

Answered: 0 Skipped: 48

Field	Responses	Percentage	Count
Name	Responses	100.00%	0
Company	Responses	0.00%	0
Address	Responses	0.00%	0
Address 2	Responses	0.00%	0
City/Town	Responses	0.00%	0
State/Province	Responses	0.00%	0
ZIP/Postal Code	Responses	0.00%	0
Country	Responses	0.00%	0
Email Address	Responses	100.00%	0
Phone Number	Responses	100.00%	0

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December 15, 2014

Toronto Children's Aid Society  
843 Kennedy Road  
Scarborough, Ontario, M1K 2H3  
FAX: 1-416-324-2553

RE: Review of Hair Test Results for F [REDACTED]; date of birth August 24, 1991; Sample # 135540

Dear Ms. [REDACTED],

The hair strand analysis carried out on this hair sample, collected July 24<sup>th</sup> 2014, represents approximately six months of drug exposure history from mid-January to mid-July 2014. This sample was decontaminated (i.e. washed) prior to analysis in order to remove drugs possibly present externally on the hair via passive exposure to drug smoke or drug residues present in contaminated environments. This sample was tested for cocaine in three two-month segments. The results from this analysis are summarized in the table below:

APPROXIMATED TIME PERIOD	ANALYTE	RESULT	RANGE*
0-2cm: mid-May to mid-July 2014	Cocaine	1.94 ng/mg	MEDIUM
	Benzoyllecgonine	0.65 ng/mg	LOW
	Cocaethylene	trace	VERY LOW
2-4cm: mid-March to mid-May 2014	Cocaine	2.12 ng/mg	MEDIUM
	Benzoyllecgonine	0.62 ng/mg	LOW
	Cocaethylene	trace	VERY LOW
4-6cm: mid-January to mid-March 2014	Cocaine	1.74 ng/mg	MEDIUM
	Benzoyllecgonine	0.47 ng/mg	LOW

\*Ranges are based on the distribution of positive results in our laboratory for hair tests of the drug in question  
VERY LOW < 5<sup>th</sup> percentile, LOW = 5<sup>th</sup> - 25<sup>th</sup> percentile, MEDIUM = 25<sup>th</sup> - 75<sup>th</sup> percentile  
HIGH = 75<sup>th</sup> - 90<sup>th</sup> percentile, VERY HIGH > 90<sup>th</sup> percentile; The 'trace' result indicates that we were able to detect the compound, but the concentration is too low to reliably quantify the amount.

All analytes detected in this sample were determined by liquid chromatography-tandem mass spectrometry (LC-MS/MS).

**Cocaine:** The presence and concentration of cocaine in each segment indicates repeated use of cocaine during each two-month time period tested. The pattern of results suggest a similar average intensity of cocaine use during each tested time period.

**Cocaine metabolites:** This hair sample, after testing positive for cocaine, was assessed for the presence of cocaine metabolites; benzoyllecgonine, norcocaine, and cocaethylene. The presence of metabolites (cocaine is converted to these compounds by the body after administration of the drug) is generally a confirmation of active cocaine use in adult hair samples.

**Benzoyllecgonine** is the primary metabolite of cocaine detected in hair samples. The presence and concentration of benzoyllecgonine in each segment supports the conclusion that the positive cocaine results are due to active use of cocaine by this individual during the tested time period.

Cocaethylene is another minor metabolite of cocaine produced when alcohol is ingested during an episode of cocaine use. The presence of cocaethylene provides evidence suggesting alcohol ingestion during episodes of cocaine use by this individual.

Regards,

**joey.gareri@sickkids.ca**

Digitally signed by joey.gareri@sickkids.ca

DN: cn=joey.gareri@sickkids.ca

Date: 2014.12.15 14:17:46 -05'00'

Joey Gareri, M.Sc.  
Motherisk Laboratory  
Division of Clinical Pharmacology & Toxicology