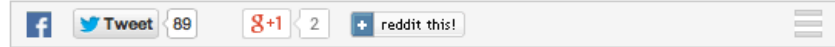


News / GTA

Scope of Motherisk review should be widened, say criminal lawyers

The Criminal Lawyers' Association has joined a growing chorus of critics urging the province to expand its review of cases involving hair testing at the Hospital for Sick Children.



By: [Rachel Mendleson](#) News reporter, Published on Wed Apr 01 2015

The Criminal Lawyers' Association (CLA) has joined a growing chorus of critics urging the province to expand the scope of the judicial review of the Hospital for Sick Children's Motherisk laboratory.

In its submissions to retired Appeal Court Justice Susan Lang, the CLA says concerns about the reliability of hair drug testing evidence that Motherisk presented in an unknown number of criminal cases demands a broader inquiry than the five years currently under scrutiny.

"The frailty of Motherisk's forensic abilities between 2005 and 2010 cries out for a meaningful review of all criminal cases (the lab) handled," the submissions state.

The CLA says it has uncovered "very few examples" where Motherisk testing was known to be used in criminal cases. However, CLA Toronto region director Daniel Brown, who helped draft the submissions, told the Star this could be "the tip of the iceberg."

"We believe the problems uncovered at Motherisk go well beyond the five-year period currently under review," Brown said. "The (province) ... must do more to ensure that cases falling outside the scope of this judicial review are also exhaustively examined so that other potential wrongful convictions can be identified and corrected."

Brown said Motherisk "should be voluntarily disclosing which cases are impacted."

Sick Kids spokeswoman Gwen Burrows said the hospital is continuing to "respect the integrity of the review that Justice Lang and her team are undertaking, and (is) cooperating fully with that review."

"We are confident that Justice Lang and her team will engage in appropriate consultation in order to inform her review," she said. "As such, we are not in a position to respond to your enquiries."

A spokesman for the judicial review said Justice Lang's team received the CLA submissions on Tuesday afternoon, and was not able to comment immediately.

The [province appointed](#) Justice Lang in November, amid an ongoing Star investigation, to review the accuracy and reliability of hair drug tests performed by Motherisk and used in criminal and child-protection cases from 2005 to 2010.

Motherisk's results, which include drug and alcohol hair testing, were routinely accepted in Ontario courts without challenge as evidence of parental substance abuse, and have been used in cases across Canada.

Sick Kids suspended its hair-testing program in March in the wake of new questions about analyses carried out by the lab, pending the results of the review.

Last week, the hospital announced it had temporarily "reassigned medical oversight" of both Motherisk's hair testing and counselling functions, following questions from the Star about the relationship between Motherisk director Gideon Koren and the drug company Duchesnay.

The questions pertained to the lack of disclosure of Duchesnay's financial support of Motherisk in a booklet on morning sickness written by Koren and featured on the Motherisk website, which heavily promotes the use of Duchesnay's drug Diclectin.

Sick Kids will not comment on if Koren, who founded the Motherisk program, has been removed as head of the program or whether he is currently under investigation but said he is still employed at the hospital. He was listed as medical director on Motherisk's website as of Tuesday evening.

In its submissions to Justice Lang in January, York University's [Innocence Project](#) urged her to include more recent cases and child custody matters, citing the case of a Toronto-area mother who received false positive hair drug test results from Motherisk last year.

In response to questions about those submissions, Linda Rothstein, counsel for Justice Lang, told the Star that Lang could not adjust the terms of the review, which were set through an order of the Ministry of the Attorney General and "can only be expanded through a new order."

Ministry of the Attorney General spokesman Brendan Crawley said Justice Lang's report "will advise on whether a further review should be undertaken regarding specific cases, or classes of cases, in which Motherisk's hair testing was used."

"We have every confidence in Justice Lang's ability to advise the ministry on the need for any further review," Crawley said.

The basis of the CLA's submissions is a litany of concerns about Motherisk uncovered in the case of Toronto mom [Tamara Broomfield](#), whose successful appeal of her cocaine-related convictions last October sparked the Star probe.

Broomfield was sentenced to seven years in prison in 2010 after Motherisk director Gideon Koren testified that drug tests performed on the hair of Broomfield's toddler showed he had routinely ingested large doses of cocaine for more than a year leading up to a near-fatal 2005 overdose.

The court tossed Broomfield's cocaine convictions when fresh evidence criticized the methodology and technique Motherisk used to test the toddler's hair and criticized the results it presented as presumptive. (Broomfield abandoned her appeals of other child-abuse convictions related to her son, who suffered brain damage as a result of the overdose.)

According to the CLA, the judge relied heavily on Motherisk's expert evidence, and Broomfield's trial lawyer "did not understand the science underpinning the hair tests and ... did not appreciate the limitations of the tests."

Citing evidence from Broomfield's preliminary inquiry, the CLA said that when Motherisk manager Joey Gareri was called as an expert witness, he did not explain that Motherisk is not a forensic laboratory, and does not adhere to international [forensic standards](#).

Gareri also failed to explain that the screening technique, called immunoassay, used to test Broomfield's toddler's hair in 2005 was a presumptive test requiring confirmation with a gold-standard test, such as gas chromatography-mass spectrometry (GC-MS), the CLA said.

“In fact, Gareri went further by misstating that Motherisk ‘uses an immunoassay that’s verified by GC-MS,’” the letter states. “No such verification by GC-MS was done in the Broomfield case.”

The province set the terms of Lang’s review after Sick Kids told the Star that Motherisk only started using a gold-standard test for cocaine in 2010, leaving questions hanging over at least five years of analysis.

Gareri’s resume filed in court in 2009 indicates he had testified as an expert in criminal matters in several regions in Ontario, including Central West, Central East and Toronto, but the number of times that either he or Koren testified in criminal matters “remains unknown,” as the CLA observes.

Gareri did not immediately respond to a request for comment.

The CLA said Motherisk, which as an accredited clinical lab has less rigorous standards than a forensic lab, “should not have engaged in forensic investigations.”

The letter concludes with a quote from retired Quebec Appeal Court Justice Fred Kaufman in his conclusions in the inquiry into the wrongful conviction of Guy Paul Morin, which reads: “An innocent person was convicted of a heinous crime he did not commit. Science helped convict him.”

“It is clear that faulty forensics seeped into Ms. Broomfield’s case,” the CLA letter states. “What is not clear, however, is whether other individuals were wrongfully convicted on the basis of similar, unreliable evidence.”

Attorney General Madeleine Meilleur has previously said that the [review](#) currently underway is a first step that could spark a much broader inquiry. Justice’s Lang’s report is expected by June 30.

Rachel Mendleson can be reached at rmendleson@thestar.ca.