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Gendered drug policy: Motherisk and the regulation of mothering in Canada

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ABSTRACT

Background: Due to misinformation and enduring discourses about pregnant women and mothers suspected of using drugs, these women continue to experience systemic discrimination. In 2014, this fact was once again made public in Canada when the Ontario government established an independent review of hair testing practices conducted by Motherisk Drug Testing Laboratory (MDTL) at Toronto's Hospital for Sick Kids. Between 2005 and 2015, MDTL tested the hair of more than 16,000 individuals for drug consumption. The results were introduced as evidence in court and resulted in both temporary and permanent loss of custody of children. Tragically, it was later discovered that the hair testing results were unreliable. This paper provides an analysis of child protection policies and practices directed at pregnant women and mothers suspected of using drugs, with a focus on the Motherisk tragedy in Ontario.

Methods: Informed by feminist and critical drug perspectives, this study draws from findings in the 2015″Report of the Motherisk Hair Analysis Independent Review," produced by Honourable Susan Lang, and provides a Bacchi-informed critical analysis of Commissioner Beaman's 2018 report of the Motherisk Commission, "Harmful Impacts: The Reliance on Hair Testing in Child Protection" (HI).

Results: The HI report is quite sympathetic to the plight of families and it acknowledges systemic issues and unequal power relations between families, social workers and the courts. Even though drug testing is an inadequate measure of parenting capacity, the HI report does not recommend banning the practice. In the HI report, the themes of harm reduction and drug prohibition are notably absent — while the use of gender-neutral terms, such as "parent" and "families," render mothers invisible.

Conclusions: The Motherisk tragedy cannot be understood as an isolated event, rather it is part of a continuum of state and gendered violence against poor, Indigenous, and Black women in Canada. The HI report fails to consider how prohibitionist discourses about drugs, addiction, mothering, and risk lead to institutional practices such as drug testing and child apprehension.

Introduction

[1]Due to misinformation and enduring discourses about pregnant women and mothers suspected of using drugs, these women continue to experience systemic discrimination. In 2014, this fact was once again made public in Canada when the Ontario government established an independent review of hair testing practices conducted by Motherisk Drug Testing Laboratory (MDTL) at Toronto's Hospital for Sick Kids. Between 2005 and 2015, MDTL tested the hair of more than 16,000 individuals for drug consumption. The results were introduced as evidence in court and resulted in both temporary and permanent loss of custody of children. Tragically, it was later discovered that the hair testing results were unreliable (Lang, 2015). This article examines the Motherisk tragedy in Ontario by drawing on the 2015 report by Honourable Susan Lang, "Motherisk Hair Analysis Independent Review," and a critical analysis of Commissioner Beaman's 2018 report of the Motherisk Commission, "Harmful Impacts: The Reliance on Hair Testing in Child Protection" (HI).

Feminist and critical drug perspectives

In order to contextualize the HI report, the first section of this article briefly explores feminist and critical drug perspectives, followed by a sociohistorical examination of the regulation of poor, Indigenous[2] and Black women, and child protection in Canada. Indigenous women were found to be overrepresented in MDTL testing, and the MRC noted that

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[2] Indigenous refers to First Nations, Métis and Inuit peoples.

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Black women were also most affected (Beaman, 2018, pp. 26, 43, 56). Sociohistorical and critical drug studies that conduct gender, class, and race analysis have brought to our attention how the regulation of women, especially poor and racialized women, intersects with the regulation of sexuality, reproduction, mothering, and drug consumption (Boyd, 1999, 2015; Campbell & Herzberg, 2017; Reinarman & Granfield, 2015). They emphasize how "gender—in dynamic relationship to race, class, and sexuality" intersects with all aspects of drug policy and practice (Campbell & Herzberg, 2017, p. 251). These perspectives provide tools to problematize moral discourses, concepts of addiction, maternal drug use, risk, and mothering. How we think about these concepts shapes policies (and practices) directed at women who use drugs and their children.

Although this article examines gendered welfare and drug policy in Canada, scholars across the globe have highlighted how drug prohibition negatively and uniquely impacts women who come into contact with overlapping health and social welfare services, and criminal justice. Globally, diverse populations of poor and racialized women bear the brunt of punitive drug policies (Amnesty International, 2017; Boiteux, 2015; Boyd, 2015, 2017a; Kensy, Stengel, Nourgier, & Birgin 2012; Malinowska-Sempruch & Rychkova, 2015; WOLA et al., 2016). In and outside of Canada, neoliberal economic and social policies continue to contribute to the feminization of poverty and disproportionately impact female-headed families. For many poor mothers suspected of using drugs, moral regulation and child apprehension by the state is common (Boyd, 2015; Kenny, Barrington, & Green, 2015; Kensy et al., 2012; Malinowska-Sempruch & Rychkova, 2015; WOLA et al., 2016).

Motherisk and critical analysis

This article discusses the socio-political environment that hair testing for drugs and Motherisk Drug Testing Laboratory (MDTL) emerged from, and the 344-page "Report of the Motherisk Hair Analysis Independent Review," produced by Honourable Susan Lang (2015). In her report, Lang recommended that the government of Ontario establish a second review of the drug testing cases. Taking up her recommendation, Justice Judith Beaman was appointed by the government as the Commissioner of the Motherisk Commission of Inquiry (MRC) in January 2016. After the MRC completed its mandate, in February 2018, Beaman's 278-page report, "Harmful Impacts: The Reliance on Hair Testing in Child Protection" (HI) was made public (Beaman, 2018). This article draws on the findings of the 2015 Lang report, and a critical analysis of the 2018 HI report, in order to understand the Motherisk tragedy and what it reveals about the moral and legal regulation of poor and racialized women suspected of using drugs.

Drawing from Carol Bacchi's (2009), 'What's the problem represented to be?' methodological framework, this paper analyzes the HI report, with a focus on illegal drug use. Diverse critical researchers have drawn from Bacchi in their analyses of drug related research and policy (Boyd & Kerr, 2015; Boyd, Boyd, & Kerr, 2015; Fraser & Moore, 2011; Lancaster, 2014; Lancaster & Ritter, 2014; Moore & Fraser, 2013; Seear & Fraser, 2014). I draw on three of six questions posed by Bacchi (2009), p. xii) to inform the analyses of the HI report: (1) What is the problem represented to be?; (4) What is left unproblematic in this problem representation?; (5) What effects are produced by this representation of the 'problem'? In order to analyze the HI report, prominent thematic discourses (i.e., risk, parenting, drug abuse, addiction, treatment, and drug testing) were identified and coded, with attention to Bacchi's methodological questions, as these discourses have important policy implications.

The ideal mother

In Canada and other Western liberal nations, the ideal mother has been constructed as White, middle-class, moral, sober, maternal, and heterosexual (Backhouse, 1999; Boyd, 2015; Campbell, 2000). Women who fall outside of this discourse, as poor and racialized mothers do, are constructed as incapable of mothering and raising their own children. Although their histories differ, Indigenous and racialized people in Canada have both experienced state violence and criminalization. Due to the ongoing impact of slavery and colonial policies, Indigenous and Black women in Canada have been made to fight for their rights, including control over their own bodies, their reproduction, and the right to raise their own children (Amnesty International, 2004; Blackstock, Cross, George, Brown, & Formsma, 2006; Kubik, Bourassa, & Hampton, 2009; Maynard, 2017; Million, 2013; Monture, 1989). Canada's first drug laws were precipitated by linking racialized people with newly criminalized drugs. These associations continue today (Boyd, 2017a, 2017b; Bristow et al., 1994; Chan & Chunn, 2014; Maynard, 2017; Mosher, 1998).

Indigenous and Black women in Canada who use drugs are especially stigmatized and constructed as drug "offenders" (Dell & Kilty, 2012, p. 52; Maynard, 2017) and are at risk of having their children apprehended by the state (Backhouse, 1999; Blackstock et al., 2006; Maynard, 2017; Monture, 1989; United Nation Human Rights Council [UNHRC], 2017). Indigenous adults, taken from their families and communities when children, have expressed their "bitterness, sadness, shame and anger at the enduring impacts from physical, sexual, and psychological abuses [experienced] while in foster care" and in their adoptive homes (John, 2016, p. 8).

Following changes to the *Indian Act* in 1951, and as residential schools in Canada slowly began to close, provincial child welfare services stepped in to monitor Indigenous families and their children. It is estimated that throughout Canada, Indigenous children made up over half the total number of children (52.2 percent) in foster care (e.g. foster care and group homes) in 2016 (Government of Canada, 2018). The overrepresentation of Indigenous children in foster care is inextricably linked to the past removal of children into residential schools (Sinha & Kozlowski, 2013). Thus, many Indigenous scholars and communities in Canada view "child welfare as an agent of colonialism rather than a support to the safety and well-being of Indigenous children and youth" (Blackstock et al., 2006, p. 6). The UNHRC also argues that because of entrenched racism, Black children are often apprehended by child welfare agencies in Canada on "dubious grounds" (UNHRC, 2017, p. 14).

Child protection and the construction of drug use and risk

From the late 1950s poor and racialized women in Canada who used criminalized drugs were constructed by child protection services as unfit mothers, and child apprehension was the norm. Experiences, outcomes, and impact of drug use are shaped by social status and the level of punitive control — whether legal, social, or medical regulation (Campbell & Herzberg, 2017; Reinarman & Granfield, 2015). Suzanne Fraser (2017) points to factors that are left unrecognized, such as structural violence, when drug use and addiction are framed "*as the problem*" (emphasis in original, p. 133). So drug use — and not ongoing structural violence — is constructed as a risk by child protection services in Canada. Further, "(addicted) maternal bodies," "(vulnerable)" newborns, and children, are constructed by child protection services as the problem to be governed (Whittaker et al., 2018, p. 7). In and outside of Canada, drug prohibitionist policies intersect with women's human and reproductive rights, and their right to raise their own children. For example, the criminalization of pregnancy in the United States — the legal designation of fetal personhood, third-party assault legislation, criminal child abuse laws, and civil commitment laws — has had terrible consequences for women suspected of using drugs (Amnesty International, 2017; Paltrow & Flavin, 2013).

To be clear, some children do need to be protected and many social workers strive to support the families they come into contact with. Poor women with children are overwhelmingly the recipients of welfare assistance. Thus, it is these women who are most often the subject of

child maltreatment investigations. In Ontario, child protection services are governed by the *Child and Family Services Act* and the Children's Aid Societies (CAS) carry out its mandate. Of the total substantiated child maltreatment investigations in the province of Ontario in 2013, women made up 90 percent of cases, compared to ten percent of men (Fallon et al., 2016).

When investigating child mistreatment, social workers in Ontario make note of whether newborns tested positive for drugs/alcohol at birth and whether parents abused drugs and/or alcohol, including during pregnancy. Nine percent of substantiated child maltreatment cases in Ontario in 2013 cited drug abuse (excluding alcohol) as the primary risk factor (Fallon et al., 2016). Abstinence is equated with "good parenting" and drug use is equated with abuse in policy; however, the term "substance abuse" is not defined. Other household risk factors include being on social assistance, living in public housing, and moving more than once in a 12-month period (Fallon et al., 2015). Thus, low-income families are constructed as at risk for maltreatment even though their status is produced by economic and social policies (Grusky et al., 2016). In a three-month sampling of children and families investigated by child welfare services in Ontario in 2013, it was found that Indigenous families are 130 percent more likely to be investigated by child welfare services for maltreatment or risk of maltreatment of children 14 years and under than are White families. Black families were 40 percent more likely to be investigated than White families, and Latin American and West Asian families were also overrepresented in child welfare investigations (Fallon et al., 2016).

Motherisk: the background

Located in Toronto's Hospital for Sick Kids, the Motherisk Program was founded in 1985. The publicly funded Hospital for Sick Kids is also Canada's largest paediatric academic health sciences centre. The Motherisk Program was established to provide information about the "potential risks to a developing fetus or infant from exposure to drugs, chemicals, diseases, radiation, and environmental agents" (Lang, 2015, p. 68). Initially, the Motherisk Drug Testing Laboratory (MDTL) was a research laboratory and contributed to the science of hair analysis. In 2000, the conservative-led Ontario government released a "Drug Treatment Consultation Plan" that laid out conditions for receiving welfare benefits that included mandatory drug testing and abstinence from drugs (MacDonald et al., 2001). Prior to 2000, mandatory drug testing of welfare recipients was not practiced in Canada (MacDonald et al., 2001). However, as in the U.S. and the U.K., in the 1990s neoliberal economic and social policies led to cutbacks and the restructuring of Canada's welfare system. Ontario Premier Mike Harris implemented cutbacks to benefits for mothers with children, and depicted single-mothers on benefits as drug users unwilling to work. He declared "those who refuse treatment or who won't take the [drug] tests on request will lose their benefits" (Etsten, 2000, p. 8). It is against this environment that the MDTL began to move away from studying drugs in hair to more aggressively promoting drug testing services to child protection agencies throughout Ontario. In a MDTL information brief on the benefits of hair testing for establishing illegal drug use, the lab claimed that it is an excellent tool because women are most often unable to stop using drugs during pregnancy and are known to be unreliable when self-reporting drug use (Lang, 2015, Appendix 9, p. 277). The MDTL brief promoted the use of hair testing of adults (in contrast to urine testing). It is purported that hair testing has several advantages, (e.g. being less difficult to collect and detecting drugs consumed over many months) to establish illegal drug use (cannabis, cocaine, opiates, etc.), and of newborns to identify "in utero drug exposure" for child protection cases (Lang, 2015, p. 36).

The investigation of MDTL was spurred by years of complaints from parents and family lawyers, a criminal case about the validity of its hair testing, and a joint news investigation by the *Toronto Star* and *CBC*. In 2014, the Ontario government finally established an independent review of hair testing practices conducted by MDTL between 2005 and 2015. The Honourable Susan Lang was appointed to conduct the review and to submit a report to the Attorney General. Lang (2015) reported that more than 24,000 hair samples from 16,000 individuals were taken to be tested for drug and alcohol use. The overwhelming majority of hair tests conducted at Motherisk were done at the request of Ontario child protection agencies to determine if a parent had used drugs, including alcohol.

Of the 24,000 hair tests taken from 16,000 individuals, 54 percent tested positive (Lang, 2015). The tests were used to confirm suspicion of drug and alcohol use and exposure to children, including in utero exposure; to monitor levels of drug and alcohol use over time; to encourage parents to agree to interventions, including temporary care orders; to test the credibility of parents or caregivers; and as a condition of a court order (Lang, 2015, pp. 15, 320). Child protection agencies in Ontario regularly attached MDTL results in court and the courts accepted the results without scrutiny as a "reliable measure of use" (Lang, 2015, p. 16). Fewer MDTL tests were conducted for criminal proceedings, with only six cases in total.

Lang concluded that the hair tests conducted at MDTL were unreliable and inadequate for use in both criminal and child protection proceedings. MDTL's hair testing did not meet internationally recognized forensic standards. Yet, the positive flawed hair test results for drugs had already been introduced as evidence in court, resulting in temporary and permanent loss of custody of children. The drugs MDTL tested for most often were cannabis/THC and cocaine, and it was found that the lab made repeated errors in its interpretation of these two drugs (Lang, 2015, p. 10). To be clear, the MDTL is not guilty of providing a few false positive drug test results for child protection services; rather, for 25 years the lab operated without adequate oversight or adequate analysis of hair samples. This systemic injustice mostly impacted poor women suspected of drug use. It is estimated that between 2007 and 2015, MDTL revenues from children's aid organizations requesting drug testing of individuals was CA$6.8 million (Mendleson, 2017). Drug testing is expensive, and resources which might have been utilized elsewhere to support families were used by child protection services to pay for hair analysis results. The Hospital for Sick Kids closed the MDTL in 2015.

In her report, Lang recommended that the Ontario government appoint a Commissioner to conduct a second review of the drug testing cases (2015, p. 230). Lang noted that the best interests of children must be the primary consideration during a second review. She contends that for this reason, she did not recommend that the second review examine every child protection case where a MDTL test result was attained (Mendleson, 2017, p. 234).

The Motherisk Commission and harmful impacts

Taking up Lang's (2015) recommendation for a second review of the cases, in January 2016, the government of Ontario established the independent Motherisk Commission of Inquiry (MRC) with Justice Judith Beaman appointed as the Commissioner. Beaman's task was to review case files of individuals and families involving MDTL hair testing results over a 25-year period (1990 to 2015). The MRC was provided a CA$1 million budget to carry out their two-year mandate. The MRC's unprecedented mandate was to determine if the test results from MDTL had been used to remove children from custody and to assist people whose children were wrongfully taken into custody or adopted into other families. In 2015, the Children's Aid Societies of Ontario were ordered to release copies of pertinent case files that included child protection proceedings, court transcripts, and child protection and adoption files. The MRC team focused on identifying and reviewing cases where MDTL results played a significant role involving children under the age of 18 who were permanently removed from their families at the time of their review. Over their two-year mandate, 1271 child protection cases were reviewed (Beaman, 2018, p. xix).

As part of their outreach, the MRC created a website with pertinent information. They also conducted a one and a half day public symposium in September 2017, to identify issues and strategies to prevent a similar tragedy in the future. The MRC conducted outreach to affected families and met with organizations and parents so that they could "tell their stories in a safe way" (Motherisk Commission (MRC, 2017). The review of cases had two phases: high priority cases where custody of children was pending or recently made; and cases where adoption orders were made and MDTL testing was a factor (Beaman, 2018, p. vii). Following each case review, the Commissioner made one of three determinations: the MDTL results did not have a substantial impact, the results had a substantial impact, or the role of MDTL results was still unclear and more information was to be collected. Parents affected by MDTL were offered counselling, legal advice, and dispute resolution.

Findings

After completing their mandate, in late February 2018, the MRC submitted their report to the Ontario government. The 278-page HI report lays out the MRC's mandate, their rationale for the review of only 1271 out of 16,000 individual cases, the information they gathered from families, social workers, organizations, etc., and their finding that only 56 of the 1271 reviewed cases demonstrated that Motherisk drug testing results had a substantial impact, in effect tearing these families apart (Beaman, 2018, p. vii). Of the total 1271 cases reviewed, Indigenous families were overrepresented; almost 15 percent (14.9) were Indigenous families. Of the 56 cases where MDTL results had a substantial impact, 12.5 percent were Indigenous families. Indigenous people make up only 2.8 percent of the population in the province of Ontario. Beaman notes that other racialized groups, such as Black families, were not identified in their review of cases because this information was not yet available. This lack of information is unfortunate because over 40 percent of children in care in Toronto, Ontario's largest city, are Black (even though Black Canadians make up 8 percent of Toronto's population) (Beaman, 2018, p. 13).

The HI report is quite sympathetic to the plight of families. The HI report acknowledges systemic issues and unequal power relations between families and CAS workers and the courts. In the HI report, flawed drug testing, and social workers' and courts' interpretation of supposedly positive drug tests, are constituted as the problem, justifying child apprehension. Beaman concludes that:

> [positive] test results shifted workers' attention away from the family's parenting strengths to concentrate on apparent deficits, and workers seemed to link substance use with inability to parent. In some cases, they equated substance use of any kind to addiction. They sometimes characterized parents who were indeed struggling with addiction as having 'chosen' substance use over their children. (2018, p. 63)

Family court judges also gave excessive weight to drug testing results in their judgments, disregarding evidence of "excellent parenting skills" (Beaman, 2018). The HI report states that youth and youth advocates with whom the Commission members spoke emphasized structural factors that impacted their parents, such as poverty and racism. Some youth also made clear that "drug use affected people differently, so that the Motherisk hair testing could not predict a person's specific reaction to a drug or its effect on their parenting skills" (p. 94). Yet, diversity of drug use is not expanded on in the HI report, nor is medicinal or spiritual use of drugs acknowledged.

Beaman emphasizes that for roughly 20 years the MDTL hair testing for drugs was "unfair and harmful" and impacted "the poorest and most vulnerable members of our society" (Beaman, 2018, p. v.).

Mothers and drug testing

The HI report states that the vast majority of hair tests were conducted on mothers because they are most often the caretakers of children (Beaman, 2018, p. 56). This is consistent with studies on child maltreatment investigations (Fallon et al., 2016). Of the 1271 cases reviewed by MRC (some individuals were tested multiple times), a total of 2811 both negative and positive hair tests were conducted (Fallon et al., 2016, p. 57). Drug testing was not always confined to one person in a family.

The HI report explores how "affected persons," defined as children, biological parents, siblings, foster parents, adoptive parents, extended families, and "the band or communitity of Indigenous children" were impacted by MDTL testing (Beaman, 2018, p. 11). The HI report recognizes that the forced removal of a child from their family and their community radiates harm. Possibly in keeping with a narrative of "affected persons," throughout the HI report, "mothers" are quite absent. In fact, the term mother is only referred to 46 times, and most often on three pages: one in relation to the lack of rooming-in for mothers and infants in hospitals and treatment settings in Ontario (p. 130) and in the conclusion of the report where a few examples of families substantially impacted by the flawed drug testing are discussed (pp. 146–147). Rather than the term "mother" — reminding the reader of women's experiences of gendered, racialized, and class-based social welfare, child protection, and drug policies — the gender-neutral terms "parent" and "families" predominate in the HI report. The absence of mothers in the HI report is problematic, given that every child has a biological mother, mothers are primarily the caretakers of children, the overwhelming majority of child protection investigations in Ontario are directed at mothers, and of the 1271 cases reviewed by MRC, mothers make up the majority (Beaman, 2018, p. 57). Further, the Motherisk lab itself made explicitly clear who their services were geared to — mothers (Lang, 2015, p. 277).

"Harmful Impacts'" recommendations for change

The HI report also includes 32 recommendations for change. The recommendations are described "as steps toward ensuring that no family will experience similar harm in the future" (Beaman, 2018, p. xii). The majority of the recommendations are to reform and improve systems that are already in place. Beaman recommends strengthening rules about submitting and evaluating the reliability of expert evidence in child protection proceedings, prohibiting hearsay evidence, the establishment of legal aid funds, and the creation of a specialty legal clinic for child protection cases, along with funding from the federal government for more Indigenous representatives in child protection proceedings (Beaman, 2018, pp. 110, 115). Although participants at the MRC 2017 public symposium communicated that group homes should be eliminated entirely (to applause by other participants); the HI report does not address this recommendation (Beaman, 2018, p. 275).

The HI report acknowledges that individuals' rights to due process and to privacy and bodily integrity were breeched (p. 60); parents who contested test results were viewed negatively by both CAS and the courts (p, 62); and CAS and the court used MDTL results "as a proxy for assessing parenting" ability as "well as credibility" (Beaman, 2018, pp. ix, 105). Nevertheless, Beaman does not recommend abolishing the use of drug testing. Furthermore, the HI report does not fully integrate the findings Lang (2015) outlined in her report on hair testing at MDTL.

In her 2015 report, Lang makes clear that hair testing cannot determine the exact dose of drugs consumed, nor can hair tests distinguish between use and exposure. Thus, exposure to external contaminants, such as hair products, sunlight, hair treatments (i.e. dying, bleaching, and permanents), can affect hair sample results (p. 56). Variations in hair growth can also impact testing results. Hair testing cannot precisely determine how often a person uses drugs, the date of use or exposure, or even whether drug use is positive or negative. Nor can hair testing for drugs determine whether the person tested is an occasional drug user or a regular user (Lang, 2015, pp. 61–66). Lang concludes that hair test results "cannot assess whether a person consumed the

drugs or alcohol when in a parental role or otherwise determine whether the person is fit to parent" (2015, p. 66). Nor can hair testing determine therapeutic or spiritual use of cannabis.

Overlooking Lang's conclusion above, Beaman recommends several reforms to ensure that in the future, test results are reliable. Beaman notes that in criminal law, the requirements related to drug testing are much more stringent than in family court (p. 106). Thus, she recommends that informed written consent (without coercion) be obtained. However, critical researchers problematize consent in relation to drugs and essential services. They "illuminate how consent is compromised when participants are vulnerable and marginalized, and essential social and economic supports are lacking" (Boyd & NPA, 2013, p. 11; see Culhane, 2011). Unequal power relations between social workers and parents stem from structural factors (including colonialism and drug prohibition) and the fact that social workers are gatekeepers to essential social and economic supports that parents seek to support their families. Thus, consent for drug testing, regardless of whether a social worker acknowledges power differences, can be best understood as consent under "duress" (see Small & Drucker, 2006). Beaman makes clear in the HI report that individuals receiving welfare benefits and subject to drug testing were vulnerable and marginalized. Possibly to counter these factors, Beaman recommends that all test results be accompanied by a report explaining the results and "impacts of gender, socioeconomic status, culture, race and other factors" (however that may be interpreted by drug testing technicians) in relation to the results. However, the HI report is silent in relation to a larger issue – drug prohibition – that influences the taking up of drug testing and surveillance of marginalized people.

Harm reduction

The HI report also recommends that residential treatment centres for families and children be established and notes that through the provincial Early Childhood Development Addiction Initiative, over 30 organizations throughout Ontario already provide services to pregnant women and mothers (and their children) who are identified as having "problematic substance use" (p. 130). These programs range in their provision of services and are not available in many communities. The HI report recommend that more peer mentorship programs for women and children be funded, and they highlight the work of Community Action for Families (CAF). CAF is a grassroots movement for social transformation, including child welfare. However, the HI report does not refer to the principles that inform CAF or its support of the implementation of harm reduction principles, such as meeting people where they are at, offering pragmatic solutions, respecting human rights, and ending drug prohibition (CAF, 2018b; Beaman, 2018, p. 126).

The HI report does not identify programs that adopt a harm reduction approach or whether abstinence is a requirement in order to participate in the programs available. However, it is important to note that abstinence is the goal of residential drug treatment programs in Canada (Boyd, Carter, & MacPherson, 2016). A surprising omission in the HI report is any reference to beneficial opioid substitution programs available in Ontario that contribute to stability, such as methadone or suboxone, or to diacetylmorphine (heroin-assisted treatment) and hydromorphone options in Canada for treatment of opioid dependence. Lang's report records that adults were tested for methadone by the MDTL; however, she does not expound on that fact or the benefits or limitations of methadone treatment, including methadone prescribing during pregnancy (2015, p. 115). Nor does the HI report expand on drug testing for methadone. In the body of the HR report, methadone is only briefly referred to twice in reference to drug testing results from methadone clinics differing from MDTL hair results, and once in relation to the cost of drug testing for methadone (Beaman, 2018, p. 59, 60, 62).

Positive test results

Throughout the HI report, flawed drug testing and reliance by CAS workers and the courts on incorrect positive results as proof of poor parenting are represented as the problem. The HI report does recommend that social workers and counsel receive education about substance use and its impact on families; yet, the type of education is not made clear (Beaman, 2018, p. 133). The specific recommendations in the HI report on drug treatment, services, and education stem from the MRC finding in their review of cases that parents' abstinence (as indicated by drug testing) was seen by social workers and judges as an indicator of good parenting, and a positive drug test was seen as a lack of ability to parent and therefore a risk to children by both social workers and the courts. The MRC notes that CAS workers oftentimes described parents in both "stigmatizing and judgmental terms," claiming they were "addicts" or "chronic drug abusers" with no other evidence outside of an MDTL result (p. 63). Beaman also claims that a narrow and simplistic approach was taken by CAS workers; a positive drug test was seen by CAS workers as confirming "substance use, substance use meant addiction, and addiction meant inadequate parenting" (p. 64). The HI report questions this narrow approach and notes that some CAS workers employed a harm reduction approach and "rarely relied on hair testing" (p. 64). Yet, harm reduction is only referred to in one more sentence in the body of the HI report, in reference to CAS workers communicating to the MRC that some family court judges respond differently to a parent's "relapse" taking a "harm reduction approach and will still consider returning a child to the home while others have zero tolerance for substance use" (p. 99).

A one-sentence definition of harm reduction is included in a footnote of the HI report: "program or policy designed to reduce drug-related harm without requiring the cessation of drug use" (Beaman, 2018, p. 64). Yet, in appendi x 9 h of the HI report, which consists of summary notes taken from a one and a half day Motherisk Commission symposium on restorative process and solutions held in September 2017 (discussed earlier), the 100 or so invited participants referred to the need for harm reduction services five different times when discussing three of the four themes presented to them by MRC (Beaman, 2018, pp. 268–278). Methadone programs were referred to in the symposium summary notes once, stating that efforts have been made over many years to engage with child protection differently if a caregiver is in a methadone program (Beaman, 2018, p. 272). The themes identified were the following: 1. ensuring reliability of scientific evidence in child protection; 2. supporting and empowering families: access to legal information and independent support; 3. enhanced substance use treatment options; and, 4. sustaining and enhancing collaboration across sectors.

Yet, the HI report does not include a full or informative discussion (including the research in support) of harm reduction (including methadone) and its benefits in relation to services for families, especially pregnant women, mothers, and their children. Nor is the establishment of more harm reduction services or training about harm reduction and services for CAS workers and judges included as a recommendation in the HI report. The absence of a discussion and recommendations in relation to the benefits of harm reduction programs is striking given their success in reducing drug related harm and engaging and providing non-judgmental support for marginalized people, including pregnant women, mothers, and their children. The absence is also surprising given that the HI report does make a point of noting that drug use in itself is not equal to poor parenting. In failing to discuss harm reduction, alternative understandings of drug use, and alternative policies and practices, are limited.

Furthermore, rather than include a discussion of successful harm reduction services, the HI report contributes to flawed assumptions about infants who have been exposed to maternal opioid use. In reference to the rooming-in programs for mothers and newborns, Beaman states that these programs are for "infants who are born opioid

dependent" and refers readers to the news article titled, "Born Addicted to Opioids" (Beaman, 2018, p. 130; Leeder, 2017). Leeder's (2017) article discusses a rooming-in program for infants; however, foremost, she perpetuates stereotypes and negative discourses about infants exposed to maternal drug use. Drawing from clinical and research results, prominent doctors and researchers have long disputed claims that infants are "born addicted" to cocaine and/or opioids. Two separate open media letters signed by researchers and doctors, the latest published in 2014 titled, "*Open Letter to the Media and Policy Makers Regarding Alarmist and Inaccurate Reporting on Prescription Opiate Use by Pregnant Women*" highlight the scientific evidence that infants are not born addicted (Newman et al., 2013; Arendt et al., 2004). Furthermore, the HI report contributes to negative and flawed discourses about maternal drug use, infants, and risk, contributing to further stigmatization and policy and practice implications.

Discussion

The MRC was unprecedented. Its recognition of systemic racism and marginalization, the terrible injustice experienced by families due to the MDTL hair testing, and the reliance of CAS workers and the courts on results in determining custody and child apprehension orders, is commendable. So too was their review of cases. However, even though drug testing is an inadequate measure of parenting capacity, the HI report does not recommend banning the practice; rather drug testing is "seen as in need of fixing" (Bacchi, 2009, p. xi). In keeping with components of Bacchi's methodological framework, the HI report constitutes drug testing and interpretations of drug testing as a problem to be fixed, rather than problematized in and of itself; "what is left unproblematic in this problem representation" has implications for what needs to change (Bacchi, 2009, pp. xii, xv). The HI report recommends several reforms to insure drug test results are more reliable. However, the omission of harm reduction, drug prohibition and prohibitionist discourses about pregnancy, mothering, and risk, in the HI report, constrains the ways drug testing and the Motherisk tragedy can be understood, and leaves meaningful solutions unexamined. Not surprisingly then, the HI report does not challenge drug prohibition, including surveillance and associated practices; nor does it recommend dismantling the child protection or social welfare systems, or creating alternative systems to mitigate future harms.

Although the Toronto-based Community Action for Families (CAF) communicated their concerns to the MRC in July 2017 with the support of a number of provincial and local groups, these issues were not fully addressed. CAF identified five areas of concern: 1) Lack of support and resources for marginalized parents to come forward to the Commission; 2) the limited scope of the Commission's mandate and exclusion of financial compensation for affected birth parents; 3) the lack of time and resources allocated to publicly acknowledge the damage done to families by the Motherisk scandal; 4) the lack of involvement of parents with experiential knowledge in the Commissions leadership and advisory roles; and 5) the need for a focus on justice and systemic change (CAF, 2018a). CAF also expressed their concern about drug testing as an assessment tool for parental capacity (2018a). Apart from the attention it pays to drug testing and parental capacity, the HI report does not address the issues identified by CAF. Beaman does note that many families had unstable housing (2018, p. 121); however, she fails to discuss or recommend affordable social housing for women and children, increased social welfare benefits, or a guaranteed income, or access to higher education. Without these supports, the cycle of poverty, child apprehension, and regulation of mothers and their children is reproduced.

In January 2018, federal Indigenous Services Minister Jane Philpott described the state of the child welfare system in Canada as a "humanitarian crisis" (Tasker, 2018). Other critics counter that the current crisis and the Motherisk tragedy are rooted in history (Boyd, 2017b; Maynard, 2017). The Motherisk tragedy is not an isolated event; rather, it is best understood through the lens of colonialism and a continuum of state and gendered violence against poor, Indigenous, and Black women in Canada. Whether the result of slavery, residential schools, child apprehension, or Motherisk, these women have been legally denied the right to be with and care for their own children. Prohibitionist discourses and policies about drugs, risk, and parenting continue to reproduce state and institutional violence, including tearing families apart.

Beaman made clear in the HI report that the MRC's mandate is now complete and that the MRC will not be reviewing any more of the 16,000 identified drug testing cases in Ontario. Only 56 families were identified as having been substantially affected by Motherisk testing, out of the 1271 cases investigated. Deputy Grand Chief Gordon Peters of the Association of Iroquois and Allied Indians responded to the MRC's conclusions and their review of only 1271 cases, rather than all 16,000, arguing that Indigenous communities were not properly consulted about the MRC process. He also argued, "If you steal a child under faulty pretences, that child has to come back" (Mendleson, 2018). However, to date there are no plans to extend the MRC's mandate for further review of cases. The MDTL results also impacted over 8000 individuals in British Columbia, 1400 individuals in New Brunswick, and 900 individuals in Nova Scotia (Mendleson, 2017). However, unlike the province of Ontario, these provinces have yet to make public any investigation they may have conducted.

For the mothers negatively impacted by MDTL, especially those who permanently lost custody of their children, the suffering is lifelong (Blackstock et al., 2006; Boyd, 1999, 2015; Kenny et al., 2015). So too for their children and other family members (John, 2016). The benefits of children remaining at home and in their communities with parents and/or extended family should not be overlooked (John, 2016; Sinha & Kozlowski, 2013); in Canada, Indigenous child welfare agencies have done a better job in keeping children within the family than have non-Indigenous agencies (Jones & Smith, 2011). In November 2018, Minister Philpott announced that the federal government would hand over control of child welfare services to Indigenous governments.

Harm reduction programs were established for women and children in and outside of Canada because early on research demonstrated that by providing social, economic, and non-judgmental maternal services for women, birth outcomes and family stability were improved (Hepburn, 1993, 2002). Studies demonstrated that marginalization, lack of social and economic support, and health and prenatal care shape fetal health, birth outcomes, and parenting environments. In fact, poverty, not drugs, is the greater risk to infants (Children's Hospital of Philadelphia, 2013; Hurt et al., 2005, 2009). Yet, nowhere has poverty been criminalized. Further, there is no causal evidence linking adult cannabis use to at risk parenting, and to date, the effects of "cannabis use in pregnancy on the developing fetus" remain inconclusive (Jaques et al., 2014). Yet, drug use and individual behaviour (failure to be abstinent), rather than structural violence or racial injustice, was constituted as the problem by Ontario child protection agencies and MDTL.

Research findings conclude that many women who use illegal drugs are adequate parents and, like non-drug using parents, adopt strategies to mitigate harm (Hepburn, 1993; Klee et al., 2002; Murphy & Rosenbaum, 1999; Olsen, Banwell, & Madden, 2014; valentine, Smyth, & Newland, 2018). Reinarman and Granfield (2015) make clear that most drug use is unproblematic and that there are also "multiple trajectories into, within, and out of" drug dependency (p. 16). Drug use in and of itself does not equal risk, nor is it the only factor that shapes family life — neoliberal social and economic policies also reproduce social inequality and other social ills (like drug laws, homelessness and inadequate wages and social benefits) that make parenting difficult for families (Grusky et al., 2016).

Drug prohibition and resistance

Although the HI report touches on the marginalization of women,

especially Indigenous and Black women, it does not consider how drug prohibition impacts women's lives nor explore how prohibitionist discourses about drugs, mothering, and risk lead to institutional practices such as child apprehension and drug testing. Research points to the fact that drug prohibition has worsened the health and well-being of people who use drugs, their families, and communities. Increased imprisonment, child apprehension, undermining of harm reduction and other alternative programs, and human rights violations accompany drug prohibition (Boyd, 2017a, 2017b; Room & Reuter, 2012). Drug prohibitionist discourses and policies influence social work and child protection policies and health and social services for women and children in and outside of Canada (Boyd, 2015; Campbell & Herzberg, 2017; Kenny et al., 2015; Kensy et al., 2012; Paltrow & Flavin, 2013). The impact of drug prohibitionist policies disproportionately falls on poor and racialized women and their children. By failing to consider the impact of drug prohibition on women, and child protection and social work practice, alternative ways of understanding the Motherisk tragedy are limited, as are alternative social and legal policies.

Future research, including feminist and critical drug research on pregnancy and mothering, would benefit by investigating more fully the social and cultural construction of drug categories and concepts such as maternal drug use, drug abuse, addiction, parenting, and risk. Scholars point to the fluidity and subjectivity of these concepts over time. Studies of pregnant women and mothers who use drugs commonly fail to fully interrogate these concepts. As with the HI report they do not explore drug prohibition. This is problematic, as punitive policies and practices stem from drug prohibition. And concepts about addiction, drug abuse, risk, and maternal and parental drug use are rooted in prohibitionist discourses and thereby influence social work policies. Unless these concepts are problematized, proclaiming that 'we should not blame women' is an empty phrase; marginalized pregnant women and mothers will continue to be discriminated against and remain at risk of child apprehension and criminalization.

At the same time, women continually resist colonial constructions and state and institutional practices that negatively impact them. Resilience and resistance to state and institutional violence against poor, Black, and Indigenous people in Canada has been more recently expressed in the Occupy Wall Street, Black Lives Matter, and Idle No More movements. Indigenous scholar Dion Million argues that for Indigenous peoples in Canada, structural violence "is the present and future state" (Million, 2013, p. 162). Thus, for Indigenous women (and men), the struggle for self-determination, coupled with Indigenous ways of knowing and being, are ongoing. Black Canadian scholar Robyn Maynard (2017) points out that Black liberation movements are linked to Indigenous movements in their quest for racial justice in Canada. Seen through the lenses of ongoing structural violence, neoliberalism, and colonialism, the Motherisk tragedy cannot be understood as a unique event. In fact, culturally bound (and flawed) theories, moral discourses, White supremacy, and scientific evidence have long served to produce punitive state policies and practices to regulate poor and racialized women's bodies and to separate them from their children. Drug prohibition, and the destructive institutional policies and practices that stem from it, including child protection and drug testing, are punitive legal and social apparatuses that lead to families being torn apart. Thus, the struggle to end structural and gendered violence continues.

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