



BARRISTERS & SOLICITORS

SASKATOON OFFICE
209 2nd Avenue North
Saskatoon, SK
S7K 3P2
(403) 266-1201 (Office)
(403) 266-2701 (Fax)
www.mauricelaw.com

Alisa R. Lombard
Cellular: (613) 914-7726
Email: alombard@mauricelaw.com

December 6, 2017

Executive Secretary Paulo Abrão
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006

Via Online Portal

Dear Executive Secretary Abrão:

RE: Re: Request for a thematic hearing on the forced sterilization of Indigenous women in Canada
Our File: 434.01

We write to request a thematic hearing on the “Forced Sterilization of Indigenous Women in Canada” at the upcoming 167th Extraordinary Period of Sessions of the Inter-American Commission on Human Rights. Women belonging to diverse Indigenous communities in Canada have been subjected to forced sterilization in the country’s public health care system for many decades and, shockingly, this practice likely continues today in at least three provinces. The full extent of this practice has not been documented and, as such, is not being addressed by provincial or national authorities. Where recent forced sterilizations have been exposed, such as in the province of Saskatchewan,¹ the publicly-run health region has offered an apology, but has neither undertaken the reforms necessary to understand how many women have been affected nor to ensure that more women do not suffer the same violation.

The root causes of violence against indigenous women generally – a documented phenomenon and practice that includes murder and disappearance² – and the root causes of forced sterilization are one and the same and persist across Canada: discrimination and harassment based on stereotypes of Indigenous women. As with other forms of violence against Indigenous women, Canada’s regional and universal human rights obligations prohibit the practice of this form of violence against women.

A public hearing before the Inter-American Commission will contribute to a greater understanding of the scope of this terrible practice, help recognize and acknowledge the violations of the affected women’s human rights, and open a much-needed dialogue with

¹ See Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women* (2017), https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf. (accessed December 6, 2017)

² See generally IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada* (2014), available at <https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>

relevant authorities regarding changes in policy and practice to prevent and redress the forced sterilization of Indigenous women in Canada.

I. Requesting Party

The Indigenous rights law firm Maurice Law and its lawyers, specifically attorneys Alisa Lombard and Aubrey Charette, make this request for a thematic hearing on the forced sterilization of Indigenous women in Canada. Maurice Law is the first – and only – national Indigenous-owned national law firm in Canada and primarily represents Indigenous individuals and communities seeking redress for violations of their rights by provincial or federal authorities. Lombard works with Indigenous women who have suffered forced sterilization in Canada, and represents those women in a class action lawsuit in the province of Saskatchewan. Maurice Law, along with its clients, wishes to shed light on this ongoing practice and its connection to systemic discrimination and violence against Indigenous women and girls in the country, with the goal of changing government policies and practices as necessary to redress and put a stop to forced sterilization in the Canadian public health care system.

The Native Women’s Association of Canada (NWAC) will discuss support for this submission this weekend (December 9-10, 2017) at a meeting of their Board of Directors. It is anticipated that a motion will be passed in support of this request, in keeping with governance practices, following which a letter of support would be sent directly to this Honourable Commission.

II. Overview of the Situation

In late 2015, media reports identified four Indigenous women who were forcibly sterilized shortly after giving birth at a hospital in Saskatoon, Saskatchewan.³ Following those reports, which the government initially sought to ignore, the Saskatoon Regional Health Authority (SRHA) commissioned an external review.⁴ The report resulting from the external review confirmed the ongoing practice of forced sterilization.⁵ The report found that “pervasive structural discrimination and racism....remains unmistakable”⁶ within the regional health care system. However, given the limitations of the external review (particularly in that it relied on

³ See, e.g., CBC News, “Another Saskatoon Woman Says She Was Sterilized Against Her Will,” Dec. 16, 2015, <http://www.cbc.ca/news/canada/saskatoon/saskatoon-woman-says-she-was-sterilized-against-her-will-1.3366464>; CBC News, “I Didn’t Want It Done: Saskatoon Woman Was Sterilized Against Her Will,” Nov. 18, 2015, <http://www.cbc.ca/news/canada/saskatoon/saskatoon-woman-sterilized-against-will-1.3324980>.

⁴ See, e.g., Roger Collier, *Reports of Forced Sterilization of Indigenous Women in Canada Mirror Shameful Past*, Canadian Medical Association Journal (CMAJ), Vol. 21, Issue 33 (Aug. 2017), available at <http://www.cmaj.ca/content/189/33/E1080>.

⁵ See Dr. Judith Bartlett and Dr. Yvonne Boyer, *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*, 22 July 2017 (“Themes arising reveal that many of the Aboriginal women interviewed were living often overwhelming and complex lives when they were coerced, their lives were intricately bound within an overriding negative historical context of colonialism. Most of the women did not understand that tubal ligation was permanent, thinking it was a form of birth control that could be reversed in the future. Essentially all of the women interviewed felt that the health system had not served their needs, and they had felt powerless to do anything about it.”), https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf.

⁶ *Id.* at 31.

affected women to contact the report authors), the report does not give a complete picture of forced sterilization in Saskatoon, let alone in greater Saskatchewan or the rest of Canada.

Moreover, this information has led to criticism, but not to concrete action to address the forced sterilization and its causes. The SRHA made a public apology following the release of the report.⁷ The health region's Vice President acknowledged the report's findings of racism within the health care system, and that the SRHA did not treat Indigenous women appropriately or with respect.⁸ However, authorities have not committed to providing reparation for the individual women who have been identified thus far, nor have they instituted broader reforms to prevent the forced sterilization of Indigenous women going forward. Domestic litigation on the forced sterilization of Indigenous women in Saskatoon is currently pending the judge's certification of the class action. The lawsuit was filed in Saskatoon's Court of Queen's Bench on October 5, 2017 (File No. QB 1485 of 2017). Over 30 Indigenous women have contacted Maurice Law and are anticipated to qualify as class members.

There is significant reason to believe that the experience of Indigenous women in Saskatoon is not unique and that many other women, including in other provinces, have been – or are being – subjected to forced sterilization by health professionals. The Saskatoon report tracks the long history of sterilization in Canada, with its ties to the colonial period when Indigenous Peoples were sterilized for being seen by the Europeans as “mentally unfit.”⁹ The external review notes that the sterilization legislations' legacy has imprints across Canada's health care system.¹⁰ The underlying values of those laws and policies, namely the undesirability of Indigenous populations, have informed the institutional systemic racism that shapes Saskatoon's health policies and practices, and likely beyond. Since the report's publication, Indigenous women in other Canadian provinces, including Manitoba, Alberta and Ontario have reported having undergone similar experiences.¹¹ The relevant authorities have not conducted an investigation or review, at least not any that has been shared publicly. It should be noted that Canada's health care system is exclusively public, that is, government-run, giving government a direct role – and responsibility – in this matter. Under Canada's *Constitution Act*, health care is a matter of provincial jurisdiction under section 92(7), and “Indians...” are a matter of federal jurisdiction under section 91(24). This jurisdictional matrix has resulted in many disputes between the various levels of government over the provision of health care and other services to Indigenous individuals.

In many cases, tubal ligation was first raised with a woman while she was in active labour and delivery, about to enter or in the operating room for an emergency or scheduled cesarean section, or closely following birth. In those circumstances, women lack the capacity to provide proper and informed consent to a medically unnecessary procedure with permanent

⁷ The Canadian Press, Saskatoon Health Region apologizes to Indigenous women pressured into tubal ligation surgery, *The Star*, 27 July 2017, <https://www.thestar.com/news/canada/2017/07/27/saskatoon-health-region-apologizes-to-indigenous-women-pressured-into-tubal-ligation-surgery.html>.

⁸ *Id.*

⁹ *Id.* at 7.

¹⁰ *Id.* at 8.

¹¹ See, e.g., Roger Collier, *Reports of Forced Sterilization of Indigenous Women in Canada Mirror Shameful Past*, *Canadian Medical Association Journal (CMAJ)*, Vol. 21, Issue 33 (Aug. 2017), available at <http://www.cmaj.ca/content/189/33/E1080>.

implications on their reproductive ability, notwithstanding the adequacy of a health professionals' explanation of the procedure's risks, consequences and permanent nature. There is evidence to support that health care professionals consistently misrepresented the permanency of tubal ligation in advising the women that it was reversible. In other cases, it is reported that women unequivocally refused to be sterilized and were told that, failing sterilization, the hospital would not let them see their baby or release them. In other cases, women were worn down and acquiesced to the coercion of health professionals persistently calling for their sterilization. In yet other cases, women were coerced into tubal ligation while incapacitated on the operating table undergoing a cesarean section, and in other cases, women were forcibly wheeled while protesting into an operating room, administered an epidural, and forcibly sterilized against their will.

In one reported case, an abortion performed, without proper and informed consent and without an explained medical reason, on a 15 year old girl resulted in irreparable damages to her left ovary, miscarriages and grave fertility challenges.

In another reported case, a 21 year old woman was encouraged by a social worker attending at her pre-natal medical appointment with her physician to have a therapeutic abortion. The reasoning reportedly provided was that the child would be taken from her. She was sterilized without her knowledge after the abortion.

In another reported and documented case, a young woman was manipulated into sterilization by a social worker, foster parent and a physician promising that her children would be returned to her from foster care. She was sterilized after the birth of her child. Her children were not returned to her care. She took her own life approximately 10 months later.

III. Violence Against Indigenous Women in Canada

The pattern of forced sterilization of Indigenous women in Canada must be placed in the broader context of the other widespread manifestations of violence against Indigenous women in Canada. International human rights bodies and experts, as well as the government of Canada, have recognized the patterns of enforced disappearances of, murder of, and domestic violence against Indigenous women and girls in Canada, although forced sterilization specifically has, until now, been left out of the larger picture of discrimination and violence against indigenous women in the country.¹²

The IACHR has already established that violence against Indigenous women in Canada is widespread. On a country visit to Canada in 2013, the government indicated that Indigenous women are three times more likely to suffer violence than non-Indigenous women. Further, the IACHR reported in 2014 that over half of Indigenous women in Canada fear for their life due to spousal violence (compared to 31 percent of non-Indigenous women).¹³ Additionally, in 2016, the Inter-American Commission in a joint press release with United Nations experts stated that

¹² See IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, paras. 90-92.

¹³ See *id.* at paras. 91-92.

nearly 1,200 Indigenous women and girls have been murdered or forcibly disappeared in the last 30 years.¹⁴

Violence against Indigenous women in Canada has typically been conducted with impunity. In its 2014 report, the Commission noted that just over half of cases of murdered Indigenous women and girls resulted in charges.¹⁵ The Commission went on to find in the same report that Canadian police have “failed to adequately prevent and protect Indigenous women and girls” from violence, often due to the prevalence of stereotypes and resulting discrimination,¹⁶ and that the failure to impose consequences for violence against Indigenous women “has given rise to both real and perceived impunity.”¹⁷ Police often assume, based on stereotypes, that Indigenous women run away of their own volition and place themselves in dangerous situations, including drug use and criminal activity, which is used as a reason not to investigate a case.¹⁸

The violence faced by Indigenous women in Canada is rooted in discrimination and is tied to socioeconomic barriers they face that prevent the receipt of basic services and resources on an equal basis with others. Commissioner James Cavallaro said on the subject, “Poverty, inadequate housing, economic and social relegation, among other factors, contribute to [Indigenous women’s] increased vulnerability to violence.”¹⁹ Further, during an inquiry conducted on the disappeared and missing Indigenous women in Canada, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) found that discrimination against Indigenous women and the rights violations they suffer, including violence committed against them, are connected; the CEDAW Committee went on to find that discrimination and violence against Indigenous women in Canada has roots in the denial of cultural, social, economic, and political rights, noting the inequalities Indigenous women face in health care services, as well as housing, education, and employment.²⁰

¹⁴ IACHR, Canada Must Address Root Causes of Extreme Violence and Discrimination against Indigenous Women – Rights Experts, 1 February 2016, http://www.oas.org/en/iachr/media_center/PReleases/2016/009.asp.

¹⁵ See IACHR, Missing and Murdered Indigenous Women in British Columbia, Canada, para. 40.

¹⁶ See *id.* at paras. 96-97.

¹⁷ See *id.* at para. 42.

¹⁸ See *id.* at paras. 96-97.

¹⁹ IACHR, Canada Must Address Root Causes of Extreme Violence and Discrimination against Indigenous Women – Rights Experts, *supra* note 14.

²⁰ See CEDAW Committee, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/OP.8/CAN/1, 30 March 2015, paras. 128-31, 190, 193, 203-205, 208, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fOP.8%2fCAN%2f1&Lang=en.

IV. Canada's Human Rights Obligations with Regard to Forced Sterilization

International human rights standards, including those that apply in Canada, prohibit forced sterilization.²¹ Pursuant to the Charter of the Organization of American States,²² of which it is a Member State, Canada is held to the human rights obligations identified in the American Declaration of the Rights and Duties of Man (“American Declaration”).²³ Furthermore, Canada is a State party to, *inter alia*, the International Covenant on Civil and Political Rights (ICCPR);²⁴ the International Covenant on Economic, Social and Cultural Rights (ICESR);²⁵ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);²⁶ the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);²⁷ and, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).²⁸ These instruments require the Canadian government – including via its publicly-funded health services – to refrain from discriminating against women on the basis of their gender or ethnicity; from subjecting them to treatment that is cruel, inhuman or degrading; and from denying them equal enjoyment of rights, among many other requirements. Additionally, Canada must take steps to protect and fulfill the rights enshrined in these instruments.

Specifically, this Honorable Commission has endorsed the view that a sterilization performed without a woman’s full, free, and informed consent violates her human rights to equality, nondiscrimination, and personal integrity.²⁹ More recently, the Inter-American Court of Human Rights held that forced sterilization violates a whole host of rights, including those related to

²¹ See generally World Health Organization et al., *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement* (2014).

²² Charter of the Organization of American States, adopted at the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/I.4 rev.13 at 106 (2010).

²³ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/I.4 rev.13 at 13 (2010) [hereinafter *American Declaration*]; see I/A Court H.R., *Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, Series A No. 10, 14 July 1989, paras. 35-45.

²⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 [hereinafter *ICCPR*].

²⁵ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3 [hereinafter *ICESCR*].

²⁶ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13 [hereinafter *CEDAW*].

²⁷ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969), 660 UNTS 195, arts. 1(3), 2, 5 [hereinafter *ICERD*].

²⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987), 1465 UNTS 85 [hereinafter *CAT*].

²⁹ IACHR, Friendly Settlement Report No. 71/03, Petition 12.191, *María Mamérita Mestanza Chávez* (Peru), 22 Oct. 2003, paras. 15-18. See also IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective* (2011), para. 61 *et seq.*; IACHR, *Access to Maternal Health Services from a Human Rights Perspective* (2010), para. 75.

dignity, private and family life, access to information, and creating a family.³⁰ While these cases involved violations of the American Convention on Human Rights,³¹ the rights at issue are also enshrined in the American Declaration.³²

Forced sterilization, including among Indigenous women in Canada, is not a new phenomenon and addressing it will require dedicated attention, resources, policymaking, and monitoring. For example, among the reparations ordered in the case of *I.V. v. Bolivia*, the Inter-American Court directed the State to adopt permanent educational and training programs for health care professionals and staff to ensure their respect for the principles of informed consent and nondiscrimination.³³ That is to say, an apology is insufficient to redress the forced sterilization of Indigenous women in Canada or to prevent the forced sterilization of other Canadian women in the future. In a similar vein, the CEDAW Committee has recommended that Canada address pervasive violence and discrimination against Indigenous women and girls “by ensuring effective access to remedies for all acts of violence,” and by taking measures to improve socioeconomic conditions for Indigenous women, increase access to health services, and eliminate negative stereotypes against Aboriginal women.³⁴

V. Importance of IACHR Oversight and Need for a Hearing

In light of the deep and discriminatory root causes of forced sterilization of Indigenous women in modern-day Canada, the likelihood that this practice is continuing in Saskatchewan and possibly other provinces today, the government’s inadequate commitment to redress and prevention to date, and the irreversible and life-altering consequences of this practice on the lives of women and their families, we urge the Inter-American Commission on Human Rights to shine a spotlight on this issue. Violence and discrimination against Indigenous women in Canada is a pervasive problem, and it is one of which the public authorities are well aware. It is a problem they have pledged to address. Nonetheless, even in the purportedly modern and professional setting of Canadian hospitals, women are being subjected to sterilization without their full, free, and informed consent. The involvement and oversight of our region’s human rights body is imperative.

This hearing would provide a unique and invaluable opportunity to focus the national government’s attention on this harmful practice, obtain information that may be in its possession regarding forced sterilizations by public health actors across Canada, guide the government in providing reparation to the women who have been affected, and identify

³⁰ I/A Ct. H.R., *I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 30 November 2016. Series C No. 329, para. 372.

³¹ American Convention on Human Rights “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978), 1144 UNTS 123, OASTS No. 36, OEA/Ser.L.V/II.82 doc.6 rev.1, art. 25 [hereinafter American Convention].

³² See *I.V. v. Bolivia*, Judgment of 30 November 2016; *María Mamérita Mestanza Chávez* (Peru), 22 Oct. 2003. Cf. American Declaration, arts. I, II.

³³ *I.V. v. Bolivia*, Judgment of 30 November 2016, para. 372(11).

³⁴ *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, 30 March 2015, paras. 217(o), 218(a), 218(c), 219(b), 219(f).

opportunities for federal and provincial leadership in crafting policies and training programs to prevent forced sterilization in the future.

VI. Request

We respectfully request that the Inter-American Commission on Human Rights convene a hearing on the topic of “Forced Sterilization of Indigenous Women in Canada” at its upcoming 167th Extraordinary Period of Sessions, to be held in Bogotá, Colombia from February 22 to March 2, 2018. We reiterate our willingness and ability to fully participate should the Commission grant this hearing request. Our delegation would include Attorneys, a representative from NWAC, an expert and may include affected women.

If the Commission decides to convene this hearing, we request that it invite the following representatives of the Canadian and Saskatchewan governments:

- Jennifer May Loten, Ambassador and Permanent Representative of Canada to the Organization of American States
- The Honourable Jane Philpott, Minister of Indigenous Services, Canada
- The Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations and Northern Affairs, Canada
- The Honourable Maryam Monsef, Minister of the Status of Women, Canada
- The Honourable Ginette Petitpas Taylor, Minister of Health, Canada
- The Honourable Jim Reiter, Minister of Health, Saskatchewan
- Honourable Larry Doke, Minister of Government Relations and Minister Responsible for First Nations, Métis and Northern Affairs, Saskatchewan
- The Honourable Bronwyn Eyre, Minister of the Status of Women, Saskatchewan
- Scott Livingstone, Chief Executive Officer, Saskatchewan Health Authority

We look forward to your decision and thank you for the opportunity to make this request.

Sincerely,

MAURICE LAW



Per:

Alisa R. Lombard
Associate

cc. Clients; Native Women's Association of Canada