



BARRISTERS & SOLICITORS

SASKATOON OFFICE
209-2nd Ave North
Saskatoon, SK
S7K 3P2
(306) 986-1557 (t)
(403) 266-2701 (f)
www.mauricelaw.com

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

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

9 February 2018

Submission to Inter-American Commission on Human Rights

Forced Sterilization of Indigenous Women in Canada

During its 167th Period of Sessions, the Inter-American Commission on Human Rights has prioritized the issues of the sexual and reproductive rights of women and girls, as well as Indigenous peoples' rights in Canada, as topics of concern. The following submission is intended to inform this honorable Commission regarding a modern-day violation of the human rights of Indigenous women and girls in Canada, including their sexual and reproductive rights, namely: irreversible, forced sterilization by medical professionals in publicly-funded hospitals.

1. Stories of Indigenous Women Sterilized Unwillingly: Examples of a Broader Phenomenon

As has come to light through a recent report,¹ Indigenous women have been, and continue to be, subjected to forced sterilization in the province of Saskatchewan, and likely throughout the rest of Canada. Forced sterilization by definition is performed without the free, prior, and informed consent of the individual, and often, but not exclusively, takes the form of seeking "consent" from a woman through coercive means, such as concealing that the operation is irreversible, or asking permission when the woman is in a stressful state, including during and immediately following birth. This practice often occurs in the context of discrimination against a particular group in a vulnerable situation. In this instance - Indigenous women and girls in Canada.

The widespread practice of forced sterilization should be addressed in the context of systemic discrimination against Indigenous peoples, particularly Indigenous women. The root causes of violence against Indigenous women generally – a documented phenomenon and practice that includes murder and forced disappearance² – and the root causes of forced sterilization are one in the same and persist across Canada: discrimination and harassment based on stereotypes of Indigenous women. Stories of forced sterilization of Indigenous women in Saskatchewan, such as the ones below, span decades.

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.

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>

“MM”, a Dene woman, was 15 and pregnant when she arrived in Saskatoon from Uranium City in 1973. Upon visiting the emergency room at a hospital in Saskatoon to seek medical attention for spotting, the attending doctor terminated MM ‘s pregnancy without providing her with a medical reason. After the procedure, she was told by the attending doctor that her “chances of having a child would be less than the average woman”. MM went on to have one viable pregnancy and later an ectopic pregnancy, the latter which caused her to flat line on the operating table. Later, she was informed by a doctor examining her internal reproductive organs that she had “been butchered” and was missing her left ovary which the doctor speculated must have happened “when she was very young” judging by the scar tissue. MM was uninformed of the reasons for the doctor’s termination of her pregnancy and is haunted by what happened to her baby. She has struggled with fertility.

“S” described attending at a hospital in Saskatoon in 2001 to naturally deliver her sixth child. Unable to walk, she describes being pushed in her wheelchair to an operating room over her explicit protests and those of her now late ex-husband. The doctors, despite her obvious lack of consent, performed a tubal ligation procedure. When the procedure concluded, the doctor remarked, “There. Cut, tied, and burned. Nothing is getting through that”. S recalls the smell of burning flesh to this day. Her marriage ended as a result of her sterility. S was forcefully sterilized when she did not have capacity to consent to a non-essential medical procedure.

Counsel has been contacted by over 50 women whose claims are similar and span from the 1960s to 2014.

In 2015 reports surfaced indicating that many Aboriginal women were coerced into having tubal ligations – sterilization procedures – in Saskatchewan. The details are shocking. Women who were admitted to the hospital to give birth came out sterilized, having given “consent” while in advanced labour, or not at all.

The health authorities in Saskatoon, the region in which the reported stories occurred, undertook an internal and an external review, but in a search for justice, two women have commenced a class action against the doctors who sterilized them, the health authorities under whose policies and in whose hospitals the sterilizations occurred, and the provincial and federal governments who are responsible for the delivery of health care and for the health care of Aboriginal people in Canada respectively. The statement of claim, filed in October 2017, received media attention, and the women’s attorney, Alisa Lombard of Maurice Law,³ has done interviews with mostly Saskatchewan-focussed media outlets, plus a few national and international print publications.

Based solely on this media coverage, Maurice Law has been deluged with phone calls from additional victims of forced sterilization from all parts of the province. Over 50 Indigenous women have come forward to describe experiences of being coerced into procedures resulting in their sterilization against their will.

In all cases, the patients were neither given full and unbiased information about the procedure and other birth control options available to them, nor were they given the opportunity in a proper environment to consider the information, if any, imparted to them. In many if not all of the cases, the procedure was misrepresented as reversible. In many of the cases, the women had no capacity to consent given circumstances of stress and duress. In all cases, the vulnerability of the women

³ Note that the women who filed the class action also obtained a publication ban on their names and identifying information, to protect their privacy, and thus most media has been handled by their attorney.

was exploited and they were forced into sterilization procedures against their will. All are Aboriginal, and all have had serious reproductive issues.

These accounts, and numbers, are provided by those who were proactive in seeking legal assistance, and do not account for the potentially dozens or hundreds more who have not heard the media coverage regarding the class action or felt comfortable ‘cold-calling’ the lawyer on the case. Once the class action is certified and formal notice is issued throughout media and Aboriginal communities across the province, it is anticipated that much greater numbers will come forward. Additionally, there is no reason to believe this issue is limited to Saskatchewan; indeed Maurice Law has received a few phone calls from individuals in Alberta, Manitoba and Ontario who have also been forcibly sterilized.

2. Forced Sterilization: a Symptom of Systemic Bias and Discrimination

The numbers alone demonstrate the systemic nature of this problem, but so too do the historical and current practices of health and government entities. Racist stereotypes pervade the delivery of health care. Aboriginal women face racist attitudes when seeking health care in Canada, being asked inappropriate questions about their alcohol consumption and sexual practices.⁴ Aboriginal women have long been subjected to attempts to limit their reproductive abilities, from eugenics-based policies in the early to mid-1900s through “family planning” policies from the 1960s.⁵ Forced sterilization is merely the latest, and most obvious, manifestation of a racist health care system.

The external review commissioned by the Saskatchewan health authorities in response to the reports of forced sterilizations largely recognised this state of affairs. It released a report in July of 2017 entitled *External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women*⁶. It found “pervasive structural discrimination and racism” in the health region that was unappreciated by the interviewed professionals.⁷ It also provided 10 “Calls to Action” to prevent future coercion.⁸ To date, there is no evidence that any of these Calls to Action have been meaningfully implemented.

Even more troublesome, the governments responsible for health care in Canada have not only failed to undertake any remedial action to address pervasive racism; they continue to facilitate it. Most notably, in Saskatchewan only, status Indians – those who are registered with the federal government under the *Indian Act* – are required to disclose their Indian status in their applications for health care coverage. Saskatchewan health cards flag status Indians at intake by marking health cards with an “R”⁹. While there is likely an administrative reason for this, given the shared responsibility of federal and provincial governments for Aboriginal health care, it is not the least invasive measure to obtain the goal of administrative convenience and further

⁴ Y.M. Boyer, M. Kampouris, “Trafficking of Aboriginal Women and Girls,” Public Safety Canada, Ottawa, Ontario, April 2014, cited in 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.

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](#).

⁶ 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.

⁷ *Ibid.* at p. 31.

⁸ *Ibid.* at p. 38-42.

⁹ Append photo of the card

exacerbates differential treatment in existing circumstances of “pervasive structural discrimination and racism”¹⁰ such as in Saskatchewan.

Systemic disadvantage is further compounded for Indigenous women through additional inequalities in housing, education, and employment and the denial of cultural, social, economic, and political rights is connected to the discrimination and disproportionate violence that they suffer.¹¹

The IACHR has recognized that violence against Indigenous women in Canada is widespread. In 2016, in a joint press release with United Nations experts, it stated that nearly 1,200 Indigenous women and girls have been murdered or forcibly disappeared in the last 30 years.¹² It undertook a country visit in 2013 and reported 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 It also acknowledged the structural failures to prevent and address these issues, citing the prevalence of stereotypes and resulting discrimination.¹⁴ 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.¹⁵ Canada has since launched a National Inquiry into Missing and Murdered Indigenous Women to investigate the root causes of violence against Aboriginal women.¹⁶

The systemic discrimination experienced by Indigenous peoples in Canada, men and women alike, manifests in their high rates of poverty, poor health outcomes, and lack of access to basic necessities such as housing and clean water relative not only to the rest of Canada, but on a global scale.¹⁷ The knock-on effects of socioeconomic struggles and discrimination affect every aspect of Indigenous peoples’ lives. Additionally, perpetrators of discrimination and violence against Indigenous peoples in Canada often enjoy impunity as was demonstrated in a recent case in Saskatchewan, in which a 56 year old white farmer was acquitted by an all-white jury for the shooting at close range of a 22 year old Aboriginal man in the back of the head, igniting nationwide protests.¹⁸

¹⁰ 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](#), at page 31.

¹¹ 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.

¹² 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.

¹³ See *id.* at paras. 91-92.

¹⁴ See *id.* at paras. 96-97.

¹⁵ See *id.* at paras. 96-97.

¹⁶ See www.mmiwg-ffada.ca/

¹⁷ See <http://www.cbc.ca/news/canada/canada-ranked-low-in-un-native-report-1.555869>

¹⁸ See <https://www.theglobeandmail.com/news/national/colten-boushie/article32451940/>;
<https://www.theglobeandmail.com/opinion/the-stanley-verdict-and-its-fallout-is-a-made-in-saskatchewan-crisis/article37945105/>

As best stated in our national magazine in 2016:

This is what it means to be born Indigenous, in Canada, in the 21st century: You are twice as likely to die in infancy. You will be nine times more likely to be sexually assaulted as a child and three times more likely to drop out of school. You will be twice as likely to lose your job. If you have a job, you will earn 60 per cent less.¹⁹

Constructive genocide has many faces in Canada – yet, a singular objective.

3. Requests of the Canadian Government and Saskatchewan Government

We call on the Canadian federal government and the government of the province of Saskatchewan to:

- cease the practice of identifying status Indians with a "R" on health cards issued in Saskatchewan and replace the existing health cards with the "R" removed;
- require training for health professionals on cultural competency and on free, prior, and informed consent to medical procedures with an emphasis on birth control options;
- instruct Health Canada to produce an informational brochure for health care providers and patients on free, prior, and informed consent in the context of women's health services; and
- instruct Health Canada to issue guidance regarding sterilization procedures, including that such procedures are never emergency in nature and that consent for such procedures must never be sought while a woman is in labor, delivery, or immediately postpartum.

4. Requests of the Inter-American Commission on Human Rights

We respectfully request that the honorable Inter-American Commission on Human Rights:

- examine the issue of, and engage in ongoing monitoring of, forced sterilization of Indigenous women and girls more closely, particularly in the broader context of violence against Indigenous women and girls and systemic discrimination against Indigenous populations;
- issue timely press releases on significant developments as they arise on the issues of forced sterilization of Indigenous women and girls and other forms of violence against Indigenous women and girls in Canada;
- engage with Canadian government on its implementation of the measures requested herein to cease the practice of forced sterilization of Indigenous women and girls and to address the systemic discrimination Indigenous peoples face in Canada when receiving health care services, and other institutional systems, when seeking redress for human rights violations; and,
- include forced sterilization in the Commission's study of and language on the issue of violence against Indigenous women and girls in Canada, and in the rest of the Americas.

¹⁹ Scott Gilmore, Maclean's Magazine, December 19, 2016, page 12.

We thank the Inter-American Commission for the opportunity to inform its members, and the broader public, about the ongoing practice of forced sterilization of Indigenous women in Canada and look forward to the positive changes this honorable body's attention can help bring about.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alisa Lombard". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Alisa Lombard, S.S.Sc., LL.L., JD
Maurice Law Barristers & Solicitors

cc. **Clients**