



BARRISTERS & SOLICITORS

SASKATOON OFFICE  
209-2<sup>nd</sup> Ave North  
Saskatoon, SK  
S 7 K 3 P 2  
(306) 986-1557 (Telephone)  
(403) 266-2701 (Fax)  
[www.mauricelaw.com](http://www.mauricelaw.com)

**Alisa R. Lombard**  
Associate  
(613) 914-7726  
Email: [ALombard@mauricelaw.com](mailto:ALombard@mauricelaw.com)

## “Without Prejudice”

October 15, 2018

**Via email:** [cat@ohchr.org](mailto:cat@ohchr.org)

### **United Nations Committee against Torture**

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva

Switzerland

### **RE: Examination of Canada’s State Report, 65<sup>th</sup> Session**

Dear Committee Members:

Maurice Law respectfully submits this letter to assist the Committee against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the “Committee”) during its 65<sup>th</sup> Session in its review of Canada’s implementation of the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment<sup>1</sup> (the “Convention against Torture”).

Maurice Law is the first and only 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. Maurice Law represents a putative class of Indigenous women who have suffered forced sterilization in the province of Saskatchewan and is also working, together with civil society partners and Indigenous leaders, to more broadly raise awareness of this problem and advance the necessary legal and administrative reforms.

This submission focuses on the modern-day forced sterilization of Indigenous women in publicly-funded and administered hospitals in Canada. We highlight the practice itself, including cases of individual women who have been forcibly sterilized and the multiple harms these women suffer as a result. Their individual stories reveal commonalities that stand as evidence of the major gaps, grounded in lived experience, in Canada’s domestic legal and administrative systems that have led to this tragic situation. Additionally, we note healthcare professionals disproportionately and,

---

<sup>1</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 23 August 1985, 1465 UNTS 85 art 1 (entered into force 26 June 1984, ratified by Canada on 24 June 1987) [*Convention against Torture*]. (defining torture as an “act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for . . . any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”).

likely, specifically target Indigenous women for forced sterilization and, importantly, that this practice is taking place in the broader national context of prejudice and discrimination against Indigenous people in Canada.

In spite of having received reports of numerous cases of forced sterilization, and of a much broader suspected practice and pattern, the federal and provincial authorities have failed to investigate or punish those responsible, undertake a review of the relevant hospital procedures and training practices, provide redress to survivors, or make the legislative and administrative changes that would help ensure this practice does not harm yet another generation of Indigenous women. As such, Canada has failed to fulfill its obligations under the Convention against Torture, which are outlined as a preliminary matter below. We urge the Committee to include this critical problem in the scope of its review of Canada's report and to consider adopting the recommendations listed at the end of this letter.

### **I. Forced Sterilization of Indigenous Women Violates the Convention against Torture**

Forced or coerced sterilization refers to the practice of surgically, permanently removing a person's ability to reproduce without that individual's prior, full, free, and informed consent.<sup>2</sup> It may take the form of seeking consent from a woman through coercive means, through undue pressure, without providing the time or information necessary for the patient to come to a proper and informed decision, or by misrepresenting the procedure and the patient's health risks. Additionally, consent may not be considered freely given when a patient is in a particularly stressful state, such as labor or delivery. Sterilization is a method of birth control, which may sometimes be medically advisable, such as if a woman has a high risk of serious medical complications in pregnancy. However, sterilization, including tubal ligation to prevent future pregnancies, is never considered an emergency procedure; there is no medically valid reason to rush a woman to consent to this irreversible surgery, or to force a woman to consent to unwanted sterilization *at all*.

Forced sterilization is a form of torture or cruel, inhuman, or degrading treatment that States parties to the Convention must act with due diligence to prevent, protect against, and remedy.<sup>3</sup>

<sup>2</sup> See e.g. Office of the High Commission on Human Rights, *et al.*, *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Inter-Agency Statement* (2014), 1, online: <[http://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325\\_eng.pdf?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325_eng.pdf?sequence=1)> [Office of the High Commission on Human Rights, *et al.*]; United Nations Economic and Social Council, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective, Addendum*, ECOSOC, 55th Sess, UN Doc E/CN.4/1999/68/Add.4, (1999), 13 at 51-52, online: <<http://undocs.org/E/CN.4/1999/68/%20Add.4>> [Report of the Special Rapporteur on Violence against Women].

<sup>3</sup> See e.g. Committee against Torture, *Concluding Observations on Namibia*, UNCATOR, 59th Sess, UN Doc CAT/C/NAM/CO/2, (2017), 8 at 34-35, online: <<http://undocs.org/CAT/C/NAM/CO/2>> [Concluding Observations on Namibia]; Committee against Torture, *Concluding Observations on Australia*, UNCATOR, 2014, UN Doc CAT/C/AUS/CO/4-5, 8 at 20, online: <<http://undocs.org/CAT/C/AUS/CO/4-5>> [Concluding Observations on Australia]; Committee against Torture, *Concluding Observations on Uzbekistan*, UNCATOR, 51st Sess, UN Doc CAT/C/UZB/CO/4, (2013), 5 at 12, 24, online: <<http://undocs.org/CAT/C/UZB/CO/4>> [Concluding Observations on Uzbekistan]; Committee against Torture, *Concluding Observations on Kenya*, UNCATOR, 50th Sess, UN Doc CAT/C/KEN/CO/2, (2013), 9 at 27, online: <<http://undocs.org/CAT/C/KEN/CO/2>> [Concluding Observations on Kenya]; Committee against Torture, *Concluding Observations on the Czech Republic*, UNCATOR, 48th Sess, UN Docs CAT/C/CZE/CO/4-5, (2012), 4 at 12, online: <<http://undocs.org/CAT/C/CZE/CO/4-5>> [Concluding Observations on

The Committee's own concluding observations and recommendations have repeatedly recognized that forced sterilization raises issues of torture or ill-treatment under the Convention.<sup>4</sup> The Committee has expressed deep concern about allegations of forced sterilization of women from minority groups and has recommended investigation, prosecution, punishment of, and reparation for all cases of forced sterilization.<sup>5</sup> The Committee has also recommended that States make legislative changes to further protect against forced sterilization<sup>6</sup> and that States take any other necessary measures to prevent practices that put women's health at grave risk.<sup>7</sup>

Other United Nations human rights experts have similarly identified forced sterilization as a form of physical violence,<sup>8</sup> and recognized the serious consequences for victims.<sup>9</sup> The former Special Rapporteur on Violence against Women described forced sterilization as a "battery of a woman" that "violat[es] her physical integrity and security" and that "constitutes violence against women."<sup>10</sup> The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has found that "[f]orced sterilization is an act of violence and a form of social control, and violates a person's right to be free from torture and ill-treatment."<sup>11</sup>

Regional human rights bodies have also found that forced sterilization violates prohibitions of torture or ill-treatment. Most recently, in the case of *I.V. v. Bolivia*, the Inter-American Court of Human Rights held that the right to be free from cruel, inhuman, and degrading treatment was violated when Bolivia sterilized a refugee without first obtaining her consent.<sup>12</sup> The Inter-American Court found that the applicant was particularly vulnerable given her status as a woman and that forcibly sterilizing the applicant caused severe mental and physical harm that amounted

---

*the Czech Republic*]; Committee against Torture, *Concluding Observations on Slovakia*, UNCATOR, 43rd Sess, UN Doc CAT/C/SVK/CO/2, (2009), 3 at 10, online: <<http://undocs.org/CAT/C/SVK/CO/2>> [*Concluding Observations on Slovakia*]; See also Committee against Torture, *Conclusions and Recommendations on Peru*, UNCATOR, 36th Sess, UN Doc CAT/C/PER/CO/4, (2006), 5 at 23, online: <<http://undocs.org/CAT/C/PER/CO/4>> [*Conclusions and Recommendations on Peru*].

<sup>4</sup> See e.g. *Concluding Observations on Namibia* at paras 34-35; *Concluding Observations on Australia* at para 20; *Concluding Observations on Uzbekistan* at paras 12, 24; *Concluding Observations on Kenya* at para 27; *Concluding Observations on the Czech Republic* at para 12; *Concluding Observations on Slovakia* at para 12; See also *Conclusions and Recommendations on Peru* at para 23.

<sup>5</sup> See e.g. *Concluding Observations on the Czech Republic* at para 12; *Concluding Observations on Slovakia* at para 10.

<sup>6</sup> See *Concluding Observations on Slovakia* at para 14.

<sup>7</sup> See *Conclusions and Recommendations on Peru* at para 23.

<sup>8</sup> See UN Committee on the Rights of the Child, General Comment No. 13 (2011): Article 19: The Right of the Child to Freedom from all forms of Violence, UNCRCOR, 2011, UN Doc CRC/C/GC/13, (2011), 10 at 23; Committee on the Elimination of Discrimination Against Women (CEDAW Committee), General Recommendation No. 19: Violence against women, UNCEDAWOR, 1992, UN Doc A/47/38, 3 at 22, online: <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf)> [*Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19*].

<sup>9</sup> See *Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19* at para 22.

<sup>10</sup> *Report of the Special Rapporteur on Violence against Women* at para 51.

<sup>11</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UNHRCOR, 31st Sess, UN Doc A/HRC/31/57, (2016), 12 at 45, online: <<http://undocs.org/A/HRC/31/57>> .

<sup>12</sup> *I.V. v. Bolivia* (2016) Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 29, at para 270, online: <[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_329\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_329_esp.pdf)> [*I.V. v. Bolivia*].

to ill-treatment.<sup>13</sup> Similarly, in the case of *V.C. v. Slovakia*, the European Court of Human Rights held that forced sterilization is a violation of the right to be free from torture and ill-treatment.<sup>14</sup> The European Court of Human Rights found that sterilizing a Roma woman without her full and informed consent constituted a gross interference with the applicant's physical integrity and caused significant physical and mental suffering so severe as to amount to ill-treatment.<sup>15</sup>

The Committee has also recognized that the principle of non-discrimination is fundamental to the interpretation and application of the Convention and that “discriminatory use of mental or physical violence or abuse” is an important factor in determining whether a State has committed torture.<sup>16</sup> The Committee has emphasized States' obligation to protect minority or marginalized individuals or populations who are especially at risk of torture or ill-treatment.<sup>17</sup> Specifically, the Committee has found that gender is a key factor in the forms of torture or ill treatment, and that women are particularly at risk of torture or ill-treatment when receiving medical treatment or making reproductive health decisions.<sup>18</sup> Similarly, the Special Rapporteur on torture has emphasized the necessity of full and informed consent in healthcare decisions and noted the intersectional nature of gender with other identities, such as race or socioeconomic status, that puts individuals at risk of torture and ill treatment.<sup>19</sup>

Under the Convention, States must prevent,<sup>20</sup> investigate,<sup>21</sup> prosecute,<sup>22</sup> and remedy<sup>23</sup> acts of torture and ill-treatment. The Committee has clarified that States are obligated to “eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented.”<sup>24</sup> As part of these preventative measures, the Committee has emphasized that States should educate the general population as well as law-enforcement and other government officials

---

<sup>13</sup> *I.V v. Bolivia* at paras 266-270.

<sup>14</sup> *V.C. v. Slovakia*, no. 18968/07, [2011] IV ECHR 1 at paras 120 & 160, online: <<http://hudoc.echr.coe.int/eng?i=001-107364>> [*V.C. v. Slovakia*].

<sup>15</sup> *V.C. v. Slovakia* at paras 118-120.

<sup>16</sup> Committee against Torture, *General Comment No. 2: Implementation of Article 2 by States parties*, UNCATOR, 2008, UN Doc CAT/C/GC/2, 24 January 2008, 6 at 20, online: <<http://undocs.org/CAT/C/GC/2>> [*Committee against Torture, General Comment No. 2*].

<sup>17</sup> *Committee against Torture, General Comment No. 2* at para 21.

<sup>18</sup> *Committee against Torture, General Comment No. 2* at para 22.

<sup>19</sup> *Committee against Torture, General Comment No. 2* at para 45.

<sup>20</sup> *Convention against Torture*, art. 2(1) (“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”).

<sup>21</sup> *Convention against Torture*, art. 12 (“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”).

<sup>22</sup> *Convention against Torture*, art. 13 (“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities”).

<sup>23</sup> *Convention against Torture*, art. 14 (“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has enforceable right to fair and adequate compensation”).

<sup>24</sup> *Committee Against Torture, General Comment No. 2* at para 4.

on the identification and prevention of torture and ill-treatment.<sup>25</sup> Where reasonable grounds exist to believe that torture has occurred, States must conduct a “prompt and impartial” investigation.<sup>26</sup> Furthermore, States must ensure that victims of torture have the ability to bring their claims before courts and other competent authorities and that victims have a right to full and adequate compensation for acts of torture under domestic law.<sup>27</sup> The Committee has also emphasized that States are obligated to identify and report to the Committee all incidents of torture and ill-treatment, including the implementation of the Convention with respect to women.<sup>28</sup>

Finally, human rights bodies support the criminalization of forced sterilization. This Committee and the Committee on the Elimination of Racial Discrimination have recommended criminalization in concluding observations concerning Peru and Slovakia, respectively.<sup>29</sup> The European Court of Human Rights has implied that, where sterilization was purposefully performed without consent, criminal remedies are appropriate.<sup>30</sup> MESECVI, the Organization of American States’ mechanism for overseeing implementation of the Convention of Belem do Para has recommended the criminalization of obstetric violence and, more specifically, the criminalization of forced sterilization.<sup>31</sup>

## II. Forced Sterilization of Indigenous Women

Forced sterilization disproportionately impacts women and girls, and poses a greater risk to women with other often-marginalized identities, such as being a member of an Indigenous community.<sup>32</sup> While forced sterilization is always a human rights violation, Indigenous women in Canada have apparently been targeted on the basis of their ethnicity, as well. Violence and discrimination against Indigenous women in Canada is a pervasive problem and one about which the public authorities are well aware and have pledged to address. Nonetheless, even in the purportedly modern and professional setting of Canadian hospitals, Indigenous women are being subjected to sterilization without their full, free, and informed consent at an alarming and

<sup>25</sup> *Committee Against Torture, General Comment No. 2* at para 25.

<sup>26</sup> *Convention against Torture*, art 12.

<sup>27</sup> *Convention against Torture*, arts 13, 14.

<sup>28</sup> *Committee Against Torture, General Comment No. 2* at paras 7, 22-23.

<sup>29</sup> *Concluding Observations on Slovakia* at para 12; *Conclusions and Recommendations on Peru* at para 23.

<sup>30</sup> See *V.C. v. Slovakia* at paras 120, 160; *N.B. v. Slovakia*, no. 29518/10, [2012] IV ECHR 1, online: <<http://hudoc.echr.coe.int/eng?i=001-111427>>.

<sup>31</sup> See e.g. Organization of American States, Follow-up Mechanism to the Belem do Para Convention, *Hemispheric Report on Child Pregnancy in the States Party to the Belem do Para Convention*, OR OEA/Ser.L/V/II. 7.10 MESECVI/CEVI/doc.234/16 Rev.1 (2016) online: <<http://www.oas.org/es/mesecvi/docs/MESECVI-EmbarazoInfantil-EN.pdf>>; Organization of American States, Follow-up Mechanism to the Belem do Para Convention, *Second Hemispheric Report on the Implementation of the Belem do Para Convention*, OR OEA/Ser.L/II.6.10 (2012) online: <<http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf>>; Organization of American States, Follow-up Mechanism to the Belem do Para Convention, *Second Follow-up Report on the Recommendations of the Committee of Experts of the MESECVI*, OR OEA/Ser.L/II.7.10 MESECVI/I-CE/doc.10/14 Rev.1 (2014) online: <<http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeSeguimiento-EN.pdf>>.

<sup>32</sup> See *Office of the High Commission on Human Rights, et al.* at 1, 3-4.

disproportionate rate, and public authorities have undertaken no action to address the practice, despite public apologies<sup>33</sup> and Canada's acknowledgment<sup>34</sup> of institutional racism.

### A. Cases of Indigenous Women Forcibly Sterilized: Examples of a Broader Practice

As partially documented in a 2017 report,<sup>35</sup> Indigenous women have been, and continue to be, subjected to forced sterilization in the province of Saskatchewan. Media reports in 2015 highlighted several cases.<sup>36</sup> Following those reports, which the government initially sought to ignore, the Saskatoon Regional Health Authority (SRHA) commissioned an external review.<sup>37</sup> The report resulting from the external review identified over a dozen cases, confirmed the ongoing practice of forced sterilization<sup>38</sup> and found that “pervasive structural discrimination and racism....remains unmistakable”<sup>39</sup> within the regional health care system. The Report points to the likelihood that the practice occurs throughout Canada as a result of the imprints and vestiges of eugenics ideology and legislation.

Since filing a lawsuit on behalf of survivors in late 2017, Maurice Law has been contacted by over 55 Indigenous women reporting that they were sterilized by Saskatchewan doctors against their will. These procedures were performed in public hospitals and, most often, while the woman was in labor, delivery, or shortly postpartum. Their stories illustrate several deeply troubling fact patterns in which Indigenous women have been forcibly sterilized.

<sup>33</sup> See Charles Hamilton and Guy Quenneville, “Report on coerced sterilizations of Indigenous women spurs apology, but path forward unclear”, *CBC News*, (27 July 2017), online: <<https://www.cbc.ca/news/canada/saskatoon/report-indigenous-women-coerced-tubal-ligations-1.4224286>>.

<sup>34</sup> See “Coerced sterilizations of Indigenous women in Saskatoon troubling: Bennett”, *CBC News*, (4 August 2017) online: <<https://www.cbc.ca/news/canada/saskatchewan/coerced-sterilizations-carolyn-bennett-racism-tubal-ligations-1.4235688>>.

<sup>35</sup> See Dr. Judith Bartlett and Dr. Yvonne Boyer, “External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women” (2017), online: <[https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal\\_Ligation\\_intheSaskatoonHealthRegion\\_the\\_Lived\\_Experience\\_of\\_Aboriginal\\_Women\\_BoyerandBartlett\\_July\\_22\\_2017.pdf](https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf)> [*External Review: Tubal Ligation in the Saskatoon Health Region*].

<sup>36</sup> See e.g. “Saskatchewan women pressured to have tubal ligations”, *Saskatoon StarPhoenix* (16 December, 2015), online: <<https://thestarphoenix.com/news/national/women-pressured-to-have-tubal-ligations>>; “I Didn’t Want It Done: Saskatoon Woman Was Sterilized Against Her Will”, *CBC News* (18 November 2015), online: <<http://www.cbc.ca/news/canada/saskatoon/saskatoon-woman-sterilized-against-will-1.3324980>>.

<sup>37</sup> See Betty Ann Adam, “FSIN supports redress for forced sterilization” *Saskatoon StarPhoenix* (23 May 2018), online: <<https://thestarphoenix.com/news/local-news/fsin-supports-redress-for-forced-sterilization>>.

<sup>38</sup> See *External Review: Tubal Ligation in the Saskatoon Health Region at 2*. (“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.”).

<sup>39</sup> See *External Review: Tubal Ligation in the Saskatoon Health Region at page 31*.

### *Doctors Forcibly Sterilized Women After They Explicitly Denied Consent*

Maurice Law has learned of at least one instance in recent years where an Indigenous woman was sterilized even though she had made it clear she did not consent to undergoing a tubal ligation. “S”, a Cree woman from Peepeekisis First Nation in southern Saskatchewan in 2001, was admitted to a Saskatoon hospital to naturally deliver her sixth child. Unable to walk after the delivery, 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 sterilization 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.

S’s experience echoes those of countless Indigenous women of prior generations.

### *Doctors Sought Consent to Tubal Ligation Using Coercion, Stress, or Misinformation*

In other cases, doctors and health professionals have reportedly created or leveraged stressful situations to manipulate women into agreeing to sterilization. Some women report that they unequivocally refused to be sterilized and were told that, failing sterilization, the hospital would not let them see their baby or release them; they relented. Other women were worn down and acquiesced to the coercion of health professionals persistently calling for their sterilization. In yet other numerous cases, women were coerced into tubal ligation while incapacitated on the operating table undergoing a cesarean section. Another method of obtaining coerced consent has been for doctors to simply misrepresent the outcome of the procedure as one that is not permanent, but a reversible form of birth control. This category of experience appears to predominate the women’s lived experiences at this time.

Although ultimately responsible for the act, doctors are not the only authority figures implicated in these cases of forced sterilization. Countless women reported that social workers have encouraged or exerted pressure on pregnant women to agree to the procedure, sometimes with threats or inducements relating to custody and access to their older children, and the apprehension or access to their newborn child.

### *Obstetric Violence*

In other cases, doctors have simply foregone any attempt at obtaining consent and have conducted the sterilization operations without the women’s knowledge. For these women, it can take years before they realize that they had been forcibly sterilized.

In a reported case, “MM”, a Dene woman, was 14 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 and without obtaining proper and informed consent from her or her guardian. After the procedure, she was told by the attending doctor that her “chances of having a child would be less than the average woman”. Years later, after flat-lining on an operating table during an ectopic pregnancy, she was informed by a doctor examining her internal reproductive organs that she had “been butchered.” She was missing her left ovary and fallopian

tube which the doctor speculated must have happened “when she was very young” judging by the scar tissue. MM continues to be haunted by what was done to her body and her baby without her knowledge or consent.

We’ve heard a few reports of forced or coerced terminations across the country.

### *Pain and Suffering Caused by Forced Sterilization*

The Indigenous women who have had their bodily and reproductive autonomy violated through forced sterilization have suffered from this trauma in various ways. There are physical side effects to the procedure, which include hormonal imbalances, early menopause, and of course the inability to naturally conceive children. Many also are left to deal with considerable mental and emotional anguish including anxiety and severe depression. This pain is often exacerbated by resulting familial and communal isolation that can stem from a decreased sense of value as a woman and other forms of social exclusion over their inability to reproduce. Additionally, for many of these Indigenous women, there can be prolonged suffering associated with their spiritual beliefs and cultural values. The pain of this experience has been so great in some cases that it has led women to harmful addictions and has caused some to end their own lives.

## **B. Pattern of Targeting Indigenous Women**

The history and recent experiences recounted in this letter are suggestive of the discriminatory nature of this practice. It is no coincidence that of all the known cases of forced sterilization in Canada in the past 20 years, every single victim has been an Indigenous woman. We know of no reported instances of forced sterilization of a non-Indigenous woman in that timeframe. Since the publication of reports on this phenomenon in Saskatchewan, Indigenous women in other Canadian provinces, including Manitoba, Alberta and Ontario, have reported having had similar experiences. Given both the scale and the scope of this practice, the issue cannot be properly understood outside the context of Canada’s broader problems with discrimination and violence toward Indigenous peoples.

In fact, Canada has a long history of forcibly sterilizing indigenous women, the earliest recorded cases dating back to the 1930s. Violence against Indigenous women in Canada has its roots in pervasive structural and systemic discrimination and marginalization in Canadian society. 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.”<sup>40</sup> A history of racism, poverty, and oppression have reinforced negative stereotypes about Indigenous woman and led to the diminishment of their perceived worth – abject and unequivocal dehumanization. As highlighted by these cases of forced sterilization, Indigenous women’s marginalization has also served to block their access to the policy, justice, and political systems

---

<sup>40</sup> See *External Review: Tubal Ligation in the Saskatoon Health Region* at page 7. (“Historically Canada’s sterilization policies have had great detrimental effects on Indigenous women. Large numbers of Aboriginal women and men were sterilized for being “mentally unfit” – when in reality, for various cultural and historical reasons they did not fit in with the Eurocentric dominant society’s definition of “fit.” Not only has this caused the destruction of ancestral lineage but has brought many lives to a brutal violent end.”).



through which their treatment could be challenged. Access to information and access to justice remain live concerns for Indigenous women.

Moreover, at least several Canadian provinces continue to identify Indigenous people on their publicly-issued health cards and/or in their medical files accessed by their health care providers upon treatment. In the province of Saskatchewan, for example, an “R”, ostensibly for “Registered Indian,” appears on the face of the health cards of Indigenous peoples, which is presented prior to obtaining medical services.<sup>41</sup> At the very least, this practice dating back to 1958 facilitates discriminatory treatment, and is anyways wholly unnecessary for an administrative purpose, such as billing or data collection.

### III. Canada’s Failure to Prevent, Protect, and Remedy

Following recent reports of Indigenous women having been forcibly sterilized, the provincial and federal authorities’ responses have been minimal, muted, and inconsequential. In response to media coverage of women’s experiences in the Saskatoon area, the health region commissioned a partial study that relied on victims hearing of the study and coming forward with information, providing no clear picture of the scope of the problem. The health region then issued a public apology.<sup>42</sup>

However, the report and subsequent statements have not translated into reforms or reparations. While the health region’s Vice President acknowledged the Saskatoon report’s findings of racism within the healthcare system and that the SRHA did not treat Indigenous women appropriately or with respect, the health region did not identify any ways in which it would attempt to address bias or stereotypes within its institutions.<sup>43</sup> Authorities have not committed to providing reparations for the individual women who have been identified thus far, and are actively fighting any obligation to do so in ongoing litigation.

There has been no accountability. No level of government has undertaken a comprehensive review to understand the scale of these violations or the factors that make forced sterilization possible or more likely. To date, the government has yet to undertake any criminal, civil, or administrative proceedings to hold institutions or individuals accountable. Aside from the report discussed above, which was limited to the Saskatoon area and which required victims to self-report, there has been no public investigation, criminal or administrative, of the reported claims of forced sterilization from the past 20 years. No healthcare provider has been sanctioned administratively or otherwise. Neither the provinces nor the federal government have implemented or required adequate training of healthcare professionals with regard to proper and informed consent and respect for women’s human rights.

---

<sup>41</sup> See Holly Moore, “Saskatchewan health card policy raises new questions about Gerald Stanley jury selection” *APTN National News* (6 April 2018), online: <<http://aptnnews.ca/2018/04/06/saskatchewan-health-card-policy-raises-new-questions-about-gerald-stanley-jury-selection>>.

<sup>42</sup> See “Saskatoon Health Region apologizes to Indigenous women pressured into tubal ligation Surgery”, *The Star*, (27 July 2017), online: <<https://www.thestar.com/news/canada/2017/07/27/saskatoon-health-region-apologizes-to-indigenous-women-pressured-into-tubal-ligation-surgery.html>> [Saskatoon Health Region apologizes to Indigenous women].

<sup>43</sup> See *Saskatoon Health Region apologizes to Indigenous women*.

Additionally, it should be noted that Canada's health care system is exclusively public, giving the government direct responsibility in this matter and requiring scrutiny into the legal framework in which forced sterilizations have been possible. 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, many ongoing in Canadian courts.<sup>44</sup>

### **A. Gaps in Legal Protection**

Canada has not included forced sterilization as an offence in its penal code. The Criminal Code does, however, criminalize the procurement of an abortion without the woman's consent, and subject an offender to a possible sentence of life in prison.<sup>45</sup> Criminalization of forced sterilization would be the single most effective, immediate, and enduring measure that could be undertaken to protect women from this practice. A clear threat of personal criminal responsibility would guarantee that individual doctors have a significant personal stake in ensuring that they have obtained proper and informed consent from their patients before performing sterilization procedures.

Regarding civil remedies, forced sterilization has been recognized as a form of battery in various jurisdictions in Canada, and victims have received financial compensation through litigation and settlement. However, in addition to the financial burden and time-consuming nature of the civil litigation process in Canada, statutes of limitation pose a potential additional barrier to access to justice. While one provincial court has found that sterilization is not time-barred as other torts owing to its sexual nature,<sup>46</sup> a court in another jurisdiction subsequently declined to follow that determination<sup>47</sup> and created legal uncertainty regarding whether short tort-based statutes of limitations apply to actions based on forced sterilization.

### **B. Lack of Documentation and Data Collection on Forced Sterilizations**

The lack of data on sterilization procedures more broadly, and forced sterilization specifically, has kept the problem of forced sterilization largely hidden and completely unaddressed. While dozens of women with credible claims of forced sterilization have come forward on their own initiative, publicly available data on the sterilization of women across Canada remains essentially

---

<sup>44</sup> See e.g. *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2010 FC 343, 2010 CarswellNat 2036; *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)* 2016 CHRT 2; *First Nations Child & Family Caring Society of Canada and Canada (Attorney General), Re* 2016 CHRT 10; *First Nations Child & Family Caring Society of Canada and Canada (Attorney General), Re* 2016 CHRT 16; *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 14; *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4; *Daniels v. Canada (Minister of Indian Affairs and Northern Development)* 2016 SCC 12, [2016] 1 SCR 99.

<sup>45</sup> *Criminal Code*, RSC 1985, c C-46, s 287 (generally) and s 287(7) (specifically).

<sup>46</sup> See *E. (D.) (Guardian ad litem) v British Columbia*, 2005 BCCA 134 at paras 70-79.

<sup>47</sup> See *Z. (M.S.) v M.*, 2008 YKSC 73 at paras 11-36.

nonexistent. We have reason to believe that neither the provincial nor the federal authorities are consistently collecting this data, let alone analyzing it for the discriminatory trends it would almost certainly illuminate.

A specific example of deficiency in data collection procedures is the lack of consistently maintained health records, or standard practice on how long health records are maintained by the province of Saskatchewan. Academics attempting to obtain data have found that inconsistent sources make for inadequate and inaccurate data, rendering most collection attempts useless. Revealing the extent to which sterilizations in Canada are both forced and disproportionately practiced on Indigenous women requires the government to take steps toward making this data available. Access to information processes - governed by legislation - are costly and time consuming.

### **C. Lack of Appropriate Training, Standards, and Oversight**

Despite the law's clarity on proper and informed consent, the explicit legal requirements of proper and informed consent are not clearly established in health policy at local levels. Regional health authorities and professional regulators devise their own policies and practices with regards to the operationalization of proper and informed consent. Recognizing the alarming incidence of forced sterilization and the recognized pervasiveness of racism in the public healthcare system, we emphasize the inadequacy of existing standards, training programs, and oversight procedures. These gaps and inconsistencies lead to confusion among practitioners and patients, and all but ensure a lack of accountability.

Moreover, the system of financial incentive, both for the doctors performing tubal ligations and presumably for Canada with respect to the cost of providing of alternative forms of birth control, creates additional need for strict and enforceable policy guidelines.

Further, there are no nationally-required trainings on biases or cultural competency for medical practitioners. This is especially important, given the prejudice toward Indigenous women in Canadian society. Healthcare providers must, at the very least, be aware of their own biases if they are going to treat all patients with the respect and dignity to which they are legally entitled. Structural racism of this kind cannot be eliminated in the absence of concerted policy effort to do so.

#### **IV. Recommendations to Address Key Issues and Challenges Faced in Canada's Implementation of the Convention Against Torture in the Context of Forced Sterilization of Indigenous Women**

We respectfully call on this Committee to consider making the following recommendations to Canada:

- Investigate reported instances of forced sterilization with a view to the prosecution and punishment of those responsible and prevention of this practice in future;
- Provide reparations to identified victims, including monetary compensation, mental health treatment, and healthcare services necessary to allow them to become pregnant and carry a child, if so desired;
- Provide training for health professionals on cultural competency and on proper and informed consent, to screen health professionals for racial biases, and to refuse licensing where candidates do not meet the required degree of cultural competence;
- Criminalize forced sterilization in the federal Criminal Code;
- Explicitly exempt forced sterilization from the statute of limitations on tort claims for assault and battery;
- Ensure that provincial health care authorities and medical professional licensing entities receive, investigate, and appropriately address reports of failure to ensure full, free, proper and informed consent to medical procedures;
- Cease the practice of mandating the disclosure of Registered Indian status in health care applications and the practice of identifying status Indians with an "R" on health cards issued in Saskatchewan, which results in differential treatment for an already disadvantaged group of vulnerable Indigenous women and girls; and, cease the practice of racial identification on the face of any document required to access health care across Canada;
- Direct Health Canada to issue guidance regarding sterilization procedures, including that such procedures are never urgent in nature; are most often not medically necessary; that consent for such procedures must never be sought while a woman is in labor, delivery or postpartum; and that the risks, side effects and permanency of tubal ligation are clearly understood;
- Direct Health Canada to produce an information brochure for health care providers and patients on proper and informed consent in the context of women's health services;
- Institutionalize training programs and requirements for all healthcare providers on proper and informed consent, women's human rights, and culturally competent care;
- Make public any data on sterilization that is in the possession of provincial or federal authorities, with disaggregated data for sterilization procedures performed on Indigenous women compared to non-Indigenous women, and specific data on geographic locations;

- Where current data collection and analysis are lacking, put policies into place to collect data on sterilization procedures across Canada, noting geographic locations and number of procedures performed on Indigenous women, without instituting a practice of identifying a woman as Indigenous on the face of documents she needs to receive services;
- Create an independent body to investigate the instances of forced sterilization of Indigenous women throughout Canada; and,
- More generally, provide additional support and policy attention to the poverty, exclusion and violence experienced by Indigenous women and girls.

We thank the Committee for the opportunity to submit this information for its consideration. There remains an enormous gap between Indigenous women's rights under the Convention and Canada's response to the discriminatory, pervasive pattern of forced sterilization; it is one we hope the Committee will afford due attention.

Sincerely,

**MAURICE LAW**



Per: \_\_\_\_\_

**Alisa R. Lombard**  
**Associate**

cc. Federation of Sovereign Indigenous Nations, Vice-Chief Heather Bear  
Assembly of First Nations, National Chief Perry Bellegarde  
Native Women's Association of Canada, President Francyne D. Joe