

COURT FILE NUMBER

1801-18051

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

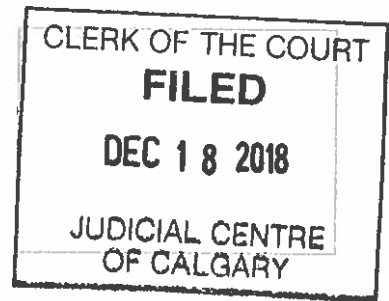
CALGARY

PLAINTIFF

MAY SARAH CARDINAL

DEFENDANT

HER MAJESTY THE QUEEN IN RIGHT
OF ALBERTA



DOCUMENT

STATEMENT OF CLAIM

Proceeding under the Class Proceedings Act

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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NOTICE TO DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

TO: HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
Alberta Justice and Solicitor General
9th floor, John E. Brownlee Building
10365 - 97 Street, Edmonton, AB T5J 3W7

STATEMENT OF CLAIM

1. The Plaintiff claims:
 - (a) An order certifying this proceeding as a Class Proceeding pursuant to the *Class Proceedings Act* and appointing the Plaintiff as Representative Plaintiff for the Class;
 - (b) A declaration that the Defendant breached its fiduciary duties to the Plaintiff and the Class by reason of the events described herein;
 - (c) A declaration that the Defendant breached its common law duties of care owed to the Plaintiff and the Class by reason of the events described herein;
 - (d) A declaration that the Defendant violated the Plaintiff's and the Class' rights as enshrined in and guaranteed by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being schedule B to the *Canada Act 1982 (UK), 1982*, c 11 (the "*Charter*");
 - (e) Pecuniary and non-pecuniary damages in the amount of \$500 million or any such amount that this Honourable Court deems appropriate;
 - (f) Punitive damages in the amount of \$50 million or any such amount that this Honourable Court deems appropriate;
 - (g) Pre-judgment interest and post-judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;
 - (h) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;
 - (i) Costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 33 of the *Class Proceedings Act*; and,
 - (j) Such further and other relief as this Honourable Court deems just.

OVERVIEW

2. The term "coerced sterilization" refers to the practice of sterilizing Indigenous women in Canada without their proper or informed consent. This practice commenced as early as the 1920s and continues to the present day. Coerced sterilization is a form of sexual assault.
3. The Defendant was complicit in creating an atmosphere of institutional and systemic racism. Coerced sterilization was implicitly and explicitly condoned, encouraged, authorized and performed by the Defendant, its agents, servants and employees. The Defendant willfully and knowingly failed to address the widespread practice of coerced sterilization of Indigenous women in Alberta.
4. In Alberta, coerced sterilization is dictated by health policies and practices informed by institutional and systemic racism. This institutional racism is most apparent in the "eugenics" ideology prevalent within Alberta Health Services. This ideology was explicitly sanctioned by the Defendant until 1972. Subsequent to 1972, this ideology remained implicitly permitted and prevalent within Alberta Health Services and its predecessors.
5. At all material times, the Defendant funded, owned, operated, managed, and/or regulated public hospitals in Alberta. The Defendant authorized, permitted and/or carried out thousands of coerced sterilizations of Indigenous women at these hospitals.
6. As a result of the Defendant's acts and omissions, Indigenous women suffered, *inter alia*, physically, emotionally, spiritually, mentally and psychologically. Coerced sterilization has been destructive to their health, family, relationships and culture. Indigenous women were deprived of fundamental choices guaranteed to all Canadians with respect to their reproductive capacity.
7. As a result of the practices described above, the Defendant breached its fiduciary duties, common law duties of care and *Charter* obligations.

THE PARTIES

8. The proposed Representative Plaintiff on behalf of the Class is May Sarah Cardinal. On or about December 19, 1977, the Defendant permitted, authorized and/or performed a coerced sterilization on Mrs. Cardinal. She did not consent to this surgery. There was no valid medical reason for the surgery. Mrs. Cardinal was not given any information regarding the surgery. She was not informed of the surgery's permanence. Mrs. Cardinal was not informed of the difference between having her tubes "tied", "cut" or "burned/cauterized". She was not given information on aftercare, side effects or counselling.

9. The Plaintiff resides in Alberta and has suffered the consequences of the Defendant's breach of fiduciary obligations, breach of common law duty of care and *Charter* violations.

10. The Defendant, Her Majesty the Queen in Right of the Alberta had sole jurisdiction, authority and control over Alberta Health Services, and its predecessors, at all material times.

THE CLASS

11. The Class is composed of all Indian, non-status Indian, Inuit and Métis women who were sterilized in Alberta prior to December 14, 2018 without their proper and informed consent.

THE DEFENDANT'S FIDUCIARY DUTY TO THE CLASS MEMBERS

12. The Defendant has a fiduciary-beneficiary relationship with Indigenous Peoples in Alberta.

13. By virtue of its constitutional obligations, *sui generis* relationship and statutory requirements, the Defendant had an ongoing obligation of consultation on matters relevant to Indigenous interests. There is an expressed and implied undertaking by the Defendant to protect the best interests of Indigenous Peoples in Alberta at all times.

14. The Defendant's constitutional obligations, in conjunction with the Honour of the Crown, bestow a discretionary control requiring the Defendant to take steps to monitor, influence, safeguard, secure, and otherwise protect the vital interests of vulnerable Indigenous women.

TH DEFENDANT'S COMMON LAW DUTY OF CARE TO THE CLASS MEMBERS

15. The Defendant owes a duty of care to all Class Members. The Defendant funded, owned, operated, managed, and/or regulated public hospitals in Alberta at all material times. The Defendant owed all hospital patients, and especially vulnerable Indigenous woman, a duty of care.

16. The Defendant knew or ought to have known that coerced sterilizations were being performed on Indigenous women at hospitals under its control. The Defendant authorized, permitted, carried out and/or was willfully blind to coerced sterilizations on the Plaintiff and the Class Members. These acts and omissions were a breach of the Defendant's duty of care.

THE DEFENDANT BREACHED IT DUTIES TO THE CLASS MEMBERS

17. During the Class Period, the Defendant breached its fiduciary duties and/or common law duties of care by the following acts or omissions, including but not limited to:

- (a) The Defendant failed to ensure that the hospitals it funded, owned, operated, managed, and/or regulated were not carrying out a program of coerced sterilization or sexual assault;
- (b) The Defendant failed to investigate the disproportionately high number of Indigenous women who were undergoing sterilization in Alberta;
- (c) The Defendant failed to provide any/adequate remedial training to health care workers in Alberta subsequent to the repeal of *The Sexual Sterilization Act*, 1928, Ch-37, such that health care workers in Alberta continued to operate as if this legislation had not been repealed; and,
- (d) The Defendant was careless, reckless, wilfully blind, deliberately accepting of, or actively promoting, a policy of coerced sterilization or sexual assault.

18. At all relevant times, the Defendant had the sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, the Defendant provided funding to Alberta Health Services, and its predecessors, which was then used to perform coerced sterilizations on Indigenous women.

19. The actions and omissions of the Defendant, as described herein, were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiff and the Class Members.

20. The Defendant turned a blind eye to this conduct, when it knew, or reasonably should have known, that the Plaintiff and the Class Members would thereby be subjected to coerced sterilization or sexual assault.

21. All coerced sterilizations perpetrated on or after April 17, 1982 were a violation of the Class Members' *Charter* rights. The Defendant's carelessness, recklessness, acceptance and/or promotion of coerced sterilizations was a direct violation of the Class Members' right to life, liberty and security of the person; their right to freedom of belief and conscience; their right to not be subjected to any cruel and unusual treatment; and, their right to equal treatment without discrimination, as guaranteed by the *Charter*. Such violations are not saved by section 1 of the *Charter*.

THE PLAINTIFF'S EXPERIENCES

22. Mrs. Cardinal attended at McLennan Hospital in December 1977 to give birth to her second child. While a patient at McLennan Hospital, she was coerced into undergoing a sterilization procedure. There was no medical reason to sterilize Mrs. Cardinal. She was 20 years old. She was healthy. Both of her children had been born after full term, medically uneventful pregnancies. She had specific plans with her husband to have two further children. The coerced sterilization of Mrs. Cardinal constituted sexual assault.

23. Mrs. Cardinal did not provide informed consent to be sterilized. Mrs. Cardinal did not provide written consent to be sterilized. Mrs. Cardinal did not want to be sterilized. Mrs. Cardinal wanted to have more children.

24. Mrs. Cardinal was not provided with any information regarding other options or forms of birth control. She was not given any information or advice on the distinction between having her tubes "tied", "cut" or "burned/cauterized".

25. Mrs. Cardinal was not given any information on the surgery, its side effects, aftercare or counselling

26. The Defendant, its agents and employees caused Mrs. Cardinal to believe that the decision to sterilize her was a decision that should be made by a doctor. The Defendant, its agents and employees caused Mrs. Cardinal to believe that she should have no input on whether to undergo sterilization. Mrs. Cardinal's treatment team applied undue and improper pressure on Mrs. Cardinal to force her to undergo the sterilization procedure. This undue and inappropriate pressure in her third trimester of pregnancy included, *inter alia*, the implied threat that if she did not undergo sterilization, her husband would leave her, and she would be forced to raise two small children on her own.

27. As a result of the Defendant's negligence, breach of fiduciary duties and *Charter* violations, Mrs. Cardinal was not aware that her coerced sterilization was improper, illegal and tortious. This information was concealed by the Defendant. As a result of the Defendant's negligence, breach of fiduciary duties, *Charter* violations, and concealment, Mrs. Cardinal believed that it was proper for decisions regarding sterilization to be made by doctors, not patients. Mrs. Cardinal only discovered that coerced sterilization was improper, illegal and tortious when she read about the experiences of other Indigenous women in or around November 2018.

DAMAGES SUFFERED BY CLASS MEMBERS

28. As a consequence of the negligence, breach of fiduciary duties and *Charter* violations of the Defendant and/or its agents for whom the Defendant is vicariously liable, the Class Members, including the Plaintiff, suffered injury and damages, including but not limited to:

- (a) mental, emotional, and spiritual abuse and suffering;
- (b) physical abuse and suffering;
- (c) sexual assault and suffering;
- (d) deprivation of Indigenous cultures, customs, traditions, language, and spirituality;
- (e) deprivation of their Indigenous identity;
- (f) deprivation of family and familial relations;
- (g) deprivation of one's ability to pass one's culture and identity on to one's children;
- (h) loss of self-esteem and self-worth;
- (i) social dysfunctionality and alienation from family, spouses and children;
- (j) impaired capacity for employment and to earn income;
- (k) the need for psychological, psychiatric and medical treatment as a result of the above;
and,
- (l) pain and suffering.

PUNITIVE AND EXEMPLARY DAMAGES

29. The Plaintiff pleads that the Defendant, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of widespread coerced sterilizations perpetrated upon Class Members, during the Class Period. Despite this knowledge, the Defendant proceeded to operate in an irresponsible and indifferent fashion and permitted the infliction of grievous harm to the Class Members.

30. The high-handed and callous conduct of the Defendant warrants the condemnation of this Honourable Court. The Defendant conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. The Defendant breached fiduciary duties, common law duties and *Charter* obligations owed to the Class Members.

31. Over a period of decades, the Plaintiff and Class Members were treated in a manner that could only result in aggravated and increased, *inter alia*, mental, emotional, spiritual, psychological, and physical suffering for a vulnerable population. The effects of the Defendant's actions have violated the Class Members' rights and irreparably altered the paths of their lives.

32. Full particulars respecting Class composition and the effects of the coerced sterilizations on the Class Members are within the Defendant's knowledge, control and possession.

33. The Plaintiff proposes that this action be tried in the City of Calgary, in the Province of Alberta.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.