THE DARK HISTORY OF NON-CONSENSUAL STERILIZATION OF INDIGENOUS WOMEN IN CANADA[1]

Abstract
Forced or coerced sterilization is performed without a person's free, prior, full, and informed consent. This violates multiple human rights, autonomy, informed consent and is an act of gender-based violence. This research examines the implications of non-consensual sterilization, focusing on its impact on Indigenous women in Canada. This article highlights the gaps in protections for Indigenous women's reproductive autonomy. It also assesses government responses and explores potential legal reforms and policy measures to ensure justice for survivors and prevent future violations. Human rights provisions make an individual's informed consent a precondition to the legality of sterilization. Non-consensual sterilization may take the form of forced or coerced sterilization. Non-consensual in the form of forced or coerced sterilization is a surgical procedure to prevent conception, performed without a patient's free, prior, and informed consent. There is historical evidence of forced or coerced sterilization in Canada. This is a dark chapter in Canadian history, marked by the violation of individuals' reproductive rights and bodily autonomy. In the past, some provinces in Canada enacted laws to forcibly sterilize women deemed unfit to procreate. The practice of sterilization rose out of the eugenics movement and has a long-hidden history in Canada. Alberta and British Columbia had laws requiring the sterilization of people considered mentally defective. These laws existed until 1972 and 1973 respectively. There have been reports of forced or coerced sterilization in Canadian hospitals as recently as 2019. Indigenous women and persons deemed mentally defective were disproportionally targeted. Apart from affecting the reproductive rights of women, forced sterilization also violates the right to autonomy and informed consent and human rights, especially the right to liberty and dignity. Courts and various international organizations have condemned and frowned at the forced sterilization of women, but unfortunately, this has not brought forced sterilization to an end. There is a need to move beyond human rights remedies to hold perpetrators of non-consensual sterilization accountable and criminally liable for non-consensual sterilization in Canada. Senator Yvonne Boyer on June 14, 2022, introduced Bill S-250, An Act to amend the Criminal Code regarding sterilization procedures and the criminalization of non-consensual sterilization in Canada. This research aims to contribute to the broader discourse on reproductive justice for Indigenous women and offer pathways for strengthening reproductive rights protections in Canada.Patients are autonomous individuals with the right to make medical decisions.

1.0 Introduction:

When a person's ability to reproduce is tampered with, without free, prior, and informed consent, it constitutes non-consensual, involuntary, forced, or coerced sterilization.[2] Non-consensual or involuntary sterilization may take the form of forced or coerced sterilization. In Canada, forced or coerced sterilization resulted from colonialization, forced assimilation, and the eugenics movement.[3] Although forced or coerced sterilization is often viewed as a thing of the past, contemporary cases also exist.[4] Informed consent is a fundamental principle of the provision of good-quality medical services and patients' rights and is recognized as a human right. Sterilization is a contraceptive measure, however, when it is non-consensual, it becomes a cause for concern. Forced or coerced sterilization violates the principle of autonomy and informed consent. Throughout the 20th century, many countries including some provinces in Canada, implemented eugenic policies and laws that targeted marginalized groups, leading to widespread violations of basic human rights. Sterilization is referred to as the most widely used form of contraception in the world and is an intrusive medical procedure and treatment. Medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. Like other contraceptive methods, sterilization should only be provided with the full and free informed consent of the individual. There have been cases where certain categories of people, such as indigenous peoples, persons with disabilities, transgender and intersex persons, etc are sterilized without their full, free, and informed consent. Based on eugenics belief, the Sexual Sterilization Acts were passed in Alberta in

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[2] Chaneesa Ryan, et al, "Forced or Coerced Sterilization in Canada: An Overview of Recommendations for Moving Forward" (2021) 16:1 *IJIH* 277https://doi.org/10.32799/ijih.v16iI.33369
[3] Ibid
[4] Ibid

1928 and in British Columbia in 1933, though eventually repealed in 1972 and 1973 respectively.[5] Under the Act, a board of eugenics could order sterilization of institutionalized patients who 'if discharged without being subjected to an operation for sexual sterilization would be likely to beget or bear children who because of inheritance have a tendency of serious mental disease or mental disorder.[6]

Stote documents 580 sterilizations across Canada in Indian hospitals between 1970 and 1975.[7] Zingel[8] observes that the issue of forced sterilization came to light in Canada when reports emerged regarding the coerced sterilization of Indigenous women. These women reported being subjected to sterilization procedures during childbirth or other medical procedures without their knowledge or informed consent. The revelations sparked outrage and led to calls for legal action and accountability. In the 2017 report 'Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women' by the Saskatchewan Regional Health Authority, many Indigenous women stated that they were coerced into sterilization by healthcare workers while in labour. Most of these coercions occurred when these women were either in the middle of childbirth or immediately after. Some of them alleged that they were told by doctors that they cannot see their newborn children until they agreed to a sterilization procedure. Most of them reported that they were not told the long-term consequences of the procedure, and were led to believe it was reversible.[9] In October 2017, a proposed class-action lawsuit was filed in Saskatchewan from more than 100 women across Canada who reported they were forced to be or were coercively sterilized.[10] Ryan et al[11] referred to forced sterilization as a reprehensible act and called for its immediate and abrupt end; and for the implementation of policies and practices that recognize and protect the right of women and girls.

Forced sterilization occurs when a person is sterilized without her knowledge or is not allowed to provide consent. Non-consensual sterilization is a grave violation of human rights and medical ethics; it can be described as acts of torture and cruel, inhuman, and degrading treatment. The most marginalized groups have been the target of forced sterilization; especially indigenous women. Governments are required to respect, protect and fulfill the right to be free from torture, cruel, inhuman, and degrading treatment or punishment; the right to the highest attainable standard of physical and mental health; the right to life, liberty, and security of person; the right to equality; the right to non-discrimination; the right to be free from arbitrary interference with one's privacy and family, and the right to marry and to found a family.[12] This paper explores eugenics and non-consensual sterilization in Canada through the human rights lens and recommends a shift beyond the human rights lens to the criminalization of non-consensual sterilization in Canada.

2.0 Eugenics and Non- Consensual Sterilization in Canada: What Does It Entail?

The term "eugenics" is of Greek origin, meaning 'well-born'. This was coined by Sir Francis Galton in 1883.[13] Sir Francis Galton dreamt of improving humans by engineering human heredity, he likened it to the breeding of animals,

[5] Ibid

[6] E Dyck, *Facing Eugenics: Reproduction, sterilization, and the politics of choice* (Toronto, Ontario: University of Toronto Press, 2013)

[7] K STote, *An Act of genocide: Colonialism and the Sterilization of Aboriginal Women* (Black Point Nova Scotia: Fernwood publishing, 2015)

[8] A Zingel, "Indigenous Women Come Forward with Accounts of Forced Sterilization Says Lawyer" CBC News 2019 April 18. Available from: https://www.cbc.ca/news/canada/north/forced-sterilization-lawsuit-could-expand-1.5102981.

[9] Dr Yvonne Boyer and Dr Judith Bartlett, "External Review: Tubal Ligation inb the Saskatoon Health Region: The Lived Experience of Aboriginal Women" July 22, 2017, https://www.saskatoonhealthregion.ca/documentsinternal/Tubal-ligation-in-the-saskatoon-health-region.

[10] supra note 7.

[11] Supra note 1.

[12] See Universal Declaration of Human Rights (articles 3, 5, 7, 10, 12, 16); the International Covenant on Civil and Political Rights (article 7, 9, 17, 23, 26); the International Covenant on Economic, Social and Cultural Rights (article 12).

[13] Philippa Levine, *Eugenics: A Very Short* introduction (Oxford: Oxford University Press, 2017) https://doi-org.ezproxy.library.uvic.ca/10.1093/actrade/978019938.

an agricultural skill that caught the attention of his cousin Charles Darwin.[14] Eugenics refers to the study and practice of improving the genetic quality of the human population through selective breeding or other means of genetic manipulation. It emerged as a scientific and social movement in the late 19th and early 20th centuries, but its roots can be traced back to earlier ideas and practices. Eugenics gained popularity in Canada in the 20th century and policies influenced by eugenics principles were implemented. The concept of improving human heredity is seen in ancient civilizations, such as ancient Greece and Rome.[15] Eugenicists believed that certain traits, such as intelligence, morality, and physical health, were hereditary and could be improved through selective breeding. Hanson believes that selective breeding could enhance the genetic quality of the population and improve societal well-being.[16] Black notes that legislation promoting eugenic practices was fueled by prevailing prejudices and misguided assumptions about human heredity.[17] Historically, eugenics has been used as a tool to justify policies that target marginalized groups and persons deemed 'undesirable' by societal standards. The underlying idea behind eugenics is that certain traits, such as intelligence, physical strength, or mental health, are hereditary and can be passed on from one generation to another. Due to its historical associations with discrimination, oppression, and violation of human rights, eugenics is widely regarded as a morally and ethically problematic concept. Throughout the 20th century, Canadian authorities implemented policies and practices that aimed to control and limit the reproduction of individuals deemed 'undesirable.' Black notes that these policies primarily targeted people with disabilities, mental illnesses, Indigenous populations, and other marginalized communities.[18]

Klutchin observes that most early eugenicists endorsed a crude notion of biological determination that deemed mental, physical, and behavioral 'defects' to be genetic and unalterable. According to him, eugenicists believe poverty, criminality, illegitimacy, epilepsy, feeble mindedness, among others were inherited traits that could not be altered.[19] Eugenicists encouraged the reproduction of 'fit' citizens defined as those who were native-born, white, and middle class, and who shared family histories free from defects, and discouraged the reproduction of unfit citizens; those with histories filled with 'destructive' traits, who were not white and whose reproduction eugenicists defined as costly and harmful.[20] Klutchin notes that eugenicists used race, class, ethnicity, intelligence, physical well-being, mental health, and sexual behavior as indicators of reproductive fitness. Reproduction from 'unfit' persons was considered destructive, unhealthy, and debilitating because the children 'unfit' persons bore were tainted by inherent defects that would cause them to become dependent upon the state for assistance. Eugenicists were more concerned about the costs associated with caring for poor people, people with disabilities, criminals, and women who bore children out of wedlock.[21]

Griffin referred to forced sterilization as any sterilization that takes place without a patient's informed consent;[22] it occurs when women seeking sexual and reproductive healthcare are sterilized without their knowledge or the opportunity to provide informed consent. Griffin further notes that the practice is used as a means of permanent contraception; as women may unknowingly have a hysterectomy[23] or be administered a medication that causes the

[14] Ibid.
[15] Ibid.
[16] J Hanson, "Settler Colonialism and the Racialized Politics of Forced Sterilization in California and British Columbia" (2019) *American Indian Quarterly*, 43: 2, 108-137.

[17] E Black, "The Transgressive Force of State Eugenics: Comparing Indigenous and Disabled People's Experiences of Sterilization in Alberta" (2018) 52: 3. *Canada Journal of Social History*, 693-716.

[18] Ibid

[19] Rebecca M Kluchin, "Fit to Be Tied, Sterilization and Reproductive Rights in America, 1950-1980" (2010) 96:4 Journal *of American History*, 1254-1255. DOI:10.1093/jahist/96.4.1254
[20] Ibid
[21] Ibid
[22] Fiona Griffin, "Forced Sterilization: Cases from Namibia", September 2022, DOI https://doi.org/0000-0003-4275-9966
[23] The blocking and severing of the fallopian tube.

fallopian tubes to seal, thus preventing fertilization. Roseman et al note that non-consensual sterilization may result from misinformation, financial incentives, or intimidation tactics obliging women to approve of the procedure.[24]

Forced sterilization is an intrusive contraceptive measure which contravenes fundamental human rights principles of autonomy and dignity. The idea of determining who should or should not reproduce based on predetermined criteria conflicts with principles of individual freedom, reproductive rights, and human dignity. Hanson notes that forced sterilization emerged as a brutal tool to enforce eugenic ideals, leaving lasting scars on the affected individuals and their families.[25] According to Human Rights Watch, forced sterilization occurs when a person is sterilized after expressly refusing the procedure, without knowledge, or is not given an opportunity to provide consent.[26] Amnesty International also explains that sterilization under coercion is seen when people give their consent to be sterilized, but based on incorrect information or other coercive tactics like intimidation, or when conditions are attached to sterilization, such as financial incentives or access to health services.[27]

Indigenous women in Canada disproportionately bore the brunt of the forced sterilization policies. Hanson observes that indigenous women were subjected to coercive tactics including manipulation, misinformation, and pressure during childbirth or other medical procedures.[28] The effects of forced sterilization were not limited to the individuals directly impacted. Many victims experienced profound emotional trauma, loss of identity, and a sense of violation. The intergenerational impacts of these practices are still felt today.[29] Sitter et al observe that people with ascribed intellectual disability have also experienced a long history of oppression; they are often treated as if they have no control or should have no control over their sexual and reproductive choices; they may be forcibly sterilized based on paternalistic justification, that it is 'for their good.'[30] The intergenerational impacts of these practices are still being felt today.[31] These policies perpetuated systemic racism and violated their reproductive rights and bodily autonomy. Women were often subjected to coercive tactics, including manipulation, misinformation, and pressure during childbirth or other medical procedures.[32]

Forced or coerced sterilization is performed without a person's free, prior, full, and informed consent and as such violates multiple human rights and is an act of gender-based violence. Patients are autonomous individuals with the right to make medical decisions. Hopp v Lepp[33] and Reibl v Hughes[34] marked a shift away from a paternalistic approach to autonomy which is a more patient-centered approach. The court in Hopp's case rejected the professional medical standard of disclosure and held that physicians must inform their patients of risks that the reasonable person

[24] Mindy Jane Roseman, et al, "At the Hospital There Are No Human Rightd: Reproductive and Sexual Rights Violations of Women Living with HIV in Namibia" (2012) 128-130, http://dx.doi.org/10.2139/ssrn.2220800
[25] Supra note 15.

[26] Human Rights Watch, "Sterilization of Women and Girls with Disabilities: A Briefing Paper" Washington DC, 10 November 2011.
[27] Standing Senate Committee on Human Rights [RIDR], Briefs, Amnesty International Submission to Standing Senate Committee on Human Rights Study on Sterilization Without Consent, submitted by Amnesty International, 5 April 2019.
[28] Supra note 15.

[29]Supra note 15.

[30] KC Sitter et al, "Supporting Positive Sexual Health for Persons with Developmental Disabilities: Stories About the Right to Love". *Br. J Learn. Disabil.* 47 (4) 255-263; A Tilley et al., The Metaphor of Civic Threat: Intellectual Disability and Education for Citizenship. In I Ware (Ed), Critical Readings in Interdisciplinary Disability Studies. Springer. 53-67.
[31] Supra note 15.

[32] Supra note 14.

[33] Hopp's case [1980] 2 SCR 192.
[34]Reible's case [1980] 2 SCR 880.

in the position of the patient would want to know. [35]In Reible's case, the patient was not informed of the chance of being paralyzed from the surgery or the risk of a stroke. At trial, the judge found that there was poor communication between the doctor and the plaintiff who was only told that he would be better off having the procedure. The defendant was found liable for negligence and battery for failing to disclose the risk of surgery. Damages of 225,000 were awarded. The decision though overturned at the Court of Appeal, was allowed at the Supreme Court.[36] An action in battery is appropriate where surgery or treatment had been performed or given to which there is no consent at all or where, apart from emergencies, surgery or treatment had been performed beyond that to which there was consent. An adult consents to healthcare if the consent relates to the proposed treatment or healthcare procedure and is voluntary, not obtained by fraud or misrepresentation, the adult is capable of deciding on whether to give or refuse consent to the proposed healthcare, the healthcare provider gives the adult the information a reasonable person would require to understand the nature of the proposed healthcare and the risks and benefits of the proposed healthcare that a reasonable person will expect to be told about.[37]

Lynch[38] notes that a competent patient has the right in law to give or withhold consent to medical examination or treatment. Where a competent adult makes a voluntary and informed decision to refuse treatment it must be respected. It does not matter whether the decision to refuse treatment is rational or irrational; it is for the patient to decide, even if it results in his or her death. Lynch[39] observes that treatment can be performed without consent based on the 'emergency doctrine' if the patient is incapable of making or communicating a decision concerning the treatment. This is applicable only where it is immediately necessary to save the life or preserve the health of the patient. The defense of emergency will not avail the health professional where treatment is imposed to save the patient's life, where the patient refuses such treatment; however, the defense of emergency may avail the medical professional where the patient cannot give or refuse consent for some reasons and its necessary to treat to save the patient's life.[40] Before a patient can be treated, valid consent must be obtained; where the health professional fails to obtain valid consent, they will be held accountable.[41] A health professional may be liable for the common law criminal offense of assault and battery if they treat a patient without valid consent.[42] It is a fundamental principle that for valid consent, consent must be given freely without any form of coercion, duress, undue influence, pressure, or fraud. Where consent is obtained under pressure or undue influence it is invalid. Pressures from the family must not override the rights of the patient.[43]

Patel[44] notes that forced or coerced sterilization can be seen where consent was obtained under duress; the consent was invalid; or the women's consent was not obtained.[45] Sterilization is valid and legal only when there is voluntary informed consent. There may be instances where there is intention without voluntariness, where one acts intentionally without acting voluntarily. Voluntariness requires the absence of force and ignorance. Sterilization is a positive form of contraception when done voluntarily; however, it may be seen in a negative light when the procedure is done without consent. According to Aristotle's account, only voluntary acts warrant praise or blame, and force as well as ignorance can render these inappropriate. Thus voluntariness requires the absence of force or ignorance.[46] A different degree of voluntariness may be required in each context, and moral considerations may help determine which degree

[35] Supra note 31.
[36] Supra note 32.
[37] Health Care (Consent) and care facility (Admission) Act, [RSBC 1996] Chapter 181
[38] Jane Lynch, *Medico- Legal Essentials Consent to Treatment* (Abingdon: United Kingdom, 2011) 3
[39]Ibid.
[40] Ibid, 45.
[41] Ibid, 16.
[42] Ibid, 8
[43] Ibid, 49
[44] Priti Patel, "Forced Sterilization of Women as Discrimination" (2017) 38:15 *Patel Public Health Reviews*. DOI 10.1186/s40985-017-0060-9
[45] Ibid
[46] Aristotle, *Cambridge Texts in the History of Philosophy: Aristotle: Nicomachean Ethics* (3rd ed) (Indianapolis: Hackett Publishing, 2014) 21.

is the correct one. Anscombe notes that use of 'voluntary', according to him, if someone does something under the threat from another man, it was forced on him; voluntariness impliess that the act was without compulsion.[47]

Patel further explains that Consent may be obtained under duress where women are asked to sign consent form while in labour, on their way to the theatre or given the impression that to obtain another medical procedure, they had to consent to sterilization.[48] Consent will be deemed invalid where women are asked to sign consent form for sterilization without being provided with full and accurate information regarding the sterilization procedure. Consent is not obtained where women were not asked if they want to be sterilized but are informed of their sterilization after having undergone a ceaserean section.[49] Patel notes that coerced and forced sterilizations have often been justified by medical personnel as necessary for public health;[50] and emphasized that forced or coerced sterilization primarily targets women who are percieved as inferior or unworthy of procreation.

3.0 Eugenics and Non-Consensual Sterilization: A Dark Chapter in History in Canada

Canada has a long history of forced or coerced sterilization. Until 1972 and 1973, Alberta and British Columbia had laws requiring the forced or coerced sterilization of individuals who were considered 'mentally defective'. [51] Sakatchewan, Ontario and Manitoba introduced similar sexual sterilization bills which was defeated in 1930 and did not become law.[52] The Canadian Association of Community Living and People First Canada explains that during the eugenics movement, over three thousand Canadians were legally sterilized in Canada, especially within Alberta and British Columbia, where those who were deemed to be 'mentally defective' to possess 'undesirable elements' or to be part of the 'unfit groups' were sterilized by the mandate of the state through the Sexual Sterilization Acts of Alberta and British Columbia.[53] Hansen and King notes that sterilization under these laws were often a condition for release from a mental health hospital.[54] Stote observes that in Alberta, First Nations, Metis and Inuit people made up of 2.5% of the population, but represented 6% of those sterilized overall.[55] Kersten on the other hand, notes that the law in British Columbia did not only target those with mental health issues, but also children, especially those housed in Institutional Home for Girls.[56] The Committee was told a couple of times that many women, especially indigenous women were pressured, badgered or led to believe that they were obligated to sign consent forms. Others were not fully informed about what they were signing or did not understand the legal or practical implications of the document.[57] The Senate Standing Committee on Human Rights[58] were also informed that some indigenous women were coerced and given ultimatum to accept sterilization or face the prospect of having their children placed in the child welfare system.[59] Ms Lombard shared the story of SAT a Cree woman who gave birth to her sixth child in Saskatoon in 2001; when presented with a consent form for her sterilization, she reports hearing her late husband exclaim 'I am not expletive signing that.' Before he stormed out of the hospital, she was wheeled into an operating room over her protests.

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[47] GEM Anscombe, "Faith in Hard Ground: Essays on Religion, Philosophy and Ethics"(2009) 29:3 *Philosophy in Review*. 155

[48] Ibid

[49] Ibid

[50] Ibid

[51] The Canadian Encyclopedia, Eugenics in Canada

[52] Ibid

[53] RDIR, Briefs, Submission to the Senate Standing Committee on Human Rights, submitted by the Canadian Association for Community Living and People First of Canada, 17 May 2019

[54] Randall Hansen and Desmond King, "Sterilization by the State: Eugenics, Race and the Population Scare in the Twentieth-Century North America" (Cambridge University Press, New York, 2013); Canada's Human Rights History, Eugenics.

[55] Karen Stote, 'An Act of Genocide: Colonialization of Aboriginal Women,' Fernwood Publishing, 2015, p. 46

[56]Luke Kersten, 'British Columbia Passes 'An Act respecting Sexual Sterilization', Eugenics Archives, Social Sciences and Humanities Research Council of Canada

[57]RIDR, Evidence, 3 April 2019 (Karen Stote, Author and Assistant Professor, Women and Gender Studies Program, Wilfred Laurier University, as an individual); RIDR, Evidence, 10 April 2019 (Melanie Omeniho, President, Women of the Metis Nation).

[58] Referred to as the Commitee.

[59] RIDR, Evidence, 10 April 2019 (Melanie Omeniho, President, Women of the Metis Nation).

She repeatedly said, 'I do not want this,' as she cried while the nurses administered the epidural and she was sterilized.'[60] Here consent was obviously absent, the husband expressly refused to give his consent to the procedure, and the woman was still sterilized, despite expressly indicating that she does not want to be sterilized. The Committee agrees that signing a consent form does not also constitute informed consent, when it is not fully understood, especially when pressure is applied under duress, when cognition is reduced or information about the procedure is incorrect. Hoffman notes that women need to fully understand and consent to what is happening to their bodies, and they need to be assisted to do that; and providers need to be better equipped to have these discussions in a way that recognizes and respects the situation of the patient, including such issues like language, culture, and other realities of individual patients.[61]

In recent years, attention has been given to the plight of Indigenous women in Canada who have been forced or coerced into undergoing sterilization procedures. This awareness stemmed from a report that was released by the Saskatchewan Regional Health Authority in July 2017.[62] This was a report of an external review commissioned after about four women reported that they had been coercively sterilized in a Saskatoon hospital between 2008 and 2012. The report documented the experiences of 16 women, most of whom reported being coercively sterilized between 2005 and 2010. There was a class action lawsuit filed in Saskatchewan in October 2017. Waves of media coverage about this, led to over 100 more indigenous women from Saskatchewan, Alberta, British Columbia, Manitoba, and Ontario to come forward with allegations that they were also sterilized without their free, prior, and informed consent.[63] The Committee's preliminary findings confirmed that forced sterilization is not confined to the past, but clearly continuing today and lives with us; however, its prevalence is underreported and underestimated.[64]

The National Inquiry into Missing and Murdered Indigenous Women and Girls highlighted that official policies of sterilization emerged in the 1920s as part of the eugenics movement and formed part of a genocidal policy against indigenous peoples.[65] Alisa Lombard and several survivors in their testimony agreed with this characterization of the history of forced or coerced sterilization in Canada.[66] Dr Evan Adams, the Deputy Chief Medical Officer of Public Health, Indigenous Services Canada refers to forced or coerced sterilization as an act of sexism, racism and cultural genocide, rooted in colonization and paternalism.[67] Dr Karen Stote pointed to historical documents that show approximately 1,150 sterilizations of women from the North of Canada and women being treated in federally operated Indian hospitals.[68] In a submission to the Committee, the Canadian Association of Community Living and People First of Canada observed that until the 1970s, Alberta and British Columbia legislated the sterilization of persons with intellectual disabilities without their consent, especially targeting those living in institutions and those with racial, sexual, cultural or socioeconomic differences that were deemed to be deviant or unfit.[69] As seen from the Committees

[60] RDIR, Evidence, 3 April 2019 (Alisa Lombard, Lawyer and Partner, Semaganis Worme Lombard, as an individual)
[61] RIDR, Evidence, 15 May 2019 (Abby Hoffman, Assistant Deputy Minister, Strategic Policy Branch, Health Canada)
[62] Supra note 8
[63] RDIR, Briefs, Amnesty International Submission to Standing Senate Committee on Human Rights Study on Sterilization Without Consent, submitted by Amnesty International, 5 April 2019.
[64] Ibid
[65] National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power, and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a, 2019, pp. 53, 266 and 267; National Inquiry into Missing and Murdered Indigenous Women and Girls, Supplementary Report-Genocide, 2019.
[66] Standing Senate Committee on Human Rights (RIDR), Evidence, 25 April 2022 (Alisa Lombard, Lawyer, Lombard Law, as an individual)
[67] RIDR, Evidence, 25 April 2022 (Dr. Evan Adams, Deputy Chief Medical Officer of Public Health, Indigenous Services Canada).
[68] RIDR, Evidence, 3 April 2019 (Dr Karen Stote, Author and Assistant Professor, Women and Gender Studies Program, Wilfred Laurier University, as an individual)
[69]RIDR, Briefs, Submission to the Senate Standing Committee on Human Rights, submitted by the Canadian Association for Community Living and People First of Canada, 17 May 2019

previous report, forced and coerced sterilization did not end with the repeal of these explicit laws and policies.[70] Dr Josephine Etowa during her appearance before the Committee in 2019 explained that, upon reviewing data, the team members noticed 'the issue of hysterectomy continually coming up in the interviews involving 237 women.[71]

The history of eugenics in Canada is characterized by a range of policies and practices that aimed to control and manipulate the genetic makeup of its population. Alberta, British Columbia, and Saskatchewan implemented sterilization laws that authorized the forced sterilization of individuals considered 'mentally defective' or having 'defective' heredity. These laws disproportionately affected indigenous women and people with disabilities.[72] Over 2,800 sterilizations were performed in Alberta under the Alberta's Sexual Sterilization Act which remained in effect until 1972 when it was repealed. British Columbia and Saskatchewan also implemented sterilization legislation, although the number of sterilizations performed under these laws was lower compared to Alberta. In British Columbia, the Sexual Sterilization Act was in effect from 1933 to 1973, and in Saskatchewan, the Sterilization Act was enacted in 1933 and repealed in 1962. From the 1960s, the eugenics movement declined in Canada. Increased awareness of human rights and ethical concerns surrounding sterilization practices led to the repeal of sterilization laws in Alberta, British Columbia, and Saskatchewan. These policies disproportionately affected indigenous patients and individuals experiencing social marginalization.[73]

Drs Boyer and Bartletts interviewed indigenous women who have experienced coerced sterilization in the Saskatoon Health Region;[74] they reported stories of women feeling invisible, profiled, and powerless and experiencing coercion. They describe misrepresentation of the permanency of sterilization and patients not offered contraceptive alternatives.[75] One of the consequences of Canada's eugenic movement was the implementation of forced sterilization programs. Individuals deemed 'unfit' or 'unworthy' of reproduction were subjected to irreversible surgical procedures without informed consent. The sterilization process was often justified under the premise of preventing the transmission of 'undesirable' traits or reducing the burden on the healthcare system. However, these justifications were built on flawed science, biased beliefs, and a lack of respect for individual autonomy and human rights.[76] Forced sterilization left deep scars on the lives of those affected. As a society, it is essential to confront this dark history, provide justice and support to survivors, and ensure that such violations are never repeated. By learning from the past, Canada can move forward on a path that upholds the principles of equality, inclusivity, and respect for human dignity.[77] In 2019, survivors, activists and organizations worked tirelessly to shed light on this dark chapter of Canadian history. Advocacy efforts sought justice, compensation, and policy changes to ensure such violation are never repeated.[78] In June 2021, the Committee released the initial report that found that the practice of forced or coerced sterilization is still practised in Canada and is both underreported and underestimated. The Committee also expressed concern about the disproportionate impact of this practice on vulnerable and marginalized groups in Canada,

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[70] RIDR, Forced and Coerced Sterilization of Persons in Canada, June 2021

[71] RIDR , Evidence, 15 May 2019 (Dr Josephine Etowa, Professor, Faculty of Health Sciernces, University of Ottawa.)

[72] A McLaren, "Our Own Master Race: Eugenics in Canada, 1885-1945" (Oxford University Press; Adams, M., & McLaren, A. 2017). Sterilizing the "Feeble-minded": Eugenics in Alberta, Canada, 1928-1972. In A. Bashford & P. Levine (Eds.), The Oxford Handbook of the History of Eugenics (pp. 480-498). Oxford University Press.

[73] Supra note 6.

[74] Y Boyer, Bartlett, "External Review: Tubal Ligation in Saskatoon Health Region: the lived experience of Aboriginal Women" 1-56, Saskatoon Health Region. Available at https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017 pdf.

[75] Ibid.

[76]Supra note 15.

[77] Supra note 15.

[78] Supra note 14.

including indigenous women, black and racialized women, persons with disabilities, intersex children, and institutionalized persons. In 2022 the Committee heard additional testimony on this issue, including from several survivors.

Class action lawsuits have been brought forward in Saskatchewan, Manitoba, Ontario, British Columbia, Quebec, New Brunswick, Nova Scotia and Alberta on behalf of Indigenous women who alleged they were subjected to forced or coerced sterilizations.[79] In 2015, media reports of forced and coerced sterilization prompted the Saskatoon Regional Health Authority to commission an external review, which was completed in 2017 and included calls to action relating to support and reparations, cultural training and education, and law and policy reform.[80] The United Nations (UN) Committed against Torture, the Inter-American Commission on Human Rights and two UN Special Rapporteurs have called on Canada to take concrete action on this issue.

The Standing Senate Committee on Human Rights (the Committee) undertook a study in 2019 on the extent and scope of forced and coerced sterilization of persons in Canada. The Committee heard from several experts and civil society groups to gain preliminary understanding of the issue, to be followed by a more comprehensive study in a future parliamentary session. In 2021, the Committee released its initial report, which found that the practice of forced or coerced sterilization still exists in Canada today and is underreported and underestimated and expressed concern about the disproportionate impact of this practice on vulnerable and marginalized groups in Canada, including indigenous women, black and racialized women, persons with disabilities, intersex children, and institutionalized persons. The committee recommended hearing from survivors in a culturally appropriate and trauma-informed manner, made recommendations on how to end forced or coerced sterilization in Canada. In 2022, the Committee continued to examine and report on such issues as may arise from time to time relating to human rights generally.[81]

In recent years, survivors, activists, and organizations have worked tirelessly to shed light on this dark chapter of Canadian history. Advocacy efforts sought justice, compensation, and policy changes to ensure such violation are never repeated.[82] Efforts are ongoing to acknowledge and address the historical injustices faced by those affected by eugenic policies, and to ensure respect for human rights and inclusivity in current policies and practices.

4.0 Non-Consensual Sterilization: Through the Human Rights Lens

Non-consensual sterilization runs contrary to the principle of autonomy. The principle of autonomy, expressed through full, free, and informed decision-making is a central theme in medical ethics, it is embodied in human rights law. People should be able to choose or refuse sterilization. Varelius referred to autonomy as self-rule, freedom from the control and limitations of others. Autonomy requires informed consent and the absence of coercion. She emphasised that if a person's choice is based on manipulation, coercion or compulsion, consent is not truly voluntary, and if it is based on misinformation, it is not informed, violating autonomy.[83]

Sterilization without full, free, and informed consent has been variously described by international, regional, and national laws as a violation of fundamental human rights and reproductive rights, and a violation of the right to be free from torture and other cruel, inhuman, and degrading treatment. In Canada, reproductive rights are considered part of the right to security of the person as guaranteed by section 7 of the Canadian Charter of Rights and Freedoms (the Charter). Security of the person includes a person's right to control their own body and it also prevents the state from interfering with personal autonomy, which includes the imposition of unwanted medical treatment'.[84]

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[79] https://www.cbc.ca/radio/thecurrent/the-current-for-july-18-2022-1.6523799/incomprehensible-that-forced-sterilizations-still-happen-in-canada-says-survivor-1.6524142

[80] Supra note 65.

[81] Senate of Canada, Journals of the Senate, 3 March 2022.

[82] Supra note 14.

[83] Jukka Varelius, "The Value of Autonomy in Medical Ethics" (2006) 9 *Med, Health Care Philos*, 377-388. https://doi.org/10.1007/s11019-006-9000-z.

[84] Department of Justice, Section 7 Life, Liberty, and Security of the Person, citing R v Morgentaler, [1988] 1 S.C.R. 30 at p. 56; Carter v Canada (Attorney General) 2015 SCC 5 at para 62.

The United Nations Special Rapporteur on Violence against Women referred to forced sterilization as a medical control of a woman's fertility without the consent of a woman; it essentially involves the battery of a woman; violation of her physical integrity and security, which also constitutes violence against women.[85] Freedom from unwanted interference with one's body and reproductive rights is protected under Canadian and International human rights frameworks, including section 7 of the Canadian Charter of Rights and Freedoms and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which Canada has ratified; as well as policies regulating medical professionals in all Canadian provinces and territories. Patel[86] observes that forced or coerced sterilization affects the right to health, the right to information, the right to liberty and security of the person, the right to be free from torture and cruel, inhuman and degrading treatment, and the right to be free from discrimination and equality.[87] Patel notes that the right to health is guaranteed under the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child.[88] Bodily autonomy is an integral part of the right to health. The Committee on Economic, Social and Cultural Rights (CESCR) notes that the right to health includes the 'right to control ones' health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment, and experimentation.[89] The CESCR confirmed that countries are obliged to ensure the accuracy of health information provided by service providers. The right to security of person, guaranteed under the ICCPR, includes the right to determine what happens to ones's body.[90] The United Nations Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of mental and physical health has expressed that guaranteeing informed consent is a fundamental feature of respect to individual's autonomy, self-determination, and human dignity.[91] Forced sterilization of women may constitute torture or cruel or inhuman treatment.[92]

The right to be free from cruel, inhuman, and degrading treatment is guaranteed under the ICCPR, CRPD and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Coerced or forced sterilization is an obvious violation of this right to be free from cruel, inhuman, and degrading treatment. The Human Rights Committee notes that the purpose of the right is to protect dignity and the physical and mental integrity of the individual from acts that cause physical and mental suffering, and protects individuals from cruel, inhuman, or degrading treatment in medical institutions.[93] CEDAW prohibits discrimination against women in accessing health care services. CRPD prohibits discrimination based on disability and recognize that women and girls face multiple discrimination. The ICCPR and the ICESCR also prohibits discrimination based on gender, sexual orientation, health status, and race among others. The ICCPR also provides for the right to equality. General recommendation 19 of the

[85] UN Human Rights Council, Violence against Women (Addendum): Policies and Practices that Impact Women's Reproductive Rights and Contribute To, Cause or Constitute Violence against Women, Report of the Special Rapporteur on Violence against Women, its causes and consequences, Radhika Coomaraswamy, E/CN.4/1999/68/Add.4.January 21.1999. para. 51, http://www.unhchr.ch/Huridocda/Huridoca.nsf/o/4cad275a8b55o9ed8o256738oo5o3fgd?Open document

[86] Supra note 18.

[87] Ibid

[88] Ibid

[89] Committee on Economic, Social and Cultural Rights. General Comment 14: the right to the highest attainable standard of health (Art 12) 2000

[90] United Nations 1976 International Covenant on Civil and Political Rights (ICCPR) available at http://www.ohcr.org/en/professionalinterest/pages/cpr.aspx

[91] United Nations General Assembly Special Session. Report of the Special Rapporteur on the right to the enjoyment of the highest attainable standard of physical and mental health. 10 August 2009. Para 18. Available at http://www.refworld.org/pdfid/4aa762e30.pdf

[92] Human Rights Council, Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E Mendez. 1 February 2013. Available at http://www.refworld.org/docid/51126ae62.html

[93] Human Rights Committee. General Comment no 20: Article 7 (prohibition of torture, or other cruel, inhumana or degrading treatment or punishment) 1992. Available at: http://www.refworld.org/docid/453883fb0.html

CEDAW Committee states that discrimination against women includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.[94]

In December 2018, the United Nations Committee against Torture adopted concluding observations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The observations expressed concern about reports of extensive forced or coerced sterilization of Indigenous women and girls, including the cases of forced sterilization in Saskatchewan.[95] The Committee against Torture made recommendations that ensure that all allegations of forced or coerced sterilization are investigated, that the persons responsible are held accountable and that adequate redress is provided to the victims; that legislative and policy measures to prevent and criminalize the forced or coerced sterilization of women is adopted, especially by clearly defining the requirement for free, prior and informed consent with regard to sterilization and by raising awareness among indigenous women and medical personnel of that requirement.[96]

In 2019, concerns about non-consensual sterilization were raised by the Inter-American Commission on Human Rights (IACHR) and by two UN Special Rapporteurs following visits to Canada that included meetings with various stakeholders and government officials.[97] The IACHR's statement urged Canada 'to guarantee effective access to justice for survivors and their families, to conduct impartial and immediate investigations, to hold those responsible to account and to take all of the necessary measures to put an end to the practice of sterilizing women against their will.[98] The IACHR notes that it had received many reports from Indigenous women and girls alleging that they had been subjected to sterilization without their free and informed consent; and expressed concerns, highlighting that surgical sterilizations must be subject to particularly rigorous controls to ensure that consent is provided in a free, informed, and voluntary manner. [99]The United Nations Special Rapporteur on the Right to Health notes some of the forms of non-consensual sterilization, especially where women are provided inadequate time and information to consent to sterilization procedures or are never told or discovered later that they have been sterilized. Policies and legislation sanctioning non-consensual treatments, including sterilizations violate the right to physical and mental integrity and may constitute torture and ill-treatment.[100]

Forced or coerced sterilization has been recognized by human rights bodies as a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment;[101] as enumerated in Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. [102] In December 2018, the United Nations Committee Against Torture (CAT) published its observations of Canada's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CAT acknowledged the information received from Canadian representatives on the forced or coerced sterilization of indigenous women and called on Canada to ensure the impartial investigation of all allegations of forced or coerced

[94] Committee on the Elimination of Discrimination against Women. General recommendation no. 19 violence against women. 1992. Available at http://www.refworld.org/docid/52d920c54.html
[95] United Nations (UN) Committee against Torture, Concluding observations on the seventh periodic report of Canada, 21 December 2018.
[96] Ibid
[97] Inter-American Commission on Human Rights (IACHR), IACHR expresses its deep concern UN Human Rights Council, Visit to Canada: Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc no. A/HRC/41/42/Add.1, 3 June 2019; UN Human Rights Council, Visit to Canada: Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,
[98] Ibid
[99] Ibid
[100] UN Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,Anand Grover, A/64/272, August 10, 2009, para 55, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/No9/450/87/PDF/N0945087.pdf? OpenElement
[101] World Health Organization et al, Eliminating forced, Coercive and Otherwise involuntary sterilization: An interagency statement, 2014, p 1.
[102] United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46, December 1984.

sterilization and that the persons responsible are held accountable and adequate redress provided to victims; and adopt legislative and policy measures to prevent and criminalize the forced or coerced sterilization of women, particularly by defining clearly the requirement of free, and informed consent with regard to sterilization and raising awareneness among indigenous women and medical personnel of that requirement.[103] The Committee Against Torture (CAT) recommended that countries take urgent measures to investigate promptly, impartially, thoroughly, and effectively all allegations of involuntary sterilization of women, prosecute and punish perpetrators, and provide the victims with fair and adequate compensation.[104]

According to Zampas and Adriana,[105] informed consent is a fundamental principle of the provision of good quality medical services and patients' rights and is recognized as a human right by the international community. Griffin referred to the forced sterilization of women around the globe as a human rights violation and bioethical concern.[106] The idea of determining who should or who should not reproduce based on predetermined criteria, conflicts with principles of individual freedom, reproductive rights, and human dignity.

The legal framework surrounding forced sterilization in Canada has evolved over time. Initially, provincial laws allowed for the involuntary sterilization of individuals deemed 'unfit' or 'undesirable.' In 1928, Alberta became the first province in Canada to enact legislation permitting the involuntary sterilization of individuals considered 'mentally defective' or having 'defective' heredity. Alberta Sexual Sterilization Act remained in effect until 1972.[107] Alberta's Sexual Sterilization Act was repealed in 1972. While it was in force, about 2,800 sterilizations were performed. The Sexual Sterilization Act was applied in a discriminatory manner and that it had a disproportionate impact on disadvantaged groups including women and people of minority ethnic backgrounds. Subsequently, the government of Alberta settled similar claims from other victims of sterilization. In 1933, British Columbia enacted the Sexual Sterilization Act, allowing for the involuntary sterilization of individuals considered "mentally defective." This law remained in effect until it was repealed in 1973.[108] Saskatchewan passed the Sterilization Act in 1933, permitting the involuntary sterilization of individuals considered "mentally defective" or "mentally deficient." This law was repealed in 1962.[109] Following the repeal of sterilization laws, the legal framework around reproductive rights and bodily autonomy in Canada has evolved. The Canadian Charter of Rights and Freedoms, part of the Constitution Act, 1982, protects fundamental rights, including the right to life, liberty, and security of the person.[110]

Forced sterilization infringes upon an individual's fundamental right to make decisions about their own bodies and reproductive choices. It robs individuals of their autonomy and denies them the right to plan their own families. As societal attitudes changed and the human rights movement gained momentum, forced sterilization practices faced increasing scrutiny. In recent years, survivors, activists, and organizations have worked tirelessly to shed light on this dark chapter of Canadian history. In 2019, the Alberta government published a landmark report acknowledging the forced sterilization of Indigenous women and outlining recommendations for redress. Several provinces, including

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[103] Ibid

[104] United Nations Committee Against Torture (CAT Committee) Concluding observations: Slovakia. 2009.para. 14. Available at http://www.refworld.org/publisher,CAT,CONCOBSERVATIONS,SVK,4b66c9542,0html

[105] Christina Zampas and Adriana Lamackova, "Forced and Coerced Sterilization of Women in Europe" (2011) 114:2 *International Journal of Gynecology & Obstetrics*, 163- 166. https://doi-org.ezproxy.library.uvic.ca/10.1016/j.ijgo.2011.05.002

[106] Supra note 31

[107] M Adams and A McLaren, *Sterilizing the "Feeble-minded": Eugenics in* Alberta, Canada, 1928-1972. In A. Bashford & P. Levine (Eds.), The Oxford Handbook of the History of Eugenics (Oxford University Press, 2017) 480-498

[108] A McLaren "Our Own Master Race: Eugenics in Canada 1885-1945. (Oxford University Press, 2017)

[109] Ibid

[110] Canadian Charter of Rights and Freedoms. (1982). Government of Canada.

British Columbia and Saskatchewan, have initiated investigations into past sterilization practices. Leilani Muir was the first person to file a lawsuit against the Alberta government for wrongful sterilization. $740,780 in damages were awarded to her for wrongful confinement, wrongful sterilization, and aggravated damages.[111] The court ordered the province to pay her the maximum damages for suffering and pain resulting from the sterilization allowed by the law. The damage inflicted by the sterilization was aggravated by the associated and wrongful stigmatization of Ms. Muir as a moron, and a high grade highly defective. The court found that Ms. Muir was improperly detained; the confinement resulted in the loss of liberty, loss of reputation, humiliation, and disgrace; pain and suffering, loss of enjoyment of life, loss of normal developmental experiences, loss of civil rights, loss of contact with family and friends, subjection to institutional discipline.

Also, in E(D) v R[112] seventeen women and one man brought an action against the Provincial Crown alleging that they were sexually sterilized between 1940 and 1968. Their sterilizations occurred while the now-repealed Sexual Sterilization Act[113] was in force. Under the Act, the medical superintendents of various provincial mental health facilities could recommend the sterilization of patients, who in the words of the Act, were likely to have children 'with a tendency to mental disease or deficiency'. The Act gave the Board of Eugenics the power to authorize sterilizations. The plaintiffs attacked the Superintendent's recommendations, which according to them, resulted in their sterilizations. The plaintiffs alleged that although the eugenic principles underlying the Act were seriously flawed, the Medical Superintendent failed to adhere strictly to them; and abused his statutory powers by basing his recommendations primarily on social and clinical factors that he knew to be irrelevant to the statute's eugenics purpose. The plaintiffs also alleged a breach of fiduciary duty, negligence, and battery. The Court held that the Superintendent acted in accordance with the authority granted by his office, and accordingly, his recommendations were lawful; and the Superintendent did not commit any of the other unlawful acts alleged by the plaintiffs. The court held that the sterilizations were not sexual assaults within the meaning of the Limitation Act. As a result, the plaintiff's causes of action are barred by the thirty-year limitation period.

In E (Mrs) v Eve, [114] Mrs. E applied for permission to provide consent to the sterilization of her mentally handicapped daughter. Mrs. E feared that Eve would become pregnant and was concerned about the effect the pregnancy and birth would have on her emotional state; it was held that the best interest of the protected person is paramount, and sterilization should not be authorized for non-therapeutic purposes under the *parens patriae* jurisdiction. The only procedures that will be allowed are the ones that are in the best interests of the protected person. The court held thus:

> '… the grave intrusion on a person's rights and the certain physical damage that ensues from non-therapeutic sterilization without consent, when compared to the highly questionable advantages that can result from it have persuaded me that it can never safely be determined that such a procedure is for the benefit of the person. Accordingly, the procedure should never be authorized for non-therapeutic purposes under the *parens patriae* jurisdiction… the court undoubtedly has the right and duty to protect those who are unable to take care of themselves, and in doing so it has a wide discretion to do what it considers to be in their best interests. But this function must not, in my view, be transformed to create a duty obliging the court, at the behest of a third party, to make a choice between the two alleged constitutional rights-the right to procreate or not to procreate-simply because the individual is unable to make that choice. More so since, in the case of non-therapeutic sterilization, the choice is one the courts cannot safely exercise.'[115]

The court held that the certain physical damage that ensues from non-therapeutic sterilization without consent when compared to the highly questionable advantages that can result from it have persuaded the court that it cannot safely be determined that such a procedure is for the benefit of the person. As such, the concern of Mrs E is not enough justification for forced sterilization. Accordingly, the procedure should never be authorized for non-therapeutic purposes under the parens patriae jurisdiction, the best interest of the patient is paramount. Surgical procedure without consent constitutes battery, the onus of proving the need for the procedure lies on those seeking to have it performed. The burden of proof must be commensurate with the seriousness of the measure proposed. A court in conducting these

[111] *Muir* v *Alberta*, 1996 CanLII 7287 (AB QB)
[112] 2003 BCSC 1013
[113] S.B.C. 1933, c. 59
[114] [1986] 2 SCR 388
[115] E(Mrs) v Eve [1986] 2 SCR 388

procedures must proceed with extreme caution and the mentally incompetent person must have independent representation.

According to Zampas and Adriana, human rights provisions in laws set by international treaties and national legislatures make individuals informed and freely given consent a precondition to the legality of their sterilization.[116] Informed consent is a fundamental principle of the provision of good quality medical services and of patients rights, and is recognized as a human right under International human rights law.[117] International human rights treaty laws protect individuals' right to informed decision-making in matters concerning sexual and reproductive healthcare services, including sterilization.[118] The UN Treaty Monitoring Bodies, which monitor state compliance with treaty provisions and provide guidance to states on how to implement their international human rights obligations, specifically addressed and condemned the practice of forced or coerced sterilization. Forced sterilization is a violation of various international human rights, including the right to health, the right to dignity of the human person, the right to bodily integrity, the right to be free from violence, and the right to be free from torture and inhuman and degrading treatment, and the need to decide on the number and spacing of children. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides for the right to decide on the number and spacing of children, including access to information, education, and means to exercise the right.[119] Various international human rights instruments explicitly protect the right to bodily integrity, reproductive autonomy, and freedom from cruel, inhuman, or degrading treatment. Sterilization, when performed without informed consent violates individual rights. International human rights bodies and professional organizations have explicitly condemned coercive population policies and programs. Coerced or forced sterilization of women has been characterized as a form of discrimination and violence against women. All forms of involuntary, coercive, and forced sterilization violate ethical principles, including respect for autonomy and physical integrity, beneficence, and maleficence.

Drawing on international human rights law, sterilization without full, free, and informed consent is discriminatory and in violation of several fundamental rights. All women have the right to the decision-making autonomy and information required to give full and informed consent to medical procedures, including sterilization, as mandated by CEDAW. The CEDAW Committee has articulated the link between involuntary sterilization and violation of human rights; noting that compulsory sterilization adversely affects women's physical and mental health, and infringes the right of women to decide the number and spacing of their children.[120] In its General Recommendation on Women's Health, the CEDAW Committee described access to good quality health services as those 'delivered in a way that ensures that a woman gives her full informed consent, respects her dignity, guarantees her confidentiality, and is sensitive to her needs and perspectives. State parties should not permit forms of coercion such as non-consensual sterilization that violate women's right to informed consent and dignity.[121] Also, CEDAW Committee characterizes compulsory sterilization as a form of violence against women, directing states to ensure that coerced sterilization does not occur;[122] noting that coerced sterilization has serious consequences for women and that decisions to have children or not must not be limited by spouse, parent, partner or Government.[123] In 2007, the CEDAW Committee issued a decision in the case of AS v Hungary[124], where a complaint was made against Hungary regarding a Roman woman who was sterilized without her consent. AS was rushed to the hospital while pregnant with heavy bleeding. At the hospital, the doctor

[116] Christina Zampas and Adiana Lamackova, "Forced and Coerced Sterilization of Women in Europe" (2011) 114:2 *International Journal of Gynaecology and Obstetrics*, 163-166
[117] Ibid
[118] Ibid
[119] Convention on the Elimination of All forms of Discrimination against Women, Article 16 1 (e)
[120] Committee on the Elimination of Discrimination Against Women. General Recommendation 19. Violence against Women, Article 16. Eleventh Session, 1992, para 22.
[121] Committee on the ELiminaton of Discrimination of Discrimination against Women. General Recommendation 24. Women and health Article 12. Twentieth Session, 1999, para 22
[122] Committee on the ELiminaton of Discrimination of Discrimination against Women. General Recommendation 19. Violence against Women. Article 16. Eleventh session, 1992, paras 1-5, 22, 24 (m)
[123] Committee on the Elimintion of Discriminaation Against Women. General Recommendation 21. Equality of Marriage and Family Relations. Thirteenth Session, 1994, para 22.
[124] Communication No. 4/2004.CEDAW/C/36/D/4/2004. 2006. Available at https://www.esr-net.org/sites/default/files/CEDAW_Committee_Decision_) pdf (hereinafter referred to as AS)

found that AS would need a cesarean section to remove her baby as the baby was dead. She signed a consent form while on the operating table for her cesarean section and for sterilization. The consent for sterilization was handwritten by the doctor. The statement contained a barely legible handwritten note containing the Latin word for sterilization. Before the sterilization was performed, AS was not provided with information about the nature of the sterilization, and its risks and consequences, nor was she provided with information about alternative methods of contraception. She only learned that she will not be able to get pregnant again after her sterilization. The State claimed that her signature was proof that she consented and that besides that fact, it was an emergency that did not require her consent because any potential future pregnancy could be harmful to her. The CEDAW committee did not accept the Hungarian States' arguments and found it in violation of CEDAW for its failure to protect AS's reproductive rights. The CEDAW Committee found that the coerced sterilization violated AS's right to health, among other rights. The CEDAW Committee found that AS had a right to specific information on sterilization and alternative procedures for family planning to guard against such an intervention being carried out without her having made a fully informed choice; and found that AS did not receive all the appropriate information in a way in which she could understand, and thus her informed consent was not obtained. AS was in a poor state of health when she arrived at the hospital and had to prepare for surgery, sign consent documents, and underwent two medical procedures and did not understand the Latin term for sterilization, which was what was used in the consent form and the consent form was handwritten and barely legible. The ruling specifically established the right to information and advice on family planning as seen in Article 10(h) and the right to appropriate services in connection with pregnancy, especially the requirement that informed consent be obtained prior to performing a sterilization procedure as seen in Article 16 (1)(e).[125] The Committee eventually found that the failure to provide AS with the necessary information for informed consent violated her rights, and called on Hungary to compensate AS financially for the violations that she suffered and made recommendations for Hungary to take several legal steps and policies to stop forced sterilization in Hungary; particularly ensuring that legislation on informed consent conforms to international human rights and medical standards, monitoring public and private health facilities to ensure that no sterilization procedures are carried out without the patient's informed and voluntary consent and raising awareness among health providers on the Convention and the CEDAW Committee's recommendations pertaining to women's access to health care services and information.[126] The Committee emphasized that compulsory sterilization negatively affects women's physical and mental health and violates their rights to reproductive autonomy. Women must be able to make informed decisions about contraceptive use and must have access to sexuality education and family planning services; they have the right to be fully informed of their options in agreeing to treatment, including potential benefits, adverse effects, and alternatives; and states should ensure access to good quality health care for women, delivered in a way that ensures informed consent, respects a woman's dignity and is sensitive to her needs and perspectives.[127]

The United Nations Human Rights Committee which monitors compliance with the International Covenant on Civil and Political Rights, has referred to the sterilization of women without their consent as a breach of the right to be free from torture and other inhuman and degrading treatment.[128] The Human Rights Committee acting under the International Covenant on Civil and Political Rights recognizes that female sterilization is the woman's choice only, not to be interfered with by her husband or government.[129] The UN Human Rights Committee referred to nonconsensual sterilization as an act of torture, and cruel, inhumane, and degrading treatment; and has condemned

[125] Convention on the Elimination of All Forms of Discrimination against Women, Articles 10 (h), 12, 16 (1) (e)

[126] A.S v Hungary. Committee on the Elimination of Discrimination against Women. Communication no. 4/2004. Thirty- sixth session, 2006, para 11.5

[127] Committee on the Elimination of Discrimination against Women. General Recommendation 19. Violence against Women. Article 16. Eleventh Session, 1992, para 22' Committee on the Elimination of Discrimination against Women, General Recommendation 21. Equality in marriage and family relations. Thirteenth Session, 1994, paras 21-23; Committee on the Elimination of Discrimination against Women. General Recommendation 24. Women and Health Article 12. Twentieth Session 1999, paras 20-23, 31 (b, c)

[128] Human Rights Committee. General Comment 28. The equality of rights between men and women Article 3 . 2000 para 11.

[129] Human Rights Committee. General Comment 28. The equality of rights between men and women Article 3 . 2000 para 20.

forced sterilization as a violation of the rights to health, bodily integrity, freedom from violence, freedom from torture, freedom from discrimination, and to decide the number and spacing of their children.

The right to health is guaranteed under the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The Committee on the Elimination of Racial Discrimination (CERD) observes that racial discrimination does not affect women and men equally or in the same way.[130] Article 23 (1) (b) of the United Nations Convention on the Rights of Persons with Disabilities expressly affirms the right of persons with disabilities to decide freely and responsibly on the number and spacing of their children, as well as their right to have access to age-appropriate information, reproductive and family planning education, and the means necessary to enable them to exercise these rights. The Childs Right Committee which monitors state compliance with the Convention on the Rights of the Child also expressed concern about the prevailing practice of forced sterilization among children with disabilities, especially girls with disabilities; and recognises this practice as a serious violation of the right of the child to her physical integrity and results in adverse physical and mental health effects; and urges the state to prohibit the practice of forced sterilization of children on grounds of disability.[131] The World Medical Association International Code of Medical Ethics stipulates that physicians shall always exercise their independent professional judgment and maintain the highest standards of professional conduct; respect a competent patient's right to accept or refuse treatment; not allow his or her judgment to be influenced by personal profit or unfair discrimination; and be dedicated to providing competent medical service in full professional and moral independence, with compassion and respect for human dignity.[132] Forced sterilization has been referred to as a misuse of medical expertise, and a clear violation of human rights. The World Medical Association calls on all physicians and health workers to urge their governments to prohibit this unacceptable practice.[133]

The International Federation of Gynaecology and Obstetrics guidelines on Female Contraceptive Sterilization states that only women themselves can give ethically valid consent to their own sterilization. Family members, including husbands, parents, legal guardians, medical practitioners, government, or other public officers, cannot consent on any woman's or girl's behalf. Women's consent to sterilization should not be made a condition to access medical care, or for any benefit such as medical insurance, social assistance, employment, or release from an institution. Consent to sterilization should not be requested when women may be vulnerable, such as when requesting termination of pregnancy, going into labour or in the aftermath of delivery.[134]

The UN Committee on Economic, Social and Cultural Rights in its 2016 General Comment No. 22 identified laws requiring sterilization for legal recognition of one's gender identity as a violation of State's obligation to respect the right to sexual and reproductive health.[135] The United Nations Human Rights Committee recognizes forced sterilization as a violation of the right to be free from torture, and cruel, inhuman, or degrading treatment or punishment and has requested that countries report on specific measures they have taken to combat the practice.[136] The Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly in 1948, enshrines the right to privacy, family, and protection against arbitrary interference with one's privacy, home, and correspondence (Article 12). Forced sterilization violates these fundamental rights.[137] The International Covenant on Civil and Political Rights

[130] Committee on the Elimination of Racial Discrimination. General Recommendation 25. Gender Related dimensions of racial discrimination. Fifty-Sixth session, 2000, para 1
[131] Committee on the Rights of the Child. General Comment 9. The Rights of Children with Disabilities. Forty third session, 2007, para 60.
[132] World Medical Association, World Medical Association International Code of Medical Ethics 2006
[133] World Medical Association,' Global Bodies Call for End to Forced Sterilization,' September 5, 2011, http://www.wma.net/en/40newss/20archives/2011/2011_17/index.html (retrieved September 29, 2011)
[134] International Federation of Gynecology and Obstetrics, Guidelines: 'Female Contraceptive Sterilization' (June 2011) para 7,8
[135] CESCR General comment No. 22 on the right to sexual and reproductive health. Article 12 of the International Covenant on Economic, Social and Cultural Rights
[136] Human Rights Committee, Equality of rights between men and women (article 3): 03/29/2000. See paragraphs11 and 20.
[137] United Nations. (1948). Universal Declaration of Human Rights.

(ICCPR), affirms the right to life, liberty, and security of the person (Article 6), as well as the right to be free from torture, cruel, inhuman, or degrading treatment or punishment (Article 7). Forced sterilization constitutes a violation of these rights.[138] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a comprehensive treaty addressing women's rights. It emphasizes equality, non-discrimination, and reproductive rights. Forced sterilization of women, particularly based on their gender or disability, violates the principles outlined in CEDAW.[139] The Convention on the Rights of Persons with Disabilities (CRPD) specifically addresses the rights of persons with disabilities and prohibits all forms of forced or coerced medical interventions, including forced sterilization, without free and informed consent. It recognizes the rights to bodily integrity, privacy, and autonomy for persons with disabilities.[140]

In recent years, forced sterilization has been increasingly addressed in the regional and universal human rights courts and monitoring bodies; especially as it affects vulnerable and marginalised groups. The African Commission on Human and Peoples' Rights in its General Comment No. 4[141] confirmed that forced sterilization is an act of sexual and gender-based violence that may amount to torture or inhuman treatment. The Commission reiterated the need for States to adopt measures of prevention, protection, and redress. The 2016 Committee for the Prevention of Torture in Africa called on states to provide legal guarantees for full, free, and informed decision making and the elimination of forced, coerced and otherwise involuntary sterilization, and review, amend and develop laws, regulations, and policies in this regard.[142]

In AP, Garcon and Nicot v France,[143] the European Court held that the French requirement that transgender persons undergo a sterilization procedure or other medical treatment before changing their gender identity on their birth certificates violates their rights to respect for private life.[144] In Soares de Melo v Portugal,[145] the European Court held that sterilization without informed consent is incompatible with respect for human freedom and dignity.[146]

5.0 Beyond the Human Rights Lens: Criminalization of Non-Consensual Sterilization in Canada

Although non-consensual sterilization clearly violates medical ethics and human rights, it is not explicitly illegal in Canada.[147] The Senate Committee wants the practice criminalized and punishable with up to 14 years imprisonment through Bill S-250 introduced by Senator Yvonne Boyer.[148] Bill S-250 considers the sterilization of persons without their consent as systemic discrimination, colonialization, and racism that disproportionately but not exclusively affects indigenous and racialized persons.[149] The Bill defines sterilization procedure as the severing, clipping, tying, or cauterizing, in whole or in part, of the Fallopian tubes, ovaries, or uterus of a person for the primary purpose of surgically preventing conception; or any other act performed by a person for the primary purpose of permanently preventing conception. The Bill proposes a punishment of imprisonment not exceeding 14 years for any person who performs non-consensual sterilization on a person and is found guilty. The medical practitioner is exonerated and

[138] United Nations. (1966). International Covenant on Civil and Political Rights.

[139] United Nations. (1979). Convention on the Elimination of All Forms of Discrimination Against Women.
[140] United Nations. (2006). Convention on the Rights of Persons with Disabilities.
[141] General Comment No. 4 2017. http://www.achpr.org/files/instruments/generl-comment-right-to-redress/achpr_general_comment_no._4_english.pdf?
[142] 2016 Intersession Activity Report. http://www.achpr.org/files/sessions/59th/inter-act-reps/265/59os_inter_session_report_comm_mute_eng.pdf?
[143] 79885/12 52471/1352596/13. https://hudoc.echr.coe.int/ent?i=001-172913
[144] Ibid
[145] 72850/14. https://hudoc.echr.coe.int/eng?i=001-160938
[146] Ibid
[147] Hon. Pierre Dalphond, Second Reading of Bill S-250, An Act to amend the Criminal Code (sterilization procedures). Available at https://theprogressives.ca/in-the-senate/speeches/second-reading-of-bill-s-250-an-act -to-amend-the-crinal-code- sterilization-procedures/
[148] CBC Radio, 'Incomprehnsible' that forced sterilization still happen in Canada, says survivor. July 19, 2022, available at https://www.google.com/amp/s/www.cbc.ca/amp/1.6524142
[149] The Preamble, Bill S-250, An Act to amend the Criminal Code (sterilization procedures) Available at https://www.parl.ca/DocumentViewer/en/44-1/bill/S-250/first-reading.

exempted from criminal liability if the sterilization procedure is performed with the consent of the person and has complied with the requirements. The Bill invalidates consent given by a person less than 18 years of age; as such person is incapable of consenting to the sterilization for any reason; or the person has not initiated a voluntary request to undergo a sterilization procedure. Bill 250 also proposed that before performing a sterilization procedure on a person, the medical practitioner must take all appropriate and reasonable measures to inform the person of alternative methods of contraception designed to prevent conception; and that they could at any time before undergoing sterilization procedure, withdraw their consent; and is satisfied that the person understands the information that is provided to them, taking into account any circumstances that may affect the person's capacity to understand the provided information; the person provided informed consent for the procedure; and the request to undergo a sterilization procedure was not made as a result of external pressure or someone abusing their position of trust, power or authority. The medical practitioner must also give the person the opportunity to withdraw their consent immediately before performing the sterilization procedure.[150] Anyone who by deceptive means, use of intimidation, threat, force, or any other form of coercion, causes or attempts to cause a person to undergo a sterilization procedure is guilty of an indictable offense and is liable to imprisonment to a term of not more than 14 years.[151]

Senator Pierre Dalphond also supports the addition of the assault provision of the Criminal Code a new indictable offense designed to prevent the forced or coerced sterilization of persons in Canada by exposing an offender to up to 14 years imprisonment.[152] He notes the argument that forced or coerced sterilization is already a crime in Canada under aggravated assault offenses; but notes that there has never been a charge of aggravated assault in relation to forced or coerced sterilization in Canada. Like the Human Rights Committee in its report 'The Scars that we Carry: Forced and Coerced Sterilization of Persons in Canada-Part II', released in July 2022, Senator Pierre Dalphond believes that the addition of a specific offense to the Criminal Code will be valuable in putting an end to non-consensual sterilization once and for all.[153] Criminalizing non-consensual sterilization in Canada will send a powerful message to society, including victims, police officers, Judges, Crown Attorneys, etc that forced or coerced sterilization can no longer be ignored by the criminal law system.; and will have a deterrent effect on medical practitioners. This will also be an implementation of the recommendations of the Human Rights Committee and the Council of Europe Convention on preventing and combating violence against women and domestic violence.[154] Article 39 of the Convention provides that states should ensure the criminalization of surgery to terminate a woman's capacity to reproduce without her prior and informed consent. Malta, Belgium, Italy, and France have already criminalized non-consensual sterilization.[155]

The UN Committee Against Torture has been examining reports of forced or coerced sterilization of Indigenous women in Canada dating back to the 1970s and including recent cases in Saskatchewan. The committee's report made recommendations to ensure that all allegations of forced or coerced sterilization are impartially investigated, that the persons responsible are held accountable and adequate redress provided to the victims; and for the adoption of legislative and policy measures to prevent and criminalize the forced or coerced involuntary sterilization of women.[156] The UN report also called for the criminalization of forced or coerced sterilization in Canada. The Senate human rights committee started studying the issue in 2019 and found that forced sterilization was still taking place in Canada; and indigenous people were not the only people affected, as black and racialized women, persons with disabilities, intersex people, and institutionalized persons were also disproportionately affected. The recommendation for the criminalization of the forced or coerced sterilization is among the senate report 'The Scars that We Carry. Forced or

[150] Ibid
[151] Ibid
[152] Hon. Pierre Dalphond, Second reading of Bill S-250, An Act to amend the Criminal Code (sterilization procedures). Available at https://theprogressives.ca/in-the-senate/speeches/second-reading-of-bill-s-250-an-act -to-amend-the-crinal-code-sterilization-procedures/
[153] Ibid
[154] Ibid
[155] Ibid
[156] Penny Smoke, "UN Committee recommends Canada criminalize involuntary sterilization." CBC News.available at https://www.cbc.ca/news/indigenous/un-committee-involuntary-sterilization-1.4936879

Coerced Sterilization of Persons in Canada'.[157] The Senate human rights committee has called on the federal government to outlaw forced or coerced sterilization and issue a formal apology to women who have been subjected to the practice. The United Nations Committee against Torture expressed concerns about reports of extensive forced or coerced sterilization of women and girls. In 2019, the Inter-American Commission on Human Rights and a United Nations Special Rapporteur called on Canada to take concrete action.

The Senate Human Rights Committee report states that some women and girls were manipulated or directly threatened, while others were sterilized without their knowledge; and cites a long history of the practice in Canada, including a strategy to subjugate and eliminate First Nations, Metis and Inuit peoples and has also disproportionately affected other vulnerable groups, including Black and racialized women and others with disabilities.[158] Mercredias a 14-year-old girl in her 7th month of pregnancy, had a C-section in a Saskatoon hospital. The surgeon performed a tubal ligation removing her left ovary and fallopian tube without her knowledge. She only found out about the procedure decades later, when she was in a relationship and wanted to have children.[159]

Senator Michele Audette who also sits on the Senate human rights committee states that the push for criminalization helps to raise the voice of survivors.[160] Justice Minister David Lametti also notes that his department will 'seriously consider' the senate committee's report recommendations in conjunction with Senator Boyer's Bill S-250 for the potential for law reform. Lawyer Alisa Lombard hopes that the federal government sees the sense in criminalizing the process, as she believes the fact of criminalizing the process will have a deterrent effect.[161] Lombard notes that there is no sign of doctors facing consequences for acts of forced or coerced sterilizations which could change if a specific criminal offense is created. She believes that if doctors know that they could potentially be subjected to criminal sanctions, it could change their behavior.[162] Senator Salma Ataullahjan notes that while existing Criminal Code offenses criminalizing assault could be used to prosecute forced sterilization, he states that the committee has not seen consequences for anyone engaging in the practice. [163]The criminalization of forced sterilization may help bring an end to the inhuman practice.

The Canadian federal government issued an apology in 2019 for the forced sterilization of Indigenous women and acknowledged the harm caused. Provincial governments, such as Alberta and Saskatchewan, have also issued apologies for their involvement in forced sterilizations. Class action lawsuits have been initiated by survivors of forced sterilization to seek justice, accountability, and compensation collectively. These lawsuits aim to hold responsible parties, including healthcare professionals, institutions, and governments, accountable for the violations. Various truth and reconciliation processes, like those conducted in response to other historical injustices, have been proposed or initiated to address forced sterilization in Canada. These processes aim to uncover the truth, facilitate healing, and promote reconciliation between survivors, communities, and the healthcare system. More efforts should be made to introduce legislative reforms to prevent future forced sterilizations and protect the reproductive rights and bodily autonomy of individuals. These reforms may involve strengthening informed consent requirements, establishing clearer guidelines and protocols, and implementing oversight mechanisms to ensure compliance. The criminalization

[157] Peter Zimonjic, "Senate Report Calls for Law Criminalizing Forced or Coerced Sterilization", July 14, 2022, CBC News. Available at https://www.cbc.ca/news/politics/senate-report-forced-coerced-sterilization-1.6520592

[158] CBC Radio, 'Incomprehnsible' that forced sterilization still happen in Canada, says survivor. July 19, 2022, available at https://www.google.com/amp/s/www.cbc.ca/amp/1.6524142

[159] CBC Radio, 'Incomprehnsible' that forced sterilization still happen in Canada, says survivor. July 19, 2022, available at https://www.google.com/amp/s/www.cbc.ca/amp/1.6524142

[160] CBC Radio, 'Incomprehnsible' that forced sterilization still happen in Canada, says survivor. July 19, 2022, available at https://www.google.com/amp/s/www.cbc.ca/amp/1.6524142

[161] CBC Radio, 'Incomprehnsible' that forced sterilization still happen in Canada, says survivor. July 19, 2022, available at https://www.google.com/amp/s/www.cbc.ca/amp/1.6524142

[162] Erika Ibrahim, "Forced, Coerced Sterilization Should be a Criminal Offence in Canada: Senate Report", July 14, 2022. Available at https://www.google.com/amps/s/globalnews.ca/news/8989251/senate-report-forced-sterilization/amp/

[163] Ibid.

of non-consensual sterilization as proposed by Bill S-250 will serve the objective of strengthening informed consent requirements and the establishment of clearer guidelines. The Bill

The Bill S-250 proposes an amendment to the criminal code, which acknowledgeses that the sterilization of persons without their consent is a legacy of systemic discrimination, colonization and racism that disproportionately, but not exclusively, affects indigenous and racialized persons.[164] It also described sterilization procedure as the severing, clipping, tying or cauterizing in whole or in part of the Fallopian tubes, ovaries or uterus of a person or any other procedure performed on a person that results in the permanent prevention of reproduction, regardless of whether the procedure is reversible through a subsequent surgical procedure.

The criminalization of forced sterilization is still an ongoing process in Canada, and the legal framework surrounding this issue is still evolving. The efforts to address forced sterilization in Canada demonstrate a commitment to human rights and the need for justice for those who have been harmed. Justice doesn't only mean apologizing and compensating the victims of non-consensual sterilization but also entails punishing the perpetrators of non-consensual sterilization in Canada. There is a need to move beyond apology, compensation, and human rights response to non-consensual sterilization to the criminalization of non-consensual sterilization. The criminalization of forced sterilization in Canada represents a critical step towards protecting reproductive autonomy, upholding human rights, and preventing future violations. Through legislative measures, including specific criminalization laws and comprehensive support for survivors, Canada can send a clear message that forced sterilization is an egregious violation of individual autonomy and dignity. By ensuring justice, Canada can work towards healing, prevention, and the creation of a society that respects and safeguards the reproductive rights of all individuals.

Conclusion

The dark history of eugenics and forced sterilization in Canada reveals the significant human rights violations committed and still being committed in the pursuit of an ill-conceived vision of genetic improvement. Non-consensual sterilization is a violation of the right to autonomy and informed consent. It is crucial to confront this, raise awareness, and work toward reconciliation and justice. By understanding the legal and ethical dimensions of these practices, society can ensure the protection of human rights and prevent the repetition of such atrocities. Forced and coerced sterilization left deep scars on the lives of those affected, especially marginalized communities, such as indigenous women. As a society, it is essential to confront this dark history, provide justice and support to survivors and ensure it is not repeated. By learning from the past, Canada can move forward on a path that upholds the principles of equality, inclusivity, and respect for human rights.[165] There is no doubt that non-consensual sterilization poses a challenge to the realization of women's human rights and has been severally condemned as a violation of rights. Despite the existing human rights provision, medical and ethical standards, and national laws and jurisprudence on ensuring informed decisions, forced sterilization persists, there is a need to move beyond human rights towards the criminalization of forced sterilization in Canada.

The lawsuits on forced sterilization in Canada represent a critical avenue for survivors to seek justice and hold accountable those responsible for the violations they endured. These legal actions shine a light on the magnitude of the issue and contribute to raising public awareness. While progress has been made, there are still significant challenges to overcome in the pursuit of justice and comprehensive redress. Continued efforts are necessary to support survivors, advocate for policy changes, and ensure that forced sterilization is never repeated, fostering a society that upholds human rights and individual autonomy. This paper advocates for a move beyond human rights remedy for forced or coerced sterilization, to the criminalization of non-consensual sterilization as a measure for righting the wrong and the elimination of non-consensual sterilization in Canada. While forced sterilization could fall under the category of assault in the Criminal Code, there is a need to codify forced or coerced sterilization as a crime in law through the passage of Bill S-250, which specifically makes provision for the criminalization of forced or coerced sterilization in Canada.

[164] Preamble Bill S-250
[165] Supra note 15.