

1998 BILL 26

Second Session, 24th Legislature, 47 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 26

INSTITUTIONAL CONFINEMENT AND SEXUAL
STERILIZATION COMPENSATION ACT

THE MINISTER OF JUSTICE AND ATTORNEY GENERAL

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

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INSTITUTIONAL CONFINEMENT AND SEXUAL STERILIZATION COMPENSATION ACT

(Assented to , 1998)

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Schedules

Preamble WHEREAS certain persons were resident in institutions in Alberta pursuant or purportedly pursuant to one or more Acts listed in Schedule 2; and

WHEREAS from 1927 to 1972 certain medical procedures were performed on persons in Alberta pursuant to or allegedly pursuant to a *Sexual Sterilization Act* listed in Schedule 2; and

WHEREAS persons have brought and may bring claims against Her Majesty the Queen in right of Alberta in respect of alleged confinement in those institutions and in respect of the performance of those medical procedures; and

WHEREAS the Government of Alberta desires to balance the interests of the persons bringing the claims and the interests of all Albertans by removing certain impediments to compensation and by implementing compensation principles to assist in resolving the claims in a fair and consistent manner;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “action” means an action against Her Majesty the Queen in right of Alberta in which the plaintiff claims any or all of the following, regardless of the nature of the cause of action and regardless of whether the plaintiff also claims damages in relation to other matters:
 - (i) damages in relation to a procedure listed in Schedule 1 that was authorized, directed or performed on the plaintiff pursuant to or purportedly pursuant to a *Sexual Sterilization Act* listed in Schedule 2;
 - (ii) damages arising out of the confinement of the plaintiff pursuant to or purportedly pursuant to an Act listed in Schedule 2, including damages, if any, in relation to any of the following matters, except damages for sexual assault committed against the plaintiff:
 - (A) the care, supervision of care or custody of the plaintiff;
 - (B) the plaintiff’s education;
 - (C) the administration of drugs or medication to the plaintiff;
 - (D) a tort committed against the plaintiff;
 - (E) any duty or obligation owed to the plaintiff;
 - (iii) damages for sexual assault committed against the plaintiff during the confinement of the plaintiff pursuant to or purportedly pursuant to an Act listed in Schedule 2;
- (b) “Her Majesty the Queen in right of Alberta” includes an employee or agent of, or a person under a contract or fee for service arrangement with, Her Majesty the Queen in right of Alberta;
- (c) “plaintiff” means the person who is alleged to have suffered loss, regardless of whether the action is brought in the person’s own name or in the name of another on that person’s behalf;

(d) “sexual assault” means an assault in the form of fellatio, cunnilingus, vaginal or anal intercourse or digital penetration.

Application **2** This Act applies to all actions, whether commenced before or after the coming into force of this Act, except actions in which final judgment was given before the coming into force of this Act.

Override of Charter **3** This Act operates notwithstanding

- (a) the provisions of sections 2 and 7 to 15 of the *Canadian Charter of Rights and Freedoms, Part 1, Constitution Act, 1982, Schedule B to the Canada Act, 1982, (U.K.) 1982 c11, and*
- (b) the *Alberta Bill of Rights*.

Limitation periods, defences **4(1)** A law that would, but for this section, prohibit the bringing of an action claiming damages referred to in section 1(a)(i), (ii) or (iii) by reason of the passage of time does not operate to prohibit the action if the action

- (a) was commenced before the coming into force of this Act, or
- (b) is commenced within 180 days after the coming into force of this Act.

(2) Notwithstanding any other law in force in Alberta, no action may be commenced after the 180-day period referred to in subsection (1)(b).

(3) Where, in the case of a claim for damages referred to in section 1(a)(iii), the individual defendant who is alleged to have committed the sexual assault would, but for subsection (1), have been able to successfully defend the claim, the court shall not make any of the following awards as against the individual defendant:

- (a) an award of damages referred to in section 1(a)(iii) that is in excess of \$150 000;
- (b) an award in respect of non-compensatory, punitive, exemplary or aggravated damages under section 5(3);
- (c) an award for pre-judgment interest under section 6(2).

(4) Subject to subsection (2) no defence against liability in respect of a claim referred to in section 1(a)(i) is available to Her Majesty the Queen in right of Alberta in an action.

Damages in an action

5(1) Where a court awards damages to a plaintiff in one or more actions,

- (a) the aggregate amount that is awarded for damages referred to in section 1(a)(i) must not be less than \$5000,
- (b) the aggregate amount that is awarded for all damages referred to in section 1(a)(i) and (ii) must not exceed \$150 000, and
- (c) the aggregate amount that is awarded for damages referred to in section 1(a)(iii) as against all defendants other than the individual defendant who is found by the court to have committed the sexual assault must not exceed \$150 000.

(2) Subject to subsection (3), a court shall not make any award in respect of non-compensatory, punitive, exemplary or aggravated damages in an action.

(3) In the case of a claim for damages referred to in section 1(a)(iii) a court may make an award referred to in subsection (2) in respect of the sexual assault but only as against the individual defendant who is found by the court to have committed the sexual assault.

Interest

6(1) Notwithstanding the *Judgment Interest Act* but subject to subsection (2), a court shall not make an award for pre-judgment interest in an action.

(2) Where a court awards damages referred to in section 1(a)(iii), the court may make an award for pre-judgment interest only as against the individual defendant who is found by the court to have committed the sexual assault.

Contribution and vicarious liability

7 Notwithstanding the *Contributory Negligence Act*, any law in respect of vicarious liability or any other law in force in Alberta, the other defendants in an action are not liable for the payment of

- (a) that part of an award of damages referred to in section 1(a)(iii) as against the individual defendant who is found by the court to have committed the sexual assault, that is in excess of \$150 000, or

- (b) any part of an award for non-compensatory, punitive, exemplary or aggravated damages or for pre-judgment interest made against the individual defendant referred to in clause (a).

Costs

8(1) A court shall not award costs on a solicitor and client basis in an action.

(2) Where in an action a court awards costs between parties, those costs must not exceed the amounts set out in the columns of Schedule C of the *Alberta Rules of Court*, depending on the amount involved, and without any multiplier.

SCHEDULE 1

Bilateral Hysterectomy
Bilateral Oophorectomy
Bilateral Orchidectomy
Bilateral Salpingectomy
Bilateral Salpingo-oophorectomy
Bilateral Salpingo-oophorectomy and Hysterectomy
Bilateral Tubal Ligation
Bilateral Vasectomy
Bilateral Vasectomy and Orchidectomy
Hysterectomy
Oophorectomy
Orchidectomy
Salpingectomy
Salpingo-oophorectomy
Testicular Biopsy
Unilateral Orchidectomy
Unilateral Salpingectomy
Unilateral Salpingectomy and Contralateral Salpingectomy
Unilateral Salpingectomy-oorphorectomy and Contralateral Oophorectomy
Unilateral Testicular Biopsy
Unilateral Vasectomy
Unilateral Vasectomy and Contralateral Epididymectomy
Unilateral Vasectomy and Contralateral Orchidectomy
Vasectomy
Any other procedure, however described, that involves the removal or alteration of a sexual reproductive organ or related tissue.

SCHEDULE 2

The Insanity Act, SA 1907 c7
The Insanity Act, RSA 1922 c223
The Mental Defectives Act, RSA 1942 c191

The Mental Defectives Act, RSA 1955 c199
The Mental Diseases Act, RSA 1942 c192
The Mental Diseases Act, RSA 1955 c200
The Mental Health Act, SA 1964 c54
The Mental Health Act, RSA 1970 c231
The Estates of the Mentally Incompetent Act, RSA 1942 c23
The Mentally Incapacitated Persons Act, RSA 1955 c201
The Mentally Incapacitated Persons Act, RSA 1970 c232
The Sexual Sterilization Act, SA 1928 c37
The Sexual Sterilization Act, RSA 1942 c194
The Sexual Sterilization Act, RSA 1955 c311
The Sexual Sterilization Act, RSA 1970 c341