

Indexed as
Muir v. Alberta

Muir v. The Queen in right of Alberta

132 D.L.R. (4th) 695
Court File No. 8903 20759 Edmonton

Alberta Court of Queen's Bench
Veit J.
January 25, 1996

Action for damages in respect of wrongful sterilization and wrongful confinement.

P.J. Faulds and S.M. Anderson, for plaintiff.
D.H. Lewis, W.C. Olthuis, R.F. Taylor and L. Neudorf, for defendant.

Veit J.:

Summary

[1] In 1959, the province wrongfully surgically sterilized Ms Muir and now acknowledges its obligation to pay damages to her. However, the province leaves to the court the determination of how much the province should pay. The sterilization was irreversible; the testimony of Ms Muir is supported by independent evidence and establishes that the physical and emotional damage inflicted by the operation was catastrophic for Ms Muir. This injury has haunted Ms Muir from the time she first learned what had been done, through to the time when she fully realized the implications of the surgery. Her suffering continues even today and will continue far into the future. The court orders the province to pay her the maximum amount of damages for pain and suffering resulting from the sterilization allowed by the law: \$250,280 as of September, 1995, adjusted to the date of issue of these reasons.

[2] The damage inflicted by the sterilization was aggravated by the associated and wrongful stigmatization of Ms Muir as a moron, a high-grade mental defective. This stigma has humiliated Ms Muir every day of her life, in her relations with her family and friends and with her employers and has marked her since she was admitted to the Provincial Training School for Mental Defectives on July 12, 1955, at the age of 10. Because of this humiliating categorization and treatment, the province will pay her an additional \$125,000 as aggravated damages.

[3] The circumstances of Ms Muir's sterilization were so high-

handed and so contemptuous of the statutory authority to effect sterilization, and were undertaken in an atmosphere that so little respected Ms Muir's human dignity that the community's, and the court's sense of decency is offended. Were there no other relevant factors, the court would order the province to pay punitive damages to Ms Muir, not by way of compensation to her for the harm inflicted on her, but rather as punishment to the province, of an additional \$250,000. However, in this case, there are two reasons why punitive damages are not imposed. First, a large award has been made for aggravated damages; by itself, this award will be costly to the defendant. Second, the province voluntarily gave up what would have been a complete defence to Ms Muir's action: Ms Muir did not start her action soon enough. Had the province used this defence -- called a limitations of action defence -- that would have put an end to Ms Muir's claim. The effect of choosing not to use this defence is more than equivalent to an apology -- it constitutes a real attempt to make things right. As a matter of policy, government apologies and initiatives of this sort to redress historical wrongs should be encouraged; punishing governments for their historical behaviour would have the opposite effect.

[4] Ms Muir was admitted to the defendant's Provincial Training School for Mental Defectives on July 12, 1955, at the age of 10. She left the school, without having been discharged, and against the advice of the school's administration, when she was nearly 21 years old, in March, 1965. The court finds that Ms Muir was improperly detained during this decade. The particular type of confinement of which Ms Muir was a victim resulted in many travesties to her young person: 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. The court awards her an additional \$250,000 for the damages connected with the detention, plus prejudgment interest from 1965 to the issuance of these reasons.

[5] Ms Muir claims additional aggravated damages of \$125,000 relating to the detention because of the failure of the government's agents to adhere to the statutory requirements concerning admission, the use of school trainees, including Ms Muir, as human guinea pigs for drug research, the connection between the sterilization and the detention, and other abuse conduct. These elements of aggravation have already been taken into account in awarding aggravated damages for the sterilization. No award is made for aggravated damages in relation to the confinement because this would be a duplication of the earlier award.

[6] Ms Muir also claims substantial damages because, during the

time she was detained at the Provincial Training School, the government failed to provide her with the education and training that she might otherwise have achieved. While Ms Muir did have the ability to reach more than a grade 5 education, she has failed to prove that she has been, and will be, in a worse employment position as a result of the intervention of the province than she would have been had she remained out of the institution. As such, no award is made under this heading.

Summary of award

(Because certain interest items have not yet been calculated, this summary is only an approximation of the total award.)

Wrongful sterilization	
Pain and suffering	\$250,280
Aggravated damages	\$125,000
Punitive damages	\$0
Wrongful confinement	
Pain and suffering	\$250,000
Interest thereon	\$115,500
Aggravated damages	\$0
Past and future	
loss of income	\$0
Total	\$740,780

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1. Background

(a) Facts

[7] Ms Muir was born in Calgary on July 15, 1944. Her mother, to whom I will refer in these reasons as Ms Scolah, was in the 36th week of her pregnancy.

[8] Ms Scolah was born in Poland and was a Roman Catholic. She was 14 when she married for the first time. She had married for a second time in 1942; her husband was one E.B.D. When Ms Muir was born, Ms Scolah was 20 years old. She already had given birth to three other children -- one of whom had died. She was to have one other child, approximately two years after Ms Muir was born.

[9] Ms Scolah's husband was away at war when Ms Muir was born. At the time, Ms Scolah was living with Mr. H.G. Scolah. In the application to have Ms Muir admitted to the Provincial Training School for Mental Defectives in 1953, Mr. Scolah is described as Ms Muir's father. He stated that he was 19 years old when Ms Muir was born. Whether or not Mr. Scolah was Ms Muir's biological father, he was certainly her psychological father -- he was the only father she ever knew. In November, 1964, when her husband died, Ms Scolah married Mr. Scolah. Mr. and Ms Scolah subsequently separated. Ms Scolah was alive when these proceedings were commenced, but she died before the trial. Mr. Scolah also died before the trial.

[10] Ms Scolah took Ms Muir to a provincial guidance clinic in October, 1951. Ms Muir was 7 years old at the time. Ms Scolah apparently gave Leilani's birth date as June 16, 1943. This is clearly wrong; it contradicts the evidence of the province's formal registration of birth: Document A001. Ms Scolah apparently gave Leilani's prematurity as seven months; this is also clearly wrong, as it contradicts the evidence of the province's formal registration of birth. Ms Scolah informed the guidance clinic that she had been a heavy drinker until 1949; by implication, this meant that she had been a heavy drinker during her pregnancy for Leilani. The staff of the guidance clinic at that time consisted of a family physician, a psychologist, a social worker, and a person referred to on the form as a psychiatrist; the evidence establishes that the person described as a psychiatrist, Dr. L.J. le Vann, although a medical doctor, never received full accreditation as a psychiatrist in England or in Canada.

[11] The family had been referred to the guidance clinic because Leilani "steals 3 or 4 lunches per day from school children". Although the school attended by Ms Muir, and name of Ms Muir's grade 1 teacher, were known to the guidance clinic, there is no information about any intellectual delays suffered by Ms Muir. Indeed, nothing is reported about unusual conduct by Ms Muir,

except her long-standing habit of stealing food.

...

[17] No psychometric testing of Ms Muir was done in 1953.

...

[20] On July 12, 1955, Ms Muir was admitted to the Provincial Training School for Mental Defectives at Red Deer. The only application form relating to her admission was the 1953 form; it was not updated. The form anticipates that a physician was to witness the signature of the person giving information, thereby confirming the information set out in the application; no physician signed the form. The form anticipates that psychometric examination of the person to be admitted has been undertaken; no testing of Ms Muir had been done.

[22] Ms Scorah, using Mr. Scorah's name, signed the following form on the day that Ms Muir was admitted to the school: "I am agreeable that sterilization be performed on my child Lellani Marie Scorah if this is deemed advisable by the Provincial Eugenics Board."

[23] The evidence establishes that Ms Muir would not have been admitted to the school if one of her parents had not signed this form. The ward admission record of Ms Muir's admission states:

Mental condition: Seems intelligent - moron
 Deformities or abnormalities: 3rd finger on both hands deformed
 Scars and their location: A number of very small scars on body, two scars on right knee, two scars on left knee, scar under chin
 Condition of clothing: rather shabby

[24] On December 15, 1955, Dr. le Vann wrote to the psychologist at the Provincial Guidance Clinic in Calgary to ask if a psychometric was ever done on Ms Muir. On December 20, 1955, that psychologist replied:

The above named child was referred to the Provincial Guidance Clinic on November 5, 1953. An appointment was made for November 23, 1953 but the appointment was not kept.

On November 27, 1953 (the psychiatrist attached to Holy Cross Hospital) phoned to inquire about the child as the parents had told him they had been to the Clinic. Dr. Hanley, (the psychiatrist) had seen the child in consultation at the Holy Cross Hospital. He was not sure of the diagnosis but thought that there was an emotional involvement rather than a primary mental deficiency. The family had taken Marie to the Red Deer Guidance Clinic but they were not seen as an appointment had not been made.

On December 19, 1955 upon inquiring, Dr. Hanley's office informed us that there had been no further contact with this girl.

To our knowledge there has never been a psychometric given this child.

(Emphasis added.)

[25] Despite receiving this information from the Calgary Guidance Clinic some six months after Ms Muir had been admitted to the Provincial Training School for Mental Defectives (P.T.S.), Dr. le Vann did not arrange for any follow-up to Dr. Hanley's report; there was no psychometric testing of Ms Muir; there was no investigation into the possible causes of emotional involvement; there was no other action taken.

[27] In June, 1956, an administrator at the school wrote to Mr. and Ms Scolah as follows:

I am enclosing a letter from your daughter Lellani who is a trainee at this School. It has been such a long time since Lellani heard from you that she has become most anxious and has not been able to do her best work at the School. She is beginning to feel you have forgotten her and that you won't be coming to see her. As I am sure this is not the case would you please advise the Medical Superintendent when you will be coming to visit Lellani and when you will be having her home for holidays this summer.

[28] Contact between Mr. and Ms Scolah and Ms Muir improved after this communication. Indeed, while she was a "trainee" at the Provincial Training School, Ms Muir left the school from time to time to be with her family. These visits varied in length -- from a weekend to a stay of several months' duration. In November, 1956, Ms Scolah wrote to Dr. le Vann to explain why Lellani had not yet returned to the Provincial Training School. That letter contained the following comments:

Now [Lellani] has a black eye. I was sawing wood with Harley when I threw the wood to the side of me and it struck her square in the face. She does not seem to understand to stay out of the way. Heaven only knows when she really will. I pray soon.

[29] On November 15, 1957, Ms Muir was finally given psychometric testing. She had begun to menstruate shortly before the test was administered. The test behaviour portion of the psychological

examination report indicates: "Lellani is a pretty, but immature looking child, who sucked her thumb constantly throughout testing." The general findings were: verbal I.Q. 70 (borderline), performance I.Q. 64 (defective); full scale I.Q. 64 (defective). The individual scores on the tests are not recorded. The following comment accompanied these results:

The Full Scale I.Q. of 64 places Lellani in the Defective Category. This level is considered accurate. Her top level of function would be only slightly higher.

The examination report concludes with this paragraph:

Analysis: Verbal abilities are slightly higher than those requiring visual motor co-ordination. There is comparatively little scatter on verbal scale. Her thinking is primarily concrete, although there is sporadic use of functional concepts. Her memory is fairly good; her judgment tends to be poor. She is quite observant: her score on this subtest being within the average range. Social anticipations are weak. Visual motor skills are average for her level of ability.

[30] A clinical record, also called a progress diary, was kept of Ms Muir's experiences at the school. Although there are many reference to her laziness and impudence, there are also remarks of the following type.

January 1956 (first note after admittance in July 1955)
Lellani is doing very well at school

January 1957
Lellani has completed work for Level II in reading and number work and because of her reading ability to get new words, she is reading with others in Level III in "Friends and Neighbours". Her number work is also up to Level III standard.

[31] In November, 1957, Ms Muir's case was brought to the attention of the Eugenics Board. The diagnosis made by Dr. le Vann was "Mental defective-moron". Under the heading "Personality, Social, Sex" there is the following entry: "Lellani has shown a definite interest in the opposite sex." Under the heading "Present condition", the report states, in part:

Lellani is young and needs considerably more training in self-control, good work habits and personal care habits before it is possible to consider discharge for her, and even then she will most likely need to be placed in an environment where she will receive strict supervision.

(Emphasis added.) Under the heading "Reason for sterilization",

this is the complete entry: "Danger of the transmission to the progeny of Mental Deficiency or Disability, also incapable of Intelligent parenthood."

[32] The Eugenics Board of Alberta, approved the sexual sterilization of Ms Muir on November 22, 1957. She was "passed clear" for a salpingectomy to be performed by one of a list of named surgeons; the term "passed clear" was used by the Eugenics Board to mean that no additional steps had to be performed -- obtaining consents or further psychometric testing -- before the actual sterilization could be done.

[33] The Provincial Training School for Mental Defectives was not proposing to discharge Ms Muir in 1957 (when the psychometric testing preparatory to sterilization was done and the approval of the Eugenics Board for the sterilization was given) or in 1959 (when the sterilization was actually performed). Indeed, when Ms Muir left the school in 1965, it was against the advice of the medical staff.

[34] The clinical record or progress diary entries for 1958 and 1959 are as follows:

January 1958

If she is in the mood, Lellani is a very good little worker, but she usually requires a good deal of supervision to get there to accomplish anything. Lellani works well and is making good progress in Level IV.

January 1959

Lellani is alert and is making good progress in Level V, but her working habits are rather untidy. She is usually well behaved in class.

[35] On January 18, 1959, the government sexually sterilized Ms Muir; a bilateral salpingectomy was performed by one of a list of named surgeons; a "routine appendectomy" was performed at the same time; Dr. le Vann assisted in the surgery. A pathology report was done on Ms Muir's right and left Fallopian tubes. The entire length of both her Fallopian tubes were removed; the extent of the operation resulted in Ms Muir's sterilization being irreversible. Her record contains no mention why both tubes were removed in entirety, instead of only a small section as was done in other cases. At the same time, an appendectomy was performed.

[42] As noted earlier, Dr. le Vann, who was the director of the Provincial Training School at the time in question was a medical doctor, but not a psychiatrist. He died before the action came on for trial. In 1950, he wrote an article for the American Journal of Mental Deficiency in which he made the following comments:

Indeed the picture of comparison between the normal child and the idiot might almost be a comparison between two separate species. On the one hand, the graceful, intelligently curious, active young homo sapiens, and on the other the gross, retarded, animalistic, early primate type individual. It is on this clinical basis that we find it difficult to associate schizophrenia as a regressive disease of the mind, if we may postulate a schizophrenic state in these idiot types. It is rather that the mind has acquired an archaic form of thinking, which in the adult is admixed with his cultural experiences and in the idiot shows itself uncomplicated and primitive with little distortion. We feel that this archaic type of thought is more extensive than has thus far been believed to be the case.

[43] In 1959, Dr. le Vann wrote an article on the use of trifluoperazine as a tranquillizing agent in mentally defective children. In it, he makes the following comments:

Although substantial numbers of children have responded adequately to chlorpromazine, perphenazine, promazine, reserpine, or other ataractic drugs, there remain significant numbers who have not. Because of this, we continue to screen new compounds for possible use at the training school: a preliminary report, describing the effects of trifluoperazine in 33 mentally defective children exhibiting behavioral disorders, has already appeared. The present report describes the results obtained in 17 patients from the original study and an additional 25 children with behavioral and/or convulsant disorders.

[44] Mr. Curr, a trial witness, who worked at the P.T.S., describes Dr. le Vann as a complex person. Mr. Curr was surprised to hear the description Dr. le Vann had made of the lower grade mental defectives in the 1950 article. Mr. Curr gave examples of what he considered to be Dr. le Vann's caring attitude for inmates at the P.T.S., even if inmates were of the idiot classification.

Ms Muir currently works part-time in a Bay cafeteria in Victoria; she is a member of a union and her hourly wage is approximately \$10.68 per hour. Because of the type of work she does in this cafeteria, she would not be expected to earn tips. Ms Muir lives independently, attends church occasionally, gardens, plays bingo, and enjoys needlework and reading.

[50] In the first 15 years following her departure from the P.T.S., Ms Muir underwent many surgical and investigative procedures in order to determine what had been done to her and if it could be reversed:

...

-- From 1971 to 1977, Dr. Faulkner was Ms Muir's family

physician. In September, 1975, Dr. Faulkner referred Ms Muir to a psychiatrist, Dr. E.M. McTavish, who wrote the following after his meeting with Ms Muir:

The problems [Ms Muir] complains of and wishes help for are pretty unhelpable. She complains that she has difficulty in accepting the fact that due to sterilization in her early teens she is unable to have children. I pointed out to her that this was a fact and had to be accepted. Her unhappiness in regard to it is understandable and in no sense pathological ... The damage done to her self image and to her reproductive capacity cannot be undone.

(b) Law

(i) Sexual sterilization legislation

[51] Section 4(1) of the Sexual Sterilization Act, R.S.A. 1955, c. 311, empowered a medical superintendent of a mental hospital to "cause a patient of a mental hospital whom it is proposed to discharge therefrom, to be examined by or in the presence of the Board" with a view to sterilization (emphasis added).

[52] Section 6 of the Sexual Sterilization Act established two grounds for sterilization, namely that procreation by the person under consideration:

6(1) ...

(a) would result in the transmission of any mental disability or deficiency to his progeny, or

(b) involves the risk of mental injury either to such person or his progeny,

(Emphasis added.)

...

(ii) Legislation for the confinement of mental defectives

[54] Section 5(1) of the Mental Defectives Act, R.S.A. 1955, c. 199, under the heading "Procedure Respecting Admission", provided that:

5(1) A person who desires to have a mentally defective person who is under his charge or control placed in an institution established for the purpose under this Act shall make application to the Superintendent, and if after due investigation and upon receipt of the prescribed forms properly completed the application is approved by the Superintendent, the mentally defective person may be admitted

by the Superintendent to the institution.

(iii) Overview of the law of damages

[55] This is a tort action; it must be distinguished, for example, from an action in contract. Before damages can be awarded, the court must find that a wrong has been done. The overriding objective in awarding damages in such a lawsuit is to compensate the injured person -- not to punish the wrongdoer. The objective of the court is to give the plaintiff financial compensation for the damage, loss or injury that she has suffered. A court can compensate for financial losses suffered, such as the loss of income or expenses of medical treatment, or expenses to repair a car. A court can also compensate for other types of losses such as physical pain and injury to feelings. The calculation of the latter kind of damage is difficult. Money is awarded not as direct compensation for what has been lost -- but as an attempt to provide what money can do -- make the real loss somewhat easier to bear. Sometimes, the wrongful action has, nevertheless, had some beneficial effects on the victim; credit must be given to the wrongdoer for any savings, for example, that the victim has achieved despite the wrongful action of the defendant.

[56] The court has the power to award damages under three headings: pain and suffering, aggravated damages and punitive damages.

(c) Procedure

[62] Because the events on which this lawsuit depends happened such a long time ago, the parties entered into an agreement about the use of documents at trial:

[63] This agreement between the parties reflects law and common sense: the documents were prepared contemporaneously with the events, well before the possibility of any legal action was considered. The documents are usually the best record of what transpired. In a few circumstances, the documents are suspect; those situations will be described more fully in the reasons.

[64] Although the defendant has tried to put all relevant documents before the court, it has been established that some of the Provincial Training School documents, stored in the sub-basement of the Michener Centre, were destroyed in a flood.

2. Witnesses

[65] The court makes the following assessments of the major witnesses.

(a) Ms L. Muir

[66] Ms Muir is not a reliable witness about the events of her childhood. This is demonstrated, among other evidence, by:

- the school attendance record which shows that, at least during one period of time during her early childhood, Ms Muir attended school regularly, rather than sporadically as she recalls;

- the evidence that suggests that she was at the Midnapore Convent for a much shorter period than she now recalls.

[67] More importantly, Ms Muir is not a reliable witness about events that occurred not long before she left the Provincial Training School. This is mainly demonstrated by the characterization as "bogus", by Ms Muir of letters that she obviously wrote. The evidence of the handwriting expert Peace, whose evidence I accept, concludes that certain letters were written by Ms Muir, even though Ms Muir does not now recall having written them. He also establishes that it was Ms Scolah, not Mr. Scolah, who filled out the application form for the P.T.S. and who wrote to Dr. le Vann.

[68] In addition, Ms Muir's recollection of her employment since she left the Provincial Training School and of her application for Canada Pension Plan benefits is not accurate.

[69] Therefore, Ms Muir's evidence about events in her childhood, and beyond, will usually only be relied on if there is independent evidence that substantially supports her testimony.

[70] There is independent evidence to support the following conclusions:

- Ms Muir had an abnormal number of scratches when she was admitted to the institution;

- Ms Muir had a very bad relationship with her mother;

- Ms Muir was denied food when she was with her family;

- Ms Muir was sterilized;

- Ms Muir's appendix was removed;

- while at P.T.S., Ms Muir was disciplined in a harsh and inappropriate way;

- while at P.T.S., Ms Muir was essentially confined;

-- while at P.T.S., Ms Muir was dealt with as if she were a mental defective;

-- Ms Muir was at no greater risk of having mentally defective children than anyone else in society;

-- nothing in the evidence suggests that Ms Muir was incapable of intelligent parenthood;

...

[94] In addition to the documentary support for his conclusions, Professor Robertson's assessment of the operations of the board is largely corroborated by the evidence of Dr. M. Thompson, a former board member and geneticist. Her evidence establishes that the powers of the board were used not in accordance with either scientific principles or legislative standards, but in support of social policy about who should be allowed to have children in Alberta. Her evidence also establishes that in most requests for sterilization that came before the board, the inmate would never be discharged, or it would be a very long time in the future before any discharge were contemplated.

[95] Professor Robertson's evidence establishes that, routinely from the 1930s on, the board frequently dealt with cases at the rate of 10 minutes per case or less. The members of the board had no information on the cases in advance of their meetings. This speed of dealing with irreversible decisions establishes that the board could not have taken the time to examine the cases in any meaningful way; it is obvious that the board relied almost entirely on the recommendation of the executive director of the institution, Dr. le Vann.

[96] Professor Robertson's evidence about the operations of the board is also largely confirmed and corroborated by the 1969 Blair Commission on Mental Health in Alberta. For example, Professor Robertson concluded that there were systemic biases in the operation of the board so that, for example, females more than males, and females from Eastern Europe and Catholics and later female natives were more likely to be sterilized. This conclusion is supported by the Blair Commission's conclusion:

Further, the sterilization of individuals with depressed I.Q. ratings attributable to emotional or delinquency or sub-cultural (e.g. Metis) factors which are capable of some degree of amelioration, is open to debate.

(Emphasis added.)

[97] His conclusion is also supported by other materials referred to in his opinion. It is obvious that much of the early eugenics

movement in Canada was based on a concern by those of British stock about the potential weakening of the race by immigrants. Many early Canadian socialists, such as J.S. Woodsworth, author of *Strangers within our Gates* and, when he moved to Manitoba, founder of the C.C.F. -- which subsequently became the N.D.P. -- were much in favour of maintaining racial purity in Canada by eugenic interference with the reproduction of East Europeans. Tommy Douglas originally espoused eugenic philosophy; probably frightened by what he saw in Germany in 1936, he later turned away from eugenics. In 1944, to his great credit, as Saskatchewan's Minister of Health, he firmly rejected two reports recommending the sterilization of the feeble-minded. In Alberta also, there was great concern in some quarters about the potential negative effects of immigration; this is one of the grounds on which three of the "Famous Five" -- Emily Murphy, Ms O.O. Edwards, and Ms L.C. McKinney -- approved the sexual sterilization legislation which was, sadly, to have negative effects on so many women.

[98] The immigration concern which resulted in a systemic bias against those men and women from "sub-cultural" backgrounds is a factor in this case: Ms Scolah was born in Poland and was Roman Catholic.

[99] Mr. Curr's evidence also supports Professor Robertson's opinions. He testified that one of the things that the caregivers were told when a child was admitted was what religion the child was. Also, on the issue of the difference in the treatment of males and females, Mr. Curr testified that at Linden House -- the model school on the P.T.S. grounds where the best of the government's resources were concentrated, boys outnumbered girls 5 to 1.

[100] Professor Robertson's report also establishes that while there was considerable support in Alberta in 1928 for government-sponsored sexual sterilization, even then support was not unanimous. In March, 1928, for example, a Liberal politician asked what would happen if anyone suffered physical impairment as a result of a sterilization and if the board would be liable for damages or prosecution as a result of its decisions.

...

[112] [Dr. Thompson's] evidence conclusively establishes that the Eugenics Board did not meet the standards imposed on it by the legislation. She acknowledges that the board could not -- in Ms Muir's or in many other cases -- be certain that any defect of the trainee would be passed on to the trainee's offspring. Dr. Thompson testified that the board unilaterally modified the standard passed by the Legislature of Alberta; in her opinion,

the legislature had set a standard that was unreasonably tough -- too high to meet. Two illustrations fairly represent Dr. Thompson's approach to the sterilization determinations.

[113] Dr. Thompson was a member of the board that approved the sterilization of a boy who had a tested IQ of 76. Persons with an IQ of 70 or more were considered to be of normal intelligence. This particular boy's level of IQ rating was achieved despite a severe hearing defect; being deaf could be assumed to have had a negative impact on the education that he would have required to have done well on the verbal IQ testing. The P.T.S. report commented that this boy had no interest in the opposite sex, but that he masturbated. The report added that he required little supervision in social hygiene. It was said that he was a poor worker. Dr. Thompson was asked why she approved the sterilization of this boy. She replied that social success is a factor to be taken into account in a sterilization decision. When the school reported that he was a poor worker, she concluded that despite all the information that he was a nice quiet boy, he was not really functioning in society. She said that she was being protective of him when she decided to have him sterilized.

[114] Dr. Thompson was asked why she approved the sterilization of a male mongol child when it had been known for decades that male mongols were unlikely to reproduce. She replied that there was nothing lost by sterilizing the male mongol; she thought everyone would agree with her approach. She thought that sterilization would "make assurance doubly sure".

[115] Dr. Thompson's approach to the issue of who should be sterilized and why the legislation could be ignored is representative of the way in which the board operated.

...

[121] I do not accept Dr. Thompson's evidence that any interest of the trainee in trainees of the opposite sex was not a factor that was taken into account in determining if a sterilization was to be performed; it is disingenuous of her to advance that opinion. Information about interest in the opposite sex was a component of the limited information provided to members of the board. Dr. Thompson never arranged for the removal of that information. It seems clear from her evidence that persons who were brought before her were unlikely to be discharged; one can only conclude, therefore, that the sterilization was done primarily to control sexual activity in the institution rather than for any of the purposes set out in the legislation. As early as 1932, we find the following letter, written by the commissioner of mental institutions in this province to the medical superintendent of the Brandon Medical Hospital:

With respect to mental defective girls it is important to remember that, while one may take chances with a girl released

from strict supervision, she still does require supervision if there are sex propensities. It is, I think, correct to say however that the only ones we have had trouble with in this respect have shown very marked tendencies to sexual delinquency before operation, but undoubtedly supervision of a general character after the operation and discharge is advisable.

[123] From the beginning to the end of its operations, concerns about sexual tendencies of the "inmates" of the P.T.S. were at the forefront of the administrators' attentions.

[124] I do not accept Dr. Thompson's evidence concerning the discussions that she had with Dr. le Vann regarding the taking of testicular tissue from vasectomized or castrated trainees: Both she and Dr. le Vann were conducting studies of "male mongols", males with Down's syndrome. She gave Dr. le Vann detailed instructions about how to take samples of the tissue that resulted from the sterilization. In all the circumstances, this constituted encouragement to Dr. le Vann to use the trainees as medical guinea pigs. This is all the more repugnant because, from the 1940s on, Dr. Thompson and the board knew, as did all those involved in genetics, that male "mongols" are infertile: their sterilization was unnecessary.

[125] Dr. Thompson's evidence demonstrates that the operations of the board, initiated on a purported scientific rationale, degenerated into unscientific practices. The decisions of the board were not made according to the standards imposed on them by the legislation, but because the members of the board, like Dr. Thompson, thought that it was socially appropriate to control reproduction of "these people".

[126] I do not accept Dr. Thompson's evidence that care was taken by the board in deciding the fate of each individual trainee brought before it. Irreversible decisions were obviously made on the flimsiest of evidence -- without any true scientific investigation of the eugenics situation of each trainee. Dr. Thompson testified that most of the people who came before the board could not read, write or count and could not dress or feed themselves. The board's and the school's own records amply refute such assertions. Minimal investigation would have disclosed the abilities of the trainees who were presented for sterilization.

3. Damages for sterilization

[147] The evidence establishes that the government acted in a high-handed way when it ignored its own legislation and sterilized her before she was ready to be discharged. If the

government had followed its own legislation, Ms Muir would never have been sterilized because she was never ready for discharge.

[148] Moreover, the evidence establishes that the conduct of the government in labelling Ms Muir a mental defective was high-handed and oppressive. The evidence proves beyond a doubt that the government did not follow its own legislation, practices and procedures when it labelled Ms Muir a moron. It ignored advice from an expert that Ms Muir's problems were emotional, not mental; it ignored the services of social workers and psychologists who might have assisted in obtaining information about Ms Muir's background; it failed to require compliance with the minimum safeguards which it had established -- signature by a physician attesting to the validity of admission information -- and psychometric testing. Before admitting her to an institution where she would be sterilized and stigmatized, the government acknowledged that it had obtained only cursory information. This was not an emergency situation; there were alternatives that were available including foster homes and group homes.

-- because the government's own standards for sterilization were ignored in Ms Muir's case, the conduct of the government was more than negligent, it was intentional. The sterilization became an assault and battery;

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-- the board not only authorized sexual sterilizations, and tolerated routine but medically unnecessary appendectomies, but also routinely authorized non-medically necessary processes such as biopsies of testicular tissue. In some cases, the board directed a vasectomy only, but partial castration by unilateral orchidectomy was carried out. In some cases, the board authorized the hysterectomy or oophorectomy (removal of the ovaries) in order to eliminate menstruation in females; according to the language of one typical case, the female trainees were "difficult to handle and to keep clean during menstrual periods". These operations were also ordered where female trainees masturbated or had lesbian tendencies.

[153] The defendant's actions were unlawful, offensive and outrageous. Punitive damages in the amount of \$250,000 suggested by Ms Muir would certainly have been ordered had it not been for the fact that the government allowed Ms Muir to bring this action. It could have put an end to her claim; her claim was made too late, and the government could have used this delay as a complete answer to all of Ms Muir's claims. This deliberate abandonment of a complete defence is in the nature of an apology. Indeed, it is more than an apology: it is an amendment -- a real effort to make things right. As a matter of public policy, this and other governments should be encouraged to recognize historical wrongs and to make fair amends for them. They should

not be punished for doing so.

[154] I note also that the government recognized, in 1972, when it abolished the Sexual Sterilization Act that the former policy of government in this area was wrong.

[167] Ms Muir lived at the residential school for almost a decade. Her evidence on the conditions in which she lived is largely corroborated by Mr. Curr. The main incidents of this detention are:

-- loss of privacy: as merely one example of the intrusive nature of the detention, Ms Muir's menstrual cycles were the subject of extensive record-keeping. Also, Ms Muir's correspondence from the school, and the correspondence to her, was monitored and regulated by the institution;

-- loss of liberty: as merely one example of the regulation of conduct while she was detained, is the evidence that she had to have permission from the school authorities to go to different parts of the institution, such as helping in the laundry room or to help those inmates who were bedridden. Ms Muir testified that she was not allowed to leave the school premises (except for authorized home visits) until, at age 18 or so, she was sent out by the school as daily household labour in residences chosen by the school. Mr Curr's evidence on this point is especially telling because he is obviously very well disposed to Dr. le Vann; none the less, Mr. Curr gave evidence of what was really happening at the Provincial Training School on the issue of detention rather than what the reports were touting as an "open" atmosphere. Moreover, the school determined which visitors Ms Muir could have; when a Mrs. Hepner, for example, offered to take Ms Muir during a Christmas vacation, the school would not allow the visit to take place;

-- imposition of institutional discipline: as merely one example of the extreme form of discipline imposed by the institution is the fact that, for punishment, Ms Muir was made to diaper adult "inmates" who had lost control of their bowel functions, and she was made to eat mush with a spoon. She was sent to wards with strait-jacketed inmates where she scrubbed floors, did other similar work, slept in a small cement room, with a rubber mattress and ate out of a tin bowl;

-- administration of drugs to control behaviour: many anti-psychotic drugs were administered to Ms Muir despite the fact that she was not psychotic. Indeed, it appears from his publications in professional journals that Dr. le Vann used Ms Muir and others as a means of testing the success of different

drug treatments.

Thus, the evidence clearly shows that the government is liable for Ms Muir's confinement.

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