



Court File No. **VLC-S-S-231251**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LORRAINE DAVIS and
STEPHANIE ROY

PLAINTIFFS

AND:

HIS MAJESTY THE KING
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT

NOTICE OF CIVIL CLAIM

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

A. Overview

1. The term “coerced sterilization” means the practice of sterilizing a person in the absence of that person’s free, full and informed consent. Coerced sterilization is a form of sexual assault.
2. The coerced sterilization of Indigenous women in Canada began in the early 1920s. Many victims of coerced sterilization were women in labour or women who had just given birth.
3. Prior to 1973, coerced sterilization was expressly sanctioned in British Columbia under the *Sexual Sterilization Act*, SBC 1933, c 59 (the “***Sexual Sterilization Act***”). Although the *Sexual Sterilization Act* was repealed in 1973 after forty years in force, the coerced sterilization of Indigenous women in British Columbia continued.
4. The defendant, His Majesty the King in Right of the Province of British Columbia (the “**Province**”), was complicit in creating an atmosphere of institutional and systemic racism in provincially-funded and regulated hospitals throughout British Columbia. Coerced sterilization was implicitly and explicitly condoned, encouraged, authorized and performed by the Province and/or its agents, servants or employees. The Province wilfully and knowingly failed to address the widespread practice of coerced sterilization of Indigenous women in British Columbia.
5. In addition, the Province wilfully and knowingly failed to address a related — but distinct — practice of subjecting Indigenous women in British Columbia to coerced abortions.
6. As a result of the Province’s acts and omissions, Indigenous women who were subject to coerced sterilization and/or coerced abortion (together “**Coerced Sterilization and Abortion**”) in British Columbia have suffered, *inter alia*, physical, emotional, spiritual, mental and psychological harm. The practice of Coerced Sterilization and Abortion has deprived Indigenous women of fundamental choices guaranteed to all Canadians with respect to reproductive capacity. The practice has had a traumatic and destructive effect on the health, family, relationships and culture of Indigenous women — and Indigenous communities — in British Columbia.
7. Coerced Sterilization and Abortion involving Indigenous women was, and remains, a form of sexism and genocide — a practice directed at eradicating Indigenous people and their cultures.

8. The plaintiffs bring this claim on their own behalf, and on behalf of class members (as described and defined below), to seek justice and compensation for the harms suffered as a result of the Province's breach of Indigenous women's trust, dignity, bodily autonomy, and reproductive and cultural rights.

9. The Province is liable to the plaintiffs and other class members for breach of its fiduciary duty, common law duties of care, and obligations under the *Canadian Charter of Rights and Freedom* (the "**Charter**"), being Part 1 of the *Constitution Act, 1982*, Schedule B to the *Canada Act, 1992* (UK), 1982, c 11 (the "**Constitution Act**").

10. The Province owed a non-delegable duty to the plaintiffs and other class members as Indigenous women. The Province is also vicariously liable to the plaintiffs and other class members for sexual assault perpetrated on them by agents of the Province.

B. The Representative Plaintiffs

Lorraine Davis

11. The plaintiff, Lorraine Davis, is a First Nations woman, a status Indian within the meaning of the *Indian Act*, RSC 1985, c I-5, and an Aboriginal Person within the meaning of s 35 of the *Constitution Act*. She is a member of the Penticton Indian Band and lives in Campbell River, British Columbia.

12. Ms. Davis was born on September 8, 1961.

13. In 1983, Ms. Davis was 21 years old and pregnant with her second son.

14. On September 20, 1983, Ms. Davis was scheduled to deliver her child by cesarian section at Campbell River Hospital.

15. Moments before her surgery was set to begin, Ms. Davis was presented with paperwork authorizing a "tubal ligation". She signed the papers not knowing what she was signing — and having received no prior explanation or medical advice about sterilization.

16. There was no valid medical reason for the procedure. Ms. Davis was not informed of the effects or the permanence of the procedure, and was not given information on aftercare, side effects or counselling. She was not provided with options for alternative forms of birth control. Nor was

Ms. Davis' husband given any information or advice concerning the procedure. In short, the subject of sterilization was not discussed with Ms. Davis or her husband at all.

17. Following the delivery of her child, several weeks passed before Ms. Davis began to realize and remember what had happened. She suffered from severe post-partum depression.

18. When she and her husband later wished to have another child — to try for a daughter — they were unable to do so because Ms. Davis had been sterilized.

19. Ms. Davis is now in her 60s and continues to feel pain, anger and trauma because of her coerced sterilization. Ms. Davis has been untrusting of doctors because of her experience at the age of 21. Thinking about the daughter she might have had, she feels an enormous sense of loss and guilt — for herself, her husband and her family.

20. Ms. Davis has directly suffered the consequences of the Province's *Charter* violations, negligence, and breach of fiduciary duty, as particularized herein.

Stephanie Roy

21. The plaintiff, Stephanie Roy, is a First Nations woman, a status Indian within the meaning of the *Indian Act* and an Aboriginal Person within the meaning of s 35 of the *Constitution Act*. She is a member of the Wet'suwet'en Nation and lives in Chilliwack, British Columbia.

22. Ms. Roy was born on March 10, 1982.

23. In about 1998 or 1999, Ms. Roy was a teenager and pregnant with her first child.

24. In relation to that pregnancy, Ms. Roy was scheduled to undergo an abortion at Vernon Jubilee Hospital. At the time, she felt pressured to undergo the abortion at the behest of her boyfriend, his mother, and the hospital's attending doctor. Ms. Roy was not given information about the procedure, and was not given information on aftercare, side effects or counselling.

25. Immediately before the abortion procedure began, Ms. Roy advised the medical professionals present that she did not want to have the abortion; she told them that she had changed her mind and did not want to proceed with it. Her advisement — and pleas to not go ahead with the abortion — went unheeded by the nurses and doctor; one of these medical professionals said to Ms. Davis, "it's too late" and "you already signed the papers". Still crying and repeating "no",

Ms. Davis was then held down by the medical staff and had a mask put on her face, rendering her unconscious. When she woke up, her baby was gone.

26. Ms. Roy is now 40 years old. She continues to feel loss and trauma because of her coerced abortion. She suffers from depression and anxiety.

27. Like Ms. Davis, Ms. Roy has directly suffered the consequences of the Province's *Charter* violations, negligence, and breach of fiduciary duty, as particularized herein.

C. The Class Members

28. The plaintiffs bring this action on behalf of all Indigenous women who:

- a. were sterilized in a hospital in British Columbia at any time between August 1, 1974 and the present (the "**Class Period**"), where that sterilization was undertaken without their free, full and informed consent; or
- b. underwent an abortion in a hospital in British Columbia at any time during the Class Period, where that abortion was performed on their bodies without their free, full and informed consent

(together, the "**Class**"; and each, a "**Class Member**").

29. The Class includes all Status Indian, non-status Indian, Inuit and Métis women who qualify as a Class Member, as described above.

D. Health Services in British Columbia

30. At all material times, the Province has enjoyed jurisdiction, authority and control over the provision of health services in British Columbia.

31. The delivery of health care services is provided by the Province through six provincial health authorities: (i) five regional health authorities established pursuant to the *Health Authorities Act*, RSBC 1996, c 180; and (ii) one provincial health society established under the *Societies Act*, SBC 2016, c 18. With the exception of certain denominational hospitals, acute care hospitals are owned and operated by regional health authorities.

32. All institutions designated by the Province as a “hospital” in British Columbia must meet certain requirements as prescribed by the *Hospital Act*, RSBC 1996, c 200 (the “**Hospital Act**”). Under s 2(2) of the *Hospital Act*, the constitution and bylaws or rules of a hospital, including medical staff bylaws, are not effective until approved by the Minister of Health.

33. Certain female reproductive rights are also a matter of provincial legislation and regulation. Under s 24.1 of the *Hospital Act*, each hospital listed in a schedule to that legislation “must provide the facilities and services, and be operated and maintained, as necessary to allow a qualified person to receive abortion services at that hospital”; the Lieutenant Governor in Council may, by regulation, amend that schedule to add any hospital in British Columbia.

E. Coerced Sterilization in British Columbia

34. As noted above, the *Sexual Sterilization Act* was in force in British Columbia between 1933 and 1973. Recommendations for sterilization were made to and accepted by the Eugenics Board (the “**Board**”), a tribunal constituted under the *Sexual Sterilization Act*, and the surgical procedures for sterilization were then carried out by order of the Board.

35. Many Indigenous women were subject to coerced sterilization by order of the Board.

36. Despite the repeal of the *Sexual Sterilization Act* in 1973, the coerced sterilization of Indigenous women in British Columbia has continued over the past five decades.

37. Ms. Davis’ experience of coerced sterilization is just one example of many nearly identical experiences of Indigenous women in hospitals in British Columbia.

38. Compared to non-Indigenous women, an egregiously disproportionate number of Indigenous women in British Columbia have been subjected to coerced sterilization.

39. The Province knew, or ought to have known, that coerced sterilization was being performed on Indigenous women at staggering rates at hospitals in British Columbia.

40. The Province authorized, permitted, and carried out — or was willfully blind to — the coerced sterilization of Class Members.

41. Full particulars concerning the practice of coerced sterilization, the composition of the Class, and the effects of the coerced sterilization on Class Members are within the knowledge, control and possession of the Province.

F. Coerced Abortion in British Columbia

42. Likewise, the Province knew, or ought to have known, that coerced abortions were being performed on Indigenous women at hospitals in British Columbia. The Province authorized, permitted, and carried out — or was willfully blind to — the coerced abortion of Class Members.

43. Non-Indigenous women in British Columbia have not been subjected to coerced abortions. Alternatively, as compared to non-Indigenous women, an egregiously disproportionate number of Indigenous women in British Columbia have been subjected to coerced abortions.

44. Full particulars concerning the practice of coerced abortion in British Columbia, the composition of the Class, and the effects of the coerced abortion on Class Members are within the knowledge, control and possession of the Province.

Part 2: RELIEF SOUGHT

45. The plaintiffs claim as follows on their own behalf, and on behalf of the Class Members:
- a. an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the Class;
 - b. a declaration that the Province is vicariously liable for the sexual assault and battery described herein;
 - c. a declaration that the Province breached its fiduciary duty to the plaintiffs and the Class by reason of the events described herein;
 - d. a declaration that the Province breached its common law duty of care to the plaintiffs and the Class by reason of the events described herein;
 - e. a declaration that the Province breached Class Members' rights under ss 7, 12 and 15 of the *Charter*;
 - f. general damages;

- g. *Charter* damages;
- h. special damages;
- i. punitive damages;
- j. damages equal to the costs of administering notice and the plan of distribution;
- k. pre-judgment and post-judgment interest;
- l. costs; and
- m. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

A. United Nations Declaration on the Rights of Indigenous Peoples

46. The Province owes duties to Indigenous peoples, including duties to act in accordance with Canada's national and international commitments aimed at the protection of Indigenous women.

47. As well, the Province owes express duties to Indigenous peoples under the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 (the "***Declaration Act***"), which ratifies the United Nations Declaration on the Rights of Indigenous Peoples as law in British Columbia, including the following Articles:

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

B. Sexual Assault and Battery

48. The plaintiffs plead and rely on the tort of sexual assault and battery. The Coerced Sterilization and Abortion that they and other Class Members experienced at the hands of medical professionals in hospitals during the Class Period was of a sexual nature, intentional and lacking free, full and informed consent.

49. Further, on their own behalf and on behalf of other Class Members, the plaintiffs plead and rely on s 3 of the *Limitation Act*, SBC 2012, c 13, which exempts from application of a limitation period any claims “relating to sexual assault, whether or not the claimant’s right to bring the court proceeding was at any time governed by a limitation period”.

50. The Province is vicariously liable for acts of the medical professionals and hospitals who performed the Coerced Sterilization and Abortion. The plaintiffs plead and rely on s 2 of the *Crown Proceeding Act*, RSBC 1996, c 89.

51. A relationship of sufficient proximity exists between the Province and the Class Members, and the risk of harm to the Class arising from Coerced Sterilization and Abortion was reasonably foreseeable.

C. Breach of Fiduciary Duty

52. The Province is in a fiduciary relationship with Indigenous peoples in British Columbia.

53. The Province’s constitutional obligations, in conjunction with the Honour of the Crown and the *Declaration Act*, bestow discretionary control requiring the Province to take steps to monitor, influence, safeguard, secure and otherwise protect the interests of vulnerable Indigenous women in British Columbia.

54. There is an express and implied undertaking by the Province to protect the best interests of Indigenous peoples — including the Class Members — in British Columbia at all times.

55. As pleaded above, the Province knew, or ought to have known, that Coerced Sterilization and Abortion was being performed on Indigenous women at hospitals in British Columbia, and the Province authorized, permitted, and carried out — or was willfully blind to — that Coerced Sterilization and Abortion. This was in breach of the Province's fiduciary duty owed to the Class.

56. Further, during the Class Period, the Province breached its fiduciary duty owed to Class Members by certain acts or omissions, including but not limited to:

- a. failing to ensure that provincially-regulated hospitals in British Columbia were not carrying out a program of Coerced Sterilization and Abortion and/or sexual assault and battery;
- b. failing to investigate the disproportionately high number of Indigenous women who underwent sterilization and abortions in British Columbia;
- c. failing to provide adequate — or any — remedial training to medical professionals in British Columbia following the repeal of the *Sexual Sterilization Act*, such that medical professionals operating in hospitals in British Columbia continued to operate as though that legislation had not been repealed;
- d. carelessly, recklessly, blindly or deliberately accepting — or promoting — a policy of Coerced Sterilization and Abortion towards Indigenous women in British Columbia; and
- e. continuing to fund hospitals in British Columbia — and the coerced sterilization and coerced abortion procedures carried out therein — despite knowing that Coerced Sterilization and Abortion was ongoing against Indigenous women in British Columbia.

57. These actions and omissions of the Province were actions and omissions of fundamental disloyalty, betrayal and dishonesty towards the plaintiffs and other Class Members.

D. Breach of a Common Law Duty of Care

58. The Province also owed a common law duty of care to all Class Members given the special relationship that exists between the Province and Indigenous peoples and, given their relationship of proximity, it was reasonably foreseeable that the Province's failure to protect Class Members from Coerced Sterilization and Abortion would cause harm to Class Members.

59. At all material times, the Province funded, owned, operated, managed and/or regulated the hospitals in British Columbia where Coerced Sterilization and Abortion was carried out.

60. As stated above, the Province knew, or ought to have known, that Coerced Sterilization and Abortion was being performed on Indigenous women at hospitals in British Columbia, and the Province authorized, permitted, and carried out — or was willfully blind to — the coerced sterilization and/or coerced abortion of Class Members. This was in breach of the Province's common law duty of care to Class Members. The Province's breach of the *Declaration Act* is also evidence of its breach of its common law duty.

61. Further, during the Class Period, the Province breached its common law duty of care to Class Members by certain acts or omissions, including but not limited to:

- a. failing to ensure that provincially-regulated hospitals in British Columbia were not carrying out a program of Coerced Sterilization and Abortion and/or sexual assault and battery;
- b. failing to investigate the disproportionately high number of Indigenous women who underwent sterilization and abortions in British Columbia;
- c. failing to provide adequate — or any — remedial training to medical professionals in British Columbia following the repeal of the *Sexual Sterilization Act*, such that medical professionals operating in hospitals in British Columbia continued to operate as though that legislation had not been repealed;
- d. carelessly, recklessly, blindly or deliberately accepting — or promoting — a policy of Coerced Sterilization and Abortion towards Indigenous women in British Columbia; and

- e. continuing to fund hospitals in British Columbia — and the coerced sterilization and coerced abortion procedures carried out therein — despite knowing that Coerced Sterilization and Abortion was ongoing against Indigenous women in British Columbia.

62. Through these acts and omissions, the Province breached its common law duty of care to the plaintiffs and other Class Members.

E. Breach of *Charter* Rights

63. Section 7 of the *Charter* provides that “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”. The right to security of the person includes a woman’s right to informed consent in making decisions regarding her own body and reproduction, and includes freedom from the threat of psychological and spiritual suffering.

64. The Province’s actions resulted in a risk to Class Members’ life, liberty, and security of the person, which was grossly disproportionate and arbitrary and discriminatory — and therefore contrary to the interests of fundamental justice.

65. Section 12 of the *Charter* provides that “[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment”.

66. The Province’s carelessness, recklessness, acceptance and/or promotion of Coerced Sterilization and Abortion as against the Class Members, as set out in the whole of this claim, was a direct violation of Indigenous women’s rights to life, liberty and security of the person under s 7 of the *Charter*, and a direct violation of their right to be free from cruel and unusual treatment or punishment under s 12 of the *Charter*.

67. All acts of Coerced Sterilization and Abortion perpetrated on Class Members or after April 17, 1982 were a violation of Class Members’ ss 7 and 12 *Charter* rights.

68. Further, the Province’s careless, reckless, blind or deliberate acceptance, or promotion, of a policy of Coerced Sterilization and Abortion among Indigenous women in British Columbia, as set out in the whole of this claim, violated Class Members’ s 15 *Charter* rights to equal treatment without discrimination.

69. Section 15 of the *Charter* provides that “[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”.

70. Indigenous women in British Columbia were treated differently than their non-Indigenous counterparts. And they were treated differently by the Province and/or its agents because of their race, national or ethnic origin, colour or religion.

71. All acts of Coerced Sterilization and Abortion perpetrated on Class Members on or after April 17, 1985 were a violation of Class Members’ s 15 *Charter* rights.

72. None of these *Charter* violations are saved by s 1 of the *Charter*. Those violations were either not “prescribed by law”, such that s 1 of the *Charter* has no application in the circumstances, or the Province’s infringements of ss 7, 12 and 15 of the *Charter* were not reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society.

F. Damages

73. As a consequence of the sexual assault and battery, breach of fiduciary duty, breach of common law duty and *Charter* violations pleaded herein, Class Members — including the plaintiffs — suffered injury and damages, including but not limited to:

- a. loss of reproductive rights and the ability to have children;
- b. physical injury and physical abuse, pain and suffering;
- c. mental, emotional, psychological, sexual and spiritual abuse, pain and suffering;
- d. deprivation of Indigenous cultures, customs, traditions, language and spirituality;
- e. deprivation of Indigenous identity;
- f. deprivation of family and familial relations;
- g. deprivation of an ability to pass on one’s culture and identity to one’s children;
- h. loss of self-esteem and self-worth;
- i. social dysfunction and alienation from family, spouses and children;

- j. impaired capacity for employment and income earning; and
- k. the need for counselling, psychological, psychiatric and/or other medical treatment as a result of the above.

G. Charter Damages

74. Considering the seriousness of the Province's misconduct, as set out in the whole of this claim, and the impact of the Province's breaches on the plaintiffs and other Class Members, damages under s 24 of the *Charter* are just and appropriate. Damages would, in these circumstances, compensate the plaintiffs and other Class Members for their losses, vindicate their rights, and deter future violations of these rights by the Province and other state actors.

H. Punitive Damages

75. As set out in detail in this claim, the Province's conduct throughout the Class Period was systemic, oppressive and high-handed, and showed a marked departure from the ordinary standards of decent behaviour.

76. The Province had specific and complete knowledge of the widespread practice of Coerced Sterilization and Abortion against Indigenous women in British Columbia during the Class Period. Despite that knowledge, the Province proceeded to carry out and condone acts of Coerced Sterilization and Abortion — or failed to intervene — and its conduct, and the conduct of its servants and agents, was irresponsible and indifferent to the harm, suffering and violation of Class Members' *Charter* rights, reproductive rights, bodily autonomy and Indigenous identity.

77. The Province's conduct was planned and deliberate. It lasted for decades and furthered the Province's policy of cultural genocide and of culturally assimilating Indigenous peoples into non-Indigenous British Columbian society. The Province's conduct merits punishment.

78. An award of punitive damages in this case is necessary to achieve the goals of general and specific deterrence.

79. This warrants an award of punitive damages against the Province.

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Place of trial:

Vancouver, BC

The address of the registry is:

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Date: February 22, 2023



Signature of Angela Bessflug

plaintiffs lawyer for the plaintiffs

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action concerns the coerced sterilization and coerced abortion of Indigenous women in British Columbia.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Enactments relied on:

Canadian Charter of Rights and Freedom, being Part 1 of the *Constitution Act, 1982*, Schedule B to the *Canada Act, 1992* (UK), 1982, c 11

Class Proceedings Act, RSBC 1996, c 50

Crown Proceeding Act, RSBC 1996, c 89

Declaration on the Rights of Indigenous Peoples Act, SBC 2019, c 44

Health Authorities Act, RSBC 1996, c 180

Hospital Act, RSBC 1996, c 200

Indian Act, RSC 1985, c I-5

Limitation Act, SBC 2012, c 13

Sexual Sterilization Act, SBC 1933, c 59