

Government of Alberta News Release

FOR RELEASE: Tuesday, March 10, 1998

Institutional Confinement & Sexual Sterilization Compensation Act Introduced

EDMONTON--The *Institutional Confinement & Sexual Sterilization Compensation Act* was introduced in the Alberta Legislature today by Justice Minister Jon Havelock. The legislation sets parameters for the amount and type of damages that a person may receive in compensation for sterilization under the *Sexual Sterilization Act* and wrongful confinement in Alberta provincial institutions from the late 1920s to the early 1970s. The Act also eliminates certain legal defences such as time limitations that were available to the government of Alberta with regard to these claims.

"We've thought about this matter thoroughly and carefully and have tried our best to find a fair solution to what is a very complex, agonizing situation," stated Havelock. "We have considered the interests of those who are bringing claims for wrongful confinement and wrongful sterilization. The purpose of this legislation is to balance those interests with the interests of all citizens of Alberta and to promote effective and reasonable resolutions of these claims."

"We believe settling these matters as soon as we can with reason and fairness will eliminate further anxiety for those involved in these claims," said Havelock. "Our lawyers will begin settlement discussions in accordance with the terms of this legislation, so that we can provide appropriate compensation to claimants as soon as possible."

"On behalf of the government of Alberta, I want to express our profound regret to those who have suffered as a result of being sterilized under the *Sexual Sterilization Act*. With this legislation in place we'll be able to move forward to resolve these claims and bring this matter to a close."

Background information is attached.

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Background Information

- In 1928, the United Farmers of Alberta Government passed the *Sexual Sterilization Act*. The *Sexual Sterilization Act* (the "Act") was designed to allow for the sterilization of mentally disabled people to prevent those individuals from passing mental disabilities to their children.
- The *Act* reflected the accepted social thinking of the day respecting genetics and the mentally challenged. The *Act* was supported by many prominent doctors and social activists in Alberta.
- The *Act* remained in force in Alberta throughout the era of Social Credit Government. Similar legislation existed in British Columbia, about half of the U.S. states, and a number of European countries.

- In 1972, recognizing that the medical and social goals of the original legislation were no longer supported by science or social thought, the newly elected P.C. Government, as one of its first acts, repealed the *Act*.
- In 1996, Leilani Muir successfully sued the Province of Alberta claiming that she had been wrongfully sterilized, under the *Act*, and wrongfully confined. She was awarded approximately \$1,000,000 in damages, interest and costs.
- Since Ms. Muir's award, approximately 700 individuals have filed claims against the Province of Alberta alleging that they were wrongfully sterilized or wrongfully confined in provincial institutions. Many individuals are seeking damages similar to what Ms. Muir was awarded.
- Approximately 500 of the actions are being taken by the court appointed limited trustee as the plaintiffs are unable to commence an action in their own right.
- The Province is defending all these claims.
- To streamline the litigation process, a representative sample of 23 individuals has been selected to proceed to a trial. The representative trial is targeted to begin on January 12, 1999, and is expected to last a year or more.

SPEAKING NOTES FOR THE HONOURABLE JON HAVELOCK

INTRODUCTION

- TODAY THE GOVERNMENT INTRODUCED THE *INSTITUTIONAL CONFINEMENT & SEXUAL STERILIZATION COMPENSATION ACT*.
- THIS LEGISLATION IS DESIGNED TO BALANCE THE INTERESTS OF THE OVER 700 CLAIMANTS WHO HAVE COMMENCED ACTIONS AGAINST THE PROVINCE OF ALBERTA IN RESPECT OF ALLEGED WRONGFUL INSTITUTIONAL CONFINEMENT AND WRONGFUL SEXUAL STERILIZATION WITH THE INTERESTS OF ALL ALBERTANS.
- OUR PURPOSE IS TO PROMOTE THE EFFECTIVE AND REASONABLE RESOLUTION OF THE CLAIMS.
- THE LEGISLATION ACHIEVES SUCH BALANCE BY PROVIDING FOR THE FOLLOWING:
 - ELIMINATING CERTAIN DEFENCES TO THE CLAIMS;
 - GUARANTEEING DAMAGES TO THOSE WHO WERE WRONGFULLY STERILIZED; AND
 - PLACING REASONABLE LIMITS ON THE AMOUNTS AND TYPES OF DAMAGES THAT CAN BE AWARDED TO THE CLAIMANTS.

HISTORY AND OVERVIEW OF OLD SEXUAL STERILIZATION ACT

- BY WAY OF BACKGROUND, IN 1928 THE ALBERTA GOVERNMENT PASSED THE *SEXUAL STERILIZATION ACT*.
- THIS LEGISLATION WAS DESIGNED TO ALLOW FOR THE STERILIZATION OF MENTALLY DISABLED PEOPLE TO PREVENT SUCH INDIVIDUALS FROM PASSING MENTAL DISABILITIES ON TO THEIR CHILDREN.
- THE LEGISLATION REFLECTED THE ACCEPTED MEDICAL AND SOCIAL THINKING OF THE DAY RESPECTING GENETICS AND THE MENTALLY CHALLENGED. IN FACT, MANY PROMINENT ALBERTA DOCTORS AND SOCIAL ACTIVISTS SUPPORTED THE

LEGISLATION, AS WAS THE CASE IN OTHER CANADIAN, U.S. AND EUROPEAN JURISDICTIONS.

- ALBERTA FOLLOWED WHAT WAS THEN THE WIDELY REGARDED AND SEEN TO BE PROGRESSIVE VIEWS ON THIS TOPIC PREVALENT IN THE WESTERN WORLD.
- NEVERTHELESS, RECOGNIZING THAT THE MEDICAL AND SOCIAL GOALS OF THE ORIGINAL LEGISLATION WERE NO LONGER SUPPORTED BY SCIENCE OR SOCIAL THOUGHT, THE NEWLY ELECTED PC GOVERNMENT OF 1972, AS ONE OF ITS FIRST ACTS, REPEALED THE *SEXUAL STERILIZATION ACT*.

EXPRESSION OF REGRET

- DURING THE FOUR DECADES BETWEEN 1928 AND 1972, AN ESTIMATED 2700 INDIVIDUALS WERE STERILIZED PURSUANT TO THE *SEXUAL STERILIZATION ACT*.
- TO THOSE WHO WERE WRONGFULLY STERILIZED, I ON BEHALF OF THE GOVERNMENT AND ALL ALBERTANS, EXPRESS MY PROFOUND REGRET. WE ARE ACCEPTING OUR RESPONSIBILITY TO YOU TO FAIRLY ADDRESS THIS ISSUE IN A MANNER THAT EQUITABLY BALANCES YOUR INTERESTS WITH THOSE OF ALL THE CITIZENS OF ALBERTA.

THE ELEMENTS OF THE *INSTITUTIONAL CONFINEMENT AND SEXUAL STERILIZATION COMPENSATION ACT*

- I WILL NOW BRIEFLY REVIEW THE PRINCIPAL ELEMENTS OF THE ACT.

SECTIONS 1 AND 2 - APPLICABLE CLAIMS

- SECTIONS 1 AND 2 DESCRIBE THE CLAIMS TO WHICH THE *ACT* APPLIES, BEING EVERY COURT ACTION COMMENCED AGAINST THE PROVINCE OF ALBERTA OR PROVINCIAL EMPLOYEES, AGENTS OR CONTRACTORS IN WHICH DAMAGES ARE CLAIMED IN RELATION TO STERILIZATION PROCEDURES PERFORMED UNDER THE *SEXUAL STERILIZATION ACT*, OR IN WHICH DAMAGES ARE CLAIMED ARISING OUT OF INSTITUTIONAL CONFINEMENT PURSUANT TO PREVIOUS MENTAL HEALTH LEGISLATION.
- IN THE 700 CLAIMS WHICH HAVE BEEN BROUGHT, THE CLAIMANTS SEEK DAMAGES IN RELATION TO THEIR CONFINEMENT IN PROVINCIAL INSTITUTIONS AND MAKE A NUMBER OF DIFFERENT ALLEGATIONS, INCLUDING INAPPROPRIATE CARE, INADEQUATE EDUCATION AND THE IMPROPER ADMINISTRATION OF DRUGS.
- THE PROPOSED LEGISLATION COVERS ALL CLAIMS AND ALLEGATIONS WHICH ARE RAISED WITH RESPECT TO THE TREATMENT OF THE CLAIMANTS WHILE CONFINED IN THESE INSTITUTIONS.
- AND IT DOES NOT APPLY RETROACTIVELY, SO THE JUDGMENT ALREADY RECEIVED BY LEILANI MUIR IS NOT AFFECTED BY THE LEGISLATION. THE *ACT* APPLIES ONLY TO THOSE CLAIMS FOR WHICH FINAL JUDGMENT HAS NOT YET BEEN GIVEN.

SECTION 4 - DEFENCES WAIVED BY THE PROVINCE

- SECTION 4 OF THE *ACT* ELIMINATES CERTAIN LEGAL DEFENCES OTHERWISE AVAILABLE TO THE PROVINCE OF ALBERTA IN RESPECT OF THESE CLAIMS.
- THE GOVERNMENT BELIEVES THAT OUR RESPONSIBILITY TO BALANCE THE

INTERESTS OF THE CLAIMANTS WITH THE INTERESTS OF THE CITIZENS OF ALBERTA, AND TO PROVIDE A FAIR LEVEL OF COMPENSATION FOR DISADVANTAGED INDIVIDUALS WHO WERE WRONGFULLY CONFINED AND WRONGFULLY STERILIZED, REQUIRES THE WAIVER OF ALL LIMITATION DEFENCES WHICH IT MIGHT OTHERWISE HAVE AVAILABLE TO IT.

- FOR THE SAME REASON, SECTION 4 ALSO ELIMINATES ANY OTHER DEFENCE WHICH WOULD OTHERWISE HAVE BEEN AVAILABLE TO THE GOVERNMENT WITH RESPECT TO STERILIZATION CLAIMS.
- HOWEVER, THE GOVERNMENT REJECTS ANY SUGGESTION THAT THE CARE RECEIVED BY THESE CLAIMANTS WAS ANYTHING OTHER THAN EXEMPLARY, AND ACCORDINGLY, OTHER THAN THE LIMITATION DEFENCE, THE LEGISLATION DOES NOT ELIMINATE ANY OTHER DEFENCES AVAILABLE TO THE GOVERNMENT IN RESPECT OF CLAIMS ARISING FROM CONFINEMENT, INCLUDING SEXUAL ASSAULT, IN THESE INSTITUTIONS.

SECTION 4 - 180 DAY PERIOD TO FILE NEW CLAIMS

- SECTION 4 OF THE PROPOSED LEGISLATION ALSO PROVIDES THAT ANY NEW CLAIM AGAINST THE PROVINCE OF ALBERTA WITH RESPECT TO THESE MATTERS MUST BE COMMENCED WITHIN 180 DAYS AFTER THE DATE THAT THE *ACT* COMES INTO FORCE.
- THIS 180 DAY WINDOW FOR BRINGING CLAIMS IS BEING ESTABLISHED SO THAT AFTER ALL THESE YEARS SOME CLOSURE MAY FINALLY BE BROUGHT TO THESE MATTERS.

SECTION 5 - MINIMUM AND MAXIMUM DAMAGE LIMITS

- SECTION 5 OF THE *ACT* ESTABLISHES MINIMUM AND MAXIMUM LIMITS FOR THE AMOUNTS OF DAMAGES THAT CAN BE AWARDED FOR THESE CLAIMS, INCLUDING:
 - A MINIMUM AWARD FOR DAMAGES FOR STERILIZATION OF \$5000;
 - A MAXIMUM CAP OF \$150,000 FOR STERILIZATION AND FOR DAMAGES ARISING OUT OF CONFINEMENT IN PROVINCIAL INSTITUTIONS; AND
 - A MAXIMUM CAP OF \$150,000 IN RESPECT OF ALLEGATIONS OF SEXUAL ASSAULT OCCURRING WITHIN THESE INSTITUTIONS, IF SUCH ALLEGATIONS ARE PROVEN.
- EACH OF THE 700 CASES WILL HAVE TO BE DETERMINED ON THEIR OWN FACTS. SOME CLAIMANTS MAY BE FOUND TO BE ENTITLED TO THE FULL \$150,000, WHILE OTHERS WILL BE ENTITLED TO SIGNIFICANTLY LESS.
- WE BELIEVE THAT THE MINIMUM AND MAXIMUM AMOUNTS, COMBINED WITH THE WAIVER OF DEFENCES BY THE GOVERNMENT, WILL ENSURE THAT ALL CLAIMANTS WILL BE REASONABLY COMPENSATED FOR THEIR CLAIMS, WHILE BALANCING THE CLAIMANTS' INTERESTS WITH THE INTERESTS OF ALBERTA CITIZENS TODAY.

SECTION 5 - PROHIBITION ON PUNITIVE DAMAGES

- SECTION 5 ALSO LIMITS THE TYPES OF DAMAGES THAT CAN BE AWARDED IN RESPECT OF THESE CLAIMS.
- A COURT WILL BE PROHIBITED FROM MAKING ANY AWARD IN RESPECT OF PUNITIVE AND RELATED DAMAGES.

- THE GOAL OF THIS LEGISLATION IS TO MAKE FAIR AMENDS FOR PAST EVENTS; JUSTICE FOR THESE CLAIMANTS REQUIRES FAIR COMPENSATION. IT DOES NOT HOWEVER REQUIRE TODAY'S CITIZENS BE PUNISHED BY AWARDS OF PUNITIVE OR OTHER DAMAGES FOR HISTORIC EVENTS.

SECTIONS 6 AND 8 - LIMITING INTEREST AND COSTS

- SECTIONS 6 AND 8 RESPECTIVELY PREVENT THE COURT FROM AWARDING INTEREST TO CLAIMANTS ON DAMAGES AND LIMITS THE AMOUNT OF LEGAL COSTS WHICH CAN BE AWARDED AGAINST THE PROVINCE.

SEXUAL ASSAULT CLAIMS LEGISLATION DOES NOT PROTECT PERPETRATORS

- AND AS I MENTIONED EARLIER, THE PROPOSED LEGISLATION APPLIES TO COURT ACTIONS AGAINST THE PROVINCE OF ALBERTA CLAIMING DAMAGES IN RESPECT OF ALLEGATIONS OF SEXUAL ASSAULT OCCURRING AT CERTAIN MENTAL HEALTH INSTITUTIONS.
- OF THE 700 CLAIMS WHICH HAVE BEEN FILED, A VERY LIMITED NUMBER ALLEGE THAT INCIDENTS OF SEXUAL ASSAULT OCCURRED AT THESE INSTITUTIONS.
- THE GOVERNMENT HAS NO DESIRE TO SHIELD PERPETRATORS OF SEXUAL ASSAULT FROM ANY LEGAL CONSEQUENCES OF THEIR ACTIONS.
- ACCORDINGLY, THE \$150,000 CAP ON DAMAGES FOR SEXUAL ASSAULT PROVIDED IN THE LEGISLATION DOES NOT APPLY TO AN INDIVIDUAL WHO IS FOUND BY THE COURT TO HAVE COMMITTED SUCH AN OFFENCE.
- THUS, THE COURT MAY AWARD PUNITIVE AND RELATED DAMAGES, PLUS INTEREST THEREON, AGAINST THE PERPETRATOR OF A SEXUAL ASSAULT IF IT CHOOSES TO DO SO.

OVERRIDE OF THE *CHARTER* AND *ALBERTA BILL OF RIGHTS*

- FINALLY, SECTION 3 OF THE *ACT* PROVIDES THAT THE PROPOSED LEGISLATION OPERATES NOTWITHSTANDING THE PROVISIONS OF SECTIONS 2 AND 7 TO 15 OF THE *CHARTER OF RIGHTS AND FREEDOMS* AND THE *ALBERTA BILL OF RIGHTS*.
- THIS IS BECAUSE THE GOVERNMENT BELIEVES IT IS IMPORTANT THAT THESE HISTORICAL CLAIMS BE SETTLED EXPEDITIOUSLY WITHOUT REQUIRING A PROLONGED CONSTITUTIONAL DEBATE OVER THE LEGISLATION, WITH THE ASSOCIATED TIME AND EXPENSE.

SUMMARY COMMENTS ON LEGISLATION

- TO CONCLUDE, THE GOVERNMENT BELIEVES THAT THIS LEGISLATION IS AN APPROPRIATE RESPONSE TO WHAT IS ADMITTEDLY A VERY DIFFICULT SITUATION.
- IT EQUITABLY BALANCES THE GOVERNMENT'S RESPONSIBILITIES TO THOSE WHO WERE STERILIZED OR CONFINED WITH OUR RESPONSIBILITIES TO THE CITIZENS OF ALBERTA TODAY.
- IT WILL ALSO HELP TO PROMOTE SETTLEMENT OF THESE CLAIMS, AND TO RESOLVE THE SAME IN A MORE TIMELY AND COST EFFECTIVE MANNER.
- IN THAT REGARD, I WILL BE INSTRUCTING TODAY THE LAWYERS FOR THE GOVERNMENT OF ALBERTA TO BEGIN SETTLEMENT DISCUSSIONS IN ACCORDANCE

WITH THE TERMS OF THIS LEGISLATION.

- THANK YOU FOR YOUR ATTENTION. RECOGNIZING THAT THESE CLAIMS ARE BEFORE THE COURTS, I WILL ATTEMPT TO ANSWER ANY QUESTIONS YOU MAY HAVE SUBJECT TO SUCH CONSTRAINT.

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