



Forced or Coerced Sterilization of Indigenous Women

By Myrna El Fakhry Tuttle

Opinion

The practice of forced or coerced sterilization of Indigenous women in Canada was supposed to have ended in the early 1970s. However, until today, we still read about Indigenous women who were sterilized against their consent in recent years.

Forced sterilization occurs when a person is sterilized without their knowledge or informed consent. Coerced sterilization is when people give their consent for the procedure, but on the basis of incorrect information or other coercive tactics such as intimidation or that conditions are attached to sterilization, such as financial incentives or access to health services. See: "[Gender Equality: Forced or Coerced Sterilization of Indigenous Women and Girls](#) at p 1".

Sterilization should only be provided with the full, free and informed consent of the individual. However, in some countries, people belonging to certain population groups, including people living with HIV, persons with disabilities, Indigenous

peoples and ethnic minorities, and transgender and intersex persons, continue to be sterilized without their full, free and informed consent. Other individuals may also be at risk of coercive sterilization, such as persons with substance dependence. While both men and women are subject to such practices, women and girls continue to be disproportionately impacted. See: "[Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement](#) at p 1" [An interagency statement].

Canada's history of sterilization emerges from the eugenics movement. Eugenics (Greek eu-good, well; Greek gen-genesis, creation), a term proposed by Francis Galton, was defined as "the science of improving the inherited stock, not only by judicious matings, but by all other influences..." See: "[Greek theories on eugenics](#)".

Eugenics is a set of beliefs and practices aimed at improving the human population through controlled breeding. It includes

"negative" eugenics (discouraging or limiting the procreation of people considered to have undesirable characteristics and genes) and "positive" eugenics (encouraging the procreation of people considered to have desirable characteristics and genes). The goal of "negative" eugenics was pursued through several different methods aimed at limiting the capacity and opportunity for procreation, including sexual sterilization, marriage prohibition, segregation and institutionalization. See: "[The Canadian Encyclopedia: Eugenics in Canada](#)" [The Canadian Encyclopedia].

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Staff and Volunteers

We have been busy these past few months. We had three students with us who recently completed their partial articles with us: **Temitope Oluleye**, **Rowan Hickie**, and **Élyane Lacasse**. **Grace Ajele** from Calgary Legal Guidance completed an articling secondment. Best to you all! **Pamela Dos Ramos** and **Brenda Johnston** continue to work exciting part of the Anti-racism project called ArtShare. We have two summer legal research students: **Arfa Saeed** and **Sahani Samarappuli**. Welcome! We are fortunate to have been working with excellent volunteers over the last few months—including **Hasiya Kontagora**, **Calista Nwangene**, **Bety Tesfay**, and others. *Thanks! - Linda McKay-Panos*

Events



ACLRC Presentation on ArtShare Program. Far Right to Left: Teacher Kirsten Riebot, Prof. Erin Spring, ACLRC’s Brenda Johnston and Pamela Dos Ramos, Cheryle Chagnon-Greyeyes.



ACLRC Staff and Articling Student: Left to Right: Summer Students Sahani Samarappuli, Arfa Saeed, Articling student Grace Ajele, Sharnjeet Kaur and Myrna El Fakhry Tuttle.



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Freedom of Expression at Canadian Universities: A difficult compromise?

By Linda McKay-Panos

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Recently, Ontario's Premier Doug Ford passed a new policy that Ontario universities should adopt free-speech policies, or face receiving less money from the Government. The policies must meet "a minimum standard prescribed by government." This means that "while members of the university/college are free to criticize and contest views expressed on campus, they may not obstruct or interfere with the freedom of others to express their views". Universities must report on their progress in implementing the policy to the Higher Education Quality Council of Ontario. In addition to threatened funding cuts, students who do not comply with the policy will be subject to university discipline policies.

Other provinces, such as Alberta, have indicated they will consider whether the "Chicago Principles" should be applied to university campuses. Conservative Leader Andrew Scheer also indicated in his campaign that his government would include a similar free speech proposal. The Chicago Principles are intended to "reflect the long-standing and distinctive values of the University of Chicago and [affirm] the importance of maintaining and, indeed, celebrating those values for the future". Universities are encouraged not to suppress "offensive, unwise, immoral, or wrong-headed" ideas. Instead, members of the university community and the university itself should openly and forcefully contest the ideas they oppose. The Chicago Principles also recognize the U.S. law's limitations on free speech:

The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. (Chicago Principles.)

Unlike most Canadian universities, the University of Chicago is a private research university and is not operated or funded by governments, but may be subject to government regulation.

Academic freedom and freedom of expression are not the same concept. How do they differ?

- Freedom of expression is guaranteed under the *Canadian Charter of Rights and Freedoms*, but it is not clear whether the Charter applies to campuses;
- Academic freedom in Canada is described as: "the right, without restriction by prescribed doctrine, to freedom to teach and discuss," and the "freedom to express one's opinion about the institution, its administration, and the system in which one works" (see: Paul Axelrod, "Academic Freedom: Can History be Our Guide?" (Axelrod)). Academic freedom policies apply to university campuses across Canada. However, academic freedom and freedom of expression are not mutually exclusive. They are similar or related in these ways:
 - In Canada, there are limits on both concepts (neither is absolute):
 - Freedom of expression does not protect violence or threats of violence. It is limited by our *Criminal Code* hate speech laws, our provincial human rights codes' hate/discriminatory speech provisions, and anti-defamation laws.
 - Academic freedom "is constrained by the professional standards of the relevant discipline and the responsibility of the institution to organize its academic mission" (Axelrod).
 - Alberta Court of Appeal Justice Marina Paperny, in *Pridgen v University of Calgary*, explained how these two concepts do not usually compete: [115] Academic freedom and freedom of expression are inextricably linked. There is an obvious element of free expression in the protection of academic freedom, whether limited to the traditional conception of academic

freedom as protecting the individual academic professional, or applied more broadly to promote discussion in the university community as a whole. Interestingly, the protection of free speech on campus is not universally seen as a threat to academic freedom. ...[117] ...Academic freedom and the guarantee of freedom of expression contained in the *Charter* are handmaidens to the same goals; the meaningful exchange of ideas, the promotion of learning, and the pursuit of knowledge. There is no apparent reason why they cannot comfortably co-exist. That said, if circumstances arise where these values actually collide, a [*Charter*] section 1 analysis would be required to properly balance them. ...

While freedom of expression is an important value, it is only one tool that supports the main purpose of universities. That purpose is "to serve society by pursuing knowledge and advancing our understanding of the world in its many aspects. Universities exist not merely to communicate, but to try to get the story right" (see: Shannon Dea, "First dispatch: Academic freedom and the mission of the university" (Dea)). On the other hand, academic freedom is complex and may be defined as "a cluster of freedoms associated in various ways with various scholarly personnel and institutions. Freedom of expression is just one of those subsidiary freedoms" (Dea). Critics of the notwithstanding clause argue it is inconsistent with the entrenchment of human rights and freedoms and fear that the majority may impose upon or limit minority rights unconstrained by the constitution (Roy and Brosseau). that infringe on a guaranteed right or freedom (Roy and Brosseau).

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Many Canadians supported eugenic policies in the early 20th century, including some medical professionals, politicians and feminists. Both Alberta (1928) and British Columbia (1933) passed Sexual Sterilization Acts, which were not repealed until the 1970s. Although often considered a pseudoscience and a thing of the past, eugenic methods have continued into the 21st century, including the coerced sterilization of Indigenous women and what some have termed the “new eugenics” — genetic editing and the screening of fetuses for disabilities (The Canadian Encyclopedia).

In 1928, the Alberta government passed the *Sexual Sterilization Act* which had four substantive parts. First, it created a Eugenics Board. Second, it specified who were sterilization candidates. Third, it outlined the conditions required for a sterilization procedure. Fourth, it specified that the physicians or surgeons who performed sterilization surgeries could not be held civil or criminally liable. See: “[Alberta Passes Sterilization Act.](#)”

The Act established a Eugenics Board with the power to authorize the sexual sterilization of certain individuals who had been institutionalized under the *Mental Diseases Act* and *Mental Defectives Act* and recommended for release. According to the Act, patients could be sterilized if “the board is unanimously of opinion that the patient might safely be discharged if the danger of procreation with its attendant risk of multiplication of the evil by transmission of the disability to progeny were eliminated.” Consent was required, either from the patient or his/her parent, guardian or spouse (The Canadian Encyclopedia).

In 1937, Alberta amended the *Sexual Sterilization Act* by providing legal protections for the people performing sterilizations, and loosening the requirement that victims “consent” to the procedure. In 1942, Alberta passed a second amendment to further expand the list of reasons people should be sterilized in support of eugenics. This Act

was not repealed until 1972. See: “[A Brief History of Eugenics and Sexual Sterilization in Canada.](#)”

In 1933, the British Columbia government passed its own *Sexual Sterilization Act*. It closely resembled Alberta’s legislation but was applied more narrowly. Under the Act, a Board of Eugenics could order the sterilization of any institutionalized patient who “if discharged... without being subjected to an operation for sexual sterilization would be likely to beget or bear children who by reason of inheritance would have a tendency to serious mental disease or mental deficiency.” As records were destroyed, the exact number is unknown but is estimated to be between 200 and 400. This Act was repealed in 1973 (The Canadian Encyclopedia).

It is true that only Alberta and British Columbia enacted sexual sterilization legislation. However, many forced or coerced sterilizations took place in provinces outside Alberta and British Columbia. Most provinces supported the eugenic policies in the early 20th century, Saskatchewan, Manitoba and Ontario all drafted sexual sterilization legislation, but these were defeated in the 1930s (The Canadian Encyclopedia).

The federal government undertook other measures to legitimize the provincial sterilization act: in 1951, an amendment to the Indian Act increased the application of provincial laws to Indians. This amendment newly stipulated that a “mentally incompetent Indian” was to be defined according to the laws of the province in which “he” resides. In other words, a mentally incompetent Indian was whatever a province deemed him or her to be. Therefore, any provincial laws dealing with those defined as mentally incompetent could be applied to Aboriginal peoples, including the Sexual Sterilization Act. See: “[Karen Stote: The Coercive Sterilization of Aboriginal Women in Canada at p 121.](#)”

Historically, Aboriginal women held the highest degree of respect within their communities as the givers of life and family anchors. They kept the traditions, practices and customs of their

Nations. Aboriginal women moved from highly respected placement in their communities as family anchors to enduring multi-levels of trauma in Canadian society. Today, many Aboriginal women generally suffer from poverty, poor housing, and poor physical and mental health. The issues are compounded by the negative effects of racism and systemic discrimination that is grounded in false notions that somehow they are in some way responsible for their own plight. See: “[Dr. Yvonne Boyer & Dr. Judith Bartlett: External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women](#) at pp 6-8”.

According to the *Globe and Mail*, about 2,800 people were forcibly sterilized in Alberta between 1928 and 1972. In 1996, an Alberta court awarded \$740,000 in damages to Leilani Muir, who was sterilized while she was 14 years old at a government-run institution in Red Deer. Hundreds of other sterilization survivors have since come forward and settled out of court with the province. See: “[The Globe and Mail, Leilani Muir made history suing Alberta over forced sterilization.](#)”

In 2005, nine women who were sterilized at Riverview Hospital (Coquitlam, British Columbia) between 1940 and 1968 were awarded \$450,000 in an out-of-court settlement. See: “[CBC News, Cash settlement for sterilized women.](#)”

Moreover, cases of forced or coerced sterilization in the province of Saskatchewan took place between 2008 and 2012. In 2017, sixty Indigenous women filed a class action lawsuit alleging forced or coerced sterilization dating back 30 years in Saskatchewan. Some of the sterilizations occurred as late as 2017. They are each claiming seven million dollars in damages. See: “[CBC News “Sask. Indigenous women file lawsuit claiming forced sterilization”](#) and “[Canada’s shame: the coerced sterilization of Indigenous women.](#)”

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The main concern of the lawsuit is whether proper and informed consent was obtained prior to sterilization. Most of the women were falsely informed that the procedure was reversible. Some were in the middle of receiving anesthetics or already under anaesthesia when asked to give consent. Others were coerced into signing consent forms while still in labour or on the operating table. In several cases, women were told that they could not leave the hospital or see their newborns until they had undergone sterilization. In one case, a health professional only asked for consent after having already begun the process of sterilization. See: "[Forced Sterilization of Indigenous Women is Genocide.](#)"

The women allege their fallopian tubes were tied without their consent, or that they were pressured into undergoing the procedure by doctors and told that it was reversible. Some were pushed into signing consent forms while they were in active labour or on operating tables. These women were told that they 'could not leave until their tubes were tied, cut or cauterized,' or that 'they would not see their baby until they agreed'. See: "[Canada's shame: the coerced sterilization of Indigenous women](#)".

"This class action is there to stop forced sterilization, punish it and prosecute it," said Alisa Lombard, the lawyer representing the women.

The lawsuit names the Saskatchewan government, provincial hospitals, several doctors and national authorities. The lawsuit cites a woman with the initials M.R.L.P. as the lead plaintiff. It said the Saskatchewan resident was sterilized without proper, informed consent immediately after her second child was delivered by emergency cesarean section in September 2008. Health professionals suggested she undergo a tubal ligation — a surgical procedure in which a woman's fallopian tubes are blocked, tied or cut — when she was "particularly vulnerable" — in labour and about to undergo emergency surgery. When she later sought to have the procedure reversed, health professionals told her she would

be unlikely to fall pregnant. Her relationship with her then-partner ended due to her sterility, the suit said. See: "[Reuters: Dozens of Indigenous women forcibly sterilized file a class-action lawsuit against the Canadian government.](#)" [Reuters].

The lawsuit stated that coerced sterilizations were an example of cruel and unusual punishment, which is illegal under the country's *Charter of Rights and Freedoms*. The provincial health ministry said that it had launched an independent review after Indigenous women came forward saying they had been pressured into having tubal ligations after giving birth (Reuters).

Sterilization without full, free and informed consent has been described by international, regional and national human rights bodies as an involuntary, coercive and/or forced practice, and as a violation of fundamental human rights, including the right to health, the right to information, the right to privacy, the right to decide on the number and spacing of children, the right to found a family and the right to be free from discrimination. Human rights bodies have also recognized that forced sterilization is a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment (An interagency statement).

International human rights bodies and professional organizations have explicitly condemned coercive population policies and programmes, noting that decisions about sterilization should not be subject to arbitrary requirements imposed by the government and that states' obligations to protect persons from such treatment extend into the private sphere, including where such practices are committed by private individuals, such as health-care professionals. Coerced and/or forced sterilization of women has also been characterized as a form of discrimination and violence against women. Any form of involuntary, coercive or forced sterilization violates ethical principles, including respect for autonomy and physical integrity, beneficence and non-maleficence (An interagency statement).

International human rights standards and conventions, of which Canada is a State Party, prohibit forced sterilization. The United Nations Declaration on the Rights of Indigenous Peoples guarantees Indigenous peoples' equality with respect to the enjoyment of the right to health (article 21). Article 2 of the Convention on the Elimination of Discrimination against Women (CEDAW) condemns any form of discrimination against women. Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide states that genocide means any acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as imposing measures intended to prevent births within the group (article 2(d)).

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, known as the "Convention of Belém do Pará," mentions in article 3 that every woman has the right to be free from violence in both the public and private spheres. Article 4 recognizes the right of every woman to enjoy and exercise the rights protected by other regional and international human rights instruments.

In May 2018, Canada underwent its third Universal Periodic Review, which is a unique process that involves a review of the human rights records of all UN Member States. Forced sterilization of Indigenous women was included among the topics raised during the discussion with Canada. The State of Argentina recommended that Canada "take the necessary steps to investigate complaints lodged regarding the forced sterilization of women from vulnerable groups and, where appropriate, punish those responsible and assist affected women". The Canadian government accepted Argentina's recommendation. See: "[International Justice Resource Centre: Forced Sterilization of Indigenous Women in Canada](#)".

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As a State Party to the UN Convention Against Torture, Canada's record on preventing and addressing torture and other forms of ill-treatment is periodically reviewed by the UN Committee Against Torture. Canada's most recent review took place in December 2018 where the Committee officially recognized that sterilizing Indigenous women without consent is a form of torture and called on Canada to "ensure that all allegations of forced or coerced sterilization are impartially investigated, that the persons responsible are held accountable and that adequate redress is provided to the victims". See: "Amnesty International: Sterilizing Indigenous Women without Consent is Torture, says UN Committee" [Amnesty International].

The Native Women's Association of Canada (NWAC), Amnesty International Canada, and Action Canada for Sexual Health and Rights supported the recommendations of the UN Committee Against Torture, and called on Canada to:

- Thoroughly investigate all allegations of forced or coerced sterilizations of Indigenous women in Canada;
- Establish policies and accountability mechanisms across Canada that provide clear guidance on how to ensure sterilizations are only performed with free, full, and informed consent; and
- Provide access to justice for survivors and their families (Amnesty International).

Canada has to stop the "extensive forced or coerced sterilization" of Indigenous women and girls in Canada, the United Nations Committee Against Torture told the country. All such allegations, including recent ones in Saskatchewan, must be impartially investigated and that those responsible are held to account, said the committee, and the state needs to take legislative and policy measures to stop women from being sterilized against their will. See: "UN committee tells Canada to stop forced sterilizations of Indigenous women."

In January 2019, the Inter-American Commission on Human Rights (IACHR)

published a press release in which it expressed its concern over the claims of forced sterilizations against Indigenous women in Canada. The IACHR emphasized that non-consensual sterilizations cause pain and suffering to the women affected and represent a form of gender-based violence and discrimination. Finally, the IACHR urged Canada to guarantee effective access to justice for survivors and their families, to conduct impartial and immediate investigations, to hold those responsible to account and to take all of the necessary measures to put an end to the practice of sterilizing women against their will. See: "IACHR expresses its deep concern over the claims of forced sterilizations against indigenous women in Canada".

According to the Minister of Indigenous Services in December 2018, Ottawa plans to engage with the provinces and territories, health educators, associations of health professionals and Indigenous partners to examine next steps. "Our government has received the UN committee's concluding observations, and will be reviewing the recommendations," a joint statement said. "Coerced sterilization is a form of gender-based violence, it is a violation of human rights and a violation of medical ethics." See: "The Globe and Mail: UN urges Canada to take action against forced sterilization of Indigenous women."

The Canadian government has to fulfill its obligations under these international conventions. It must stop human rights violations across Canada by ending discrimination against Indigenous women through subjecting them to forced or coerced sterilization which is cruel, inhuman or degrading treatment. The government must investigate forced or coerced sterilization cases. In addition, the government has to ensure that every woman makes a voluntary and informed choice about her body and the sterilization procedure which has permanent consequences.

ACLRC Website: aclrc.com

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In addition, section 1 of the *Charter* already provides an opportunity for governments to impose reasonable limits on rights if the limits can be “demonstrably justified in a free and democratic society” and permits courts to accommodate legislative goals. Finally, some argue that the notwithstanding clause will be invoked in cases where rights are most in need of protection. For example, Eugene Forsey argued that if the notwithstanding clause and the *Charter* were in force during World War II, it could have allowed the Canadian government to continue to forcibly inter Japanese-Canadians regardless of any fundamental rights they might have had (Roy and Brosseau).

Premier Ford followed the usual route for invoking the clause—after a court ruling that the law reducing the number of wards violated freedom of expression. Some people criticized Ford’s use of the clause as “heavy handed and disrespectful” (Beatrice Britneff, *Global News*, September 14, 2018 [25 Toronto MPs slam Ford for using notwithstanding clause, urge MPPS to defeat bill](#)”).

Former prime minister Jean Chretien, former Saskatchewan premier Roy Romanow, and former Ontario attorney general Roy McMurtry—all present at the negotiation of the notwithstanding clause in 1981—released a statement that condemned Ford for using the notwithstanding clause improperly as a means to circumvent proper process (McLean’s September 14, 2018 [“Chretien, Romanow and McMurtry attack Ford’s use of the notwithstanding clause”](#)). Most critics were particularly concerned about the timing—the reduction in seats occurred in the weeks prior to the election. It is clear that Ford’s invocation of the notwithstanding clause has created concern that this will embolden some to put pressure on other governments to use it; once seen as a politically dangerous decision, using the notwithstanding clause may now be politically popular (Mark Gollum, *CBC News*, September 12, 2018, [“Doug Ford’s use of notwithstanding clause sparks](#)

[fears it will embolden others to invoke it”](#)).

The Quebec situation is very theoretical. Current legislation banning authority figures from wearing religious symbols would need to be introduced and passed. A court would have to declare the legislation as violating the *Charter*, and then Premier Legault would have to pass amended legislation using the notwithstanding clause. This would take at least two to three years. In the meantime, on the face of it, this proposal seems problematic. It appears to go to the very heart of rights that the *Charter* seeks to protect—minority religious rights.

It will be very interesting to see what occurs after the Ontario Court of Appeal rules on Bill 5 and whether the new Québec government will wade, once again, into the issue of invoking the notwithstanding clause. Further, Ontario’s, and possibly Québec’s use of the notwithstanding clause could even spark discussions about amending the *Charter* to exclude the notwithstanding clause altogether.

New Resources on ACLRC Website:

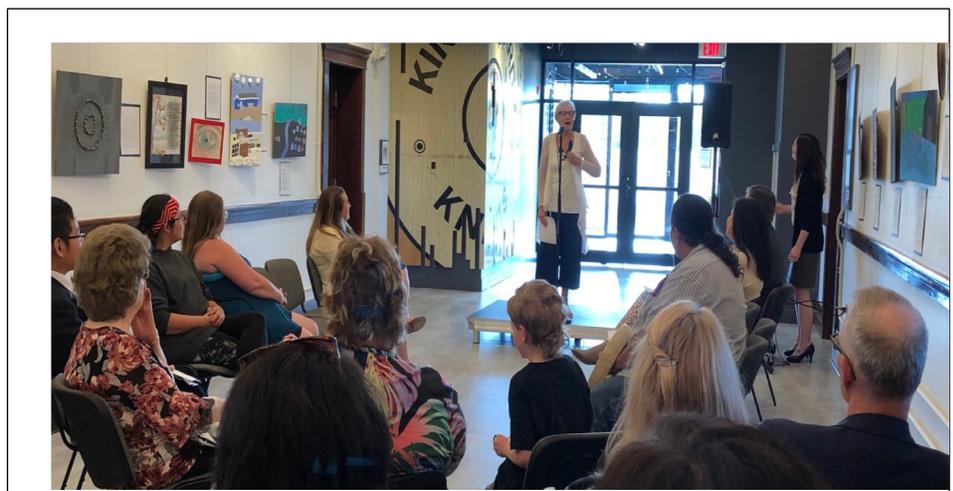
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Legal Standing of Nature and Right to a Healthy Environment
<http://www.aclrc.com/rights-of-nature-1>

Collection, Storage and Disclosure of Personal Information by the Police: Recommendations for National Standards
<https://static1.squarespace.com/static/511bd4e0e4b0cecdc77b114b/t/5d153e1625335e0001a08816/1561673241591/Police+Records+.pdf>

Prisoners’ Rights in Alberta
<http://www.aclrc.com/prisoners-rights-in-alberta-1/>

Identity Theft
<http://www.aclrc.com/introit>



PITA’SINAKI Art Show of ArtShare June 15, 2019

Coming Very Soon: Nominations for ACLRC's Civil Liberties Award

Do you know an Albertan who has demonstrated outstanding leadership in promoting civil liberties and human rights through legal research, education or advocacy? Nominations will open in August 2019. Watch our website for nomination procedure.

Past award recipients include: Anna Pellatt (in memoriam), Gary Dickson QC, Vilma Dawson, Dr. Hussein Amery, Barbara Graff, Dr. Ed Webking, Janet Keeping, Paula Simon, Judy Shapiro, Mothers Of Morinville, Saima Jamal, Tom Engel, Martha McManus, Kelly Ernst and Gabriel Chen.



ACLRC Display at My World Conference at Genesis Centre



**Middle: Minu Bhatia, Red FM Interview for March 21, 2019 #Roshni
Right: Volunteer Lawyer (former student) Nitin K. Srivastava
Left: Exec. Director Linda McKay-Panos**

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