



HIV/AIDS and Accessing Services

Discrimination and Accessing Services

A lot of people living with HIV experience discrimination when they are trying to access basic services (e.g. health care and dental care). The problem is that this kind of discrimination is not always obvious, and people feel like there is nothing they can do about it. But there is something you can do. Here's what you need to know.



The Alberta *Human Rights, Citizenship and Multiculturalism Act* protects people from being discriminated against by the people who provide public services. Based on certain qualities, like race or disability, people who provide services to the public cannot:

- 1) Refuse to provide a person with goods, services, accommodation or facilities that are usually available to the public,
- 2) Discriminate against a person in the process of providing goods, services, accommodation or facilities that are usually available to the public.

People are protected from discrimination based on any of the following qualities:

- Physical Disability
- Mental Disability
- Sexual Orientation
- Gender/ Gender Identity
- Source of Income
- Race
- Colour
- Ancestry
- Place of Origin
- Family Status
- Marital Status
- Religious Beliefs
- Age (not always covered)

These qualities are called “protected grounds” for discrimination. If a service provider (e.g. doctor or dentist) refuses to provide you with services, treats you unfairly, harasses you or discriminates against you based on any of the grounds above, they may have broken the law. This means that you have the right to do something about it.

The information on this sheet is **not legal advice**. If you have specific legal questions you should talk to a lawyer.

HIV and Discrimination

HIV/AIDS is considered a **physical disability** according to the law.



The Alberta *Human Rights, Citizenship and Multiculturalism Act* says service providers cannot discriminate against people on the basis of physical disability. This means that it is **against the law for someone who provides services to discriminate against you on the basis of your HIV status.**

You do not actually have to be HIV positive in order to experience discrimination. The following people are all protected from discrimination based on physical disability:

- Symptomatic HIV+ people (have symptoms)
- Asymptomatic HIV+ people (do not have symptoms)
- People perceived to be HIV + but who are not
- HIV- people who associate with people who are HIV+

The Many Faces of Discrimination:

People living with HIV/AIDS sometimes belong to more than one group that is protected from discrimination. HIV affects a diverse group of people including:

- Aboriginal peoples
- Women
- Heterosexual people
- Transgendered and Transexual people
- Injection drug users
- Men who have sex with men
- People who come from countries where HIV/AIDS is common (e.g. South Africa)

It is important to note that race, gender, sexual orientation and physical/mental disability (including alcohol and drug use) are all protected grounds for discrimination in the area of providing services. If you are discriminated against based on any of these grounds the service provider may have broken the law. This means that you have the right to make a complaint.

What Counts as Discrimination?



In Applying to get Services:

It is illegal for a service provider (e.g. doctor, dentist etc.) to refuse to serve you based on any of the protected grounds for discrimination. This means that they cannot refuse to serve you based on your HIV status. If the service provider is “accepting new patients” or “accepting new clients” that means that they **cannot refuse to serve you due to your HIV status**. It is considered discriminatory to say that they are “not comfortable” serving you. If they feel that they do not know enough about HIV/AIDS to provide you with basic, non-specialist services, it is their responsibility to learn more about HIV/AIDS so that they can serve you.

Often when you visit the offices of doctors, dentists or other service providers, they ask you to fill out forms that include personal information, including medical information. This information may help them to provide better service for you, because if they are aware of your health status they can take that information into account and watch for complications related to your HIV status.

However, you **DO NOT HAVE TO DISCLOSE** your HIV status when filling out these forms. Today, doctors, dentists, nurses, hygienists etc. practice “universal precautions” to protect them from communicable diseases like HIV. This means that they wear latex gloves, face masks, goggles and aprons when they are doing procedures that carry a possibility of disease transmission. Unless they are performing an extremely invasive procedure (e.g. a major surgery), they should not be at “significant risk” of HIV transmission. The law says that if you are going to place someone at “significant risk” of HIV transmission, you **MUST** disclose your HIV status to them. However, if they are not at “significant risk” the law says you do not have to disclose your HIV status. (For more information on law, disclosure and HIV please see the Fact Sheet #4).

If you do decide to disclose your HIV status on these forms, remember that it is **discriminatory for them to take that information, and then to refuse to serve you due to your HIV status**.

In the Process of Receiving Services: :

When you are accessing services, it is illegal for the service provider to discriminate against you based on any of the protected grounds for discrimination. This means that while you are accessing services they cannot discriminate against you based on your HIV status. For example, they should not:

- Treat you badly or unfairly
- Treat you like your HIV is the only important thing and ignore health issues that are NOT related to your HIV status
- Disclose your HIV status to others/ break your confidentiality
- Harass you verbally or physically (including jokes, derogatory statements, threats)

Accommodation:

Service providers also have a legal duty to “accommodate” the individual needs of service users who have disabilities. This means that they must make a special effort to provide people with disabilities with whatever they need to make that service more accessible or appropriate. Examples of accommodation might include installing a wheelchair ramp to make the service accessible or learning more about a disability in order to better serve an individual.

This is especially important for people living with HIV/AIDS because HIV/AIDS is considered to be a disability. Service providers are required to take *reasonable* steps to accommodate someone with a disability. This means that, as long as the accommodation does not cause the service provider “undue hardship”, the service provider must work with the service user to accommodate their needs. For example, if the service provider needs to learn more about HIV in order to be able to serve you, it is their responsibility to do so. They cannot refuse to provide basic non-specialist services to you due to your HIV status.

The most important things to know about getting accommodation are:

- You need to let your service provider know that you need accommodation
- You should explain what kind of accommodation you need (e.g. a higher dose of pain medication if you have a high tolerance for pain medication and the current dosage is insufficient.)
- You should cooperate to find the best way to accommodate your needs.
- Assistance is available from your local AIDS service organization.

Discrimination in Action

Here are some examples of discrimination while accessing services that people living with HIV have shared with us:



Discrimination in HIV testing:

“I’m arranging for my permanent residence here in Canada. And you know, as part of the process you have to take medical exams...I remember when they called me from the general physician’s and they asked me to go there because he needed to talk to me...And I don’t want to exaggerate, the first thing that the doctor said was, ‘You know what, you lied to me. You were lying.’ And I’m like ‘Excuse me? What do you mean?’ [and he said] ‘Yes, because you are gay and you have AIDS!’”

In this case, the individual was not given pre or post test counseling. The doctor assumed that the individual was gay based only on the fact that he had tested positive for HIV. The doctor accused the individual of lying to him and assumed that he had known his HIV status and failed to disclose it. The doctor also told the individual that he had AIDS without providing any counseling about what the positive test result meant. The individual later discovered that his illness had not progressed to the AIDS stage, and instead, he was HIV positive. The doctor clearly treated this individual badly, failed to follow proper counseling procedures, and discriminated against the individual on the basis of his HIV status and assumed sexual orientation.

Refusal of health and dental care:

“[The doctor] just said, I’m not going to treat you,...I don’t treat you people.”

“So when I went to see the dentist, when I went in and filled out the forms, I said on my form that I was positive, and when I got to the suite where they were going to work on me, the hygienist, she came in and had a look at my chart, and then she left the room. Shortly afterwards, the dentist came back without the hygienist and said that she was ‘uncomfortable’ working on me. He said, ‘we’ve never had an AIDS patient before.’”

“I’ve been looking for two years for a GP and there’s not one that will take an HIV patient. As soon as they know you’re HIV they say ‘sorry, we’re not taking any patients.’”

“I just had one [dentist] where she said that we don’t do anyone who is HIV, so we’ll send you to one that will.”

“My doctor of 25 years fired me because I was a junkie. I didn’t even get a chance to tell him I was HIV positive because I didn’t know at the time. But there were bruises, he was treating me for compensation for a wrist injury and I got bruises all over my arms. And he’s like, ‘What are you mainlining?’ ‘Coke’ ‘Would you find yourself another doctor. Here’s the AADAC number. Don’t come back here.’ But that’s discrimination because I was a junkie, not because I was, I didn’t even know my [HIV] status then”

In all of these examples, people living with HIV were refused services due to their disabilities. It does not matter what excuse they use, whether it is that they do not treat “you people”, they feel “uncomfortable”, or they want to send you somewhere else, all of these are examples of discrimination.

Discrimination in Providing Medical Care:

“I did have a friend who came down with a non-HIV related cancer, and basically got a line from a cancer surgeon along the lines of, ‘you’ve got HIV, you’re going to die anyway’...they treat as far as chemo or radiation or whatever, but as far as an operation to remove the tumor, no.”

Sometimes people living with HIV are treated like their HIV status is their only important health issue. However, people living with HIV have many of the same medical concerns as anybody else, whether it’s a headache, a hernia, or cancer. These medical concerns should never be ignored, and people living with HIV have a right to access the same kind of treatment available to others for these issues.

Breaches of confidentiality:

“I’ve heard, on more than one occasion, from more than one person, that someone who is positive and admitted to [hospital], that, shall we say, the grape vine spreads very quickly and all the staff of the hospital knows in very short order that the patient in room such and such is HIV positive.”

Patients in health clinics, doctor’s/dentist’s offices and hospitals have a right to keep their health information private. The doctors and nurses who are directly treating you might need to know your HIV status, but it is not necessary for anyone else to be informed of your HIV status. If your confidentiality is broken, then they have violated your right to privacy.

What to do when you face discrimination:



1) Discrimination? Ask yourself: am I being discriminated against on the basis of one of the protected grounds of discrimination (i.e. disability, race etc.).

2) Speak with the Discriminator, Request a Meeting with someone Higher Up, or Write a Letter of Complaint: If you are able to work out the problem informally, it may be faster and better for everyone involved. For example, you may want to talk directly to the person who is discriminating against you because they may not even realize that they are treating you unfairly. Or you may want to talk to someone higher up, because once the business/ organization knows that you are having problems with a one of their workers, they may be willing to deal with it. You could also send them a letter of complaint. If you need some support in this process, be sure to ask for help. You can contact your local AIDS service organization.

3) Keep Records: If you think you are being discriminated against, it is a good idea to start keeping records. Write down all of the events, conversations or situations that make you think you have been, or are being, discriminated against.

Make sure you include who was involved, what happened, and when each event happened (date and time). Gather anything that will support your story– documents, memos, names of people who witnessed events, bills, e-mail print outs etc.

4) Ask Questions: If you have questions, talk to somebody. You can contact the Alberta Human Rights and Citizenship Commission or your local AIDS serving organization to ask questions and get support. Or visit the Alberta Human Rights website.

5) Identify the Complaints Process: Find out if there is a complaints process at the business where you were accessing service, or through the professional organization that the person who discriminated against you belongs to. See the next section of this fact sheet for more information.

6) File a Human Rights Complaint or a Civil Lawsuit: If writing letters or filing a complaint is unsuccessful, there are other options. You can file a human rights complaint with the Alberta Human Rights Commission, or you can launch a civil lawsuit. For more information on this see the following pages of this Fact Sheet, read Fact Sheet #8 Filing a Human Rights Complaint.

Lodging an Official Complaint



The first thing you should try is to talk directly with your service provider about your concerns. If this is unsuccessful, you may need to lodge an official complaint. You have three options:

- 1) Complain to a business or professional organization.
- 2) Human Rights Complaint
- 3) Civil Lawsuit

Complain to a Business or Professional Organization:

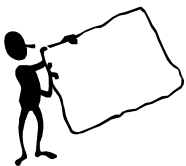
If the person who is discriminating against you belongs to a business or professional organization, you could try filing a complaint using their complaints process.

For example, if you are discriminated against by a doctor working in a clinic or hospital, you might want to try talking directly to the doctor about your concerns. If that doesn't work, you could talk to the hospital/clinic complaints department or write the hospital/clinic a letter of complaint. If you do not feel that your complaint is taken seriously or you are unhappy with the results, then you can file a complaint with the health region's complaints department.

If that doesn't work, you can file a complaint with the College of Physicians and Surgeons of Alberta. The College can investigate your complaint, and provide the doctor with advice for improvement, charge a physician with unprofessional conduct, or launch a formal investigation into the physician's knowledge or skill. The College cannot give you a cash settlement. Filing a complaint with the College is free, there is no time limit on filing a complaint, but the complaints process could take four months or longer. Many professional organizations have similar complaints processes. Please see the Community Resources section of this fact sheet for more information on who to contact.

If these complaints processes are not successful, or if you are unhappy with the results, you can still file a complaint with the Alberta Human Rights Commission or launch a civil lawsuit. **There are time limits** on how long you have to file a complaint or a lawsuit after an incident occurs. If it looks like complaining through a professional organization is going to take too long, remember, you are allowed to file a complaint through a professional organization AND to file a human rights complaint and/or civil lawsuit all at the same time.

Lodging an Official Complaint



Human Rights Complaint:

You can file a complaint with the Alberta Human Rights and Citizenship Commission if a service provider **refuses to provide services to you** based on a protected ground for discrimination, if a service provider **discriminates against you** while providing you with service, or if your service provider **fails to accommodate** your individual needs.

Filing a complaint is **free**. You have **twelve months** to file a complaint after an alleged incident. Resolving a complaint may take anywhere between **one month and more than a year**, depending on how long it takes to go through the process.

For more information on steps of filing a Human Rights Complaint please see Fact Sheet #8.

It is important to note that even if the human rights commission finds that only 10% of your dismissal or mistreatment was due to discrimination, that **still amounts to discrimination**.

Also, people often worry that it will be **their word against the word of the other person**. It is important to try to collect any proof you can that discrimination has occurred. But, even if you cannot find much proof, you should still file a complaint. The investigators at the commission will consider what you and the other person have to say and **if your version of events is more credible, they may find in your favour despite the lack of concrete evidence**.

Alberta Human Rights and Citizenship Commission

Suite 310, 525 – 11 Avenue SW
Calgary, Alberta T2R 0C9

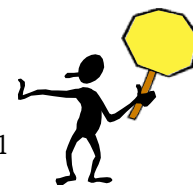
Confidential Inquiry Line (403) 297-6571

Toll-free 310-0000 then (403) 297-6571

TTY service in Calgary (403) 297-5639

TTY Toll-free within Alberta 1-800-232-7215

Filing a Civil Lawsuit:



You can file a civil lawsuit if you feel like you have been **the victim of malpractice** or if you want to sue someone for **harassment**. Through this process you may be able to collect money for damage done or for pain and suffering.

There may be a **time limit** on how long after an incident you can sue. You should consult with a lawyer to find out the time limit for your specific complaint.

Filing a case in civil court is **not free**. There are costs associated with lawyers, court filing fees, witness fees and you will not be reimbursed for wages lost while you attend your court hearing. Before you decide to sue, you should think about whether it will cost you more than you stand to gain. Also, when you sue, if you win, these costs will usually be paid for through your court settlement. But, **if you lose, you may be required to cover the other person's court costs**.

Also, if you launch a civil lawsuit, you will have to prove that you have been harassed or that the person providing services has not done their job properly. This may involve providing documents or witnesses to support your claim. The proof required in a court case is likely greater than the proof required if you were to file a human rights complaint.

To talk to a lawyer:

Lawyer Referral Service (403) 228-1722

Provide prerecorded legal information and the names of 3 lawyers you can call for advice. The first 1/2 hour is free.

Calgary Legal Guidance (403) 234-9266

Provide free legal advice at their evening legal clinic.

If you are **thinking of filing a civil lawsuit**, have a look at this **booklet** produced by the Alberta Court Services:

Commencing a Claim in Provincial Court Civil Division and Getting and Collecting your Judgment in Alberta.

Available at www.albertacourts.ab.ca

Community Resources

AIDS Calgary

Can answer questions and assist with filing complaints.
Suite 200, 1509 Centre Street South
Calgary AB T2G 2E6
Phone (403) 508-2500
www.aidscalgary.org



Southern Alberta Clinic

#213 906-8 Ave. SW
Calgary AB T2P 1H9
Phone: 403 234-2399
www.crha-health.ab.ca/clin/sac/sac.htm

Alberta Human Rights and Citizenship Commission

Suite 310, 525 – 11 Avenue SW
Calgary, Alberta T2R 0C9
Confidential Inquiry Line (403) 297-6571
Toll-free 310-0000 then (403) 297-6571
TTY service for persons who are deaf or hard of hearing Calgary (403) 297-5639
Toll-free within Alberta 1-800-232-7215

Calgary Hospitals

(including Foothills, Peter Lougheed, Rockyview, Children's)
Concerns & Commendations Department 944-1673

Calgary Health Region

Complaints/Comments/Commendations
943-LINK 943-5465
Hospital Patient Representative 943-1205
Public Health Concerns / Food-Housing-Sanitation 943-8060

Information & Privacy Office

10101 Southport Road SW 943-0424

Further Reading

This fact sheet was adapted in part from the following sources:

Human Rights Information Sheets. Alberta Human Rights and Citizenship Commission June 2002.

www.albertahumanrights.ab.ca

Duty to Accommodate. Alberta Human Rights and Citizenship Commission

www.albertahumanrights.ab.ca

Commencing a Claim in Provincial Court Civil Division and Getting and Collecting your Judgment in Alberta. Alberta Court Services.

www.albretacourts.ab.ca

The Complaints Process. College of Physicians and Surgeons of Alberta.

www.cpsa.ab.ca/complaints/complaintsprocess.asp

This website lists regulatory bodies for health care providers, including alternative health care practitioners:

www.health.gov.ab.ca/reading/links.html#regulatory

College of Physicians and Surgeons of Alberta

900 Manulife Place, 10180-101 Street
Edmonton, Alberta, Canada T5J 4P8

General Complaints & Sexual Exploitation Complaints Line: 1-800- 661-4689

E-mail inquiries: Ms. Sharon Barron, Manager
sbarron@cpsa.ab.ca

Website: http://www.cpsa.ab.ca/aboutus/complaints_dept.asp

Complaints form: www.cpsa.ab.ca/complaints/lodge_complaints.asp

The Alberta Association of Registered Nurses

Complaints should be mailed to:

Executive Director,
Alberta Association of Registered Nurses
11620 168 Street
Edmonton, AB T5M 4A6

Complaints Information Line: 1-800-252-9392 ext. 521

Website: www.nurses.ab.ca/profconduct.html

Alberta Dental Association and College:

Complaints should be mailed to:

Complaints Director of the Alberta Dental Association and College

Suite 101, 8230-105 Street
Edmonton, Alberta T6E 5H9.

Website: www.abda.ab.ca/resources/resources_complaint_process.asp

Alberta Dental Hygienists' Association

#222, 8657 - 51 Avenue

Edmonton, Alberta

T6E 6A8

Telephone: (780) 465-1756

Fax: (780) 440-0544

email: adha@askadentalhygienist.com

<http://www.askadentalhygienist.com/>

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