



# Human Rights and HIV/AIDS

## Canadian Human Rights

The *Canadian Charter of Rights and Freedoms* is part of the Canadian Constitution. The Constitution is the highest law of Canada, and all other laws in Canada must be in line with the *Charter*. According to the *Charter*:



“Every individual is equal before and under the law and has the right to the equal protection and 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” (Note: sexual orientation has been included in the *Charter* by the Supreme Court)

This means that **all laws** (federal, provincial or municipal) must treat people who belong to these protected groups equally. **That includes people living with HIV/AIDS.**

The rules set out in the *Charter* apply to the federal and provincial governments and anything they have authority over. This means that any laws they pass, services they provide or businesses they run must treat all people equally. It is important to remember that the *Charter* does not apply to private individuals, organizations or businesses. These areas are governed by other legislation (like the *Alberta Human Rights, Citizenship and Multiculturalism Act*). So most discrimination you might encounter (e.g. at work, by your landlord etc.) would fall under this other provincial legislation.

In practice, the *Charter* can be used to challenge an unfair law in the courts. You will sometimes hear people talk about a “Charter Challenge.” This means that people are using what is written in the *Charter* to argue that a law does not follow the rules set out in the *Charter* and is therefore “unconstitutional” (it violates the rules in the Constitution).

The *Canadian Human Rights Act* protects people from discrimination when they work for or access services from agencies operated by the federal government. In practice, if you were discriminated against by a federal employer or if someone in a federal agency discriminated against you when you were trying to access services (e.g. from a federal social benefits program) you could file a complaint with the **Canadian Human Rights Commission**.

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

## Alberta Human Rights



In Alberta, the *Human Rights, Citizenship and Multiculturalism Act* protects people from discrimination. In contrast to the *Charter* and the *Canadian Human Rights Act*, which govern the relationship between individuals and government, Alberta’s human rights legislation governs the relationship between individuals and private companies, businesses, organizations or other individuals.

In general, Human Rights legislation **does not cover personal relationships**. However, if discrimination in personal relationships is violent or threatening, it may fall under **hate/bias crime** provisions in the Criminal Code of Canada or support the use of a restraining order.

In Alberta, **discrimination is prohibited in the following areas:**

- **Accessing public services** (for example, health care, dentists, social services, service in restaurants etc.)
- **Housing** (when applying for housing or once you have moved in)
- **Employment practice** (when applying for a job or during employment)
- **Job advertisements and applications**
- **Public statements, publications, signs**
- **Membership** in trade unions and other occupational organizations

In Alberta, **discrimination is prohibited based on the following grounds:**

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

In practice, if you are discriminated against at work, by your landlord or while trying to access services like health care or dental care, that could amount to a violation of Alberta Human Rights law. If this happens, you can file a complaint with the Alberta Human Rights and Citizenship Commission. For more information, see the Community Resources section of this fact sheet, or see Fact Sheet #8 Filing a Human Rights Complaint.

# HIV/AIDS and Human Rights



## Physical Disability:

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

Both the *Canadian Charter of Rights and Freedoms* and the *Alberta Human Rights, Citizenship and Multiculturalism Act* prohibit discrimination on the basis of physical disability. This means that it is **against the law to discriminate against someone on the basis of their HIV status.**

You do not actually have to be HIV positive in order to experience discrimination. The following people are protected from discrimination based on “physical or mental 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+

## Confronting Human Rights Abuse

If you experience discrimination on the basis of your HIV status, or any other protected ground for discrimination (e.g. race, gender) you may be able to file a human rights complaint. In Alberta, Human Rights complaints should be filed with the Alberta Human Rights and Citizenship Commission (see contact info. below) For example, if you feel discriminated against in employment, housing or accessing services (like doctors or dentists), and you are unable to resolve your problem informally, you could file a complaint with the Alberta Human Rights and Citizenship Commission. Please see the Fact Sheets on employment, housing, and access to services for specific information about complaints options and/or see Fact Sheet #8 Filing a Human Rights Complaint.

## Community Resources

### AIDS Calgary

Will provide assistance with questions and filing complaints.  
Suite 200, 1509 Centre Street South  
Calgary AB T2G 2E6  
**Phone (403) 508-2500**  
[www.aidscalgary.org](http://www.aidscalgary.org)

### 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  
Web site: [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca)  
TTY service in Calgary (403) 297-5639  
TTY Toll-free within Alberta 1-800-232-7215

## 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 people
- 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 prohibited grounds for discrimination in Canada and Alberta.

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: The Alberta *Human Rights, Citizenship and*  
: *Multiculturalism Act* does not list sexual  
: orientation as a protected ground for  
: discrimination. But, a Supreme Court decision  
: (*Vriend v. Alberta*) said that Alberta must protect  
: people from discrimination based on sexual  
: orientation. This means that when the Alberta  
: Human Rights Act is read in the courts, it is  
: read *as though* it includes sexual orientation. In  
: Alberta it *is illegal* to discriminate against  
: people due to their sexual orientation, whether  
: they are straight, gay, lesbian, bisexual,  
: transgendered, transexual etc.  
: .....

## 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. Available at [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca)

*Canadian Charter of Rights and Freedoms.* Available at <http://laws.justice.gc.ca/en/charter/>

*Your Guide to the Canadian Charter of Rights and Freedoms.* Available at [http://www.pch.gc.ca/progs/pdp-hrp/canada/guide/index\\_e.cfm](http://www.pch.gc.ca/progs/pdp-hrp/canada/guide/index_e.cfm)

*Canadian Human Rights Commission*  
[www.chrc-ccdp.ca](http://www.chrc-ccdp.ca)

*Human Rights Law and Harm Reduction in the Context of HIV/AIDS.* Powerpoint presentation by Ruth Carey, HIV/AIDS Legal Clinic of Ontario (HALCO)

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