# Right to healthcare that is free of discrimination under the Canadian Charter of Rights and Freedoms

## You have a right to equal treatment regardless of your sexuality or gender.

You have the legal right to receive healthcare that is free of discrimination based on your sexual orientation, gender identity, or gender expression. This is provided for under both federal and provincial law. Connecting with a local Two-Spirit & LGBTQ+ community centre or lawyer could help inform you of federal and provincial laws and protections. Here is a list of [2SLGBTQ+ centres](https://enchantenetwork.ca/en/membership-learn/) (<https://enchantenetwork.ca/en/membership-learn/>) by region.

*Canadian Anti-Discrimination Laws*

*Section 15 of the* *Canadian Charter of Rights and Freedoms* *states “every individual is equal before and under the law and has a right to the equal protection and equal benefit of the law without discrimination.” Sexual orientation was added as a protected group under the Canadian Human Rights Act in 1996. In addition to federal protection against discrimination of 2SLGBTQ+ people, all provinces and territories have 2SLGBTQ+ protections in their laws. In 2017 the Canadian Human Rights Act and the Criminal Code was amended to include gender identity and gender expression as protected from discrimination.*

## You have a right to receive inclusive service and not be denied care.

You deserve the best possible care, and your healthcare providers have a duty to provide it. In an emergency, healthcare providers must provide you with care and cannot deny you for any reason. Although a doctor does not have to accept new patients in non-emergency scenarios if they have legitimate reasons (such as not having the capacity to accept new patients or not specializing in a given area), they cannot reject a patient because that person is 2SLGBTQ+, even in non-emergency situations. Some examples of discriminatory care:

* + - ignoring, mocking or questioning you or your pronouns;
		- being rude or physically rough;
		- treating your partner or spouse inappropriately or continually referring to them as a friend instead of a partner or spouse; and
		- making assumptions about your care needs because of your identity or how they perceive your identity (e.g., refusing to provide any type of care because they don’t specialize in gender-affirming care).

If you feel you received poor care or were denied care because of your sexual orientation, gender identity, or gender expression, you can file a complaint against the healthcare provider. For information about how to file a complaint, see “Taking Action Against Discrimination in Your Healthcare” below. It may also be helpful to connect with a local 2SLGBTQ+ community centre or organization to help find inclusive healthcare providers.

# Right to decide who will advocate for your health *(Link to the Health Guide)*

## You have a right to create a healthcare directive; to delegate someone to make healthcare decisions on your behalf; and to have the decisions outlined in your healthcare directive respected.

A healthcare directive is a written document that sets out your wishes for your medical care and treatment. Depending on your province/territory, a healthcare directive might also be known as a living will, a personal directive, or an advanced directive. It might be legally binding (e.g., in Nova Scotia and Saskatchewan), or it might not be legally binding but can greatly influence care providers (e.g., in Alberta and Ontario).

Under Canadian law, healthcare providers must respect valid healthcare directives which often include naming a healthcare delegate to advocate for you if you are unable to do so. These delegates are especially important so that you can ensure your wishes and decisions are respected. Many 2SLGBTQ+ people do not want their biological family to be their healthcare delegate for a variety of reasons. It is important to create your healthcare directive in advance, and know that you need to be considered mentally competent for it to be valid.

When creating a healthcare directive, you may want to speak with a lawyer or another reliable source provided by a healthcare authority or a legal institution.

*Provinces and territories have guideline formats to help you create your own healthcare directive. Learn more about healthcare directives and the legislation surrounding healthcare directives in your* *home province or territory**.*
If you are transgender or gender-expansive (e.g., you identify as gender nonbinary, gender nonconforming, gender fluid, etc.), it is important to tailor your healthcare directive to include gender identity related protections. The **Addendum to Healthcare Planning Document** (see appendix) may be used in your healthcare directive to help create a section advising healthcare providers to respect your gender identity and expression.

Research shows that 2SLGBTQ+ Canadians entering the last stages of life face many challenges when seeking quality care. A healthcare directive may help alleviate some concerns, particularly in provinces and territories where it is a legally binding document that healthcare providers must follow.

# Right to have your gender identity respected

## You deserve to feel safe sharing your gender identity.

If you are transgender or gender-expansive, it’s important for your healthcare providers to know about your unique and specific health needs, since they may not always be obvious. For example, a transgender woman may need different cancer screenings than a cisgender woman. It is important that you feel safe discussing your gender identity with your doctors, nurses, and other healthcare providers because it makes a difference to the type of medical care you need, and to the potential health issues that may arise in your future. If you do not trust or feel comfortable discussing your gender identity with your current healthcare provider, you can contact a local 2SLGBTQ+ community centre or organization, or visit <https://glmaimpak.networkats.com/members_online_new/members/dir_provider.asp?address_zip_radius=25&action=search&location_type=S&country_name=Canada&pn=1> to find 2SLGBTQ+ friendly healthcare providers.

Currently, there are no federal standards to ensure the quality of home care services in Canada, but most provinces and territories have implemented standards that are relevant (though not specific) to 2SLGBTQ+ patients. Provinces and territories have stated that home care staff have a responsibility to treat you with courtesy and respect and to provide services that are responsive to your care needs and supportive to you. If you and your gender identity are not being respected, you can file a complaint through the organization or province or territory through which the home care service is provided. See “Taking Action Against Discrimination in Your Healthcare” below.

## You are entitled to be called by your name and gender pronouns (your chosen name and correct pronouns).

Healthcare providers have an ethical duty and professional responsibility to treat all patients with dignity and respect, and intentionally or repeatedly using the wrong pronouns or name violates this duty and constitutes harassment. Keep in mind that sometimes providers may call you by the wrong name or pronouns out of ignorance or confusion rather than with the intent to disrespect you. On the other hand, if you have explained your name and pronouns and the provider still fails to use them, it may not be out of ignorance or confusion. If you feel the action is discriminatory, you can file a complaint within the facility and/or with the healthcare provider’s professional college, as described in “Taking Action Against Discrimination in Your Healthcare” below.

Details about your name and pronouns should be added to your medical chart even if they are different from what is listed on your government-issued identification. This will enable all of your healthcare providers at that facility to know your pronouns, even if they are different from what is listed on your government-issued identification. You also have the right to include instructions about your gender identity and expression in your healthcare directive. To learn more about your right to make a healthcare directive, see the “Right to Decide Who Will Advocate for Your Health” above.

## You should be able to use the facilities of your choice.

If a healthcare provider refuses to let you use the facilities (such as a restroom) of your choice based on your gender identity, it could amount to discrimination on the basis of gender identity, and it might be illegal under the *Canadian Human Rights Act*. You can file a complaint with the Canadian Human Rights Commission. (See “Taking Action Against Discrimination in Your Healthcare” below.)

If your gender identity does not fit into a male-female binary (e.g., you identify as gender nonbinary or nonconforming), you have the choice to use either male or female facilities, or to use a gender-neutral facility if one is available. However, using a gender-neutral facility is always your choice; you cannot be forced to use one. Connecting with a local 2SLGBTQ+ community centre and a lawyer can help you understand the rights and protections that are available to you in your area.

# Right to decide who does and does not visit you, regardless of your legal or biological relationship. *(May be dependent on age and COVID-19 restrictions)*

The policies of hospitals and other healthcare facilities cannot prevent you from having visitors by applying rules that discriminate on the basis of sexual orientation, gender identity or gender expression. Healthcare providers and facilities might be reluctant to recognize your family if they are not biologically related to you. One precaution you can take is to make lists of individuals who can and cannot visit you if you are in a healthcare facility, and include the lists in your healthcare directive and Health Guide (LINK). This will be especially helpful if you are or become unconscious at any time during your hospital stay.

## If you are denied a visitor, you can ask the facility to show you the rule that prohibits that visitor.

Hospitals may deny visitors for a variety of reasons, such as the visit being outside regular visiting hours or due to a patient’s current health condition. However, if you feel that the facility denied a visitor for discriminatory reasons, you can ask the facility to show you the rule that prohibits that visitor. Asking to see the rules can help you understand whether the denial was legitimate, which could help resolve problems in the future. It can also let healthcare providers know that you are concerned about your visitors being rejected and that you understand your rights. If you feel the action was discriminatory, you can file a complaint through the hospital administration department, the patient representative within the hospital, or the Human Rights Commission. (See “Taking Action Against Discrimination in Your Healthcare“ below.)

# Right to the privacy of your healthcare records and your identity

## You have a right to the privacy of your medical records and care under provincial or territorial legislation.

Healthcare providers and facilities have a legal and ethical obligation to maintain confidentiality and take measures to safeguard your health information, including paper or electronic medical records and information shared verbally. Maintaining confidentiality is fundamental to the trust between doctor and patient. Healthcare providers must also keep your information current, complete, and accurate (to the best of their knowledge), and protect it from theft, loss, or unauthorized use or disclosure. However, the right to privacy and confidentiality is not absolute. In every province and territory, there might be circumstances where the law authorizes or requires your personal information to be disclosed without your consent, as discussed below.

Information about your sexual orientation, gender identity, gender expression, and sex assigned at birth is included as protected health information and is also subject to your right to privacy. Discussions among your healthcare team regarding your gender identity and gender expression and sex assigned at birth should take place only if it is relevant to your medical health and treatment. Otherwise, it is not only disrespectful and unprofessional—it is illegal.

## Your doctors and nurses can only share your medical information if it is necessary to provide you with care, or if you give them permission to share it with others.

In most cases, your health information can only be disclosed with your consent. However, your consent to release information does not always need to be stated verbally or in writing. Healthcare professionals are often entitled to assume that you have consented to the sharing of your personal health information with other healthcare professionals involved in your care. If you don’t want all members of your medical team to have access to certain information, you should tell your doctor. You may also have to fill out a specific request form to block the sharing of this information. This process is likely to vary from one institution to another. You can also include instructions in your healthcare directive regarding which friends and family members may have access to your medical information.

In some limited circumstances, the law might authorize or require the disclosure of your health information without your consent, in order to prevent harm and protect public health. Some examples might include testing positive for HIV or another sexually transmitted infection (STI), such as gonorrhea, syphilis, or chlamydia. Note that in these limited circumstances, healthcare providers can provide this information only to the provincial or territorial public health authorities and cannot share it with anyone else. In all but the limited exemptions provided by law, they have to keep this information private, like they would any other protected information.

Each province and territory in Canada has a commissioner or ombudsperson responsible for overseeing provincial and territorial privacy legislation. See provincial and territorial privacy laws to find out how to file a complaint with your province’s ombudsperson if you feel your privacy has been violated.

# Right to protest if you are discharged due to discrimination

## You have a right to dispute being discharged or transferred from a healthcare facility.

Sometimes patients feel that they are being discharged (released from) or transferred from a facility because the facility does not want to treat 2SLGBTQ+ patients. While discharge and transfer rules are generally provincial or territorial, discriminatory discharge or transfer is illegal everywhere in Canada. Discrimination can be difficult to prove, especially if the facility has a reason for the discharge or transfer. If you feel that the discharge or transfer is unfair, you can challenge it for reasons beyond discrimination because facilities must follow many rules before ending your care.

If you feel you are being discharged or transferred improperly—due to discrimination or for any other reason—you can file a complaint with the healthcare facility’s patient-relations office and state that you are being discharged improperly (for example – due to an anti-2SLGBTQ+ bias). This complaint may delay your discharge, and give you time to come up with a back-up plan. You or a healthcare advocate can work on allowing you to stay at the facility; to find an inclusive facility; and/or hold the healthcare facility accountable for its discriminatory practices.

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Like hospitals, nursing and retirement homes are regulated provincially and rules may vary across the country. The Residents’ Bill of Rights states that residents have the right to participate in making any decisions concerning their discharge or transfer to or from long-term care. To find out more about your rights in your province or territory, contact a local 2SLGBTQ+ community centre or organization, or local lawyer.
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One way to be proactive is to have a discharge plan in place so that you will not be caught off-guard if and when the healthcare facility starts the discharge process. You or your healthcare proxy can ask for a meeting to discuss a discharge plan with the healthcare facility. You can learn more about creating a discharge plan here. Note that in both hospitals and nursing or retirement homes, your healthcare delegate has the right to participate in your discharge planning if you are not able to do so yourself. This is another reason it’s important to name a healthcare delegate who understands, supports, and affirms your 2SLGBTQ+ identity and healthcare wishes.

# Right to participate in healthcare decision-making as a minor

## “Mature Minors” have a right to decide on healthcare treatment that is in their best interest and do not need parental consent.

A “mature minor” is a young person below the age of consent who has demonstrated decision-making skills and whose physical, mental, and emotional development makes them capable of fully appreciating the nature and consequences of medical treatment. Those who are considered mature minors can give legally effective consent.

A minor’s right to decide whether to participate in medical treatment is recognized by Canadian law. Provincial and territorial laws that address a minor’s consent to medical treatment include British Columbia’s Infants’ Act and Ontario’s Health Care Consent Act. For more information, view the summary of Canadian Law regarding age of consent. Additionally, the Supreme Court of Canada has indicated that under the best interests of the child standard, a minor’s views with regard to treatment must be seriously considered, in accordance with their maturity. (*A. C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 S.C.R. 181**)**.

Current laws only provide guidelines for healthcare providers to decide if the minor is capable of making informed choices and what issues are to remain confidential from the parent or guardian. The more complex a medical treatment is, the less likely it is that the minor will be considered capable of making informed consent. 2SLGBTQ+ youth can always ask their healthcare provider to keep the information they share with a healthcare provider confidential and not share it with their parents or legal guardian.

## A minor has the legal right to receive healthcare that is free of discrimination based on sexual orientation, gender identity, or gender expression.

If you feel you are being treated unfairly due to your sexual orientation, gender identity, or gender expression – such as not being treated as mature because a provider does not want to provide you with 2SLGBTQ+ affirming care – reach out to a local 2SLGBTQ+ community centre or organization to find a 2SLGBTQ+–affirming healthcare provider.

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In January 2020, the British Columbia Court of Appeals unanimously affirmed the right of mature minors to access gender-affirming care without parental consent. It stated that when medical professionals consider treatment that is in the best interest of a minor, and they assess that the minor is sufficiently mature to consent to the treatment, no additional consent is needed. (*A.B. v C.D., 2020 BCCA 11*). While only binding in British Columbia, this is a precedent-setting case for providing freedom of autonomy over their gender and their body for young transgender and gender-diverse people across Canada.

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Mental health is especially important for 2SLGBTQ+ youth, given the stigma, discrimination, and isolation they can face. Availability of free mental health services varies across Canada. Speak with your family doctor, a nurse practitioner, or a local 2SLGBTQ+ community centre or organization for more information on where inclusive care is available. If you are experiencing suicidal thoughts, know that you are not alone and that support is available.

* + - Crisis Centres across Canada
		- Mental Health Sites across Canada

Once you reach the age of consent in your province or territory, you can create a valid healthcare directive and appoint a healthcare delegate. For more information on healthcare directives see the section on your “Right to Decide Who Will Advocate for Your Health.”

## Minors should not be forced into conversion therapy.

Conversion therapy is a discredited and harmful practice in which practitioners claim to be able to change a person’s sexual orientation, gender identity, and/or gender expression. This treatment can result in several health risks including depression, anxiety, and suicidality among 2SLGBTQ+ people. The provinces of Manitoba, Ontario, Prince Edward Island, Nova Scotia, the Yukon and Nunavut Territories well as some jurisdictions in Alberta and Vancouver, British Columbia have all adopted laws banning conversion therapy. In October 2020 the federal government proposed legislation that, if passed, would make it a crime to force anyone to undergo conversion therapy.

If you are a minor and are being forced into conversion therapy, contact a local 2SLGBTQ+ community centre for support or a local lawyer to help advocate for your right to make your own health decisions. Even if conversion therapy is not explicitly banned in your area, you can still exercise your right to be involved in your own healthcare decision-making and can also protest that this treatment is contrary to science and harmful.

# Two-Spirit and Indigenous LGBTQ+ specific rights

Canada’s human rights apply in First Nations. Two-Spirit and Indigenous LGBTQ+ people also have specific rights as Indigenous people through various legislative acts and treaties with Canada.

***The Canadian Human Rights Act*** prohibits discrimination in employment and services within federal jurisdiction. With the passing of an amendment to the *Canadian Human Rights Act* in June 2008, and the application of the *Canadian Human Rights Act* in 2011, the rights of Two-Spirit and First Nations LGBTQ+ people are protected. First Nations people can make complaints about discrimination to the Canadian Human Rights Commission, and there are systems to address discrimination.

Canada’s Constitution splits legal responsibility, or jurisdiction, between the federal and provincial or territorial governments. Self-governing First Nations also have responsibilities, as negotiated between the First Nation and the federal government. As a result, jurisdiction may vary from one First Nation to another.

In 1982 the Government of Canada patriated the Canadian Constitution and, in so doing, formally entrenched Aboriginal and treaty rights in the supreme law of Canada. Section 35 of the *Constitution Act*, 1982 provides:

*(1) The existing aboriginal and treaty rights of the aboriginal people in Canada are hereby recognized and affirmed.*

*(2) In this Act, “Aboriginal Peoples of Canada“ includes the Indian, Inuit, and Métis Peoples of Canada.*

*(3) For greater certainty, in subsection (1), “treaty rights” includes rights that now*

*exist by way of land claims agreements or may be so acquired.*

*(4) Notwithstanding any other provision of this act, the Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.[1]*

*Canada’s Constitution splits legal responsibility, or jurisdiction, between the federal and provincial or territorial governments. Self-governing First Nations also have responsibilities, as negotiated between the First Nation and the federal government. As a result, jurisdiction may vary from one First Nation to another.*

*Originally, section 67 of the Act (an exemption) shielded decisions or actions by First Nation Band Councils and the Government of Canada made under or pursuant to the Indian Act from complaints.*

*In June 2008 section 67 of the Act was repealed with the passing of an amendment to the Canadian Human Rights Act, applying immediately to the federal government with a three-year delayed application for First Nation governments. The revised legislation means that First Nations individuals who are registered Indians and members of Bands, or individuals residing or working on reserves, can make complaints of discrimination to the Canadian Human Rights Commission relating to decisions or actions arising from or pursuant to the Indian Act.*

*The application of the Canadian Human Rights Act in First Nations communities in 2011 affirmed the rights of Two Spirit and First Nations LGBTQ+ people and created mechanisms for redress in situations where discrimination has occurred.*

## Non-insured health benefits for Two-Spirit and Indigenous LGBTQ+ people

Two-Spirit and Indigenous LGBTQ+ First Nations individuals who are “Registered Indians” and members of Bands also have access to Non-Insured Health Benefits (NIHB). The NIHB program provides registered First Nations and recognized Inuit with coverage for a range of medically necessary health benefits including prescription drugs and over-the-counter (OTC) medications, dental and vision care, medical supplies and equipment, mental health counselling, and transportation to access medically necessary health services that are not available on reserve or in the community of residence. Safer sex (condoms) and some gender-affirming products are also available through the NIHB program.

**Taking Action against Discrimination in Your Healthcare**

If you believe you were discriminated against in your healthcare, you can file a complaint. You may also be entitled to file claims for intersectional discrimination if the treatment is based on a combination of different aspects of your identity, such as discrimination specifically for being a transgender Indigenous person or other transgender racially visible minority.

There are three places you might file a complaint if you believe you have experienced discrimination in your healthcare.

* + 1. **Facility where the discrimination occurred:** You can file a complaint at the facility where the discrimination occurred. This can often be done on the hospital’s website, through their patient relations department, or through a privacy officer. This option may make sense if the incident seemed limited to a few individuals within the facility, and you feel that others in the facility might be supportive of your concern.
		2. **Professional college:** If the complaint is about a physician or surgeon, you can file a discrimination complaint through the College of Physicians and Surgeons where the discrimination happened (province or territory). If the complaint is about a nurse, you can file a complaint with the College of Nurses. You can find contact information for each of these colleges by searching online for your province or territory.
		3. **Canadian Human Rights Commission:** Canada protects against discrimination on these grounds:
		- race;
		- national or ethnic origin;
		- colour;
		- religion;
		- age;
		- sex;
		- sexual orientation;
		- gender identity or expression;
		- marital status;
		- family status;
		- disability; or
		- criminal convictions that have been pardoned or for which a record suspension was ordered.

On the Canadian Human Rights Commission website, you will find a list of the Provincial and Territorial Human Rights Agencies, where you can file a complaint.

The Canadian Healthcare Bill of Rights was created to help you advocate for quality and inclusive care for yourself, your family, your friends, and your community. If you are being discriminated against or disrespected in your healthcare treatment and you need more help, we also encourage you to reach out to a local 2SLGBTQ+ community centre or organization, or local lawyer.

Please also refer to the one-page summary and wallet-sized card.

**Addendum to Healthcare Planning Document:**

**Respecting Gender Identity and Expression**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, provide these instructions on respecting my gender identity and expression, to be followed irrespective of whether I have obtained a court-ordered name change, changed my gender marker on any identification document, or undergone any transition-related medical treatment.

The person I have appointed as my healthcare decision-maker, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, has the authority to direct any healthcare provider, medical staff, or other person to address me by my name and gender pronouns of choice, and to preserve to the fullest extent possible an appearance consistent with my gender identity and expression.

I direct my physician and all medical personnel to refer to me as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ during any period of treatment, even if that is not my legal name.

I direct my physician and all medical personnel to use the following pronouns in reference to me, my chart, my treatment, etc., during any stage of treatment:

 She/Her \_\_\_ He/Him\_\_\_ They/Them \_\_\_ None (name only) \_\_\_

 Something else \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

During any period of treatment, if I am unable to personally maintain my appearance, I direct my physician and all medical personnel to maintain my appearance to the extent possible as (check one):

 Male \_\_\_\_ Female \_\_\_\_ Neutral / Androgynous \_\_\_\_

Something else \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

During any memorial service or preparation thereof, I direct all coroners, funeral home employees, healthcare workers, and participants to refer to me by the name and pronouns noted above, irrespective of whether I have obtained a court-ordered name change, changed my gender marker on any identification document, or undergone any transition-related medical treatment. These individuals should also maintain the masculine, feminine, or other gender expression noted above.

Other instructions:

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Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Have witness(es) sign and date if appropriate:*

Thank you to our partners….

References:

Inspirational Documents:

* The *Universal Declaration of Human Rights* (Articles 1,2,3)
* The *United Nations Declaration on the Rights of Indigenous Peoples* (Articles 2,11,15,24,31)
* The *United Nations Convention on the Rights of the Child* (Articles 2,15,19)

Legal Documents:

* The *Canadian Charter of Rights and Freedoms* (Section 15)
* The *Canadian Human Rights Act* (Section 2)
* *Personal Information Protection and Electronic Documents Act*

Resource Documents:

https://www.chrc-ccdp.gc.ca/eng/content/human-rights-handbook-first-nations

List of all provincial colleges of physician surgeon and nurses