

Know Your Rights



Disclosure and post-secondary education

The information contained in this publication is information about the law, but it is not legal advice. For legal advice, please contact a lawyer in your region.

Copies of this brochure are available at www.aidslaw.ca



Funding for this publication was provided by the Public Health Agency of Canada. The opinions expressed in this publication are those of the authors/researchers and do not necessarily reflect the official views of the Public Health Agency of Canada.

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I. As a student at a post-secondary institution, do I have to disclose that I have HIV?

In most cases, there is no legal obligation to tell a post-secondary institution (i.e., trade school, job training program, college or university) that you have HIV. Whether you disclose your HIV status at school, and to whom, should be entirely up to you. Your personal health information, including your HIV status, is private, personal information.

HIV is not transmitted through casual contact, so there is usually no reason for an educational institution to require disclosure. Canada's human rights laws prohibit discrimination based on disability when providing services, including education. HIV and AIDS are considered disabilities under the law. This means that an educational institution cannot request to know your HIV status, just as it cannot ask about your sexual orientation, marital status, religion or other similar personal characteristics. It would be unlawful discrimination for a school to request this information as a condition of acceptance or continuation in a program of study.

But note that, if you are studying in a health care program, there may be some exceptions to this general rule that you don't have to disclose (see below).

In most cases, there is no legal obligation to inform a post-secondary institution (i.e., trade school, job training program, college or university) that you have HIV. Whether you disclose your HIV status at school, and to whom, should be entirely up to you.

2. What if I am studying in a health care field? Do I have to tell my college/university, teacher, professor, mentor or preceptor that I have HIV?

While studying in the vast majority of programs, students will not be asked whether they have HIV. However, students may be asked to disclose if they are training in certain health professions where there is a (very small) possibility of HIV transmission, such as medicine and dentistry. The administration may either request and expect voluntary disclosure of communicable diseases, or require medical documentation which includes the results of a recent HIV test.

Often, students are asked to disclose to the college or university if they are studying in health professions where the professional code of conduct requires disclosure to practise after graduation. For example, Ontario's College of Physicians and Surgeons has a policy requiring disclosure by doctors who have HIV or hepatitis B or C and whose practice includes "exposure-prone procedures." (These are invasive procedures where there is a risk that a health care worker could be injured by a sharp instrument or tissue inside a body cavity or wound, thereby exposing the patient to the worker's blood.) Similar policies exist in most provinces.

In these programs of study, personal health information about infectious diseases may be requested from students before practical experience training, such as placements in various clinical settings. The person to whom the medical information is to be provided may differ between institutions. For example, this could be a direct supervisor or the dean of the school. Confirm the precise requirements of your program with the college or university.

In Quebec, the Institut national de santé publique du Québec (INSPQ) maintains a specific Blood-Borne Infection Risk Assessment Unit (*Service d'évaluation des risques de transmission d'infections hématogènes*, or SERTIH). For certain health professions, an expert panel of this unit will review individual cases and make recommendations about any adjustments to your practice or your training that may be necessary and feasible. SERTIH forwards the information to your educational institution (or to your professional regulatory body if you are already in practice). HIV

disclosure is not required in all cases, even if disclosure of other infections is requested (e.g., tuberculosis, hepatitis A).

Information regarding students' health, including HIV status, is not intended to be used to exclude students but to ensure that any transmission risks are minimized as students learn and practise skills, including in particular "exposure-prone procedures." For students living with HIV, a risk assessment may be conducted, counselling may be provided, and restrictions could be placed on the student's practical training. Information collected for these purposes should be held in strict confidence and used only for these purposes.

All students, whether living with a diagnosed communicable illness or not, should be taught proper infection control procedures. Furthermore, there is no risk of HIV transmission except in the case of certain exposure-prone procedures (and even then, the risk is very small). Therefore, unless limited to circumstances where you would be performing such procedures as part of your training, requests by educational institutions for you to disclose such information may be overly broad and unjustified.

Nonetheless, if you are a student in one of these programs and are living with HIV, you will have to decide how you will answer the screening questions or the request for medical information. You may choose to provide the requested information but include a letter indicating that you feel the disclosure requirement is overly broad and emphasizing that your information is to be kept confidential. You may choose to decline to provide the requested information, indicating that you feel it is an unjustifiable intrusion into your privacy.

Whatever you choose to do, you should consider whether you feel the request is overly broad in the circumstances, whether you are prepared to challenge it (for example, by launching a human rights complaint) and the potential impacts on your education and career. An AIDS-service organization or legal clinic may be able to help you assess your options.

3. Do I need to disclose that I have HIV to my classmates?

You do not need to disclose that you have HIV status to your classmates. HIV cannot be transmitted through casual

contact. It is up to you to decide whether you want to share that information with other students.

4. Can I request additional help to meet deadlines and educational goals because of illness or limitations related to my HIV status?

Yes. In order to ensure equality for students living with disabilities, post-secondary institutions are obliged to provide accommodation to students who require it because of a disability. This obligation applies to both publicly and privately funded schools. If the accommodation requested would cause “undue hardship” to the institution — meaning it would be too difficult or expensive to implement — then the institution is not required to provide it. But it must be able to prove this would be the case.

The accommodation should be based on the student’s individual needs, provided in a timely manner, and monitored and evaluated so it can be changed over time if necessary. Academic accommodation might mean adjusting teaching and evaluation procedures to meet the particular needs of a student with a disability and allow the student to do their best on a level playing field with other students. For example, a student with a health condition that results in unusual fatigue might be given extra time to complete tests or assignments.

To be eligible for accommodation, you need to tell the school that you have a disability and provide appropriate documentation (e.g., a letter from your doctor) explaining the accommodation you need in order to meet the requirements of the program. You do not need to disclose your specific medical condition(s), such as HIV, to get accommodation. However, if you do not provide adequate medical information,

the institution may not be required to accommodate your needs.

Many colleges and universities have disability resource centres or offices for students with disabilities that can help you get accommodation, if needed, to pursue your studies. A directory of campus disability services is available through the National Educational Association of Disabled Students (NEADS) (see below).

Academic accommodation does not change the essential program requirements or expectations within your educational program. You will still need to pass tests or exams, turn in assignments and demonstrate that you have mastered the required skills.



Post-secondary institutions are obligated to provide academic accommodation to students who require it because of a disability, to the point of “undue hardship.”

5. If I tell someone at school that I have HIV, do they have to keep it confidential?

It depends whom you tell.

If you disclose your HIV status to a teacher, dean, mentor, counsellor, residence staff, administrative staff, or others working in an official capacity at a post-secondary institution, that person must keep this information confidential. Legally, an institution cannot disclose information about a student’s HIV status (or other medical information) to others (e.g., parents, teachers, other students, potential employers, etc.) without the student’s consent, except in rare circumstances. If your HIV status is recorded in your file at the school’s health services or counselling services, it is considered confidential information and should not be shared with other departments of the institution. However, these legal obligations to keep your HIV status confidential *do not apply* to a classmate, peer or any other person at the school who is not acting in an official capacity for the institution.

In practice, it is often difficult to control the flow of information at school, and legal remedies are limited if a breach of privacy occurs. Provincial and territorial privacy laws protect the confidentiality of an individual’s personal information, including their health information in official school records. If you believe that your privacy has been violated by your educational institution, contact a lawyer, legal clinic or your provincial/territorial privacy commissioner for advice. (In Manitoba, the Ombudsman is the provincial privacy commissioner.)

For more information on remedies for breaches of privacy, see the resource in this series entitled “**Remedies for discrimination and privacy violations in the workplace.**” Much of that information is also applicable in the educational context.

6. What protection do I have against discrimination and harassment at school?

Under human rights law, you are protected from HIV-related discrimination and harassment (which is considered a form of discrimination) at school. Human rights codes apply to both governments and the private sector. This means educational institutions are covered.

In the federal jurisdiction, and in each province and territory, there is a human rights act that would apply to educational institutions. In most jurisdictions, the applicable Human Rights Commission offers information and services to people who believe they have suffered discrimination. Many complaints are settled through mediation. If mediation efforts are unsuccessful, the commission will decide whether to refer the case to a human rights tribunal for a hearing. If the commission decides not to refer the case to a tribunal, it will be the end of the complaint.

The procedures and services available in each province/territory vary, so contact the appropriate commission for detailed information. In British Columbia, Ontario and Nunavut, complaints are filed directly with the provincial/territorial Human Rights Tribunal, rather than with the commission.

Note that there is usually a “limitation period” that means you must file your com-

plaint within a certain period of time after the discrimination takes place. Often this period is one year, but check with the relevant commission.

Filing a human rights complaint is free of charge. You do not need a lawyer to represent you, although you may choose to have one. If you hire a lawyer, it will be at your own expense unless you are able to get free services through a legal clinic or other legal aid service. The human rights commission you contact can suggest resources of these sorts that may be available.

Remember that many different people and organizations can provide you with information and support, but *only* a lawyer can give you legal advice, specific to your individual situation.

See the resource in this series titled **“Remedies for discrimination and privacy violations in the workplace”** for more information on what you can do if you experience discrimination at your post-secondary institution. Much of the information contained in it is also applicable in the educational context. Seek legal advice from a lawyer or legal clinic about your own personal situation.

7. What should I do if I experience discrimination at school?

If you believe you are being discriminated against or harassed at school, you should try to keep a record of what is happening. If possible, your notes should include:

- the date of the incident(s);
- a description of the incident(s);
- the names and contact information of witnesses, if any;
- what was said or done to you and how you responded; and
- copies of all relevant e-mails, text messages, postings on social media (e.g., Facebook, Twitter), letters and documents.

Sometimes, confronting the person who is responsible for the discrimination may resolve the situation. You might also bring

the matter to the attention of a supervisor, professor/instructor or dean, as the school has an obligation to take steps to make sure students don't face discrimination there. Your local AIDS-service organization may be able to help you consider different options and support you if you decide to take such actions.

You may want to contact the appropriate provincial or territorial human rights commission for information about initiating a human rights complaint and for other referrals. You may also choose to contact a lawyer for legal advice about your particular situation. The lawyer may contact your college, university or school on your behalf in an attempt to stop the discrimination.

For further information

- *The Charter in the Classroom: Students, Teachers and Rights*, “Concept 8: Equality — Accommodation of Difference” and “Concept 9: Equality — Protection from Discrimination.” On-line: www.thecharterrules.ca.
- The National Educational Association of Disabled Students (NEADS): www.neads.ca.
- Ontario Human Rights Commission, “Guidelines on Accessible Education” (2004; revised 2009). On-line: www.ohrc.on.ca.
- College of Physicians & Surgeons of Ontario, “Blood-borne Pathogens”, Policy #3–12 (1998, revised 2005, 2012). On-line: www.cpso.on.ca (“Policies”).