



# *Two-Spirit and LGBTQ+ Canadian Healthcare Bill of Rights*

For Advanced Illness, Frailty and End of Life



# Introduction

The *2SLGBTQ+ Canadian Healthcare Bill of Rights for Advanced Illness, Frailty and End of Life (2SLGBTQ+ Bill of Rights)*, assists people who are Two-Spirit and LGBTQ+ in receiving healthcare that is respectful, feels safe, and is free from discrimination. 2SLGBTQ+ Canadians living with advanced illness or who are frail may face additional challenges when seeking care.

Canada's *Charter of Rights and Freedoms* prohibits discrimination based on sexual orientation, gender identity and gender expression; however, unfortunately the reality is sometimes different. We've created this publication to help you know your rights and to assist you in obtaining care that is respectful and inclusive.

The *2SLGBTQ+ Bill of Rights* outlines your rights when accessing healthcare; highlights what decisions you are entitled to make; and details what actions you can take if you're not receiving access to respectful and inclusive care.

There are eight rights listed here. Some of these rights are clearly enshrined in legislation, including Canada's *Charter of Rights and Freedoms*. Others haven't yet been tested in the courts but align with the spirit of existing legislation.

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# 1 The RIGHT...

**to healthcare that is free from discrimination under the *Canadian Charter of Rights and Freedoms* regardless of your sexual orientation, gender identity, or gender expression.**

► **You have the right to treatment free from discrimination.**

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.

Note: 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 person below the age of consent who has demonstrated decision-making skills and whose physical, mental, and emotional development makes them capable of fully understanding the nature, potential harm, benefit, and consequences of agreeing to or declining medical treatment.

### **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.

[\*Canadian Charter of Rights and Freedoms\*](#) 



*If you have questions about your rights or concerns about the care you are receiving, connecting with a local Two-Spirit and LGBTQ+ organization or a lawyer may be helpful.*

[Connect to the Enchanté Network](#) 

[Connect to Conseil québécois LGBT](#) 

► **You cannot be denied healthcare, and you have the right to receive respectful care.**

You have a right to 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 care. Although a doctor does not have to accept new patients in non-emergency situations 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 care that is not respectful and is discriminatory are:**

- 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 certain types of care).



*If you think 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** at the end of this document. It may also be helpful to connect with a local 2SLGBTQ+ community centre or organization to help find inclusive healthcare providers.*

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## The RIGHT...

**to decide your wishes for future healthcare and who will be your advocate if you cannot or choose not to speak for yourself.**

- ▶ **You have the right to create an advance care plan and/or a health care directive that outlines your wishes for future care, and the right to have those wishes respected.**

2SLGBTQ+ Canadians living with advanced illness or who are frail may face additional challenges when seeking care. A healthcare directive may help.

A healthcare directive, personal directive, or advance directive is a written document that sets out your wishes for your medical care and treatment. The names of these documents, and whether they are legally binding, vary between provinces and territories.

Under Canadian law, healthcare providers must respect valid healthcare directives, which often include naming a healthcare delegate or “substitute decision-maker,” to advocate for you if you are unable to do so.

If you are trans or gender-expansive (e.g., you identify as gender non-binary, gender fluid, etc.), it is important to tailor your healthcare directive to include gender identity-related protections.



*The **My Choices for Safe and Inclusive Healthcare** and **Planning for My Care** documents may be used to help advise healthcare providers learn what is important to you and to respect your gender identity and expression.*

*[My Choices for Safe and Inclusive Healthcare](#) *  
*[Planning for My Care](#) *

► **You have the right to identify a person to make health decisions for you if you cannot or choose not to.**

Also called “substitute decision-makers” these delegates are especially important as they can advocate to have your wishes and decisions respected. Some 2SLGBTQ+ people do not want members of their biological family to make decisions on their behalf. It is important to create your healthcare directive in advance. You must be considered competent when you create the directive for it to be valid.

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



*Learn more about healthcare directives in your province or territory.*

**Connect** 

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# 3 The RIGHT...

## to have your gender identity and expression respected.

### ► You deserve to feel safe sharing and expressing your gender identity.

If you are trans or gender-expansive, it's important for your healthcare providers to know about your unique and specific health needs, since they maybe overlooked or misunderstood. For example, a trans woman may need different cancer screenings than a cisgender woman. It is important that you feel safe discussing your gender identity and sex assigned at birth with healthcare providers because this information can impact the healthcare you need and the health issues that may arise in your future.



To find 2SLGBTQ+ friendly healthcare providers contact a local 2SLGBTQ+ organization.

[Connect to the Enchanté Network](#)

[Connect to Conseil québécois LGBT](#)

### ► You have the right to be called by your chosen name and pronouns.

Healthcare providers have an ethical duty and professional responsibility to treat all patients with dignity and respect. Intentionally or repeatedly using the wrong name or pronouns violates this duty and constitutes harassment. Sometimes providers may call you by the wrong name or pronouns out of ignorance or confusion rather than with the intent to disrespect you. If you have explained your name and pronouns and the provider still fails to use them, this could constitute harassment.

You can request that details about your chosen name and pronouns be added to your medical chart even if they are different from what is listed on your government-issued identification.

You have the right to include instructions about your gender identity and expression in your healthcare directive (see right 2).



*If you think the action is discriminatory, you can file a complaint within the facility and/or with the healthcare provider's professional college.*

*See **Taking Action Against Discrimination in Your Healthcare** at the end of this document.*

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### ► **You have the right to use the restroom facilities of your choice.**

You can use the restroom facilities that you feel most comfortable and safest using whether they are gender-binary or inclusive facilities.

If a healthcare provider refuses to let you use the restroom of your choice based on your gender identity or gender expression, it could be considered discrimination.

While it is a good practice for organization and places to provide mixed or gender inclusive restrooms, these are not always available. Using gender inclusive facilities, however, is always your choice; you cannot be forced to use one.



# 4

## The RIGHT...

**to decide who does and does not visit you, regardless of your legal or biological relationship.**

- ▶ **Healthcare facilities cannot prevent you from having visitors on the basis of sexual orientation, gender identity, or gender expression.**

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. The facility cannot deny a visitor for discriminatory reasons.

Note: Other circumstances, such as pandemic restrictions, may limit visitors to healthcare facilities.



*If a visitor has been denied, you can ask the facility to show you the rule that has prohibited their visit. This can help you understand whether the denial was legitimate. It also lets healthcare providers know that you are concerned about your visitors being rejected and that you understand your rights. If you think the action was discriminatory, you can file a complaint through the facility's administration department, the patient representative, or to the Human Rights agency in your province or territory. (See **Taking Action Against Discrimination in Your Healthcare**, at the end of this document.)*



*Make lists of those who can and cannot visit you if you are in a healthcare facility, and include the list in your healthcare directive and your **My Choices for Safe and Inclusive Healthcare** booklet. This will be especially helpful if you are alone or if you become unconscious at any time during your hospital stay.*

***My Choices for Safe and Inclusive Healthcare** [↗](#)*

# 5 *The 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 healthcare providers and patients. Healthcare providers and health systems must keep your information current, complete, and accurate (to the best of their knowledge), and protect it from theft, loss, or unauthorized use or disclosure.

Information about your sexual orientation, gender identity, gender expression, and sex assigned at birth is protected health information and part of 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, unethical and unprofessional – it is illegal.

The right to privacy and confidentiality is not absolute. In every province and territory, there may be circumstances where the law authorizes or requires your personal information to be disclosed without your consent (discussed in the pages that follow).

► **Your personal and medical information can only be shared if it is necessary to provide you with care, or if you give permission to share it.**

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 providers are often entitled to assume that you have consented to the sharing of your personal health information with other healthcare providers involved in your care.



*If you don't want all members of your healthcare team to have access to certain information, you should tell your doctor or other primary healthcare provider. You may also be asked to complete a specific request form to block the sharing of this information. This process may vary among facilities.*

*You can also include instructions in your healthcare directive regarding which friends and family members may have access to your medical information.*

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► **Disclosure required by law.**

In some limited circumstances, the law might require the disclosure of your health information without your consent, in order to prevent harm and protect public health. Some examples include testing positive for HIV or a transmissible infection. 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 think your privacy has been violated.*

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# 6

## The 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 or transferred from a facility because they are 2SLGBTQ+. Discriminatory discharge or transfer is illegal in Canada. Discrimination can be difficult to prove, especially if the facility has a reason for the discharge or transfer.



*If you think 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 administration office stating that you are being discharged improperly (for example, due to an anti-2SLGBTQ+ bias).*

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# 7 *The RIGHT...*

## **to refuse any treatments that are discriminatory or harmful to 2SLGBTQ+ people.**

► **You have the right to refuse treatment services that are discriminatory.**

If you have concerns that a treatment you are being offered or provided is discriminatory, you have the right to ask for proof that it is an accepted healthcare practice.

It is not acceptable for counselling, other intervention or treatment services to be provided with the aim of changing a person's sexual orientation, gender identity and/or gender expression.

Conversion therapy, for example, is a discredited and harmful practice in which practitioners claim to effect these changes. This treatment can result in several health risks including depression, anxiety, and thoughts of suicide among 2SLGBTQ+ people.

Some provinces and territories have laws banning conversion therapy. Federal legislation is currently pending to criminalize conversion therapy-related conduct in Canada.

# 8 RIGHTS...

## specific to Two-Spirit and Indigenous LGBTQ+ people.

Two-Spirit and Indigenous LGBTQ+ people have specific rights through various legislative acts and treaties with Canada.

### ► **Rights as outlined in the *Canadian Human Rights Act*.**

The *Canadian Human Rights Act* prohibits discrimination in the provision of services within federal jurisdiction and specifically protects the rights of Two-Spirit and Indigenous LGBTQ+ peoples.

### ► **Proposed rights as outlined in the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.**

Canada has endorsed the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* and, in consultation with Two-Spirit and gender-diverse people, is in the process of implementing these rights in Canadian law.

For more information [↗](#)

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

Two-Spirit and LGBTQ+ First Nations individuals who are “Registered Indians” and members of Bands, or are Inuit recognized by an Inuit land claim organization, 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. Some gender-affirming services and tools are also available through the NIHB program.

# Taking Action

## Taking action against discrimination in your healthcare

If you think you were discriminated against in your healthcare, there are a number of actions you can take that include filing a complaint with various entities. If the potential discrimination is based on more than one aspect of your identity, for example your gender identity and your cultural identity, you may also be entitled to file claims for intersectional discrimination. This may be particularly relevant to those who are Two-Spirit, Indigenous, from racialized communities or people who are living with a disability.

### Where can you file a complaint?

- **Facility where the discrimination occurred:** Contact the facility's administration office or check their website, if one is available, to determine the process.
- **Professional college:** If the complaint is about a physician, you can file a discrimination complaint through the College of Physicians and Surgeons in your province or territory. If the complaint is about a nurse, you can file a complaint with the nursing regulatory body in your province or territory. You can find contact information by searching online for your province or territory.
- **Your local Indigenous governing body:** If applicable to you, they can be a support and help navigate colonial health systems.
- **Canadian Human Rights Commission and Provincial or Territorial Human Rights agencies:** You can file a complaint with the Human Rights agency in your province or territory or with the Canadian Human Rights Commission.

[Human Rights agency](#)

[Canadian Human Rights Commission](#)

The *Canadian Healthcare Bill of Rights for Advanced illness, Frailty, and End of Life* 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 and need more help, you may consider reaching out to your local 2SLGBTQ+ organization or a local lawyer.

**This document** is part of **Proud, Prepared and Protected** – a series of resources to support 2SLGBTQ+ inclusive palliative care.


- **My Choices for Safe and Inclusive Healthcare** is a place to record information related to your health and preferences for your care. It can help you to have conversations with healthcare providers, to plan for your future care, and to share information with others, including your emergency contacts.
- **Planning for My Care** is intended to help you think about what is important to you, what concerns you might have, and who you want to make decisions for you would if a time comes when you can't make decisions for yourself.

These products were developed by people who identify as Two-Spirit and LGBTQ+ and the Canadian Virtual Hospice.

An infographic summary of this 2SLGBTQ+ Bill of Rights and wallet card are also available.

## References:

- *The Universal Declaration of Human Rights*
- *The United Nations Declaration on the Rights of Indigenous Peoples*
- *The United Nations Convention on the Rights of the Child*
- *The Canadian Charter of Rights and Freedoms*
- *The Canadian Human Rights Act; Personal Information Protection and Electronic Documents Act*



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Visit [www.virtualhospice.ca/2SLGBTQ](http://www.virtualhospice.ca/2SLGBTQ) for more inclusive care resources including:

- My Choices for Safe and Inclusive Healthcare
- Planning for My Care

*We are grateful to all the individuals and organizations who contributed to making this a safe and inclusive document.*

Aussi disponible en français.



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