

Duty to accommodate **STUDENTS WITH DISABILITIES** in post-secondary educational institutions



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HUMAN RIGHTS GUIDE

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This guide is produced by the Alberta Human Rights Commission (the Commission). It discusses the principles of human rights law and is based on decisions made by human rights panels,¹ tribunals and courts. These decision-makers have interpreted certain sections of the *Alberta Human Rights Act* based on the facts of particular cases. As this case law evolves, so does the Commission's application of the *Alberta Human Rights Act* (the *Act*).

This guide will:

- ◆ Help individuals, employers, service providers, and policy-makers understand their rights and responsibilities under Alberta's human rights law
- ◆ Assist organizations and individuals in setting standards for behaviour that complies with human rights law

The information in this guide was current at the time of publication. If you have questions related to this publication, contact the Commission.

This publication does not provide legal advice. Should you require legal advice, consult legal counsel.

This publication explains a post-secondary educational institution's duty to accommodate students with disabilities. The Commission originally developed this publication in consultation with an advisory committee that included students with disabilities, disability service providers from various educational institutions, and representatives of community organizations that serve persons with disabilities. In addition, various individuals who work at post-secondary educational institutions in Alberta reviewed a draft of this publication. This version was prepared with the assistance of input from individuals who work in post-secondary educational institutions across Alberta. The Commission is grateful for the assistance of the advisory committee and others.

In this publication, we use the term **disability service provider**. The job of the disability service provider at a post-secondary educational institution includes:

- Helping students with disabilities to develop appropriate accommodation plans
- Acting as a resource for faculty, instructors, staff and others at the educational institution who need information about appropriate accommodation and documentation

Some post-secondary institutions do not have a designated disability service provider. In these cases, students may want to consult with the instructors of the specific courses where accommodation is needed, the institution's human rights office, the student representative, or the dean of their faculty. Even when there is a designated disability service provider, it may be useful for the student or the disability service provider (with permission from the student) to discuss required accommodations with the instructor of the specific course or the staff member in charge of a particular service where accommodation is needed (such as a librarian).

¹ In October 2009, as part of the amendments to Alberta's human rights legislation, panels were renamed human rights tribunals. In this publication, the word "tribunal" should be interpreted to include panels.



This guide is intended to:

- ◆ Increase understanding of what accommodation means
- ◆ Increase awareness about the duty to accommodate
- ◆ Assist in developing effective policies and procedures
- ◆ Assist in developing reasonable accommodation strategies
- ◆ Promote communication between students and the education sector about accommodation

Introduction

Post-secondary education is the gateway to the workplace and community for most Canadians. It is essential that post-secondary education be accessible to all members of our community, including persons with disabilities. Historically, persons with disabilities have often not been able to participate fully in post-secondary education. The method for ensuring that persons with disabilities have equal access to post-secondary education is through a process called accommodation. Accommodation has allowed many persons with disabilities to make major contributions to life in Alberta and Canada.

This publication provides information about the duty to accommodate students with physical and mental disabilities so they can participate in post-secondary education and activities. Accordingly, this publication will focus on the duty to accommodate students, but it is important to note that post-secondary institutions may also have a duty to accommodate individuals or groups who are not students, as well as to accommodate persons on the basis of other protected grounds. For more information on the duty to accommodate in other contexts (for example, on the basis of religious beliefs), see the Commission's human rights guide *Duty to accommodate*.

Accommodation and the duty to accommodate under the law

Accommodation

Accommodation is the process of adapting the way in which services are provided to eliminate or reduce the barriers that certain individuals experience when attempting to access those services; for example, persons with disabilities accessing the educational services provided by post-secondary institutions. For information on accommodation in other contexts, see the Commission's human rights guide *Duty to accommodate*.

Any student or visitor who has a characteristic that meets a protected ground under the *Act*, such as mental disability or physical disability, may request an accommodation from a post-secondary institution. For example, there are a number of students with developmental

disabilities who, with accommodation, can participate successfully in the post-secondary education environment. The accommodation may involve students auditing courses or modifying participation in a program.

Accommodation does **not**:

1. Require that post-secondary institutions lower academic or non-academic standards to accommodate students with disabilities
2. Relieve the student of the responsibility to develop the essential skills and competencies expected of all students

Accordingly, there are programs and courses where it will not be possible to accommodate students with disabilities. For more information on these limitations, see the section **How does a post-secondary institution determine that an accommodation is not possible?** below or read the Commission's human rights guide *Defences to human rights complaints*.

Disabilities

Accommodating people with disabilities

Many complaints about accommodation relate to the grounds of physical disability and mental disability.

The *Act* says that **physical disability** means “any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness.” Some of the disabilities that have been established as protected under human rights law are: epilepsy/seizures, heart attack/heart condition, cancer, severe seasonal allergies, shoulder or back injury, asthma, Crohn’s disease, hypertension, hysterectomy, spinal malformation, visual acuity, colour blindness, loss of body parts such as fingers, speech impediments, arthritis, muscular atrophy, cerebral palsy, and alcoholism. Drug dependence and other addictions may be captured under physical disability and/or mental disability.

Some common conditions, such as colds and the flu, which do not last long and have no long-term effects, are not normally considered to be physical disabilities. However, just because a given condition is common, this does not mean that it is automatically not considered a disability. Some disabilities occur regularly in the general population.

Mental disability is defined by the *Act* as “any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder.” Some examples of mental disabilities include: dyslexia, depression, schizophrenia, obsessive compulsive disorder, and anxiety disorders.

It is not possible to provide a complete list of conditions normally considered to fit in these definitions. The disabilities listed above are examples only.

Services customarily available to the public

Section 4 of the *Act* covers most services provided by post-secondary institutions and states:

No person shall:

- (a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or
- (b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public,
because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.

For ease of reference, going forward, “goods, services, accommodation or facilities that are customarily available to the public” will be referred to as “services.”

Under section 4 of the *Act*, a service only needs to be generally available to a defined public, which could be a specific group that shares a common characteristic. The “public” does not necessarily mean the public at large. The “public” could be a group that has been selected using eligibility criteria. Every service has its own “public” and that group may be very large or very small. For example, students at a university are considered the “public” in the context of the university providing educational courses, which is considered a service. Thus, all of the students registered in an entry level biology class would be considered the “public” even though the class is not available to the general public. These students were selected to be part of this “public” through an admissions process (that is, using eligibility criteria) and are able to access the university’s educational courses even though that service is not available to the general public. The important part is that once the “public” has been defined, the *Act* prohibits discrimination within that public.

Because section 4 of the *Act* only covers services that are customarily available to the public, it does not apply to private relationships between parties. For example, the implementation of an employment contract between a university and one of its employees creates a private employment relationship between the employee and the university, so it is not considered a “[service]... customarily available to the public.”

For a more in-depth look at how the Supreme Court of Canada has approached the definition of public and services customarily available to the public, see the summary of *University of British Columbia v Berg* in the **Appendix**.

Post-secondary education sector

References to the “post-secondary” education sector in this human rights guide means institutions that provide academic and vocational training to students. These include but are not limited to:

- ◆ universities
- ◆ technical institutes
- ◆ English as a second language schools
- ◆ continuing education facilities
- ◆ community colleges
- ◆ private sector training schools
- ◆ trade schools
- ◆ adult education and upgrading schools

Everyone in a post-secondary institution has a responsibility to understand and participate in the accommodation process. The members of a post-secondary institution who must work with students to create appropriate accommodations, when possible, include faculty, administrators, student services staff, and facilities management staff. The types of services that may require accommodation include:

- ◆ course work
- ◆ practicum and clinical placements
- ◆ co-op placements
- ◆ graduate internships
- ◆ library services
- ◆ athletic services
- ◆ school teams, such as the debate team and swimming team
- ◆ cafeteria services
- ◆ parking and transportation services
- ◆ residences
- ◆ computing services
- ◆ health services
- ◆ counselling services
- ◆ affiliated services, for example, the student union and student newspaper
- ◆ student clubs, for example, the French Club and the Chemistry Students’ Society
- ◆ campus events
- ◆ campus orientation

Accommodating students with disabilities in the post-secondary context

Accommodating students with disabilities involves making adjustments or alternative arrangements in both the physical environment and the educational environment to ensure that it does not create learning or physical barriers that would prevent students with disabilities from accessing educational or other services provided by post-secondary institutions.

The educational environment includes but is not limited to:

- ◆ The people who provide services, for example, faculty members
- ◆ The courses provided by the post-secondary institution
- ◆ Institutional policies related to matters such as admissions, attendance, course load, or graduation requirements
- ◆ Campus facilities, such as classrooms and laboratories
- ◆ Equipment, such as computers

In educational environments, the goal of accommodating students with disabilities is to ensure that they are able to fully participate in all aspects of their educational experience, using methods such as:

- ◆ Administrators and faculty who are knowledgeable about and supportive of accommodation
- ◆ Policies and standards that include the responsibility for accommodation
- ◆ Accessible facilities
- ◆ Flexible course delivery formats
- ◆ Flexible evaluation formats, such as exams, papers, and presentations
- ◆ Individual services, for example, interpreters and notetakers
- ◆ Services to help students negotiate accommodations
- ◆ An appeal process to challenge decisions denying accommodation
- ◆ Flexible entrance, attendance, course load, and graduation requirements that do not lower academic standards
- ◆ Practicum and co-op partners who are knowledgeable about and supportive of accommodating students with disabilities

Accommodation applies to both individual students and groups of students. In relation to individual students, the duty to accommodate has both a substantive and procedural component. The substantive aspect of accommodation refers to the accommodation that was offered to the student. To create an appropriate substantive accommodation, the post-secondary institution must participate in an individualized assessment of a student's needs and try to be flexible and creative in the search for an accommodation that meets that student's needs. If the post-secondary institution cannot provide an appropriate accommodation in the circumstances, it must have a valid reason (this topic is discussed in more detail below). This process of assessing a student's needs and finding an accommodation is part of the procedural aspect of accommodation, which essentially refers to the process used to find a substantive accommodation. A post-secondary institution, including faculty, staff, and student services officials, is obligated to engage with students during the process of finding and implementing an accommodation.

For students who experience similar disabilities, there may be one method of accommodating all of these students. For example, students who have anxiety disorders may each need to write an exam in an empty classroom. Similarly, accommodating groups of students with the same characteristic may require change across the entire system. For example, there must be enough laboratory space set up to accommodate students who use mobility aids, such as wheelchairs.

As discussed above, a post-secondary institution is required to engage in the process of accommodating a student and, when possible, must offer an appropriate accommodation. These obligations, however, do not require post-secondary institutions to lower academic or non-academic standards to accommodate students with disabilities. Accommodation does not relieve the student of their responsibility to develop the essential skills and competencies expected of all students.

How much accommodation is required?

The Supreme Court of Canada has ruled that where the educational environment has a discriminatory effect on students with disabilities, the post-secondary institution is required to provide accommodation up to the point of **undue hardship**. The undue hardship standard places a high standard on service providers, meaning a service provider must show that it would experience a substantial hardship if it were to accommodate the student. The courts have provided some factors to be used as a guide for determining whether a situation amounts to undue hardship, as well as some examples of situations that amount to undue hardship. These factors and examples are discussed below in the section **How does a post-secondary institution determine that an accommodation is not possible?**

In all situations, the institution must consider an array of potential methods for accommodating students in a way that will overcome their individual barriers to accessing the learning environment. The accommodation that the post-secondary institution provides must be reasonable. There is no obligation on the post-secondary institution to provide an immediate or perfect accommodation, or to accommodate beyond the point of undue hardship.

How does a post-secondary institution determine that an accommodation is not possible?

In some cases, the manner in which a post-secondary institution provides a service in the educational environment will create a discriminatory effect on a person, even if the institution did not intend to discriminate. If a person can show that the method for providing that service resulted in that person being excluded or experiencing any other type of adverse treatment on the basis of a characteristic that is protected under the *Act*, such as physical disability or mental disability, the method of providing that service will be interpreted by courts as being discriminatory on its face (referred to as **prima facie** discrimination). However, where there is *prima facie* discrimination, if the institution can show that its contravention of the *Act* was related to a **bona fide and reasonable justification** in the circumstances, that institution will be deemed not to have contravened the *Act*.²

² *Act*, s 11.

The Supreme Court of Canada has developed a test that can be used to determine whether a post-secondary institution's actions or policies that allegedly violate the *Act* are **reasonable and justifiable**.³ This test determines whether the action or policy meets the bona fide and reasonable justification defence. The test also may assist with:

1. Determining the feasibility of accommodating an individual student or group of students with disabilities
2. Auditing the elements of the educational environment that discriminate against students with disabilities to determine whether those elements are reasonable and justifiable

The Supreme Court of Canada test for a bona fide and reasonable justification has three parts. To meet this test, the party defending the policy, rule, or standard must prove that it meets all three parts.

In 1999, the Supreme Court of Canada released a decision that provides direction to employers as to whether a particular occupational requirement is a bona fide occupational requirement.⁴ The Government of British Columbia had created minimum fitness standards that applied to forest firefighters. A female firefighter did not meet the requirements of a running test designed to measure aerobic fitness. Consequently, even though she had worked as a forest firefighter for three years, her employment was terminated. In grieving her dismissal, the firefighter argued that the aerobic standard discriminated against women because women generally have lower aerobic capacity than men. The Supreme Court held that the Government had not provided evidence that the aerobic standard was reasonably necessary to provide effective forest firefighting.

In its decision, the Supreme Court outlined a three-part test. The *Meiorin* test, named after the female firefighter, sets out an analysis for determining if an occupational requirement is justified. Once the person making a complaint has shown that the standard, policy, or rule has caused *prima facie* discrimination,⁵ the employer must prove, on a balance of probabilities:⁶

1. That a workplace standard is rationally connected to the functions of the job performed
2. That the standard was established honestly and in the good-faith belief that it was necessary to fulfill a legitimate work-related objective
3. That the standard itself is reasonably necessary to accomplish the work-related goal or purpose. In demonstrating if the standard is reasonably necessary, the employer must show that they have accommodated the employee to the point of undue hardship⁷

³ *British Columbia (Public Service Employee Relations Commission) v British Columbia Government and Service Employees' Union (BCGSEU)* (1999), 35 CHRR D/257 (SCC) [*Meiorin*]; *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*, [1999] 3 SCR 868, 181 DLR (4th) 385 [*Grismer*].

⁴ *British Columbia (Public Service Employee Relations Commission) v British Columbia Government and Service Employees' Union (BCGSEU)*, [1999] 3 SCR 3, 176 DLR (4th) (SCC).

⁵ For more information on *prima facie* discrimination, see the *Evaluation of a bona fide occupational requirement* section (below).

⁶ The term "balance of probabilities" essentially means more likely than not.

⁷ *Meiorin* at para 54.

The test requires employers to consider the capabilities of different members of society and whether individual needs can be accommodated while determining if a standard, policy, or rule is a bona fide occupational requirement. For example, some women have lower aerobic capacity than men. Before setting a fitness standard so high that many women would be unable to achieve it, an employer must be certain that such a high level of fitness is necessary to do the job. This does not mean that the employer cannot set standards, but it does mean that the standards should reflect the requirements of the job.

Under the Supreme Court of Canada's bona fide and reasonable justification test, the phrase "reasonably necessary" requires the institution to show that the contested policy, rule, or standard accommodates to the point of undue hardship.⁸ The Supreme Court also set out some factors that can help determine whether undue hardship has been reached in a given circumstance. Those factors are:

- ◆ whether accommodation is possible in the situation
- ◆ the financial cost of accommodation
- ◆ whether accommodation would disrupt a collective agreement
- ◆ the impact of morale on employees
- ◆ the interchangeability of the workforce or facilities
- ◆ safety risks posed to that person or others⁹

These six factors are good examples of the types of considerations to use to determine whether an attempt to accommodate would amount to undue hardship. It is important to remember, however, that Canadian courts have been very clear that undue hardship is unique to every situation, and there is no complete list of factors for undue hardship. Instead, the factors mentioned above should be applied with common sense and flexibility in each situation, and new factors may emerge depending on the facts.¹⁰

Examples of factors that may amount to undue hardship for a post-secondary institution include:

1. Financial cost that hurts the viability of the service, program, or institution

Costs that amounts to undue hardship generally must be so significant that it places an unreasonable financial burden on the institution, program, or service ("institution"). Whether this bar is met depends, in large part, on the overall budget of the institution, as the cost is considered in relation to that institution's budget. The larger the institution, the less likely it is that the financial cost of accommodation will amount to undue hardship. The financial cost of individual accommodation rarely reaches the point of undue hardship.

⁸ *Grismer* at para 32.

⁹ *Grismer* at para 32; *Renaud v Central Okanagan School District No 23*, [1992] 2 SCR 970, at para 26.

¹⁰ For a Supreme Court of Canada summary of factors that constitute undue hardship see *Renaud v Central Okanagan School district No 23*, [1992] 2 SCR 970 or *Chamby (Commission solaire regionale) v Bergevin*, [1994] 2 SCR 525.

2. Students cannot meet the requirements for entering or completing a program

An accommodation that requires an institution to fundamentally alter a program or lower professional standards within that program will generally amount to undue hardship. In addition, an accommodation that undermines the requirements and standards necessary for qualifying for or entering a particular program would generally give rise to undue hardship. To establish that it cannot accommodate short of undue hardship, the institution must demonstrate that the particular accommodation would compromise the fundamental structure of a program, professional standards, or necessary requirements for entry and participating in a program.

3. Significant interference with the rights of other students

The institution must demonstrate that accommodating an individual or group of students would substantially interfere with providing the service to other students. Such interference includes a significant negative impact on the educational activities of other students, placing a burden on other students, or being unable to provide essential elements of a service or program to other students as a result of the accommodation.

4. Health and safety concerns for the student being accommodated or for other students or service providers

The institution will not only have to reliably identify and measure the risks to health and safety, but also determine who bears the risk. Risk that is limited to the person being accommodated may be less likely to amount to undue hardship, in certain circumstances, than risk to others. Safety and health risks that contravene legally required occupational health and safety and workers' compensation requirements may be considered an undue hardship.

In many cases, accommodation measures are simple and affordable and do not create undue hardship.

For more information about the duty to accommodate, bona fide and reasonable justification, see the Commission's human rights guide *Duty to accommodate*.

Recommendations for implementing the duty to accommodate in the post-secondary environment

Rights and responsibilities in the accommodation process

Students with disabilities and post-secondary institutions both have rights and responsibilities in the accommodation process. The most effective accommodation measures are a result of cooperation and clear communication between these parties.

Recommended accommodation process for post-secondary institutions

Prepare, plan, and train for accommodation

1. Have an organization-wide accommodation policy. Ensure that the policy:
 - ◆ Addresses the accommodation of students with disabilities
 - ◆ Indicates that all of the institution's policies, including rules, standards, and procedures, must include a provision for accommodating students to the point of undue hardship
 - ◆ Includes a procedure for determining the appropriate level of accommodation
 - ◆ Includes a procedure for requesting accommodation
2. Ensure that there is a person responsible for administering the accommodation policy. This policy administrator should have expert knowledge of the policy and issues related to accommodation.
3. Ensure that staff and students have a working knowledge of the accommodation policy and procedure, as well as their rights and obligations related to accommodation.
4. Review rules and standards developed in the past to see whether they meet the Supreme Court of Canada's bona fide and reasonable justification test.¹¹
5. Ensure that you use the Supreme Court of Canada's bona fide and reasonable justification test when developing new policies, rules, standards, programs, and facilities.

Respond to requests for accommodation

1. Once the institution receives a request for accommodation, it has a duty to accommodate the student to the point of undue hardship. The disability service provider should arrange a meeting with the student as soon as possible, because most activities in the educational environment are time-sensitive. Even if the request does not follow the institution's typical process for requesting accommodation or disclose the medical information needed to create an appropriate accommodation, the post-secondary institution should follow up with the student to determine whether that student requires an accommodation.

¹¹ For more information on the **bona fide and reasonable justification test** see the section **How does a post-secondary institution determine that an accommodation is not possible?**

2. Ask for supporting medical information.¹²
3. The educational institution must demonstrate that it has cooperated with the student during the accommodation process, conducted a thorough search for possible accommodations, and considered each of the possible accommodations identified.
4. Although it is not legally required, documenting the entire process is recommended. This documentation may be used to inform future policy or procedural changes within the post-secondary institution, or it may provide useful context if a dispute arises.
5. Listen to and consider the needs of the student requesting accommodation.
6. Thoroughly consider the evidence from professionals that indicates accommodation is required, and consider this evidence when developing a plan to resolve the barriers the student faces in the educational environment. It also may be helpful to seek advice from experts, such as medical specialists, learning specialists, lawyers, and Commission staff.

Develop accommodation plans

1. The institution is legally required to take a flexible and creative approach to considering and developing options for accommodation.¹³ Consider a broad range of possibilities.
2. Develop several standard ways of accommodating common disability concerns, for example, extended time for writing tests.
3. Explore how the student has been successfully accommodated in the past. A lack of history does not absolve the institution from its current duty to accommodate.
4. Work with the student to develop a written accommodation plan.
5. Ensure that the parties involved, such as professors, are integral to the process. Only involve those individuals after you receive permission from the student and in accordance with established institution policies.

Review and revise the accommodation plan

1. It is recommended that you develop a system for monitoring the success of an accommodation plan. This system could take the form of periodic follow-ups with students, or advising students that they are welcome to book appointments to discuss the success of or changes to their accommodation plan.
2. Review and revise the accommodation plan if circumstances or needs change.

¹² For more information on obtaining medical information see the Commission's human rights guide *Obtaining and responding to medical information in the workplace*.

¹³ For more information on this legal requirement see *Hoyt v Canadian National Railway*, 2006 CHRT 33 and *Canadian National Railway Company v Teamsters Canada Rail Conference*, 2018 ABQB 405.

Inform others when denying a request

1. Inform the disability service provider that a request for accommodation has been denied.
2. Provide written reasons for denying a student's request for accommodation. Explain why the accommodation would cause undue hardship. These reasons generally need to be supported by evidence and cannot be strictly guesswork or anecdotal.
3. Inform the student of how to appeal the denied accommodation request. Be sure to provide the student with information about all available appeal methods the institution offers/provides.

Recommended steps for students to take to obtain accommodation

While the post-secondary institution (service provider) has a duty to accommodate the student(s), students also have responsibilities to be involved in the process. This includes communicating about their needs, providing relevant information when necessary, and working with the service provider to explore and consider options for reasonable accommodation.

Plan before you ask for accommodation

1. Review the institution's policy for accommodating students with disabilities and the established processes for creating an accommodation.
2. If you require accommodation, disclose that you have a disability at the earliest point possible.
3. Think about the kind of accommodation you require. This includes thinking about your disability and its impact on your participation in the general post-secondary environment, as well as its impact on your specific program. Consider any barriers or functional limitations that you may face in relation to learning or receiving another service.
4. Develop a set of options for accommodating your **specific** disability. This will likely require you to think about how the barriers or functional limitations you face in the post-secondary environment could be overcome. You should consider examples of accommodations that you or others have used or attempted in the past and whether those accommodations may help in your current situation. Such past accommodation may include the most recent Individualized Program Plan that you developed with your secondary school.
5. Have research and resources available to help the accommodating person or institution put the accommodation in place. Examples of the type of research and resources you might provide include: resources provided by your institution (see the disability service provider's office), descriptions of similar accommodations that have been used at your institution or other post-secondary institutions, and an accommodation plan that was created as part of your Individualized Program Plan.
6. Be prepared to support your request for accommodation with reasonable supporting information, for example, written medical information from your doctor or specialist. Legally, you have a responsibility to cooperate with the post-secondary institution to find

a suitable accommodation. Cooperation may mean that you must provide information or medical documentation to help the post-secondary institution better understand your needs. However, you generally will not be required to provide a diagnosis. For more information on providing medical information, see the Commission's human rights guide *Obtaining and responding to medical information in the workplace* and the Commission's information sheet *Obtaining and responding to medical information in the workplace: A summary for employees*.

7. Although it is not required, keeping a written record of the efforts that you make to receive accommodation may be useful if a dispute arises.

Make your request

1. Do not wait until the last minute to make a request. Make your request for accommodation at the earliest reasonable opportunity. The amount of time that is reasonable will depend on individual circumstances. It is generally wise to make a request as soon as you know that you will need an accommodation. Your school may have a written form for requesting accommodation.

Make an appointment to discuss your accommodation requirements with the disability service provider or person the institution has designated to coordinate accommodations for students with disabilities. In addition, you can discuss the type of accommodation you need with your instructor or a staff member who is in charge of a particular program or service.

2. At your appointment:
 - a. Make your request for accommodation and provide your completed request form, if you have one.
 - b. Provide sufficient medical or other information to support your request for accommodation. Discuss any further information the school will need to understand your accommodation request. This could include a letter from your doctor outlining your specific needs in connection to your disability.
 - c. Ask the disability service provider when you will hear back from them with a response to your request and if you will receive a written response or accommodation agreement.
3. If you are successful in setting up an accommodation following the initial appointment, keep the school informed if your accommodation needs change.
4. If you were not successful in setting up your accommodation through your initial appointment, request a second appointment. Make sure they have your request in writing and that you have provided all of the necessary information to support your request.
5. If you are still unsuccessful, you may want to meet with the institution's human rights advisor or student representative to find out what on campus options exist to help you resolve the matter. You should decide whether you would like to pursue on campus options for attempting resolution.
6. If you are unsuccessful in your attempts to get an accommodation from the post-secondary institution, after cooperating in the accommodation process, you can make a complaint to the Commission. You must make a complaint within one year after the date that the alleged discrimination took place. This applies, even if you choose to pursue internal mechanisms first.

If you have questions about your specific situation or making a complaint, or if you need help calculating the one-year period for making a complaint, visit the Commission's website or call the Commission's confidential inquiry line. See the Contact us section at the end of this guide.

Cooperate with the institution making an accommodation plan

1. Once your request has been approved, you may need to meet with the disability service provider or the person the institution has designated to coordinate your accommodation request. You may also consider discussing your accommodation needs with another resource at the post-secondary institution, if you haven't already done so. These individuals may include the institution's human rights advisor, a student representative, the dean of students, the dean of your faculty, or the professor/instructor of the course in which you would like the accommodation.
2. Be aware that you may need to disclose confidential information about your disability to those people who arrange accommodation. Disclosure may be essential for the accommodation to be arranged. Only in rare cases will the disclosure of a diagnosis be required for accommodation purposes. However, a diagnosis may be required for certain funding opportunities or to qualify for some specific programs. In addition, the Government of Alberta may require your institution to submit a yearly report that includes the number of accommodations within specified categories.
3. Remember that accommodation only needs to be reasonable. The post-secondary institution does not have a duty to provide instant or perfect accommodation.
4. Put the accommodation plan in writing.
5. Follow the accommodation plan.
6. Inform the service provider as soon as possible if the accommodation plan needs to be modified.

Cooperate with the institution when an accommodation plan needs to be reviewed or revised

1. Be sure to discuss changes with the disability service provider or other member of the post-secondary institution if changes are required.
2. Tell the disability service provider if your need for accommodation ends.

Duty to accommodate students with disabilities

FAQs and examples

Questions and answers about the duty to accommodate students with disabilities

1. *What resources are available for students with disabilities to help them get reasonable accommodation?*

Most institutions have a disability service provider's office that will have a full listing of resources available to students, including the school's accommodation policy. Other resources include the institution's human rights advisor, student representative, dean of students, or the dean of the student's faculty. Students may also wish to contact an advocacy organization that advocates on behalf of persons with disabilities. The disability service provider's office or the other listed resources may also be able to refer students to agencies and programs that can provide funding for accommodation.

2. *How much notice do students need to provide in order to be accommodated?*

Students should provide as much notice as possible. The amount of notice required to put an accommodation in place depends on the nature and uniqueness of the accommodation that the student is seeking. An accommodation that has been regularly granted in a standardized fashion would require little notice. For example, students with dyslexia may routinely require more time to write a test than other students. However, a request that requires a unique approach or extensive resources and planning to implement would require much more lead time. An example would be setting up the laboratory portion of a botany course for a student with a disability related to vision.

3. *What documentation of the/their disability is a student required to provide?*

Students who require accommodation should provide enough medical information to facilitate accommodation. In most cases, the student will provide medical information from their family doctor. In some cases, it will be necessary to consult an expert in the area of the specific disability, such as a chartered educational psychologist for learning disabilities, a psychiatrist for psychiatric disabilities, an audiologist for hearing disabilities, and an ophthalmologist for visual disabilities. These medical professionals do not necessarily need to provide a specific diagnosis, but should provide enough information about the disability and its impact on the post-secondary environment to allow the student and the post-secondary institution to develop an appropriate accommodation plan.

In some circumstances, the student may need to provide more medical information or respond to requests for more information to outline their unique needs. For more information, see the Commission's human rights guide *Obtaining and responding to medical information in the workplace*.

4. *What if a student is afraid to disclose that they have a disability because they fear discrimination?*

Students often do not want to disclose that they have a disability because they fear that they will suffer discrimination as a result of the disclosure. At the same time, students who do not disclose that they have a disability may not receive necessary accommodation. Students who know that they require accommodation should disclose that they have a disability as soon as they realize they will require accommodation. While the disability service provider, faculty, or staff will likely require information about the student's restrictions and limitations, only in rare circumstances will they need a diagnosis of the student's disability (see note on **page 10** about funding and disclosure of diagnoses).

5. *What should a student do if a faculty member does not understand that there is a duty to accommodate?*

The student should encourage the instructor to contact the disability service provider's office or the Commission to find out more about the duty to accommodate. The disability service provider's office or Commission may be able to provide information or other resources to the faculty member in order to facilitate or support a successful accommodation for the student. If the institution does not have a disability service provider, the student may contact the institution's human rights office, the student representative, or the dean of their faculty.

6. *What should a student do if a faculty member has refused to accommodate a disability?*

The student should contact the disability service provider's office. The disability service provider will be able to advise the student on options to obtain the necessary accommodation or applicable appeal processes. The disability service provider may contact the instructor to help resolve the matter. The disability service provider should only contact the instructor with the permission of the student and in accordance with the institution's policies. If the institution does not have a disability service provider, the student may contact the institution's human rights office, their faculty's student representative, or the dean of their faculty.

7. *What can a student do about a lack of access to services on campus, such as the cafeteria, residences, pubs, bookstore, library, recreational facilities, or health clinic?*

The student should check the institution's calendar or website to determine where to make a request for appropriate access to campus services. If those resources do not provide a clear answer, the student could contact the disability service provider or student representative to get assistance with determining the appropriate authority and making a request for better access. In the absence of a designated person, contact the institution's human rights advisor, if the institution has one, or student services. The human rights advisor or student services office will be able to direct the student to the person or office responsible for the specific service.

The student should make a written request to the person or office responsible for the specific service for appropriate access and request a written reply. If the appropriate access is not provided, the student should contact the institution's human rights advisor to find out what on-campus options the student has to try to resolve the matter. If the matter cannot be resolved through internal processes, the student could contact an advocacy group that represents the interests of students who are affected. The student could also make a complaint under the *Act* to the Commission. If students have questions about a specific situation or making a complaint, they could call the Commission's confidential inquiry line. The students must make a complaint within one year after the date that the alleged discrimination took place.

8. *What can a student do if the institution has refused to accommodate a disability?*

The student may see the institution's human rights advisor or student representative to find out what on-campus options the student has to try to resolve the matter. In addition, the student could make a complaint under the *Act* to the Commission. If students have questions about the specific situation or making a complaint, they could visit the Commission's website or call the Commission's confidential inquiry line. Under the *Act*, the complaint must be made within one year after the date that the alleged discrimination took place. If a student chooses to pursue on-campus mechanisms for resolving the issue, the student should be aware of this one-year time limit for making a human rights complaint and keep track of how much time has passed since the incident.

9. *What duty does the institution have to make the course material accessible?*

As a general practice, the institution should make course material as accessible as possible. If a student or group of students requires accommodation, the institution has a duty to provide accessible course material in a manner appropriate for the disability. The institution must make all efforts possible to the point of undue hardship to ensure that the materials are accessible. This may include:

- ◆ Providing material in an accessible format on websites or online learning management platforms, such as Desire2Learn
- ◆ Making instructor's notes or projected presentations, for example, PowerPoint presentations, available in advance
- ◆ Providing options or supports to audio record the lecture or retain a notetaker

In addition, there must be a procedure in place for developing alternate course materials to accommodate students with disabilities. It is helpful for faculty to explain to students the accommodation procedure regarding course materials at the start of each course.

In most cases, producing accessible or alternate course material will not result in an undue hardship for the instructor or educational institution.

10. What duty does an institution have to provide accommodation during the exam process?

The institution's exam policy must include a procedure for accommodating students with disabilities. The procedure should:

- ◆ Set out a protocol for students and instructors to follow when establishing an accommodation, and
- ◆ Include several accepted ways to accommodate students with disabilities during testing

There may be instances where a different or unique accommodation is required, depending on an individual's need. As with any accommodation, the student, the educator, and other members of the institution all have a duty to broadly explore and document the various options.

For exams, as with all accommodations, an institution must provide all possible accommodations for students to the point of undue hardship. The institution, however, is not required to lower its academic standards or provide testing that no longer reasonably assesses a student's ability to meet the core elements of the course or program. Such considerations will be weighed to determine if the accommodation crosses the threshold into undue hardship.

11. What duty do institutions with attendance policies have to accommodate students whose disabilities cause them to be absent more than the policy allows?

The attendance policy must include a procedure for accommodating those students. The procedure should set out a method for identifying alternative ways for students to meet the objectives of the course that are being enforced through the attendance policy. However, if the attendance policy is the only reasonable method to achieve an essential element of a course or program, an accommodation request that proposes that the student not attend will be considered undue hardship so long as it meets the bona fide and reasonable justification test.¹⁴ For instance, attendance in a drama class where in-class performances are necessary to achieve the key objective of enabling students to become comfortable performing in front of an audience may be a bona fide and reasonable justification for being unable to accommodate a student who must learn remotely due to a medical condition.

12. What are the guidelines for confidentiality in the accommodation process?

Disability service providers and other members of an institution, including faculty, must keep the details of the student's disability and accommodation confidential. The member or office within the institution that is working with the student—oftentimes the disability service provider—will provide other staff and faculty with only the details of the disability and accommodation that are required for creating or implementing the accommodation. In addition, that person or office will only contact other staff and faculty with the permission of the student and in accordance with established institutional policies. Students seeking accommodation can choose to disclose additional information about their disability.

¹⁴ For more information on undue hardship related to attendance policies see *Harris v Camosun College*, 2000 BCHRT 51.

13. How do you determine appropriate accommodations for students with mental disabilities, especially in cases where the only information is confirmation of the diagnosis?

Often the disability itself makes it difficult for the student to participate in the design and implementation of the accommodation. In this case, it may be helpful for the student to be connected with a student advocate or disability advocate during the accommodation process. The institution may also need to work with a support person for the student, such as an appointed guardian for a dependent adult.

When a lack of information makes it difficult to design an appropriate accommodation, it may be helpful to:

- ◆ Make a written request for additional medical information
- ◆ Review what types of accommodation have been used in the past and determine whether they can be used or adapted in this instance
- ◆ Seek input from someone who is familiar with the challenges faced by someone with a similar disability

It is important for the student to provide enough medical information to enable the post-secondary institution to design a reasonable accommodation to meet the student's needs. If a student simply provides a diagnosis without more information on what type of accommodation is medically required, the request may be too vague.

14. Who is responsible for facilitating the accommodations in clinical and practicum placements: the institution or the practicum provider?

A post-secondary institution has a duty to accommodate students who participate in clinical and practicum placements so that students with disabilities have the ability to complete this requirement for their program. The institution must attempt to find placements that are suitable for a particular student's disability-related needs. Once a student is placed in a clinical or practicum, if that student requires an accommodation due to a disability, the post-secondary institution and clinical or practicum provider must collaborate with the student to create a suitable accommodation. A post-secondary institution is not relieved from its duty to accommodate simply because the details of a clinical or practicum, such as work schedule, are agreed upon between the student and clinical or practicum provider.

Although the post-secondary institution and clinical or practicum placement have the duty to accommodate a student to the point of undue hardship, that accommodation does not excuse a student from demonstrating the necessary competencies during a practicum to complete that requirement for the program of study.

15. How do safety considerations affect the duty to accommodate in clinical and practicum placements?

The institution must assess the safety risk to the individual student, including whether there are ways to reduce risk or other placements that would pose less of a threat to the student's safety. Institutions may deny a student with a disability a clinical or practicum placement because of concerns about safety. To deny a particular placement, the safety risk, as well

as the reasons and method of denying the student a particular placement, must meet the bona fide and reasonable justification test. Refer to the three-part bona fide and reasonable justification test (described above) to determine if a standard is reasonable and justifiable.

16. How do the requirements of third-party licensing or professional bodies affect the provision of academic accommodations?

Both the institution and the licensing or professional body are responsible for reasonably accommodating the student. For activities and services related to the post-secondary institution, the institution must accommodate students to the point of undue hardship. The institution, however, is not required to lower academic standards or other educational standards that are required for admittance to a licensing or professional body. The licensing or professional body has a separate duty to accommodate persons with disabilities. If an issue arises, the licensing or professional body will also be required to demonstrate that its rules and standards are reasonable and justifiable (see the bona fide and reasonable justification test).

Accommodating persons with disabilities does not result in lower quality graduates or inferior professionals.

It is in everyone's best interest for institutions to inform students who seek accommodation about the potential issues they may face when applying for a professional license. Institutions may also consider the competencies required by licensing bodies when establishing the academic standards that must be met in order to complete the program, regardless of whether a student needs an accommodation.

Examples of accommodations in the post-secondary educational environment

Post-secondary institutions may design programs and facilities to meet the needs of a broad range of individuals, which may be sufficient to accommodate some students with disabilities. When a student has a disability that is similar to the disability of other students, an appropriate accommodation may already be in place at the institution. For example, the institution may have instituted a system for providing students with extra time to complete an exam. These pre-established accommodation methods, however, may not work for all students. When a student has unique needs, it is important that the institution and the student work together to arrive at accommodations that are appropriate in the circumstances. The accommodation process and accommodation offered to the student should be formally documented.

The following examples will provide an idea of: (1) disability-related accommodations that have worked for some students, such as an institutional design feature, (2) a system of accommodating students experiencing similar barriers to learning, or (3) some types of accommodations to consider when creating an individualized accommodation plan. These examples have also been recommended by students and service providers.

It should be noted that this list of examples is not exhaustive, particularly as institutions are required to take an innovative and flexible approach to creating and assessing all possible accommodations in a given circumstance.

Course work and exams

- ◆ Textbooks and course materials in alternate formats, including large print, audio tape, electronic text, and Braille
- ◆ Sign language interpreters and CART (Communication Access Real-time Translation) in classes, laboratories, practicums, field placements, meetings with instructors, etc.
- ◆ Extended library borrowing privileges
- ◆ Online access to university or college publications
- ◆ Accessible websites
- ◆ Make instructor's notes available on learning management platforms
- ◆ Photocopies or electronic copies of notes written on overhead projector transparency film and SMART Boards
- ◆ Notes for or copies of PowerPoint presentations given ahead of time
- ◆ Notetakers
- ◆ Exam accommodations, include:
 - scribes and/or readers
 - distraction-free test areas
 - extended time
 - alternate format, including large print, Braille, and audio tape
 - computers and adaptive software
 - ergonomic set-up
 - appropriate lighting
 - spell checking software program, as warranted
 - medical accommodations (for example, stretch breaks and food breaks)

The physical environment

- ◆ Appropriate classroom space for those in wheelchairs and furniture for others requiring special seating
- ◆ Accessible space close to the front of the lecture theatre
- ◆ Modified lighting in classrooms and laboratories when possible
- ◆ Accessible way-finding signage with attention to lighting, colour contrast, tactile symbols, font type, and size, etc.
- ◆ Stairs clearly marked with visible and tactile strips
- ◆ Attention to snow and ice removal, especially at curb crossings
- ◆ Assistance in getting around campus for students with limited mobility or vision
- ◆ Elevators with in-car audible signals, tactile button indicators, hands-free emergency phone
- ◆ Accessible leisure-area space (for example, cafeterias, recreation facilities, student lounges)
- ◆ Universal Design in all facilities, including classrooms, laboratories, and student housing

- **Universal Design** refers to the physical environment. Universal Design in education creates an educational environment that takes into account the needs of students with the widest possible range of abilities in the widest range of situations.
- **Universal Design for Learning** refers to the learning environment. Universal Design for Learning may be incorporated into such areas as instruction, curriculum, and online delivery.

Related resources

Funding

1. Student Aid Alberta, including:
 - ◆ The Canada Student Grant for Students with Permanent Disabilities
 - ◆ The Canada Student Grant for Services and Equipment for Students with Permanent Disabilities
 - ◆ The Alberta Grant for Students with Permanent Disabilities for Services and equipment
2. Canada Student Loans and Grants: more information available on the Government of Canada website

References and other resources

1. Alberta Human Rights Commission human rights guide *Duty to accommodate*
2. Alberta Human Rights Commission human rights guide *Defences to human rights complaints*
3. Alberta Human Rights Commission human rights guide *Obtaining and responding to medical information in the workplace*
4. Patricia Pardo, *Implementing Academic Accommodation in Field Practicum Settings*
5. Government of Alberta, Alberta Learning Information Service, *Explore Education & Training for Persons with Disabilities*
6. Government of Alberta, Services for People with Disabilities
7. Government of Alberta, Service Dogs in Alberta
8. Office of the Information and Privacy Commissioner of Alberta
9. Voice of Albertans with Disabilities
10. Association on Higher Education and Disability
11. National Centre on Universal Design for Learning
12. Debra Russell, DLR Consulting

The list above focuses on Alberta resources.



You might also consult:

- ◆ The Ontario Human Rights Commission, *Policy on accessible education for students with disabilities*
- ◆ Ontario Human Rights Commission 2003 report: *Achieving Barrier-Free Education for Students with Disabilities*
- ◆ Accessibility for *Ontarians with Disabilities Act, SO 2005, c 11*
- ◆ University of Manitoba, Cooper Commission, *Report of the ad hoc Committee of Senate Executive to Examine Accommodation of Students with Disabilities and Governance Procedures Related to Academic Requirement*
- ◆ Barbara L Roberts, *A Lifeline for Disability Accommodation Planning*
- ◆ *How Models of Disability and Human Rights Principles inform Accommodation and Accessibility Planning*

Legislation

- ◆ *Service Dogs Act, SA 2007 c S-7.5*
- ◆ *Freedom of Information and Protection of Privacy Act, RSA 2000 c F-25*
- ◆ *Health Information Act, RSA 2000 c H-5*

Appendix: Cases on the duty to accommodate students with disabilities

The following cases provide more guidance on the general duty to accommodate or its application to the educational sector. The decisions are available online through CanLII (the Canadian Legal Information Institute) at canlii.org

1. ***Arnold v Canada (Human Rights Commission)*** (1996),
30 CHRR D/134 (Federal Court)

Funder—duty to accommodate student applicant—failure to seek accommodation earlier

The complainant had dyslexia. The complainant did not seek accommodation from his university during his earlier studies because of the stigma associated with making such a request. He applied to the Social Sciences and Humanities Research Council (SSHRC) for a doctoral fellowship to continue his studies in law at his university. He was unsuccessful. He alleged that the SSHRC's selection and screening criteria failed to recognize the obstacles he faced as a student with a disability, and failed to accommodate him.

The complainant's claim included a request for the SSHRC to accommodate students with disabilities by adjusting admissions criteria and establishing a quota for disabled students.

In this case, the Federal Court noted that the complainant's university was subject to Ontario's human rights law, while the SSHRC was under the jurisdiction of the *Canadian Human Rights Act*. Because the university was within provincial jurisdiction, the Court stated that it, and the Canadian Human Rights Commission (CHRC), did not have the proper authority to review the university's level and method of accommodation.

The Court overturned the CHRC decision that the SSHRC did not discriminate against the complainant because his university satisfied the duty to accommodate by offering the complainant the opportunity to request accommodation. The Court determined that this decision was wrong in law. The SSHRC cannot claim that it does not need to comply with federal law on accommodation because another individual or organization (here, the university) accommodated the complainant. The Court held that the SSHRC could not claim "surrogate accommodation"; it was directly responsible for complying with federal law on accommodation. As a result, the Court referred the matter back to the CHRC for a decision under the correct law.

Given the Court's decision that an individual or organization cannot rely on surrogate accommodation, it did not matter that the complainant had not sought accommodation from the university during his earlier studies.

2. ***Brewer v Fraser Milner Casgrain LLP*** (2008),
306 DLR (4th) 171, 66 CHRR D/40 (Alberta Court of Appeal)

Duty to accommodate—undue hardship—duty to cooperate with accommodation efforts

The complainant, Brewer, was a legal secretary who developed symptoms of dyspnea (laboured breathing). Some of the triggers included perfumes, chemical 'smells,' and other scents. The employer took steps to accommodate Brewer, but eventually she refused

to return to the workplace. The complainant filed a complaint with the Alberta Human Rights Commission, alleging that she had not been accommodated to the point of undue hardship. The Alberta Court of Appeal agreed with the human rights investigator who found that Brewer had not cooperated with the accommodation process. She refused to try a new workspace that the employer felt addressed her accommodation needs and she did not provide additional medical information on her condition when it was requested. The employer is required to provide an accommodation that would be reasonable in the circumstances, but is not obligated to provide a perfect accommodation. The employee has a duty to be open to trying different options for accommodation, even though it may not be the exact accommodation requested.

This guideline would transfer to the educational setting as well—that is, a student would have a duty to cooperate with the process of finding an appropriate accommodation and could be expected to test a method of accommodation that is reasonable in the context of that student's disability.

3. *British Columbia (Public Service Employee Relations Commission) v British Columbia Government and Service Employees Union (BCGSEU)*,

[1999] 3 SCR 3; (1999), 35 CHRR D/257 (Supreme Court of Canada)

Aerobic standard discriminatory—bona fide occupational requirement—duty to accommodate—undue hardship not demonstrated

The complainant, *Meiorin*, was a female forest firefighter who had worked successfully in the job for three years. During her employment, the British Columbia Government established an aerobic fitness standard for its forest firefighters. The complainant failed to run two miles in a fast enough time and was fired for not meeting the fitness standard. The complainant argued that the fitness standard discriminated against women because women generally have a lower aerobic capacity than men. The Court introduced a new test for determining whether an occupational standard, such as the aerobic fitness standard, was a bona fide occupational requirement and, as a result, could be considered reasonable and justifiable. Using this test, the Court determined that the aerobic fitness standard was not reasonably justifiable because it set a higher standard than was needed to ensure safety and efficiency. The Court said that if an aerobic fitness standard was necessary for safety and efficiency, it should reflect the differences between men and women. The Court rejected the Government of British Columbia's argument that a negative effect on firefighter morale caused by lowering the fitness standard would be an undue hardship.

4. *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*,

[1999] 3 SCR 868; (2000), 36 CHRR D/129 (Supreme Court of Canada)

Lack of individual assessment—not reasonable and justifiable—accommodation and service provision

The complainant, *Grismar*, had a condition known as homonymous hemianopia (HH), which limited his peripheral vision. The British Columbia Motor Vehicle Branch cancelled the complainant's driver's licence, because his vision no longer met the standard set by the British Columbia Superintendent of Motor Vehicles of a minimum field of

120 degrees. Certain exceptions to the 120-degree standard were allowed, but individuals with the complainant's condition were never permitted to drive in British Columbia. The complainant reapplied for his licence several times, passing all the tests except field of vision. Motor Vehicles did not allow the complainant to be individually assessed to establish that he was able to compensate for his limited peripheral vision. The complainant alleged that the Superintendent was not providing him with a service that was customarily available to the public because of his disability. The Court adapted the *Meiorin* test to apply it to services customarily available to the public. Using the bona fide and reasonable justification test, the Court determined that the Superintendent's approach was not reasonable and justifiable. In the course of coming to this conclusion, the Court noted that the Superintendent's approach of never licensing persons with HH did not attempt to minimize the discriminatory impact of its standard. The Court also noted that the Superintendent individually tested persons with the same peripheral vision deficiency that did not have HH.

5. *Brown v Trebas Institute Ontario Inc,*

2008 HRTO 10 (Human Rights Tribunal of Ontario)

Accessible materials—obligation to assist with obtaining accommodation—financial undue hardship

The complainant was accepted into the Music Business Administration program at Trebas Institute. The complainant was legally blind and required specialized computer equipment, as well as course materials in an accessible format, in order to enrol in the program.

The complainant could apply for a government bursary to cover the cost of the computer equipment. The complainant had difficulty obtaining these materials and completing the paperwork required for the bursary. Trebas did not meaningfully assist the complainant with completing the paperwork and did not take significant steps to obtain accessible materials. Because these accommodations were not in place, the complainant was granted one enrollment deferral and denied a second enrollment deferral.

The Human Rights Tribunal found that Trebas had discriminated against the complainant on the basis of his physical disability. Trebas had failed to take steps to eliminate the complainant's barriers to enrolling. Trebas was aware that the complainant was having trouble acquiring the needed accommodations, but did not demonstrate a willingness to assist the complainant and put little to no effort into obtaining required accommodations. Trebas had a legal obligation to work with the complainant to put in place the appropriate accommodations in time for the complainant to enrol, and Trebas should have recognized that the complainant was not solely responsible for obtaining these accommodations. Further, the Tribunal found that Trebas could not successfully argue that its small size created a financial hardship that made them unable to accommodate the complainant, as the bursary would have paid for the accommodations. Finally, there was no evidence that deferring the complainant's enrollment a second time would result in undue hardship for Trebas, despite its one deferral policy. Accordingly, Trebas failed to reasonably accommodate the complainant to the point of undue hardship.

6. ***C v University of Victoria*, 2013 BCHRT 252,**

2013 CarswellBC 3212 (British Columbia Human Rights Tribunal)

Accommodation following inability to complete course due to disability

The complainant was an engineering student at the University of Victoria. He had mental and learning disabilities and, as a result of his disabilities, withdrew from SEng 265.

He complained that the University of Victoria removed that course from his transcript and he was subsequently unable to re-register for that class or register for classes for which SEng 265 was a pre-requisite. In dismissing this complaint, the British Columbia Human Rights Tribunal noted the complainant received the proper accommodation he needed after withdrawing from SEng 265 in that the university removed the course from his transcript and refunded his tuition.

7. ***Callan v Suncor*, 2006 ABCA 15,**

74 CHRR D/126 (Alberta Court of Appeal)

Disability—return to work—reasonable accommodation—no duty of instant or perfect accommodation

Callan worked for Suncor in a clerical position until she developed a debilitating disease. Her condition deteriorated rapidly, and she began to rely on a wheelchair for mobility. When she returned to work, she found that the workplace was not wheelchair-accessible. Callan and several Suncor employees discussed what type of accommodation she would require, as the medical documentation from Callan's lawyer had not mentioned the wheelchair. The Suncor employees implemented some forms of accommodation, but advised Callan that her request for additional accommodations, such as automatic entry doors and a grab-bar in the washroom could not be addressed until the appropriate employees returned from vacation. Callan then took the position that she could not return to work until it was safe to do so. She made a human rights complaint alleging discrimination on the ground of disability and indicated that the employer had not accommodated her disability. The complaint was dismissed on the basis that Suncor had made reasonable attempts to accommodate Callan's disability as it understood it, and the Chief Commissioner upheld the dismissal. Callan sought a judicial review. Eventually, the case made its way to the Alberta Court of Appeal, which concluded that Suncor had reasonably attempted to accommodate Callan and that there is no duty of instant or perfect accommodation. The employer only has a duty to provide reasonable accommodation.

This decision transfers to the educational setting: students requesting accommodation are not entitled to dictate the accommodation they will accept, nor is the educational institution required to accept students' own subjective assessment of their abilities. The duty to accommodate only requires that the institution provide reasonable accommodation.

8. ***Eldridge v British Columbia (Attorney General)*,**

[1997] 3 SCR 624; [1997] SCJ No 86, (Supreme Court of Canada)

Charter—duty to accommodate deaf patients to the point of undue hardship

The complainants were three deaf individuals who alleged that their equality rights under Section 15 of the *Charter* were violated when the British Columbia public health system failed to provide adequate interpreter services for deaf patients in their dealings with

doctors and hospitals. The Court ruled that the complainants suffered discrimination because the system failed to ensure that they benefited equally from medical services offered to everyone.

In ruling that the government had not accommodated deaf persons to the point of undue hardship, the Court determined that: effective communication was a necessary part of the provision of health care; the cost of accommodating deaf persons was very small compared to the provincial health care budget; and the potential ripple effect of other disadvantaged groups seeking similar interpretive services was not a factor for determining the point of undue hardship. Importantly, the Court also found that the accommodation of sign language interpretation was not an ancillary service, but rather the means by which these deaf individuals could receive the same quality of medical care as those who could hear. Accommodation is intended to ensure meaningful access to the service.

9. *Gamache v York University*,

2012 HRTO 2328 (Human Rights Tribunal of Ontario)

Shared responsibility—disability must be factor in adverse treatment—delay in providing accessible materials amounting to discrimination

The complainant was enrolled in the Primary/Junior Consecutive Education Program with the Faculty of Education at York University, which included two practicum placements. The complainant was also legally blind in one eye. The complainant was accommodated by being provided with materials in an accessible format, although there was a delay in getting these materials to her. The complainant was not able to successfully complete the practicums and the university agreed to defer this requirement. However, the complainant failed several courses. The complainant did not file the required petition to continue in the program and, as a result, did not successfully complete it. The Human Rights Tribunal found that the complainant should have taken steps to inform herself about the processes at York University for acquiring accommodations. The Tribunal further determined that there was a shared responsibility between the complainant and the university for the failure to issue accommodation letters. In addition, the complainant's disability was not a factor in her inability to successfully complete the practicums or the course and, therefore, it was not discrimination. The Tribunal found the failure to provide the applicant with course reading materials in a timely manner violated her rights under the *Human Rights Code*. It also stated that providing the materials in accessible formats did not amount to undue hardship, although this did not materially affect her ability to complete the practicum.

10. *Hannaford v Douglas College (2000)*,

37 CHRR D/336, 2000 BCHRT 25, (British Columbia Human Rights Tribunal)

Refusal to provide assessment—duty to notify about disability—ability to accommodate without documentation

The complainant was enrolled in criminology courses at Douglas College. She claimed to have a visual and reading disability related to Graves' disease and a cognitive and learning disability related to a childhood fall. While at the college, the complainant underwent a Vocational Rehabilitation Services (VRS) assessment, which supposedly confirmed that

she had a cognitive disability. The complainant, however, refused to give a copy of the VRS assessment to the Disabled Student Services (DSS) office, which was arranging the majority of the complainant's accommodation. As part of this accommodation, the college provided her with extra time to write her exams and an access aide who assisted her in obtaining information from the library and organizing her materials. She was also seeing a psychologist and an educational therapist. The complainant informed the college that she did not want any more contact with the educational therapist. In response, the DSS office withdrew the services it had been providing.

The complainant then filed a complaint with the British Columbia Human Rights Commission, alleging that the college withdrew services that she needed in order to accommodate her cognitive disability, and refused to provide an academic tutor to accommodate this disability. The issue before the Tribunal was whether the complainant had a cognitive disability and, if so, should the college have known about and provided accommodation for that disability. The Tribunal found that the complainant did not have a cognitive and learning disability. According to the Tribunal, the complainant's alleged cognitive disability was not apparent to the college. In such cases, the person seeking accommodation has a duty to make the disability known to the service provider and may need to provide medical documentation to confirm the disability. The complainant had not informed the college of her alleged cognitive and learning disability. The Tribunal also found that the college had reasonably accommodated the complainant for her reading and visual disability. As a result, the Tribunal concluded that the college did not discriminate against the complainant.

This case is important in the post-secondary context, because it demonstrates that, when their disabilities are not apparent, students should notify the institution of their disabilities in order to receive accommodation. The case also shows that, in such cases, students may be required to disclose medical documentation to confirm their conditions.

11. *Harris v Camosun College*,

2000 BCHRT 51, 39 CHRR D/36 (British Columbia Human Rights Tribunal)

Requests for information about disability reasonable—requirement to attend in person not discriminatory

The complainant was enrolled as a student in the Criminology program from 1994 to 1997. She alleged that the college did not accommodate her multiple sensitivities to environmental elements such as paints, varnishes, gas fumes, plastics, and carpets. As a result, she was unable to take a few courses in which she had intended to enroll. The college repeatedly asked the complainant for documentation of her sensitivities and its specific impact on the learning environment. She provided a letter from an allergy specialist that indicated that she was allergic to cats and house mites. She provided a second letter from a doctor who had no expertise regarding chemical sensitivities. By continuing to ask for medical documentation regarding the nature of her environmental sensitivities and its impact on the learning environment, the complainant alleged that the college made unreasonable demands for medical information and that this constituted harassment on the basis of her disability.

The Tribunal found the college's requests for medical information reasonable for two reasons. First, medical documentation about the impact of a student's disability on the learning environment would allow the college to tailor accommodations to an individual student's needs. Second, the college was required to submit information on the medical basis for each accommodation request to the Ministry of Advanced Education, which provided the funding for its Disability Support Services office. The Tribunal also found that the college's requirement that the complainant attend a course in person was not discriminatory. The college could not accommodate the student's need for remote study without incurring undue hardship, because remote learning would mean that the student could not accomplish the course's core element of interacting with other students to develop interpersonal skills. On this basis, the Tribunal found that the attendance policy was reasonable and justifiable.

12. *Hickey v Everest Colleges Canada*,

2009 HRTO 796 (Human Rights Tribunal of Ontario)

Accommodation for a practicum—accommodation is shared duty

The complainant had a physical disability as a result of motor vehicle accident, which resulted in her being unable to stand for more than one hour, sit for more than 40 minutes, or perform tasks that were too repetitive. Her limitations were outlined in a medical letter that was sent to Everest College, where the complainant was enrolled in the dental assistant program. The dental assistant program required her to complete an 80-hour on-site work practicum with a dental office. The complainant obtained a practicum position at Dove Dental. She was to work eight-hour shifts for two weeks. Dove Dental was aware of the complainant's medical limitations, but it was never asked to consider or implement shorter shifts. Due to the complainant's behaviour, which was a result of limitations imposed by her disability, Dove Dental terminated her position and the complainant was unable to successfully complete her practicum.

The Human Rights Tribunal found that the college was aware of the complainant's physical limitations, but did not consider possible accommodations that would allow the complainant to complete the practicum. The college argued that arranging accommodations in the practicum was the sole responsibility of the complainant.

The Tribunal, however, found that the college shared the duty to accommodate and, once it was aware of her disability, it had the responsibility to explore accommodation options that would allow the complainant to attempt the practicum required by her course.

13. *Dunkley v University of British Columbia and another*, [2015] BCHRT 100 (British Columbia Human Rights Tribunal)

Duty to accommodate deaf students by providing sign language interpreters—institution must fund interpreters if no external funds available

The complainant was profoundly deaf. She was a fourth year medical student who asked the University of British Columbia for sign language interpreters for a residency program. The university, as well as the Health Authority, refused to fund the level of interpretive services necessary. The complainant completed several weeks of residency without the benefit of interpreters and was placed on leave before completion. The British Columbia

Human Rights Tribunal found that a post-graduate education was a service customarily available to the public and that sign language interpreters are an accommodation required by deaf students to enable them to use the university's educational services, particularly during the residency. Finally, the Tribunal concluded that the university failed to accommodate the complainant to the point of undue hardship. The Tribunal ordered that Dunkley be paid \$35,000 for injury to dignity, feelings, and self-respect for losing her residency.

14. *Justice Institute of British Columbia v British Columbia (Attorney General)*,

[1999] BCJ No 1571, 17 Admin LR (3d) 267 (British Columbia Supreme Court)

Accommodation applying retroactively—accommodation required once notice of disability and method of accommodation known

The complainant was a trainee police constable who was removed from training when he performed unsatisfactorily in the course testing. The complainant did not identify himself to his instructors as someone with a learning disability, nor did he request accommodation. After his unsatisfactory test performance, he was assessed as having a learning disability. The doctor who completed the complainant's neuropsychological assessment said that if the complainant was able to write exams in a private room and given additional time, he would be able to complete the required training successfully. Even with the assessment information, the Justice Institute continued to refuse to let the complainant carry on in the program. The Court ruled that the complainant had a learning disability that could be accommodated by allowing him to take examinations in an alternate way, such as having more time to write an exam.

15. *Matthews v Memorial University of Newfoundland (1994)*,

22 CHRR D/384, [1994] NJ No 446 (Newfoundland Supreme Court)

Non-legitimate comments about disability may constitute harassment (discrimination)

This is an appeal by Memorial University of a Board of Inquiry decision, which found that the Faculty of Medicine harassed the complainant by making negative comments about his stutter in his faculty file and in a reference letter from the dean. The Board of Inquiry took the position that faculty members could address performance concerns with a student, and that not all comments that relate to protected grounds will be considered harassment under human rights legislation. However, if the comment is not legitimate or is not substantiated by facts, and the student in question feels that the comment is vexatious, the comment may meet the criteria for harassment under the legislation. The Board of Inquiry found that some of the comments made by members of the Faculty of Medicine served no legitimate purpose regarding his performance as a medical student and should be removed from his file. Further, the Board found that some of these comments constituted harassment. The Court upheld the Board's decision after finding that the Board had not erred in either the fact or law that it relied on in reaching its conclusions. The Court also allowed the complainant's cross-appeal and awarded him monetary damages in addition to the remedies ordered by the Board.

16. *Moore v British Columbia (Ministry of Education)*,

2012 SCC 61, [2012] 3 SCR 360 (Supreme Court of Canada)

Test for *prima facie* discrimination—defining services—systemic discrimination

The complainant filed a human rights complaint on behalf of his son, J, who was severely learning disabled. After being diagnosed, J could only receive the type of specialized education he required by attending a private school, as the local Diagnostic Centre (the facility providing this type of education for the public system) closed due to financial reasons. The Supreme Court found that the service was education, not special education. Potentially discriminatory treatment should be compared to the treatment of a broad group, otherwise the analysis may descend into an inappropriate “separate but equal” approach. The Supreme Court then set out the test for *prima facie* discrimination, which must be established by a complainant in order to substantiate a claim of discrimination. Based on this analysis, the Court held that the school district had discriminated against J. The Court also confirmed that the remedy for discrimination must be linked to the claim. Systemic remedies are only available if a complainant claims there was systemic discrimination. While the Court upheld the B.C. Human Rights Tribunal’s individual orders to reimburse the Moores for the cost of private schooling and award them damages, it did not uphold the systemic remedies ordered by the Tribunal.

17. *Robb v St. Margaret's School (2003)*,

45 CHRR D/276, 2003 BCHRT 4(British Columbia Human Rights Tribunal)

Also see the corrigendum (correction).

Denial of enrolment based on vague criteria discriminatory—undue hardship not proven

The complainant was a grade three student, who was enrolled in a private school. She was assessed during her grade three year as having a severe learning disability involving deficits in symbolic processing, nonverbal reasoning, and visual-motor co-ordination. The assessor determined that the complainant needed a comprehensive individual education plan, remedial reading instruction, adaptations for reading in the classroom, bypass strategies for writing (for example, scribing and voice dictation), a modified math program, reduced quantity of assigned work, opportunities to advance conceptually, and strategies for managing her attention patterns. Two months later, the school informed the complainant’s parents that the complainant would not be able to enroll in the school for the next school year. The Tribunal found that re-enrolment was withheld because of the complainant’s learning disability. The Tribunal found that the school’s decision to withhold enrolment was made by someone with no expertise in learning disabilities and was based on vague criteria and on the advice of staff who, he acknowledged, lacked experience in dealing with students with severe learning disabilities. The Tribunal concluded that it would not have been an undue hardship to resolve the situation by less drastic means and that it was discriminatory to deny the complainant enrolment at the school.

Beliefs that are based on assumptions of what a student who has a disability can do, and not on an actual assessment of abilities, is likely to amount to discrimination on the basis of disability.

18. *University of British Columbia v Berg,*

[1993] 2 SCR 353, 18 CHRR D/310 (Supreme Court of Canada)

Services customarily available to the public—denial of services based on mental disability was discriminatory

The complainant was a student with an above-average academic record in the master's program in the School of Family and Nutritional Sciences at the University of British Columbia. She experienced recurring depression and one day wrote "I am dead" on the mirror in the school's washroom. Later the same day, she attempted to jump through a plate glass window because she was frightened by RCMP and security personnel in the hallway. When the school moved premises in 1982, the complainant was initially denied a key to the building, although graduate students were regularly issued keys in order to use the facilities after hours. The complainant was also denied a rating sheet required for an application for a hospital internship.

The parties accepted that the key and rating sheet were "services" within the meaning of the applicable human rights legislation. Importantly, the Supreme Court determined that, for the purpose of "customarily available to the public," the public may be a subset of the general population. That subset is generally selected through the use of eligibility criteria, such as students who become part of a university program through an admissions process. As a result, every service has its own public and the service provider cannot discriminate within that group of people when providing a service that is generally available to that group. While discussing the meaning of "customarily available," the Supreme Court determined that a service may have a discretionary or personal evaluation component, but that the exercise of the discretion or basis for evaluation cannot be discriminatory. In this case, the Supreme Court found that key and rating sheets were habitually provided to students in Berg's position and the only reason Berg was denied these services was her mental disability. As a result, the Supreme Court held that the university had discriminated against Berg.

19. *University of British Columbia v Kelly,*

2016 BCCA 271 (British Columbia Court of Appeal)

Accommodations analysis—evidence of undue hardship—accommodation guarantees opportunity not success

The complainant was a resident in the Family Medicine Residency Program at the University of British Columbia. He had some difficulty in the program due to attention deficit hyperactivity disorder and non-verbal learning disorder. The university initially attempted to accommodate the complainant, but eventually terminated him from the program for unsuitability. The British Columbia Human Rights Tribunal determined that the university had not accommodated the complainant to the point of undue hardship. The Tribunal also found that the university's "modifications" were properly characterized as accommodations, despite the alternate term. The university appealed the decision to the British Columbia Supreme Court, which upheld the Tribunal's decision. The university appealed again to the British Columbia Court of Appeal.

The Court of Appeal dismissed the appeal, holding that the Tribunal properly considered the accommodations as part of the bona fide occupational requirement and bona fide and reasonable justification tests, rather than collapsing it into the *prima facie* discrimination analysis. The Court of Appeal also considered the university's argument that it was not required to lower practice standards or allow the complainant to proceed when he did not pass the requirements, as well as the argument that there was a negative impact on other students and administrative difficulties. The Court of Appeal rejected these arguments on the basis that the university did not provide evidence to establish undue hardship, as it could not solely rely on anecdotal evidence and impressionistic conclusions. Finally, the Court of Appeal upheld the prior Tribunal and Supreme Court decisions that accommodation is aimed at guaranteeing that a person may have the opportunity to try to participate in the program regardless of any disability, but does not guarantee success in the program. The complainant does not need to demonstrate that he would be able to succeed despite his disability, although, in this case, there were facts that supported the conclusion that there was a reasonable chance of success if the complainant had been provided with further accommodations. Based on these findings, the Court of Appeal found that the university did not meet its duty to accommodate.



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