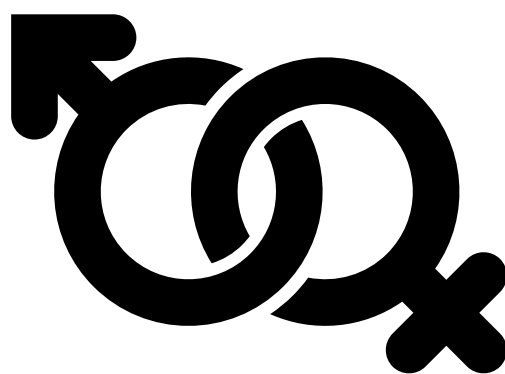





Type of law:
**HUMAN
RIGHTS LAW**

HUMAN RIGHTS & DISCRIMINATION



A 2023 Alberta Guide to the Law

 **Student Legal
Services
of Edmonton**

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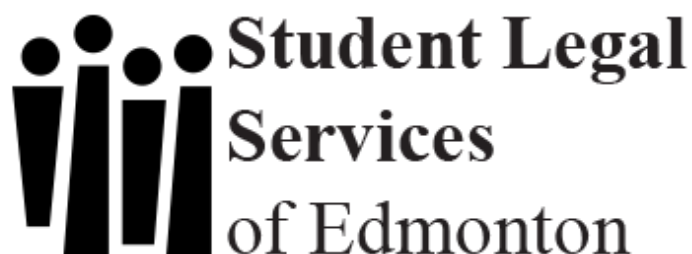
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HUMAN RIGHTS IN CANADA

In Alberta, you have the right not to be discriminated against based on a number of personal characteristics.



Freedom from discrimination applies to...

the workplace,
tenancy
arrangements, group
membership etc.



This includes:

- Marital Status
- Gender
- Ancestry
- Mental Disability
- Family Status
- Age
- Gender Identity/Expression
- Source of Income
- Physical disability
- Race
- Place of origin
- Religious Beliefs
- Colour
- Sexual Orientation

If you feel like you have been discriminated against you can contact:

The Alberta Human Rights Commission

Confidential Inquiry Line:

780-427-7661

HATE CRIMES

The EPS defines a hate crime as any act designed to injure, terrify or intimidate a member of a specific identifiable group.

If you feel like you have been a victim of a hate crime contact the police at 911 if it is an emergency or at the complaint line.

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INTRODUCTION

Human rights are the basic rights that each person in Canada enjoys as members of society.

Among others, fundamental human rights include the right to equality and dignity and to live free from all forms of discrimination.



The right to live free from discrimination is the right to be treated fairly and not in a manner different to others based on inherent characteristics such as age, gender, colour, race, religion, sexual orientation, etc. (for full list see below).

The right to be free from discrimination is protected in certain areas of everyday life. For example, in the context of employment or tenancy.

Human rights are protected in Canada under the Charter of Rights and Freedoms, the Canadian Human Rights Act, as well as individual human rights statutes created by each province or territory of Canada. **In Alberta, the provincial human rights legislation is the Alberta Human Rights Act.**

THE CHARTER OF RIGHTS AND FREEDOMS



The Charter of Rights and Freedoms (“the Charter”) is a part of the Constitution of Canada. The Charter lays out the rights of each individual in Canada in relation to government action.

The Charter is the supreme law in Canada, meaning laws created by either the federal, provincial or municipal governments may not go against the rights and freedoms guaranteed under the Charter.



If a law contradicts the Charter, the Court may declare it invalid and of no force or effect.

Some of the rights and freedoms that the Charter guarantees are:

- Freedom of conscience and religion;
- Freedom of thought, belief, opinion and expression;
- Freedom of peaceful assembly;
- Freedom of association;
- Right to vote;
- Freedom of mobility;
- Right to life, liberty, and security of the person;
- Right to be secure from unreasonable search or seizure;
- Right to not be arbitrarily detained or imprisoned;
- Right to have criminal proceedings occur in a certain way;
- Right to not be subjected to cruel or unusual punishment;
- Right to an interpreter in proceedings;
- Right to be treated equally and not to be discriminated against; and
- Right to be educated in one of either French or English

NOTE: The **Charter only applies to actions by governments or entities** controlled by the government, sufficiently governmental in nature, implementing a governmental program, or wielding statutory power of compulsion.



The Charter is not applicable to the interactions between individuals (that is where provincial/territorial human rights legislation comes into play).

CANADIAN HUMAN RIGHTS ACT



The Canadian Human Rights Act is a federal piece of legislation, which supplements the Charter and **protects people from discrimination when they are employed by or receive services from the federal government, First Nations governments or private companies that are regulated by the federal government such as banks, trucking companies, telecommunication companies.**

A list of all federally regulated industries and workplaces can be found on the Government of Canada's website:

<https://www.canada.ca/en/services/jobs/workplace/federally-regulated-industries.html>

Discrimination is an action or decision, whether intentional or not, that treats people negatively or differently based on their personal characteristics.

It has the effect of **imposing burdens, obligations or disadvantages on individuals or groups, which are not imposed on others or withholds or limits access to opportunities, benefits or advantages available to other members of society.**

Under the Canadian Human Rights Act:

It is prohibited to discriminate against a person or group based on the following circumstances:

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex
- Sexual orientation
- Gender identity or expression
- Marital status
- Genetic characteristics
- Disability
- Conviction of an offence for which a record suspension has been granted

In the areas of:

- Goods, services, facilities, or accommodation
- Commercial premises or residential accommodation
- Employment practices
- Employment applications and advertisements
- Membership in unions
- Publications and notices

If you feel you have been discriminated against in one of the areas above because of a personal characteristic listed, **you have 1 year from the date of the incident to file a human rights complaint to the Canadian Human Rights Commission.** There is no filing fee and you may file a complaint on your own. A lawyer is not required, although you may choose to hire one. You may also call the commission (1-888-214-1090) and ask for help.

ALBERTA HUMAN RIGHTS ACT



The Alberta Human Rights Act supplements The Charter and protects Albertans from discrimination in certain areas based on specified grounds.

Under the Alberta Human Rights Act:

It is prohibited to discriminate against a person or group based on the following circumstances:

- Race
- Religious beliefs
- Colour
- Gender
- Gender identity and expression
- Physical & mental disability
- Age
- Ancestry
- Place of origin
- Marital status
- Source of income



In the areas of:

- Publications and notices
- Goods, services, facilities, or accommodation
- Tenancy
- Employment practices
- Employment applications and advertisements
- Membership in unions



If you feel you have been discriminated against in one of the areas above because of a personal characteristic listed, **you have 1 year from the date of the incident to file a human rights complaint to the Alberta Human Rights Commission.** There is no filing fee and you may file a complaint on your own. A lawyer is not required, although you may choose to hire one. Self-assessment and complaint forms can be found on the Alberta Human Rights Commission website.

EXCEPTIONS



Charter rights are not absolute. **Your rights guaranteed under the Charter may be infringed if it can be shown to be reasonable and justifiable in a free and democratic society.**

For example, while freedom of speech is protected under the Charter, there are laws that limit people's freedom to express themselves, such as laws that prohibit hate speech or some types of pornography.



Even though these laws limit an individual's freedom of expression, such limitations are considered reasonable and justifiable and therefore allowed.

There is also an exception to the equality rights provision under the Charter. Generally, everyone is equal before and under the law and are entitled to equal protection and benefit under the law.



However, there are **exceptions for ameliorative programs (sometimes called "affirmative action") for historically disadvantaged individuals or groups because of their personal characteristics.** This is not considered a breach of equality rights.

The rationale is that these programs allow governments to pro-actively combat existing discrimination through affirmative measures.



Under the Canadian Human Rights Act and Alberta Human Rights Act there is an exception for instances where the discrimination is reasonable and justifiable in the circumstance. If it can be demonstrated that the discriminatory treatment is reasonable and justified, it is allowed.

For instance, treating persons under the age of 18 different in relation to tenancy or some goods, services, accommodation or facilities will not always constitute a violation of their human rights on the protected characteristic of age.

A specific example of a situation where this might occur is insurance premiums. **Insurance companies typically charge higher rates for younger drivers. This may appear to be age discrimination in the practice of providing a service.**

However, because **younger drivers are at an increased risk of causing accidents compared to older drivers, this differential treatment is viewed as reasonable and justifiable** under the circumstances.



PROCESS & PROCEDURE UNDER THE ALBERTA HUMAN RIGHTS ACT



1

COMPLAINTS

In Alberta, with a few exceptions (e.g. federally regulated companies), any person having reason to believe that they have been discriminated against may file a human rights complaint with the Alberta Human Rights Commission.

A complaint must be filed within 1 year of the incident.

The complaint form can be obtained from the Alberta Human Rights Commission's website. **There is no fee for filing a complaint and you may file it yourself. A lawyer is not required;** however, you can obtain legal representation at any stage of the proceedings. If you choose to use a lawyer, you are required to pay their legal fees.



A complainant must describe each incident of alleged discrimination, with reference to the areas and protected characteristics listed above.

The complaint must include information concerning:

- what the complaint is about
- why the complainant believes they were discriminated against
- how they were treated differently than others
- who did the discriminating
- the date(s) and place(s) where the discrimination occurred
- any other action (such as a civil law suit or Workers Compensation Appeal) that has been taken regarding the situation (if any)

The Alberta Human Rights Commission **places a 20-page limit on complaint (including the form)**. While Complainants are asked not to include supporting documentation with their complaint, it is a good idea to have the documentation compiled and ready as the Commission may request it later in the complaint process.

Note that if a person is found to have made a complaint for malicious or ulterior purposes and the complaint is frivolous, they have breached the Alberta Human Rights Act and may be liable for fines, costs, or other penalties to be imposed the Commission.



Union Members

Those who belong to a union must first go to their union. Typically, collective agreements include clauses guaranteeing a workplace free from discrimination.

The collective agreement may have a dispute resolution process for breaches that can be used to address human rights concerns. If there is an error or concern regarding the union's dispute resolution decision you can still file a human rights complaint with the proper Commission. In Alberta, a union can assess whether there is a potential human rights concern and if so they should inform the union member of the 1 year limitation period for complaints to the Alberta Human Rights Commission.

The dispute resolution process typically culminates in **arbitration, which is a form of dispute resolution that exists outside of the court system** (it takes a form similar to a trial with evidence being produced through witnesses).

Arbitrators have the authority to interpret and enforce human rights legislation. Accordingly, if you are a member of a union, it will be important to first explore recourse for discriminatory conduct through the collective agreement.

You can still file a human rights complaint with the proper Commission; however, that complaint may be held in temporary suspension until the grievance process is complete.

Unions have a joint responsibility with the employer to create a workplace free from discrimination, and have a duty to ensure that discrimination is addressed. As such, unions can provide thorough representation for human rights issues. They can assist with:

- Guiding a member who has a human rights issue through the dispute resolution process under the collective agreement;
- Assisting members to resolve a complaint informally;
- Advocating for the member with the employer;
- Helping a member file a grievance based on a human rights issue and representing the member in the arbitration process; and/or
- Helping a member make a human rights complaint to the relevant human rights commission.

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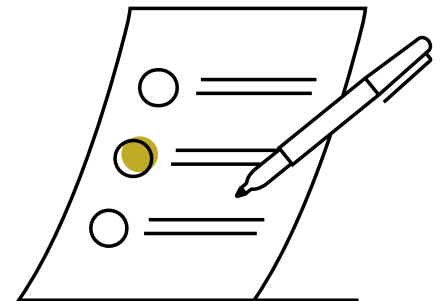
RESPONSE

After a complaint has been file, the Commission will inform the person or organization against which the complaint was made (the “Respondent”) and provide a copy of the complaint to them.

The Respondent then has 30 days to provide a written response to the complaint. Incomplete responses may be returned to the respondent by the Director, with an extension of 30 days to add additional information.

The Respondent can respond in writing using the response form or they can write a letter that covers the areas outlined on the response form.

A response form can be obtained from the Alberta Human Rights Commission’s website and it is often included with the letter notifying the Respondent of the complaint.



The Alberta Human Rights Commission **places a 20-page limit on complaint (including the form)**. While Respondents are asked not to include supporting documentation with their complaint, it is a good idea to have the documentation compiled and ready as the Commission may request it later in the complaint process.

There is no filing fee for a response. A lawyer is not required to create and file a response, but you can obtain legal representation to do so. You may also retain legal counsel at any stage of the proceeding. If you choose to use a lawyer, you are required to pay their legal fees.

3

INITIAL REVIEW

Once a complaint and response has been filed, the intake team reviews the file determines the next appropriate step. During this point, the intake team may request additional information from the complainant and respondent. The review can lead to two different steps in moving the complaint forward.

1) Conciliation: a non adversarial way of resolving a complaint. The majority of complaints go through this process

2) Director Decision: a director team reviews the complaint and decides if the complaint should continue to the tribunal or be dismissed.

NOTE:. A complaint may be dismissed if it is assessed to be without merit; this may be based on the substance of the complaint or other basis such as being outside of the jurisdiction of the Alberta Human Rights Commission.

4

CONCILIATION

Conciliation is a voluntary, non-adversarial way to resolve a complaint. The majority of complaints go through this process. A human rights officer will arrange and oversee a meeting between the complainant and the respondent

The officer will explain human rights law, discuss the factors surrounding the issues, and work with both parties to come to a solution.



The objective is to reach a settlement that is acceptable to both parties without having to conduct a formal hearing. If unresolved, the issue will be sent to the Director Decision.

The Alberta Human Rights Commission imposes a 60-day period for conciliation. If the parties cannot reach a resolution within 60 days, the conciliation is considered unsuccessful. An unsuccessful conciliation may move to the Director's Decision step, where it will be further evaluated.

During the conciliation process the respondent may make a settlement offer to the complainant. If this offer is rejected, the Director may assess the offer to determine if it was reasonable, and if so, reject the complaint. If this happens, the parties will be informed in advance so the complainant can consider the offer.

5

DIRECTOR'S DECISION / INVESTIGATION

In this step the Director decides whether a complaint should be referred to the tribunal or be dismissed.

This step often occurs after conciliation has been unsuccessful, but not every complaint must go through conciliation. If the Director decides to dismiss the complaint their decision may be appealed within 30 days of receiving notice.

Before the Director makes a decision further investigation may be required. You may be asked for additional information or for assistance in collecting evidence and witnesses.

The investigative process involves an investigator reviewing all the information relating to the dispute. The investigator can interview witnesses and request further information from the parties to help determine whether there is a reasonable basis to proceed with the complaint. The parties are expected to operate in good faith when providing information, arranging for witnesses to be interviewed, and responding to communications and requests from the Commission.



When the investigator is satisfied that they have all the information, they will prepare a memo outlining their recommendation to share with the parties. The parties have the opportunity to review the investigator's recommendations and comment on the memo before it is shared with the Director of the Commission. The Director, considering the investigative memo, may either dismiss the complaint or refer the issue to a Tribunal Hearing.

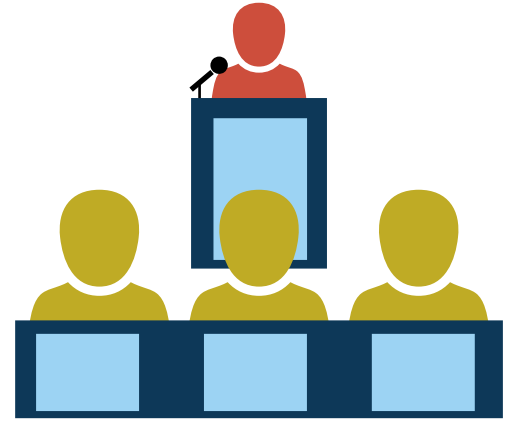
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TRIBUNAL HEARING

The first step when a complaint reaches the tribunal stage is mediation, known as tribunal dispute resolution (TDR). TDR is a voluntary conference with the Chair of the Human Rights Tribunal, where the parties have one final meeting to see if they can come to a resolution before going to a hearing. The choice to accept a resolution is voluntary at this stage, and either party may accept or reject the suggested resolution

Human rights tribunals are quasi-judicial, meaning they have similar powers and procedures to courts, but are less formal.

Hearings are open to the public unless the Panel (of 1 or 3 members) decides that a private hearing would better suit the confidential nature of the matter being heard. **All persons named in the complaint may attend the hearing.**



It is important to note that in most cases, when a matter **proceeds to a hearing legal counsel for the Director of the Commission has carriage of the complaint.**

- This means that **legal counsel to the Director is responsible for making the case that discrimination occurred by calling witnesses and evidence.**
- The Complainant works with legal counsel to the Director but their **main role is as a witness to provide evidence of the discrimination.**
- **The Complainant is not responsible for making the legal argument.**
 - However, this does not apply if the complaint is dismissed earlier in the processes and the Complainant appeals that decision to the Chief who then refers it to a hearing.
 - In that case, the Complainant has carriage over their own matter and must make the legal argument that discrimination occurred.
- **The Respondent is responsible for bringing their case and making the legal argument, unless they decide to retain legal counsel at their own expense.**

Evidence at a tribunal hearing is presented through witnesses giving testimony and identifying relevant documents.

While the strict rules of evidence used in judicial proceedings are relaxed in hearings before a human rights tribunal, parties must still be prepared to produce the relevant witnesses and documents to establish their case.

The witnesses will be subject to cross-examination by the other party so that both parties are able to test the evidence put before the tribunal.

A hearing typically ends with both parties providing oral argument regarding the merits of the case; in some circumstances, this may be done in writing.



If the complainant is successful, the Panel may order that the respondent to do any or all of the following:

- Cease the violation in question;
- Refrain from committing the same or any similar violation in the future;
- Make available to the complainant the rights, opportunities or privileges that the person was denied;
- Compensate the complainant:
 - For any wage or income lost
 - For expenses incurred because of the discrimination
 - For injury to dignity and self-respect (general damages); and/or
- Take any other actions that the Panel deems appropriate (e.g. take educational seminars or issue an apology)

7

APPEALS

If a complaint is dismissed before the tribunal hearing, the Complainant may appeal that decision to the Chief Commissioner in writing within 30 days.

The Chief Commissioner then reviews the matter and decides whether the complaint should have been dismissed or if it should be referred to a hearing before the human rights tribunal.

A party may appeal a decision from a human rights tribunal to the Court of Queen's Bench; this is called judicial review. A party must apply for judicial review within 6 months of the Tribunal's decision.

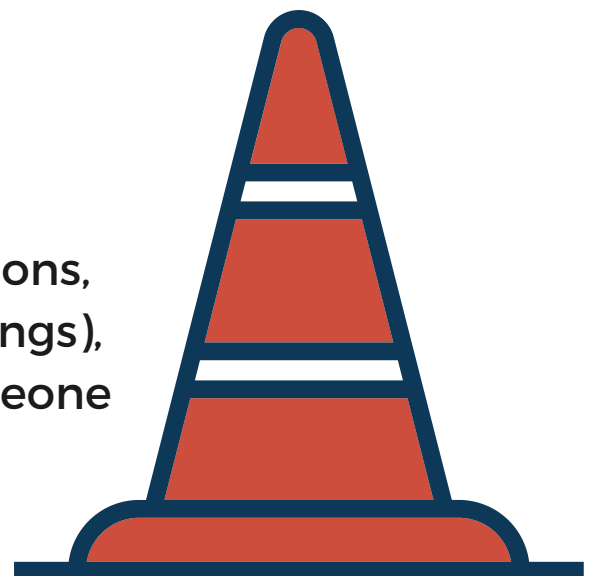
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SAFETY

If a person believes that their safety or the safety of anyone named in the complaint is at risk, they should contact the local police service and notify the Commission

The Alberta Human Rights Act prohibits retaliation against a person for:

- making or attempting to make a complaint
- participating in a human rights proceeding (including investigations, settlement discussions and hearings), as well as retaliating against someone for assisting an individual with a complaint or human rights proceeding.



A separate complaint can be made on this basis.

HATE CRIMES



There is no nationally accepted definition of what constitutes a hate crime.

The Edmonton Police Service defines a hate crime as:

“an offence committed against a person or property which is motivated in whole or in part by the suspects’ hate, prejudice or bias against an identifiable group based on real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.”

In other words, **a hate crime is any act designed to injure, terrify or intimidate** a member of a specific, identifiable group.

Victims of hate crimes are usually selected simply because they are a member of one of these identifiable groups, not because of anything specific that they have done.

While there is no specific offence for hate crime in the Criminal Code, there are certain provisions which protect against crime directed at identifiable groups.



The promotion of genocide, the public incitement of hatred against an identifiable group, the willful promotion of hatred, the willful promotion of anti-semitism and the creation of hate propaganda are all illegal under the

Criminal Code.

When a person is convicted of a criminal offence, if the offence was motivated by hate, bias or prejudice, that can be used as an aggravating factor at sentencing.

- This means that a hate-motivated crime can be given a harsher sentence than the same type of crime that was not motivated by hate.
- For example, an aggravated assault that has been classified as a hate crime will likely receive a longer sentence than an aggravated assault that is not found to motivated by hate.

EXAMPLES OF HATE CRIMES

It is difficult to give specific examples of what constitutes a hate crime because it will depend on whether the underlying offence was motivated by hate of an identifiable group.

Deciding whether or not a hate crime has been committed will depend heavily on the details of the situation.

However, the EPS suggests that the following actions could, depending on the motivation, constitute a hate crime:

- Violence or threats of violence;
- Acts of mischief or vandalism;
- Distribution of hate literature or hate mail;
- Threatening phone calls; and/or
- Destruction of religious property or symbols.

While not all instances of hate are necessarily criminal in nature, the EPS also suggests it is important to tell the police if you witness the following:

- Intimidation against an identifiable group;
- Distribution of prejudicial material; and/or
- The use of racial slurs.

REPORTING HATE CRIMES



If a person feels that he or she has been the victim of a hate crime, he or she has a few options available:

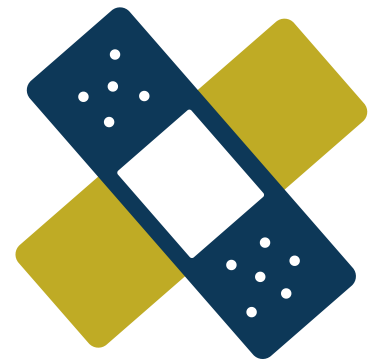
- If the crime is **in progress**, call **911**;
- Report anonymously to Crime Stoppers (**1-800-222-8477**)
- If the crime is **not in progress**:
 - Call the EPS Complaint Line (**780-423-4567**) or
 - Be sure to include the date, time and details of the incident.



VICTIMS OF HATE CRIME



Victims of hate crimes have resources available to them such as the Crime and Trauma Informed Support Services (**780-421-2217**).



This organization can provide support to people victimized by crime.

Their trained staff and volunteers can assist victims by providing emotional support, referrals to community support, and court orientation and accompaniment,

The Government of Alberta's Victims of Crime Assistance Program (**780-427-7217**) can help with victim impact statements and submitting restitution requests, court orientation and accompaniment, and applying for financial benefits programs.

WHO CAN I CALL FOR MORE HELP OR INFORMATION



Human Rights Resources:

Alberta Human Rights Commission

800 Standard Life Centre
10405 Jasper Ave, Edmonton, AB

Toll-Free Ph: 1-800-232-7215

Confidential Inquiry Ph: 780-427-7661

Website: www.albertahumanrights.ab.ca

Safety Resources:

Edmonton Police Services

Web: www.eps.ca

Complaint Line (Non Emergency): 780-423-4567 or #377

Hate Crimes Unit: 780-423-4567

Crime & Trauma Informed Support Services: 780-421-2217

Legal Resources:

Calgary Legal Guidance: Free Legal Info

Website: clg.ab.ca

Provides free legal information on a number of legal issues.

Student Legal Services

11036 88 Ave NW
Edmonton, AB T6G 0Z2

Admin: 780-492-8287

Email: slshrp@ualberta.ca

Web: www.slsedmonton.com

Law students able to provide free legal information and assistance to low income individuals who have made or are looking to make a human rights complaint to the Alberta Human Rights Commission or individuals who have been named as a Respondent in a complaint made to the Commission. Students will act as your agent in the human rights process under the supervision of advising lawyers.

Edmonton Community Legal Centre

Telus House, South Tower
Second Floor, 10020 - 100 Street
Edmonton, AB T5J 0N3

Ph: 780-702-1725

www.eclc.ca

Email:

intake@eclc.ca

Provides legal services for low-income Albertans in certain areas of family and civil law. These services include free legal information, referral, and legal education. ECLC may also be able to provide legal advice if you fall within their eligibility criteria. Much of their legal information can be found on their website, as well as the time, dates, and locations of their public legal education programs. Additionally, ECLC has a fee waiver program if your income and document fall within their guidelines.

Legal Aid Alberta

10320 102 Ave NW, Edmonton, AB

Ph: 1-866-845-3425

Website:

www.legalaid.ab.ca

Legal Aid Alberta provides subsidized legal assistance and representation to low-income Albertans on certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.

Lawyer Referral Service

Ph: 1-800-661-1095

When you call, you will speak to an operator and you will describe the nature of your problem to them. The operator will then provide you with the contact information for up to three lawyers who may be able to assist you. When contacting these referred lawyers, make sure to let them know that you were given their information by the Lawyer Referral Service. The first half hour of your conversation with a referred lawyer will be free and you can discuss your situation and explore options. Note: This free half hour is more for consultation and brief advice. It is not intended for the lawyer to provide free work.

NOTES

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