

CROSSON CONSTITUTIONAL LAW

University of Calgary
2500 University Dr NW
Calgary, AB T2N 1N4

September 22, 2021

Sent via email to president@ucalgary.ca

Dear President McCauley:

I write on behalf of post-secondary students across the province of Alberta who have alerted our firm that some post-secondary institutions are denying exemption requests to vaccine and testing policies when these requests are in fact rooted in the protected human rights grounds of disability and religious belief.

Refusing these objections is not permitted under law.

The *Alberta Human Rights Act*, s.4 is clear, “no person shall deny any class of persons services or facilities because of religious beliefs, physical disability, or mental disability.”¹ Please also see the law outlined in the materials from the Alberta Human Rights Commission and Canada’s largest human rights entity, the Ontario Human Rights Commission.²

Regarding religious exemptions, the Supreme Court of Canada in *Syndicat Northcrest v. Amselem* 2004 SCC 47 states that religious beliefs are to be protected if an individual believes it is grounded in his or her religion, regardless of whether the belief was required by a religious authority. It is therefore illegal for your institution to refuse exemption requests because they are based on a belief not required by a particular religion. The law is clear, you cannot refuse an exemption request because it is unsubstantiated by a religious authority.

Some institutions hold the position that because the request is required to be in keeping with religious, rather than political beliefs, they can require the individual’s request to be in keeping with and verified by a religious body. That is incorrect under *Amselem*, above, but we understand if these institutions are not well-versed in the law. This is new ground for many of them.

However, ignorance of the law is no excuse for breaching it.

¹ <https://www.qp.alberta.ca/documents/Acts/A25P5.pdf>.

² http://www.ohrc.on.ca/en/code_grounds/creed.

CROSSON CONSTITUTIONAL LAW

We are also aware that some institutions are refusing to permit exemptions and are not providing a reason for doing so. This is not permitted under law. If there is a valid reason to reject the request, you are required to disclose that reason under basic administrative law principles.

As well, some institutions are refusing requests by revising their criteria but neglecting to note which criteria is not met. This also fails to meet basic administrative law principles.

Furthermore, many students who have legitimate medical conditions are being denied medical exemptions, such as those who are suffering with allergies and autoimmune diseases. This is unlawful as human rights legislation interprets disability broadly.³ Indeed, the Alberta Human Rights Commission defines disability as follows:

Physical disability is defined in the *Act* as any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness. This includes, but is not limited to, epilepsy; paralysis; amputation; lack of physical coordination; visual, hearing and speech impediments; and physical reliance on a guide dog, service dog, or wheelchair or other remedial appliance or device.

Mental disability is defined in the *Act* as any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder.⁴

We find that some post-secondary institutions are not adhering to this view of disability and are dismissing exemptions on a narrower basis. These dismissals fall outside what is permitted at law.

Service providers are expected to make reasonable efforts to accommodate individuals with disabilities unless it would cause undue hardship, that hardship being to the provider, not to the individual.

We are carefully examining Alberta post-secondary institutions to review the actions of these institutions in relation to honouring human rights legislation.

Upon our review, we will encourage any individual whose request for an exemption has been illegally rejected to seek relief with the Alberta Human Rights Commission. We have experience in representing individuals on complaints and will be happy to support multiple student

³ [Policy on ableism and discrimination based on disability | Ontario Human Rights Commission \(ohrc.on.ca\)](https://www.ohrc.on.ca/en/policy-on-ableism-and-discrimination-based-on-disability).

⁴ https://www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/sheets/protected_grounds/Pages/mental_or_physical_disabilities.aspx.

CROSSON CONSTITUTIONAL LAW

complaints against your institution if our review indicates that you are illegal rejecting legitimate requests.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Carol Crosson', written over a horizontal line.

Carol Crosson
Barrister and Solicitor

cc. rgappeal@ucalgary.ca.