



Legal Aspects of Multiple Chemical Sensitivity (MCS)

Empowering Community and Removal of Barriers (ECRoB) Project

Is Multiple Chemical Sensitivity (MCS) recognized as a disability under the law?

MCS is a disability recognized by the Canadian Human Rights Commission, and protected under the Canadian Human Rights Act (CHRC, 2007; CHRA, 2007) People experiencing this disability are entitled to specific rights, benefits, and legal remedies in the event that they encounter accessibility barriers or discrimination due to their disability.

What rights are people with MCS entitled to?

Just as for other disabilities, people with MCS can access rights and benefits provided by law. These benefits can include:

- protection from discrimination
- access to accommodations
- barrier-free access to services and educational institutions
- eligibility for government-funded disability support programs

What should I do if I face discrimination because of MCS?

It's advisable to consult with a legal professional who is knowledgeable about disability rights and the specific laws in your jurisdiction. If you face financial barriers in obtaining legal counsel, try consulting your local provincial or territorial legal aid offices.

How can I prove discrimination based on MCS?

Be sure to retain records and documentation, such as:

- accommodation request (and responses) documentation
- communication records
- date and time notes or journal
- exposure history
- financial records
- incident reports
- medical documentation from healthcare providers
- photographs and videos
- prescription records
- property inspection reports
- public records or social media posts demonstrating prejudice or discrimination
- witness testimonies

Can I seek compensation if my MCS is a result of workplace exposure?

Depending on local laws, you might be eligible for workers' compensation or other forms of relief if you can prove that your MCS developed due to your workplace.



How can I know what chemicals were used for a fragrance?

Since fragrances are considered trade secrets, manufacturers can legally omit detailed disclosure of the chemicals composing them. (CSC, 2022)

Do products need to carry warning labels for chemicals that could trigger MCS?

At the time of writing, current labeling regulations fall short of adequately alerting consumers to the risks posed by the chemicals used. Some places might require labels for specific chemicals, but not all chemicals that could potentially trigger MCS symptoms will necessarily be labeled. (Sarantis, 2010)

Is MCS recognized internationally as a disability?

The recognition of MCS varies internationally. While some countries or regions might recognize it officially as a disability, others may not. Countries that recognize MCS include Germany (1998) followed by Denmark, Austria, Luxemburg, Spain, and Finland. MCS is classified in Germany and Austria under the ICD-10 code T78.4. Japan has acknowledged MCS and also in its health system ICD-10, code T65.9, unspecified respiratory conditions due to inhalation of fumes, gas, and chemical vapors. In the USA, MCS has been partially recognized by several medical authorities as well as legislation such as the American with Disabilities Act (ADA). MCS is also recognized as a disability in Canada, Germany and Australia.

Have MCS cases ever reached courts or tribunals?

Several courts and tribunals within many Canadian jurisdictions have ruled on MCS-related cases.

How can I advocate for stronger legal protections for individuals with MCS?

Joining or supporting organizations dedicated to MCS awareness, contacting local representatives, and educating the public can be effective ways to advocate for stronger legal protections.

When we talk about having a disability recognized by law, what exactly do we mean?

What we are referring to here are a few laws in the federal context, namely the Policy on Environmental Sensitivities, which was officially adopted in 2007, and updated in 2014 and 2019 by the Canadian Human Rights Commission. It provides guidance on creating scent-free, least-toxic product-use workspaces aligned with human rights obligations of federally regulated employers, and it is supported by the Canadian Human Rights Act. There is also the Accessible Canada Act which was adopted in 2019, and aims to find, remove, and prevent barriers to people with disabilities in a federal scope. In the provincial context, a disability is defined according to provincial legislation. Although MCS is not explicitly acknowledged as a disability, some past cases have been able to establish so.

How do we know which laws apply and which commission or tribunal to file your complaint with?

For this, we have to refer to the division of powers set out in the Constitution Act, of 1867 (art. 91 and 92).

On the one hand, the federal context applies when the discrimination takes place in federal government organizations, and federally regulated organizations and businesses, such as communication, transportation, banks, etc. And the complaint must be filed with the Canadian Human Rights Commission or possibly other Tribunals. The laws that may apply include the Canadian Human Rights Act, the Accessible Canada Act, and the Canadian Transportation Act.

On the other hand, the provincial context applies when discrimination occurs in public and private acts in specific social areas, such as for example the receipt of municipal or provincial government services or from private businesses, employment that falls within provincial jurisdiction, and rental housing. This may also include provincial government agencies, such as provincial ministries and agencies, provincial Crown corporations, and provincially regulated agencies and businesses, such as schools, hospitals, public housing, and restaurants. If the discrimination occurs in one of these contexts, the complaint may be filed with the provincial Human Rights Commission. Each province and territory have their own Commission, so the ones that would apply are the ones within which the discrimination occurred.

If the issue is work-related, the Federal or provincial/territorial Workers' Compensation could also be used as a vehicle for filing a complaint.

It is also essential to obtain legal advice in each case to determine the proper forum. Some cases that raise human rights issues can also be brought to other tribunals and in other fora, and in some cases, it may be advisable to frame the legal issues in other ways rather than within a human rights context to increase chances of success. Legal advice at an early stage is important to receive information on what the options may be and how best to proceed.

What is the duty to accommodate?

The duty to accommodate is a legal obligation that gives people with disabilities equal opportunity as others. The duty of the accommodation provider includes working cooperatively to find the most appropriate solution that meets the individual's disability-related needs. Accommodations are highly individualized to the particular needs of the individual with a disability and to the context in question

The limits on the duty to accommodate, or rather the defense to failing to appropriately accommodate, is called undue hardship. The accommodation provider is not required to provide

the accommodation if it causes them hardship that reaches the point of being “undue.” Now, undue is a legal term. While there are some subtle differences in federal, provincial and territorial human rights laws, the courts have been clear that undue hardship is a high standard to meet, and it must be grounded in fact. What is considered an appropriate accommodation and what is considered “undue” is determined on a case-by-case basis.

Are there time limits for filing a case to a tribunal or court to obtain an accommodation or compensation for your disability?

It is important to keep in mind that there are certain delays that need to be respected.

For all Human Rights Commissions, it is important to verify this information for each commission individually.

For federal cases, you have up to 12 months following the last act of discrimination you want to complain about. If your complaint is late, you will need to explain why you believe the Commission should still accept your complaint. For example: a prolonged illness that prevented the individual from making their complaint by the deadline.

For province-specific legal information on how to file a human rights complaint, please see our website: <https://aseq-ehaq.ca/en/legal-2/>

What are some of the barriers to justice for people with MCS?

Despite the fact that these legal instruments are in place provincially and federally, there are still several barriers to accessing justice for people with MCS.

1. The first barrier is related to proof of disability. It is important to note that in human rights law, we don't need a diagnosis - in theory anyway. In practice, not having a medical diagnosis can be an important barrier. Although MCS is recognized as a disability, the person requesting disability-related accommodation still needs to establish that they are a person with a disability. Since the medical community is not well educated about this condition, very few doctors are able to make the diagnosis. Proof of MCS as a disability is therefore difficult to obtain.
2. The second obstacle is that lawyers, like doctors, are not well educated about the condition, and it is difficult to represent a person when one does not understand their disability.
3. The third barrier continues this trend, namely that it is difficult to get MCS expertise in court/tribunal since few people are adequately trained on the subject.
4. The fourth barrier is that courts are not familiar with MCS, so convincing them requires even more effort.



5. The fifth barrier is that legal resources, particularly provincial and territorial ones, are fragmented, and a person who is ill and has no legal experience, would not necessarily understand the processes and tools for obtaining justice on their own.

What are the socioeconomic consequences of not accessing reasonable accommodations for people with MCS?

The socioeconomic consequences of not accessing reasonable accommodation for people with MCS are multiple. The impacts are particularly high in terms of work stoppage and income. Yet, these people are as educated as the rest of the population. Notably:

- People with MCS earn between \$20,000 and \$39,999 annually, compared to people without disabilities who earn between \$40,000 and \$60,000 annually.
- 41% of people with MCS are unable to work.
- 65% of them earn less than \$20,000 annually

Among people with MCS who cannot work

- 34% have a post-secondary/university degree;
- 50% of these women who cannot work have a post-secondary diploma or university degree;

For those with MCS who are working, they report increased hostility and conflict in the workplace due to people not understanding their condition and mistakenly believing them to be unreasonable in their demands.

In short, the lack of education about the condition and the lack of access to justice affects not only people with MCS, but also society at large.

This information sheet is provided for educational purposes only and does not constitute legal advice. It is essential to consult with a qualified legal professional for advice tailored to your specific circumstances and requirements.



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