

Civil liability issues for PHAs and service providers



Civil liability

- Civil liability is the area of law concerned with private responsibility between persons.
- The persons involved in a civil court case can be **natural persons** (in other words, human beings) or **legal persons** (e.g., corporations and governments). The word “**party**” is often used to refer to the persons involved in a civil court case.
- The party that files a lawsuit is known as the **plaintiff**. The party against whom the lawsuit is filed is known as a **defendant**.
- The standard of proof in a civil court case is **proof on a balance of probabilities** (i.e., what is most probable based on the evidence). This is a lower standard of proof than in criminal cases, which must be proved *beyond a reasonable doubt*.
- In civil court cases, a party who is found to **have breached a legal duty** may be liable to pay **monetary compensation** to a party who has suffered damage, or may be subject to other court orders or restraints.
- **An organization that is incorporated has a legal personality and can be sued. As well, the staff, volunteers and directors of an organization can be sued personally, whether or not the organization is incorporated.** Some organizations have directors’ liability insurance, or otherwise indemnify the directors, to protect the personal assets of their directors from being used to pay legal fees, court costs and court-ordered monetary awards.
- **Two sources of law** form the basis of civil liability in provinces and territories other than Quebec. The first source of law is the common law, which is judge-made law, developed through decided cases. Acts (also known as statutes) passed by the legislature are the second source of law. In Quebec, at least in theory, all laws come from acts. However, judges who decide Quebec civil law cases interpret the acts, and as a result shape what the law is.

Both the non-disclosure and the disclosure of HIV status may lead to findings of civil liability. Here are three situations where civil liability might arise:

- **A person living with HIV (PHA)** could be sued by a sexual partner for having sex without disclosing their status.
- **A service provider or an organization** could be sued by the sexual partner of a client for not taking steps to prevent the client from exposing the partner to HIV. For information on potential civil liability in such circumstances see “Preventing harm to others,” in the section on “Client confidentiality and record-keeping,” also in this resource kit.
- **A service provider or an organization could be sued by a client** for disclosing his or her HIV status without his or her consent.

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