

# RECRUITING AND HIRING TIPS TO ENSURE EQUAL RIGHTS OF LAW STUDENTS AND LAWYERS WITH DISABILITIES

**The tips are based in part on the following:**

Ontario Human Rights Commission guide entitled *Hiring? A Human Rights Guide* at <http://www.ohrc.on.ca/english/publications/hiring-guide.pdf>

Ontario Human Rights Commission guide entitled *Human Rights at Work* at <http://www.ohrc.on.ca/english/publications/hr-at-work.pdf>

Ontario Human Rights Commission guide entitled *Policy and Guidelines on Disability and the Duty to Accommodate* at <http://www.ohrc.on.ca/english/publications/disability-policy.shtml>

Nova Scotia Barristers' Society, *Hiring Practices for Equity in Employment* at <http://www.nsbs.ns.ca/diversity/InterviewEquityGuide.pdf>

The legal profession and society in general need to adapt their structures and attitudes to include persons with disabilities. This requires a shift in our approach, one that focuses on human dignity and equality. This is also a shift that is required in private practice. This online resource centre provides tips and best practices to attract, hire and retain law students and lawyers with disabilities.

## **Objectives of Recruiting and Hiring Tips**

The objectives of the following tips are to ensure that law firms and legal organizations:

- hire the best qualified person;
- adopt recruitment and selection policies, programs and practices that are inclusive,
- job-related, reliable, valid and fair;
- follow recruitment and selection policies, programs and practices that do not exclude a student or lawyer because he or she has a disability;
- provide a fair system for identifying reasonable, genuine and directly related competencies to the job;

- base hiring decisions on the applicant's ability to do the job rather than on factors unrelated to job requirements, qualifications or performance;
- achieve equality in the workplace.

Law firms and legal organizations have a legal obligation to treat every person equally with respect to employment without discrimination because of the grounds outlined in the *Human Rights Code* and the *Rules of Professional Conduct*, including disability and perceived disability. This obligation includes respecting the **substantive equality** of every person during the recruitment process.

**Substantive equality** does not mean treating everyone the same. A substantive equality approach examines the impact of law within its surrounding social context to make sure that laws and policies promote full participation in society by everyone, regardless of personal characteristics or group membership. Substantive equality requires ensuring that important differences in life experience, as viewed by the equality seeker, are taken into account.

See the Ontario *Human Rights Code*

[http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19\\_e.htm#BK6](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19_e.htm#BK6)

See also the *Rules of Professional Conduct*

<http://www.lsuc.on.ca/regulation/a/profconduct/>

### **Establishing Requirements for the Position**

Before advertising a position, law firms and legal organizations should compile an inventory of the essential knowledge, skills, abilities, education and experience to be competent in the position.

The knowledge, skills, abilities, education and experience should be reasonable, genuine and directly related competencies to the job. Only competencies required for a position should be used as criteria for recruitment and selection.

Members involved in recruiting and hiring should be conscious of assumptions, stereotypes, and personal biases that may have direct or indirect adverse impact on decisions made regarding recruitment and hiring.

While generally selection criteria should be applied consistently for all candidates, flexibility should be maintained. Those involved in the recruitment process should be sensitive to the differences in life experience of individuals and ensure that they respect the

substantive equality of candidates. Recruiters should know and comply with their duty to accommodate differences based on the grounds enumerated in the *Human Rights Code*, including disability.

According to the Ontario Human Rights Commission, the following examples are criteria that are not considered reasonable:

- if they relate to incidental duties rather than essential components of a position;
- if they are based on a client or colleague's preferences and exclude individuals because of grounds protected in the *Code*, such as disability;
- if they rely on stereotypical assumptions to assess an individual's capacity to perform the job duties;
- if they state that the job be performed only in a certain way where reasonable alternatives may exist so that persons are not excluded because of grounds protected in the *Code*, such as disability;
- if they reinforce role-modeling based on traditional or stereotypical ideas about the appropriate roles of men and women.

### **Advertising a Position**

When advertising a position, law firms and legal organizations should,

- ensure that the position is advertised broadly and not only in mainstream publications. In doing so, law firms and legal organizations should actively recruit law students and lawyers with disabilities and consult with the disability community, in law schools and in society.
- ensure that job advertisements are in accessible formats. For example, if a job advertisement is available in electronic format, the advertisement should be made available in electronic text format or transmitted via email. For general information regarding accommodation for persons with disabilities, consult [Providing Legal Services to Persons with Disabilities](#).
- ensure that requirements or duties for employment are reasonable, genuine and directly related to the performance of the job.

Job advertisements should not contain statements, qualifications or references that relate either directly or indirectly to disability.

When designing a job advertisement, please consider,

- whether the wording used is non-discriminatory;
- whether the essential duties of the job are explained clearly;
- whether the language is neutral.

## **Application Forms**

In application forms, a law firm or legal organization may not ask,

- questions that relate directly or indirectly to a person's disability.
- questions about someone's health, illnesses, mental disorders, physical or intellectual limitations, developmental disabilities, intellectual impairment, medical history, learning disability, injuries, workplace accidents or medication.
- a listing of disabilities, limitations or health problems.
- whether a candidate drinks alcohol or uses drugs, whether they have ever received psychiatric care, and if they have ever been hospitalized for emotional problems.

## **Interview Process**

Law firms and legal organizations are encouraged to ensure that those involved in interviewing potential candidates are trained in disabilities issues. In particular, interviewers should know about the duty of confidentiality and the importance of respecting the privacy of candidates, that they should not ask about personal health matters that are not related to the position and that they should respect the dignity of the candidate.

Candidates should be informed of policies that may be applicable to them, such as accommodation policies.

A law firm or legal organization may ask job-related questions to determine the applicant's qualifications or his or her ability to perform the essential duties of the job. A law firm or legal organization should not ask other questions concerning an applicant's disability.

Candidates do not have to disclose a disability and some candidates will not disclose during the recruitment process.

If a candidate discloses a disability prior to or during a job interview, or if an applicant's disability is evident, you must accommodate the candidate's needs, up to the point of undue hardship, if required for any part of the interview or test screening process. For example, interviews should be conducted in accessible locations. Firms or legal organizations may encourage applicants to request accommodations in advance if required to participate in the interview.

If the candidate chooses to talk about his or her disability during an interview, or if the candidate's disability is evident, the only inquiry that the interviewee may make is whether the candidate has needs that require accommodation. Such inquiries should be limited to the applicant's ability to perform the essential duties of the job. You should not ask, for example, how long the person has had a disability or how the person became disabled. The aim of the questions should be to ascertain the applicant's ability to perform essential duties of the position.

A legal employer should not request a driver's licence number or a copy of the licence on an application or during an employment interview because it may screen out applicants without consideration of whether the individual may be accommodated. Having a valid driver's licence should only be a requirement for employment if it is an essential job duty and if individual accommodation is not possible.

You should be aware that the traditional cues that often impress interviewers, such as a quick and articulate responses, eye contact and steady handshake, do not necessarily reflect potential job success. Consider the quality of responses.

In conducting interviews, you should be careful to avoid misconceptions, such as,

- stereotyping, which occurs when someone develops a preconceived image of a person based on, for example, his or her disability;
- the candidates similarity with the interviewer, which occurs when someone judges a candidate more highly if the person is similar to himself or herself including having similar experiences, hobbies and attitudes;
- reliance on intuition which may lead to incorrect evaluations about candidates' suitability for the job;
- Incorrect interpretation or misunderstanding of responses.

### **What is the Duty to Accommodate?**

The duty to accommodate refers to an employer's obligation to ensure that employees or prospective employees with disabilities are not adversely affected by a rule, policy, practice or physical barrier in the workplace. A law firm or legal organization is responsible for accommodating the needs of persons with a disability to the point at which the accommodation would create undue hardship.

For an outline of the duty to accommodate see the Ontario Human Rights Commission's *Policy and Guidelines on the Duty to Accommodate* at:

<http://www.ohrc.on.ca/english/publications/disability-policy.shtml>

### **Legal Obligations to Accommodate a Student or Lawyer with Disabilities**

Law firms and legal organizations are encouraged to adopt accommodation policies and to communicate the policies to all members of the firm and prospective members of the firm. A precedent for such policies is available on the Law Society website at

<http://www.lsuc.on.ca/media/guide1.pdf>

The *Ontario Human Rights Code (Code)* imposes a duty on Ontario employers, including law firms and legal organizations, to promote equality rights of persons with disabilities and to accommodate persons with disabilities up to the point of undue hardship.

Accommodations must be provided in a manner that most respects the dignity of the person. For example, a person who uses a wheelchair and has to use a service elevator near a loading dock or garbage room to gain access to his or her office has not been accommodated in a manner that respects his or her dignity.

Law firms and legal organizations must respect the privacy, confidentiality, comfort, autonomy, individuality and self-esteem when accommodating students and lawyers.

Because everyone has unique individual needs, each person who requires an accommodation must be accommodated individually.

### **Law Firms or Legal Organizations and the Student or Lawyer with Disabilities have Responsibilities when it comes to Accommodations**

The accommodation process is a shared responsibility between the law firm or legal organization and the student or lawyer with disabilities. Everyone involved should cooperatively participate in the process, share essential information, and try to find mutually agreeable accommodation solutions.

### **Responsibilities of student or lawyer requesting an accommodation**

To make a request for an accommodation, students or lawyers with disabilities have the following responsibilities, which should be undertaken in a prompt manner:

1. The student or lawyer should make a request for accommodation.
2. Whenever possible, the student or lawyer should provide notice of the request in writing and allow a reasonable time for reply.
3. The student or lawyer is encouraged to identify the ground or grounds under which he or she is requesting the accommodation.
4. The student or lawyer should explain why the accommodation is required and provide enough information to confirm the existence of a need for accommodation and the type(s) of accommodation required.
5. The student or lawyer should provide suitable verifiable information concerning the ground(s) at issue (e.g. appropriate documentation and assessment of a disability), as requested by the law firm or legal organization.
6. A student or lawyer who requests an accommodation because of a disability and believes that he or she is capable of doing the essential requirements of the position should indicate this.
7. The student or lawyer should cooperate in obtaining necessary information and should participate in discussions about solutions.
8. The student or lawyer should meet agreed upon performance standards once accommodation is provided.

## **Responsibilities of law firm or legal organization when considering a request for accommodation**

When a student or lawyer requests an accommodation, the law firm or legal organization has the responsibility to assess the need for accommodation on an individual basis. The law firm or legal organization has the following responsibilities, which should be undertaken in a prompt manner:

1. The law firm or legal organization should respect the dignity of the student or lawyer requesting the accommodation. This means acting in a manner that recognizes the privacy, confidentiality, comfort, autonomy, and self-esteem of the student or lawyer.
2. The law firm or legal organization should presume that a request for accommodation is made in good faith unless there are legitimate reasons for believing otherwise.
3. The law firm or legal organization should consult the student or lawyer and consider any suggestions offered by him or her in arriving at a strategy for accommodation.
4. The law firm or legal organization should request only information that is reasonably necessary to enable the law firm or legal organization to consider the request for accommodation.
5. The law firm or legal organization should deal with accommodation requests in a timely way.
6. The law firm or legal organization should consider alternatives if the request cannot be fully accommodated.
7. The law firm or legal organization should obtain expert opinion or advice when required.
8. When a student or lawyer with a disability indicates that he or she is capable of satisfying the essential requirements of the position, the law firm or legal organization, with the input of the student or lawyer, should determine what is “essential” to the position and identify possible alternatives to enable the student or lawyer to perform the job duties in a satisfactory way. The law firm or legal organization should establish on an objective basis whether the person’s disability renders the student or lawyer incapable of fulfilling the essential requirements of the position. If the student or lawyer cannot satisfy the essential requirements without accommodation, the law firm or legal organization will explore how to accommodate him or her to enable satisfaction of the essential requirements of the position.
9. The law firm or legal organization must take all necessary protection to maintain confidentiality.
10. When the law firm or legal organization is of the view that the request for accommodation should be granted, he or she should provide the accommodation required.

11. The law firm or legal organization should consult with the student or lawyer regularly to determine whether the accommodation is appropriate or should be modified.

### **Undue hardship**

Law firms and legal organizations have an obligation to reasonably accommodate students or lawyers up to the point where accommodation would result in undue hardship.

In determining undue hardship, the law firm or legal organization should only consider the following factors:

1. Cost;
2. Outside sources of funding; and
3. Health and safety requirements.

The Code sets out only three factors. When assessing whether an accommodation amounts to undue hardship, a law firm or legal organization may not take into account factors such as business inconvenience created by the accommodation, its affect on employee morale, client preferences, or the fact that the accommodation contravenes a collective agreement or contract.

For more information about the concept of “undue hardship” see *Policy and Guidelines on Disability and the Duty to Accommodate*

<http://www.ohrc.on.ca/english/publications/disability-policy.shtml>

See also

[Guide to developing a law firm policy regarding accommodation requirements](#)

[Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities Legal Developments and Best Practices](#)

If the law firm or legal organization concludes that a requested accommodation would impose undue hardship on the organization, it should prepare a written report including,

1. the nature of the accommodation sought and refused, and
2. the factors that support the view that the accommodation would lead to undue hardship (including evidence showing the financial cost of the accommodation or health and safety risks).
- 3.

The decision should be explained clearly to the student or lawyer and reasons for the decision should be provided.

For case law on the duty to accommodate to the point of undue hardship, see *British Columbia (Public Service Employee Relations Commission) v. British Columbia*

*Government and Service Employees' Union*, [1999] 3 S.C.R. 3, (“the Meiorin case”) at <http://www.canlii.ca/ca/cas/scc/1999/1999scc48.html> and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (the *Grismer* case) at <http://www.canlii.ca/ca/cas/scc/1999/1999scc82.html>

## **Additional Legal Obligations of Law Firms and Legal Organizations**

### ***Accessibility for Ontarians with Disabilities Act***

In 2005, Ontario adopted the *Accessibility for Ontarians with Disabilities Act, 2005* (*AODA, 2005*). To consult the *AODA, 2005* see

<http://www.canlii.ca/on/laws/sta/2005c.11/20060517/whole.html>

The *AODA, 2005* applies to the public and the private sectors, including law firms and legal organizations.

The *AODA, 2005* establishes tangible objectives and an enforcement mechanism to enhance full accessibility for persons with disabilities in Ontario.

Accessibility standards will apply to a person or organization that provides goods, services or facilities to the public, employs persons in Ontario, offers accommodation to the public, owns or occupies a building, structure or premises that is open to the public, or is engaged in a prescribed business, activity or undertaking or meets such other requirements as may be prescribed.

Industry or sector- specific standards for accessibility will be developed. The standards will set out measures, policies, practices or other requirements for the identification, removal and prevention of barriers faced by persons with disabilities. This will include architectural, information and communication, attitudinal, technological and policy and practices barriers.

The standards, once defined, will be implemented over a five-year period. The target date for achievement of accessibility is 2025.

### ***Canadian Human Rights Act***

Law firms and legal organizations regulated by federal statutes also have a duty to accommodate under the *Canadian Human Rights Act* and the *Employment Equity Act*. To consult these statutes, please go to:

*Canadian Human Rights Act*

<http://www.canlii.ca/ca/sta/h-6/>

*Employment Equity Act*

<http://www.canlii.ca/ca/sta/e-5.401/>