

Practice Resource

Model policy

Workplace equality

Preface

Achieving equality is a complex task that will be accomplished only if we apply good will and good sense to the challenge of creating inclusive workplaces. The foundation of the Workplace Equality Model Policy is the recognition of the right to work in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices. This fundamental right is realized, in part at least, by the specific policies which address aspects of employment and firm membership.¹

Law firms have differing abilities to initiate special programs and lawyers have differing needs. For smaller firms it is recognized that certain aspects of the model policy may be impractical or impossible to implement. Different firms will have different goals and may choose different approaches to promote workplace equality. For example, some firms set hiring targets or include provisions respecting participation of members of identifiable groups on particular committees. At the same time it is recognized that some firms will choose not to implement such specific provisions for reasons including that the provisions are unnecessary given the diversity that already exists at the firm or the size of the firm. For this reason, this model policy is intended to serve as a guide only. Firms may adapt all or part of the policy as suits their circumstances and in accordance with applicable legislation.

In order that day-to-day decision-making in a law firm takes full account of the aspirations and contributions of all firm members, it is important that the diversity of firm membership be reflected in the decision making process of firms. This, and other aspects of the Workplace

¹ Several of the recommendations concerning equality of opportunity for women lawyers in the Law Society of British Columbia's *Women in the Legal Profession Report* (1991) are incorporated into the provisions of this model policy. In the Fall of 2005, the Law Society of British Columbia commissioned a survey of inactive members in order to identify factors influencing lawyers to move to inactive status. Thirty-five percent of respondents said that they had experienced some form of discrimination while practicing law in B.C. Among respondents, discrimination was more prevalent among females than males and among those who had been called to the Bar more recently. Among those who reported experiencing discrimination, their comments were largely related to gender discrimination (68%) and, to a lesser extent, age/experience discrimination (16%). See: *Law Society of BC: Survey of Inactive members of the Law Society, October 31, 2005* by NRG Research Group. The findings of this survey closely matched the results of similar surveys in Alberta (see: *Alberta Law Foundation: Report on Equity and Diversity in Alberta's Legal Profession, January 26, 2004* by Merrill Cooper, Joan Brockman, and Irene Hoffart) and Ontario (see: *Turning Points and Transitions: Women's Careers in the Legal Profession, A Longitudinal Survey of Ontario Lawyers 1990-2002 – A report to The Law Society of Upper Canada, September 2004* by F.M. Kay, C. Masuch, and P. Curry).

Equality Model Policy, will help ensure that all firm members are full participants in the workplace.

Formal procedures requiring decision-makers and employees to directly and clearly communicate about matters such as working conditions, job requirements and employees' success in meeting those requirements may be needed to counteract the very human tendency of decision-makers to communicate fully only with those with whom they feel at ease. This inclination may mean that individuals who belong to traditionally marginalized groups do not receive the feedback or recognition that are essential to professional advancement or perceive that there is a lack of such communication.

There is also provision for a special program applicable to women, aboriginal peoples, persons with disabilities and members of visible minorities in circumstances of hiring and promotion (see section 5.13).² The British Columbia *Human Rights Code* makes provision for special programs which have as their objective the amelioration of conditions of groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex. Employment equity programs may be developed and implemented without prior Tribunal approval however, an approved employment equity program that meets the *Code* criteria under section 42 is not discrimination or a contravention of the *Code*. The Firm may make application for approval of the Tribunal in order for such a program to be deemed not to be in contravention of the *Human Rights Code*. Approval as a special program does not insulate the Firm from a human rights complaint if there is conduct falling outside the terms of the Tribunal's approval.

Firms wishing to adopt this policy with the inclusion of section 5.13 or a provision like it may wish to contact the Tribunal in order to seek approval of a finalized policy as a special program under the *Code*. As other aspects of this policy are consistent with human rights legislation, the remainder of the policy would not be considered a special program. The B.C. Human Rights Tribunal has published a Special Programs Policy which provides information about the requirements for Tribunal approval of a special program.³

² The *Employment Equity Act*, S.C. 1995, c. 44, s. 3 defines "designated groups" under the Act as "women, aboriginal peoples, persons with disabilities and members of visible minorities" and "members of visible minorities" as "persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour". This Policy is designed to promote diversity as considered in the federal equity legislation and in human rights legislation wherein there is provision for employment equity programs that have as their objective, the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex. Firms may wish to develop a program that targets one or more specific identifiable group. This policy is drafted in keeping with the groups identified in the federal legislation and is intended to be compliant with provincial human rights legislation.

³ See http://www.bchrt.bc.ca/policies/special_programs_policy.htm. Firms must have regard to s. 42 of the British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210 which allows employers to develop special programs that may otherwise be a breach of the Code. Section 42 states:

- (1) It is not discrimination or a contravention of this Code to plan, advertise, adopt or implement an employment equity program that (a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, and (b) achieves or is reasonably likely to achieve that objective. ...

Model policy

1. Statement of commitment

[Name of firm] recognizes that respect for the dignity and worth of everyone who works at the Firm is the foundation of harmonious and productive working relationships. Each individual has the right to work in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices.

2. Purpose

The purpose of this policy is to promote equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons related to a prohibited ground of discrimination and unrelated to ability.

In the fulfillment of this goal, this policy also includes mechanisms to assist in correction of conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities (collectively, the “Identified Groups”) by giving effect to the principle that employment equality means more than treating persons in the same way in that it may require special measures and the accommodation of differences.⁴ For the purposes of this policy, “members of visible minorities” is defined as persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour.⁵

3. Persons covered by this policy

This policy applies to all Firm members, including all those working for [name of firm] including secretarial, support, professional and administrative staff, articling and summer students, associates and partners (“Firm Members”). This policy will also apply to applicants for positions with the Firm as appropriate.

(3) On application by any person, with or without notice to any other person, the chair, or a member or panel designated by the chair, may approve any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups.

(4) Any program or activity approved under subsection (3) is deemed not to be in contravention of this Code.

⁴ See *Employment Equity Act*, S.C. 1995, c. 44, s. 2. Firms will want to carefully consider the characteristics which they wish to include in the Identified Groups. This definition has been drafted in keeping with groups identified in federal employment equity legislation. Section 42 of the British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210 provides for the approval of special programs that may otherwise be a breach of the Code including programs that have the objective of the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex.

⁵ See *Employment Equity Act*, S.C. 1995, c. 44, s. 3.

4. Statement of principles

4.1 Right to equal opportunity

The Firm recognizes that every person has the right to equal opportunity without discrimination in matters relating to employment or membership in the Firm. Under no circumstances shall any person be treated in a discriminatory manner because of his or her race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age or because an applicant or candidate has been convicted of a criminal or a summary conviction offense unrelated to employment.

4.2 Discrimination defined

Discrimination means a distinction, whether intentional or not, based on a characteristic or perceived characteristic referred to in paragraph 4.1 that has the effect of imposing burdens, obligations, or disadvantages on an individual or class of individuals not imposed upon others, or which withholds or limits access to opportunities, benefits, or advantages available to other individuals or class of individuals.

4.3 Employment decisions covered

In particular, the Firm will not discriminate against an individual in decisions respecting hiring, evaluation, promotion, partnership, remuneration, the provision of support services, the assignment of work, or the provision of professional development and client entertainment opportunities.

4.4 Pregnancy discrimination included

The right to equal opportunity without discrimination because of sex includes the right to equal opportunity without discrimination because a woman is pregnant or may become pregnant.⁶

4.5 Special programs

The firm may adopt or carry out a special program pursuant to the *Human Rights Code* (a “Special Program”) with the objective of ameliorating conditions including opportunities for employment or Firm membership for members of the Identified Groups.⁷

⁶ The inclusion of women in the definition of Identified Groups recognizes this aspect of discrimination.

⁷ Firms may wish to proactively seek approval of this Policy from the BC Human Rights Tribunal as a special program in order to prevent complaints of discrimination arising from the application of the Policy. See section 42 of the *Human Rights Code* and the B.C. Human Rights Tribunal Special Programs Policy at http://www.bchrt.bc.ca/policies/special_programs_policy.htm.

5. Equality in action

5.1 Firm committees

All Firm committees will strive to be inclusive and diverse in membership. Where it is not possible to ensure formal representation of all Identified Groups on all committees, the Firm will strive to ensure that the views of members of Identified Groups are considered in decision making.⁸

5.2 Recruitment interviews

The Firm follows the Law Society of B.C. Guidelines - Recruiting, Interviewing & Hiring Practices which is designed to promote a fair hiring process in which all candidates are considered on the basis of their skills and abilities. Everyone carrying out recruitment interviews for the Firm will observe these guidelines. In addition, the Firm will provide sufficient notice of social invitations so that applicants can make whatever arrangements are necessary to attend and ensure that social functions are accessible wherever possible. On request, the Firm will also take steps to ensure that informational material available to candidates is communicated in a format which ensures that all candidates can be fully informed.⁹

5.3 Orientation

The Firm will ensure that orientation materials and information about career development and promotional opportunities are communicated and made available in a format which ensures that all interested persons can be fully informed.¹⁰

5.4 Evaluation

The Firm's evaluation procedure includes:

- established performance categories that are communicated to all Firm Members;
- direct communication about performance and expectations;
- a discussion of satisfaction with the type and level of work assigned; and

⁸ Firms may wish to be more specific and include a statement such as “The Firm’s goal is to have women members on these committees in a proportion that is at least equal to the proportion of women in the profession as determined by Law Society statistics”. Such statements can be adapted to make provision for inclusion of any or all Identified Groups. This practice may be considered a Special Program under the *Human Rights Code*.

⁹ See the Law Society Guidelines – Recruiting, Interviewing & Hiring Practices.

¹⁰ This may include large print or audio communication.

- a record of the results of the evaluation under each performance category.

Evaluations will be carried out by [a **committee**] during any probationary period, and annually thereafter to ensure there is an opportunity to receive adequate and timely feedback.

5.5 Promotion and remuneration

Recommendations about remuneration and promotion will be made by a committee and will be based on established performance categories.

5.6 Professional development

Equal access to professional development opportunities appropriate to the role of the Firm Member will be made available. Professional development opportunities such as attendance at conferences and courses, will be approved and recorded by [a **committee**]. In house training and educational programs conducted by the Firm are accessible to all Firm Members as appropriate as based on their role with the Firm. This will include training respecting harassment and discrimination.

5.7 Work assignment

The distribution and assignment of work and client responsibilities will promote the development of individual talents and interests without reliance on preconceptions respecting the preferences and abilities of individuals based on a characteristic or perceived characteristic related to one or more of the prohibited grounds of discrimination, including a person's membership in an Identified Group.

5.8 Mentoring

The Firm's policy respecting mentoring is as follows:

- each [associate or Firm Member] will be given the opportunity to choose a mentor from among a group of those who are people of influence in the Firm;
- the opportunity to choose a mentor will be given annually at an evaluation interview;
- [associates or Firm Members] are not obliged to have a mentor;
- the mentor will not be the [associate's or Firm Member's] supervisor; and
- the mentor's role is to advise the [associate or Firm Member] on professional matters and, where appropriate, to be an advocate for the [associate or Firm Member] within the firm.

[OR]

The Firm will make every effort to provide [associates and students OR Firm Members] with a designated mentor who will advise the [associate or Firm Member] on professional matters.

5.9 Location of firm/professional functions

Firm or professional functions are held only in facilities and at times that accord access to all Firm Members. The Firm ensures that such functions are accessible to Firm Members. The Firm sponsors and participates in a variety of social activities and client functions so that Firm Members are able to participate in a variety of activities.

5.10 Client entertainment

Client entertainment opportunities will include a variety of events that appeal to diverse interests and provide opportunities for all Firm Members to entertain clients. The Firm ensures that client entertainment functions are accessible and respectful of the diversity of Firm Members.

5.11 Work premises

The Firm ensures accessibility to and at the work premises. This includes both the entrance to and movement around the premises including washroom facilities. Signs, manuals, workplace instructions and electronic information is made accessible to firm members who may require information in a different format. Emergency information is communicated in a format which ensures that all individuals are able to understand the information.

5.12 Supporting Firm Members

In the event of inequitable or discriminatory treatment of Firm Members arising from interaction with third parties such as clients or suppliers, the Firm will support the Firm Member in resolving the matter.¹¹

5.13 Employment equity¹²

¹¹ Some firms may wish to be more specific with respect to measures the firm is prepared to take. For example, if it appears that a client objects to a lawyer handling a file based on a characteristic or perceived characteristic related to the lawyer's membership in an Identified Group, a firm may wish to consider some or all of the following actions: informing the client of the lawyer's relevant experience and credentials, recommending that the lawyer continue with the work assignment, or refusing to continue to provide service to the client.

¹² This provision can be omitted or adapted to apply to any group that is targeted for hiring purposes. Although it is recognized that recruitment of members of Identified Groups can be a very different challenge than retention, some firms may wish to proactively change their hiring practices in order to promote greater diversity. The *Women in the Legal Profession Report* clearly indicated that promotion of women within the profession is a continuing problem. The Model Policy includes this provision in order to provide a mechanism for addressing the imbalance for firms that wish to take such an approach. The Law Society maintains statistics respecting the number of women members.

Where candidates are substantially equal in merit but one candidate is a member of an Identified Group, the candidate who is a member of the Identified Group will be hired or promoted.¹³

5.14 Equality and Diversity Advisor

The Firm will designate a senior lawyer in the firm as an Equality and Diversity Advisor who will answer questions about the Firm’s policies that may be applicable to equality and diversity issues, monitor compliance, assist in the coordination of accommodation efforts, and advocate on behalf of Firm Members as appropriate in order to address concerns raised. The Equality and Diversity Advisor’s name and contact information is <*>.

6.0 Review

The Firm will review this policy bi-annually.

7.0 Enquires

Enquiries about this policy and procedure should be addressed to <*>.

8.0 Related Policies

<*>

¹³ This practice would likely require approval as a Special Program, approval for which should be obtained under the *Human Rights Code*.