

EDI
FOR LEGAL WORKPLACES:
FACILITATOR'S GUIDE

FACILITATOR'S GUIDE

INTRODUCTION

- Welcome to the Law Society of Ontario's materials addressing Equality, Diversity, and Inclusion for Legal Workplaces. This Facilitator's Guide, Discussion Guide, and Bibliography are designed to help you and your colleagues – lawyers, paralegals, law clerks, and legal assistants – in your legal workplace to explore and better understand the concepts of Equality, Diversity, and Inclusion (EDI) in the context of legal practice and the legal professions.
- The purpose of this guide is to assist with hosting and leading a group discussion among your colleagues on EDI topics, in order to fulfill the required three Professionalism Hours of accredited continuing professional development focused on EDI.
- The Facilitator's Guide will explain key terms, provide you and your colleagues with fact scenarios to prompt reflection and discussion, and give information on further reading and resources about this area. This Guide aims to assist individuals within your legal workplace who wish to guide the discussions on EDI. It also provides tips to the Facilitator about how to enable respectful and valuable interactions around these sometimes sensitive issues.

HOW TO USE THIS GUIDE

- This Guide provides suggestions for preparing for the program, setting the tone, leading the discussion, and troubleshooting. The Guide includes tips, instructions, and an overview of the facilitator's role.
- This Guide also complements the LSO's online eCourse about EDI issues entitled "Addressing Equality, Diversity, and Inclusion in the Legal Professions" which was released in August 2019. This eCourse is free of charge and available to any person with internet access at the following link: <https://store.lso.ca/e-courses>.
- The eCourse is designed to permit LSO members to complete their required EDI CPD hours (3 hours must be completed by December 31, 2020) independently, and without requiring additional colleagues to view the online eCourse with them. Additional information about the EDI CPD hours requirement may be found here: <https://lso.ca/about-lso/initiatives/edi/cpd-equality,-diversity-and-inclusion-requirement>

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- The requirement to complete 3 professionalism hours of accredited programming focused on EDI may also be completed in a group setting, with a facilitator using these materials to lead a discussion within your workplace about EDI issues. These materials are accredited by the Law Society, allowing participants and the facilitator to complete the required EDI CPD hours, upon completion of the activities contained within this Guide. Each of the provided Fact Scenarios is designed to count towards one hour of the EDI CPD hours requirement. There are five scenarios you may choose from. Fulfillment of the requirement is based on the duration of the discussion. Here is the link to further information on how to fulfill and report your EDI hours for the LSO: <https://lso.ca/about-lso/initiatives/edi/cpd-equality,-diversity-and-inclusion-requirement>

The materials within this guide:

- Include discussion points for consideration
- Support in-house group sessions that focus on application of the principles of EDI and those taught in the eCourse
- Facilitate discussion and exploration of your particular workplace's culture and challenges
- Link additional resources to areas of learning, so that you can choose to study an issue more deeply
- Outline the learning objectives that an EDI-accredited course should explore
- Build from and expand upon the reflection questions and roundtable discussions embedded in the modules of each of the EDI eCourse's hours

IMPORTANT INFORMATION

- The material covered in the eCourse and in this Guide is complex, nuanced, and can sometimes be uncomfortable for people to talk about. This Guide is designed to help you and your colleagues approach these sensitive issues in a balanced and inclusive manner. However, consider consulting with an experienced educator if you are concerned that having these discussions in your workplace could lead to less, rather than greater, understanding of the issues surrounding EDI. There are many qualified speakers and facilitators in this field who are experienced at discussing and working through EDI issues in legal workplaces. If you work with an educator, they can use the EDI eCourse materials and these materials, as appropriate, or utilize their own materials to address the same learning objectives.

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LEARNING OBJECTIVES

The following chart sets out more specifically the learning objectives and available resources to supplement the group discussion.

COMPONENTS (HOUR 1)

TOPIC	KEY LEARNING OBJECTIVES	RESOURCES
EDI: Concepts, Meanings & Why it Matters	<ol style="list-style-type: none">Understand the meaning of core concepts:<ul style="list-style-type: none">EqualityEquityDiversityInclusionRacializedIntersectionalityRecognize the existence and role of cultural values and assumptions, including your own cultural lens, and those that underlay Canada's legal systemAcknowledge differenceAcknowledge the reality of overlapping cultural identitiesRecognize systemic barriers in the lawIdentify the connection between cultural competence and professional and legal obligations, including in the <i>Rules of Professional Conduct</i>	<p>Discussion Guide</p> <ul style="list-style-type: none">Fact Scenario #1Discussion Questions <p>Facilitator's Guide</p> <p>EDI eCourse: Hour 1, EDI: Concepts, Meanings & Why it Matters</p> <p>Bibliography</p>

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COMPONENTS (HOUR 2)

TOPIC	KEY LEARNING OBJECTIVES	RESOURCES
Implicit Bias: How the Mind Works	<ol style="list-style-type: none">1. Recognize and understand implicit bias2. Understand how implicit bias can influence our perceptions, decisions, actions, and behaviours3. Recognize the negative impact of implicit bias in the legal system4. Identify subtle ways that implicit bias can manifest5. Identify the risks of stereotyping, including internalization6. Recognize micro-aggressions, and the messages that underlay them7. Focus on effects instead of intentions8. Explore how to address implicit bias	<p>Discussion Guide</p> <ul style="list-style-type: none">• Fact Scenario #2 and #3• Discussion Questions <p>Facilitator's Guide</p> <p>EDI eCourse: Hour 2, EDI: Implicit Bias: How the Mind Works</p> <p>Bibliography</p>

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COMPONENTS (HOUR 3)

TOPIC	KEY LEARNING OBJECTIVES	RESOURCES
Strategies for EDI in Practice	<ol style="list-style-type: none">1. Recognize extent to which our behaviour and the way we assess the behaviour of others is culturally embedded2. Ensure good cross-cultural communication/ understanding3. How to be an ally4. Understand the importance of mentoring & micro-affirmations5. Develop structures to support decision-making based on relevant criteria6. Check the risk of implicit bias affecting decision-making7. Avoid making key decisions when at high risk of defaulting to assumptions/biases8. Be alert to the risks of preference for people like us, which often manifests through ideas like “fit”9. Recognize the harmful effects of a lack of diversity for legal organizations, the profession, and the legal system10. Identify the ways the concepts explored in the program can manifest in legal practice, and consider best practices in:<ul style="list-style-type: none">• Hiring• Distribution of work• Client interactions• Interactions with others in the legal system	<p>Discussion Guide</p> <ul style="list-style-type: none">• Fact Scenarios #4 and #5• Discussion Questions <p>Facilitator's Guide</p> <p>EDI eCourse: Hour 3, EDI: Strategies for EDI in Practice</p> <p>Bibliography</p>

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TIPS FOR FACILITATORS

A. PREPARATION FOR THE PROGRAM:

Discussing these issues can be challenging, and it is a good idea to prepare participants for the work you are going to do. You may want to take some or all of the following steps to ensure that participants come to the discussions ready to participate productively

- Meet with key people in advance to encourage support for the program and to ask for their participation in the program (i.e. senior leadership, those with particular experience or expertise in EDI issues, or anyone who has previously expressed concerns about these issues)
- Give participants information about what to expect in the program: agenda, facilitator, expectations for participation, small group discussion, etc.
- Provide an opportunity for people to approach leaders or experts in EDI outside of the group, in advance or afterwards, with any concerns and/or questions, including an opportunity to debrief comments made during the session that may have caused concern
- Consider whether to distribute any material, or require any preparation, ahead of the EDI session. You could offer the EDI discussion session after individuals have completed EDI eCourse. Alternatively, you could assign some advance reading to prepare participants to participate productively in the discussion. Consider whether or not to distribute the Discussion Guide to the participants, ahead of the EDI session. This will give them a chance to review the fact scenarios, and may help them to formulate their thoughts for sharing with the group. However, reviewing the fact scenarios and questions as a group may help people to see them from different perspectives and prevent opinions from hardening before they can be explored. Consider carefully what will work best for your group.
- Consider whether your physical environment will be conducive to learning and discussing these issues – perhaps it is a group discussion with chairs facing each other (a circle or a “U” shape setup) so that people can engage with each other, face to face. Perhaps you should work in a break (or two) if you intend to complete the Fact Scenarios in one session. Do you want to make food or drink available to participants?

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B. INTRODUCTIONS AND TONE-SETTING:

- Discussing these issues productively requires that facilitators create a safe space where participants can ask questions, share concerns, and speak freely. You can set a positive tone by doing the following:
 - Talk about the importance of maintaining a productive discussion at the outset
 - Explain the value of these conversations to your workplace (ie. developing best practices and procedures, the benefit of EDI, etc.)
 - Ask a senior leader to model the approach you ask participants to take
 - Use “we” not “you” when talking about the work that needs to be done, and the potential for mistakes and inappropriate conduct: ie. “we all need to do this work”, “we can all get this wrong”, etc.
- Consider showing a short video by Jay Smooth, from Hour 1 of the EDI eCourse that can help to explore the difficulties inherent in these conversations and the kind of attitude to bring to them. The complete video can be found by searching – Jay Smooth, TEDx Talk “How I Learned to Stop Worrying and Love Discussing Race” at this link:
<https://www.youtube.com/watch?v=MbdxeFcQtaU>

C. THE VALUE OF AN ICEBREAKER:

- Many times, leaders of group sessions find it helpful to have a way for the group to transition into the discussion topics – especially those topics that might be personal or sensitive – by creating a break for the individuals in the group between their usual work activities, and what the group is being asked to do. This is often called an “icebreaker exercise”.
- You may want to consider doing a short icebreaker exercise before you launch into a discussion of the fact scenarios. Asking open-ended questions helps the individuals who are participating to start to formulate their thoughts around the topics to be discussed. It also helps the facilitators to get a sense of where people are in their exploration of EDI issues and what issues and concerns could be addressed in your discussions. You can ask people to reflect on questions like these ones, and perhaps have them discuss their responses, either in pairs, small groups, or in the full group:

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- What do the concepts of EDI mean to you in your professional life?
- Can you think of examples in your practice where EDI issues made you consider a situation differently?
- What might be the value to our workplace of discussing EDI and potentially changing our approach to EDI issues?

D. YOUR ROLE AS A FACILITATOR:

- Lead the group through a discussion of each scenario you plan to cover
- Help guide the group to discuss each of the questions listed below the scenario
- You may want to prompt the group to explore the issues raised by the scenario by asking further questions; some suggestions for additional questions for discussion appear after the Questions for Reflection. The bullet points underneath provide some guidance regarding the issues that may be raised in the discussion
- You may have to try to keep everyone on the topic at hand
- Establish clear timelines in advance. Let the group know when you are near the end of the segment
- Do not take notes during these sessions. It may convey to participants that you are keeping track of their questions and responses, and it will deter full and frank discussion

E. TROUBLESHOOTING:

These conversations can be difficult. Exploring these scenarios may trigger defensiveness on the part of participants who may see problems with their own conduct, and/or frustration by other participants who feel that the problem with this kind of conduct should be obvious.

You may find that some participants are resistant to the relevance and/or value of these ideas to your workplace, the legal profession, the legal system or to Canadian society. You may want to begin the group discussion by talking openly about these possibilities, and the importance of bringing openness, patience, and humility to these conversations. You may need to remind your group of how important it is that everyone remain respectful of one another.

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If anyone is really struggling with the topics you are discussing, you may want to suggest that their questions or comments might better be explored in a smaller setting, with you and/or others involved in organizing the training, or with a senior member of your organization.

F. ADDITIONAL HELP FOR FACILITATORS:

If you do need to intervene to deal with a comment, conflict, or reaction from the group, you may find these tips helpful:

- Be alert to power imbalances. A more junior participant may be intimidated if they feel criticized or get a defensive response from a more senior participant. The words of a senior participant may hold more weight and can therefore be quite harmful if they are not addressed adequately during the discussion.

- When responding to a potentially harmful comment, it helps to:
 1. Focus on the conduct, not the person
 2. Assume everyone has good intentions and focus on the effects of comments
 3. Avoid labeling
 4. Use a non-judgmental tone and expression
 5. Demonstrate the intent to educate, not to shame

If you are not able to defuse problems (hostility, excessive conflict, complete lack of participation) during the session, you may need to follow up with an individual or individuals after the session, perhaps with the assistance of a senior leader at your workplace.

Consider having on hand a list of additional resources or supports available to those participants who may feel more strongly about the topics. A bibliography of resources is referenced within this guide, which you or your colleagues may find helpful.

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INTRODUCTION TO SCENARIO DISCUSSIONS:

NOTE TO FACILITATORS:

The scenarios have been designed to illustrate key concepts in EDI training. They are not always explicit about the personal characteristics or cultural identities of all the characters, or whether the central character is a junior or senior legal practitioner.

You may want to encourage participants to first consider the scenarios from the perspective of their own cultural identities and positions in the legal system. You may then discuss how the personal characteristics of the characters within the scenarios (such as their race, creed, gender identity, age, family status, sex, sexual orientation, ability) may affect their cultural lens and their perception of the actions described in the scenario.

It is important to note that some of the characters may make assumptions or act in ways that appear biased or discriminatory. The scenarios are not intended to perpetuate stereotypes, bias, or discrimination. Participants will have to explore those assumptions for the scenario to be useful, which may lead to objections that the scenarios themselves are biased. You can respond that the scenarios are not intended to exacerbate or perpetuate bias or discrimination but are a learning tool to discuss some of the challenges faced by marginalized licensees. In any exercise that deals with these issues, it is challenging to simulate EDI scenarios for educational purposes without reinforcing problematic stereotypes. Understanding those challenges in the abstract can be difficult. The scenarios are intended to make concrete some of the real situations that licensees face.

SCENARIO #1: EDI – Concepts, Meanings & Why it Matters

You have been asked to collect feedback about an Asian-Canadian lawyer, Tadashi, for the purposes of his partnership application at your firm.

One lawyer reports that Tadashi was not aggressive enough during a recent negotiation and that he thinks Tadashi needs to be more outgoing. He's not sure that Tadashi's "got what it takes". He notes, however, that the client seemed to connect with Tadashi on an emotional level.

Another lawyer comments that he regularly sees Tadashi photocopying his own cases and binding books of documents, rather than leaving this work to the legal assistant to complete. That lawyer doesn't think this is a good use of time, and comments that Tadashi has shown poor judgment and is wasting his time.

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A third lawyer says that she has no problem with Tadashi's work, but comments that Tadashi doesn't seem to ever want to come out to the pub with others from the office after work. She worries whether Tadashi will contribute to the firm's client development, as well as mentoring and supporting students and associates. According to this lawyer, these activities require "sociability" from senior firm members, and she's not sure how Tadashi would meet this need if he's so shy.

QUESTIONS FOR REFLECTION & DISCUSSION:

1. What are some of the cultural values and assumptions the lawyers may be bringing to bear in assessing Tadashi's performance?
2. What conclusions do you think the lawyers may have drawn about Tadashi's performance? Are there alternative explanations that could apply?
3. How might insisting on these expectations exclude good legal practitioners for consideration for more senior roles?

LEARNING OBJECTIVES:

This fact scenario is designed to align with the following EDI learning objectives:

- Recognize cultural values & assumptions
- Recognize your own cultural lens & the lens that others might be applying
- Identify risks of stereotyping
- Recognize intersectionality (multiple & overlapping cultural identities)
- Acknowledge discomfort with difference
- Explore how to value difference

You may want to guide participants to identify and discuss some of the following issues related to this scenario:

- Assumptions about what makes a good lawyer: being forceful, outgoing, social, as signs of confidence; being comfortable with hierarchy and other markers of authority
- Drinking culture and related socializing valued as way to build relationships, make connections, get work done; that can exclude those who don't "fit" or face barriers to this kind of participation (religion, health, etc.)
- Failure to value other strengths, approaches
- Failure to ask, try to understand rationale for and value of his style

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ADDITIONAL DISCUSSION QUESTIONS:

1. What assumptions are these lawyers making about Tadashi, and about what makes a good lawyer?
 - What might underlay those assumptions? i.e. Western mainstream model of how a lawyer acts; undervalues humility, overlooks other forms of connection
2. Why might Tadashi be doing his own copying?
 - Note that it does not appear that anyone has asked him
 - Could be feeling the need to be a self-starter, “look after yourself”; staff may not be helpful or taking direction
3. What is the significance of the comments about Tadashi not socializing and not drinking with colleagues & clients?
 - Puts focus on drinking as a place where work gets done, relationships built
 - Barrier for those who don’t drink for religious reasons or otherwise
 - Both drinking as a hobby and having an outgoing, forceful personality are often emphasized in certain legal settings, such as litigation
4. Have you encountered similar kinds of assumptions being made about other cultural identities, or around other aspects of being a successful legal professional?
 - Gender: women viewed as not being aggressive, too soft-spoken, not physically imposing enough to become litigators
 - What else?
5. What is the obligation of the person who is collecting this information from colleagues?
 - Do you disclose what you have been told?
 - Ask questions about their observations?
 - Do you talk to Tadashi?
6. What situations can you think of where these kinds of assumptions might play a role in decision-making in your legal organization?
7. How could you develop policies and practices that would minimize the risk that cultural assumptions would prevent your organization from making the best decisions possible?

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SCENARIO #2: Implicit Bias - How the Mind Works

You are in a two lawyer practice with Kyla, a black lawyer and another sole practitioner, who is recognized as an expert in the area, has agreed to work together with you as co-counsel. You have divided responsibility over a file so that you are each taking carriage of distinct issues (including legal argument, research, and evidence related to those issues). You note that the client continues to direct all questions to you, even on the issues for which Kyla is responsible. Kyla hasn't said anything. On several occasions after Kyla has expressed her opinion on a matter, the client turns to you and asks for your opinion.

You send the client a draft factum that you and Kyla prepared and ask for his comments. The client calls you and says that he has some concerns about the argument. He questions whether Kyla has shown good judgment in pursuing a particular strategy. You point out that you and Kyla made that strategic decision together. He brushes your response aside and continues to question whether Kyla has adequately researched the legal issues.

You are ultimately successful in court on the client's case. The client sends you a congratulatory email without copying Kyla. He tells you he has another matter he wants to send you but he wants you to work independently on the file. Upon reviewing the file, you realize it falls squarely within Kyla's area of expertise. Although you don't want to lose the work, you know that the client will benefit from Kyla's knowledge and experience.

QUESTIONS FOR REFLECTION & DISCUSSION:

1. Is there a possibility that the client's perception of Kyla and the quality of her work may be affected by implicit bias? How is it being demonstrated?
2. How might these interactions with the client be affecting Kyla?
3. What can you do as Kyla's colleague to support her and to address the client's potential bias?

LEARNING OBJECTIVES:

This fact scenario is designed to align with the following EDI learning objectives:

- Recognize and understand potential implicit bias
- Identify subtle ways that implicit bias can manifest
- Explore how to challenge implicit bias
- Understand how to support people who are being marginalized

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You may want to guide participants to identify and discuss some of the following issues related to this scenario:

- Assumptions about what lawyers look like
- Assumptions about racialized persons that may come from implicit bias
- For Kyla's colleague: grappling with her own privilege
- Needing to speak with Kyla to find out from her how you can support her (being an ally)

ADDITIONAL DISCUSSION QUESTIONS:

1. What may be driving this client's conduct?
 - Implicit bias seems likely given scope and nature of client's conduct
2. What are the ways in which implicit bias may be manifested here?
 - Greater scrutiny
 - Lower expectations; presumptions of inability; confirmation bias
 - Discomfort with difference, wanting to work with "people like you"
3. Does the race, cultural identity, or gender of the client matter?
 - Acknowledge that anyone can have implicit bias; gender can exacerbate it; consider the issue of intersectionality where discrimination is based on more than one social categorization e.g. race and gender
4. What effects might this conduct have on a racialized lawyer like Kyla?
 - Kyla may feel demeaned and demoralized
 - Others will pick up on the client's signals and could further reduce her authority and credibility
5. What should Kyla's colleague do? Has she done enough to this point?
 - Redirecting to Kyla and boosting her status can be done without directly criticizing the client, at least at the outset
 - Need to intervene early; when nothing is said at the outset problem only worsens

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SCENARIO #3: Implicit Bias - Micro-messaging

You are a paralegal sharing office space with several other paralegals. A couple of weeks ago you walked into the office kitchen where two paralegals, Fatimah and Barbara, were having lunch. Fatimah, who wears a hijab, was recently hired by a paralegal firm down the hall. You overheard Barbara comment to Fatimah, “It’s so great that you feel comfortable wearing a hijab to work. Did you wear it to your interview?” Fatimah responds that she always wears a hijab.

Later that week, Fatimah noticed on a social website that Barbara had posted a photograph of Fatimah in her office, saying “I love working in an office where diversity is really valued!”

Afterwards, Fatimah spoke directly to Barbara. She demanded that Barbara remove the Facebook post immediately, stating, “You did not ask my permission to post that.”

Barbara was shocked and said, “I don’t understand why you’re upset. Aren’t you proud to be Muslim?”

Fatimah was visibly angry. She raised her voice and said, “I was hired because I was the best qualified candidate for the job, not because I wear a hijab!”

Barbara has now complained to you that Fatimah is a “bully” who yells at her in the workplace for no reason.

QUESTIONS FOR REFLECTION & DISCUSSION:

1. What are the implicit messages that Barbara’s comments may be conveying to Fatimah?
2. How might Barbara’s comments have made Fatimah feel about her value in the workplace?
3. How would you respond to Barbara’s complaint that Fatimah is a “bully”?

LEARNING OBJECTIVES:

This fact scenario is designed to align with the following EDI learning objectives:

- Recognize micro-aggressions
- Understand the assumptions and harmful messages that underlay them
- Recognize the negative effects of “othering”
- Focus on effects instead of intentions

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You may want to guide participants to identify and discuss some of the following issues related to this scenario:

- Assumptions about Fatima's cultural/religious identity underlying some of Barbara's comments
- Assumptions about affirmative action and diversity hiring underlying others
- How repeatedly experiencing these kinds of micro-aggressions effects recipients

ADDITIONAL DISCUSSION QUESTIONS:

1. What are the messages/assumptions embedded in each of Barbara's comments and actions?
 - Question/comment about hijab; "othering"/ pointing out difference; implying that hired for diversity reasons instead of ability
 - "Aren't you proud to be a Muslim?" - Presumption about Fatimah's feelings/values
2. What is wrong with Barbara's posting about celebrating diversity?
 - Photo of Fatimah makes her an object
 - Barbara using Fatimah to signal her own value of diversity
 - This may cause someone to feel that they are only seen as a token
3. How might Barbara's conduct make Fatimah feel?
 - When such comments are frequent they can become toxic
 - May find work colleagues are expending energy and time on these things, instead of giving attention to the work to be done
4. Is it hard to understand these experiences when it doesn't happen to you every day?
5. How can you help Barbara to understand Fatimah's response?
6. How can our workplace encourage and celebrate workplace diversity without tokenizing racialized employees?

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SCENARIO #4: Implicit Bias - Strategies as a Colleague/Mentor

You are assigned to mentor a racialized associate in your office, Michael. As you are walking down the office hallway, you see this associate talking with a group of lawyers. One of the lawyers makes a comment that appears to be a joke, but could be understood to be offensive to racialized minorities. Michael smiles awkwardly and looks uncomfortable, but says nothing to the lawyer who made the comment or to the others.

The following week, you meet with Michael for a mentoring lunch. Hesitantly, Michael tells you that he was in a meeting with a senior partner and a client a month ago, and that the client made a comment which Michael felt was racist and homophobic. The senior partner grimaced but did not say anything at the meeting or afterwards.

Michael tells you that he does not want you to tell anyone about the incident in the meeting.

QUESTIONS FOR REFLECTION & DISCUSSION:

1. What might Michael be experiencing as a result of these incidents?
2. What are some steps you could (or should) take in relation to these incidents? What if the lawyer who made the hallway comment is a senior partner?
3. What kind of support could the senior partner have provided to Michael in the meeting, in response to the client's comment? What about after the meeting?

LEARNING OBJECTIVES:

This fact scenario is designed to align with the following EDI learning objectives:

- Focus on what you do in your practice – context here is mentoring and dealing with colleagues
- How to be an ally
- Recognize and challenge offensive behavior/micro-aggressions
- Understand the importance of mentoring and micro-affirmations

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You may want to guide participants to identify and discuss some of the following issues related to this scenario:

- Failing to intervene when a member of a racialized community has to deal with offensive conduct/micro-aggressions
- How to intervene productively
- How to deal with power imbalance (relating to an incident and efforts to address)
- How to deal with other risks (business impact where client)
- Failing to support a member of a racialized community when dealing with such conduct
- Providing support and challenging problematic behavior when an affected person is reluctant to challenge it

ADDITIONAL DISCUSSION QUESTIONS:

1. What is wrong with this kind of conduct? Isn't it "just a joke"?
 - Harmful effects of humour that demeans, marginalizes, perpetuates harmful stereotypes
 - Importance of developing and maintaining a healthy and safe workplace culture
2. Is it important to say something when this happens, even if no one who may be directly affected by the comment is present?
3. What might you have done when you observed the joke being made?
 - How and when to intervene with the lawyer making the joke
 - Best practices: focus on the conduct not the person; focus on effects not intent; adopt a non-judgmental tone; intention to educate, not shame
 - How to check in with and support Michael
4. Why is it hard for people to hear that they may have got something wrong, offended someone, particularly when it has to do with race/gender, etc?
5. Now that Michael has spoken to you, what could your response be? How might you handle his request that you not intervene directly?
 - Express concern, compassion – recognize need to just share it with someone, for someone in power to acknowledge that this is not OK
 - Explore concern about confronting: how you can support him, etc.; maintain communication to see if he changes his mind; ask whether there have been other incidents; encourage him to come back to you if happens again; talk about obligation to maintain workplace free of harassment

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6. Why might someone in Michael's position not want to come forward? Is it important to respect their wishes?
7. If you are in a position of leadership in your organization, do you think you have an obligation to do something further, even if Michael does not want to pursue it?
 - Might consider doing a discreet investigation about whether there is a larger problem
 - Consider proposing a systemic remedy i.e. training, communication to firm about maintaining positive workplace culture, importance of being an ally
8. Confronting a client about this kind of behavior would obviously be difficult, but do you have an obligation to do it? What kinds of problems are created for organizations when they don't address this kind of behavior and the impact it can have on their members?
 - Implication that you are condoning the client's behavior if you don't confront it
 - Worry that more of this is happening than you are aware of, creating a toxic environment
 - Legal obligations to maintain a workplace free of harassment and discrimination
 - Real problem retaining staff and bringing lawyers up into positions of leadership where they do not feel supported in this way
9. What if it is you who tells the joke? You realize as soon as you've made it that it could be offensive, but no one has said anything to you about it.
10. What if the joke is made by a member of your panel while you are speaking at a professional legal event?

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SCENARIO #5: Implicit Bias - Hiring Practices

John is the head of a small legal firm comprised of 2 lawyers and 1 paralegal. John is conducting articling student interviews. After scheduling interviews with his three top student candidates, John receives a call from an old law school friend whose son, Terry, is a law student looking for an articling position. He asks if John would mind taking a look at Terry's resume. Terry's grades aren't strong, but he worked in his dad's law firm for a summer and has relevant experience. Because of that experience, and John's friendship with Terry's dad, John decides to give Terry an interview.

In advance of the interviews, John created a standardized list of questions he intends to ask each applicant. Simran, who is a South Asian Canadian, is the first candidate John interviews. Simran has a strong academic record and gives very impressive responses to his questions, but John finds it hard to get a sense of her personality. The other two candidates perform less effectively in the interviews in comparison to Simran.

John interviews Terry at the end of the day. He realizes early in the interview that Terry played for the same law school hockey team as John did, and they end up chatting for most of the interview about John's old coach and Terry's experiences at his dad's firm. After the interview, John realizes that he forgot to ask Terry some of his pre-set questions, but thinks he'd be a good fit with others at the firm regardless.

John is trying to decide whether to offer the articling position to Terry or Simran.

QUESTIONS FOR REFLECTION & DISCUSSION:

1. What are some of the factors that might give an advantage to Terry that Simran wouldn't have?
2. How might the concept of "fit" be affected by implicit bias?
3. What concerns, if any, do you have about how John conducted the student interviews?

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LEARNING OBJECTIVES:

This fact scenario is designed to align with the following EDI learning objectives:

- Focus on what you do in your practice – context here is hiring practices
- Develop structures to support decision-making based on relevant criteria
- Check the risk of implicit bias affecting decision-making
- Avoid making key decisions when at high risk of defaulting to assumptions/biases, i.e. when depleted (end of day, tired, etc.)
- Be alert to the risks a natural preference for people like us which can manifest through ideas like “fit”
- Recognize the harmful effects of a lack of diversity, not just for members of marginalized communities, but for legal organizations

You may want to guide participants to identify and discuss some of the following issues related to this scenario:

- The potential problem with “fit” as a stand-in for just choosing people like us
- Risks of implicit bias: decision-making process compromised by departure from structure adopted to ensure impartiality; decision-making also happening in high-risk situation
- John developed a good system but then departed from it; need to develop and then enforce best practices
- Systemic problems that are created by this dynamic over time

ADDITIONAL DISCUSSION QUESTIONS:

1. Is there anything wrong with John relying on the assessment that Terry will be a good “fit” to make a choice?
 - Fit as a stand-in for choosing people who are like us
 - Unduly influenced by sense of connection, common interests
 - Barriers that members of racialized communities may face when these factors are overvalued
2. Was it fair for John to have opened up the interviewing process to Terry?
 - Risks of implicit bias where don’t have structured process for making choices
 - If going to be flexible in this way, what could John have done to try to restore fairness and impartiality?

DISCUSSION GUIDE

3. Is there a greater risk of implicit bias given that John interviewed Terry at the end of the day?
 - Might now be feeling some pressure to decide
 - Risk of reverting to instinct/implicit associations
4. Could John have done something more to overcome his sense that he didn't really get to know Simran?
5. What best practices for hiring and performance assessment can counter these problems?
6. It is understandable that legal organizations may make choices that take into account their desire to build a cohesive, comfortable workplace. But what is the downside for organizations who may place too great an emphasis on these goals?