

EDI
FOR LEGAL WORKPLACES:
DISCUSSION GUIDE
FOR PARTICIPANTS

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INTRODUCTION TO SCENARIO DISCUSSIONS:

CONSIDERATIONS FOR DISCUSSION FOR GROUP PARTICIPANTS:

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 first consider the scenarios from the perspective of your own cultural identities and position in the legal system. It might then be helpful to consider 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. As a participant, you will have to explore those assumptions for the scenario to be useful, which may lead to objections that the scenarios themselves are biased. 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?

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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?

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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”?

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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?

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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?