

F. Sample Policy on Enhancing Diversity and Inclusion in Recruitment, Retention, and Advancement

A detailed sample policy that can be adopted for use by the licensee's legal workplace.

Effective Date:*

Revised Date:*

Approved By:*

References:

- *Human Rights Code*, R.S.O. 1990, c. H.19
 - *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, c. 11
 - *Integrated Accessibility Standards*, O. Reg. 191/11
 - "Best Practices Standards for the Recruitment, Retention, Development, and Advancement of Racial/Ethnic Minority Attorneys", New York City Bar, Minorities in the Profession Committee (April 1, 2008)
 - "Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations", Canadian Bar Association (2007)
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PURPOSE

XYZ Organization (the "Organization") is committed to establishing and maintaining a diverse and inclusive workplace, particularly for those who have been historically excluded from, and under-represented in, the practice of law, including individuals who are identified by Ontario *Human Rights Code* grounds such as: Indigenous peoples; people with disabilities; individuals from racialized groups; people of diverse faiths and creeds; people with diverse gender identities or expressions, which could include those who identify as trans, intersex, non-binary, bigender, polygender, agender, demigender, gender fluid, gender non-conforming, gender variant, genderqueer or two-spirited; people with diverse sexual orientations, which could include those who identify as lesbian, gay, bisexual, pansexual, polysexual, asexual, demisexual, queer, questioning or two-spirited; and women.

APPLICATION

This policy:

- Applies at every level of XYZ, and extends to all partners, employees (including full-time, part-time, temporary, probationary, casual, and contract staff), and students;

- Applies to every aspect of the employment relationship, including recruitment, selection, promotion, transfers, training, salaries, benefits, discipline, performance appraisals, and termination. It covers rates of pay, hours of work, leaves of absences, and holidays.

DEFINITIONS

Accommodation: The Organization's duty to adjust its rules, policies, or practices in order to allow for the full participation of employees or applicants who have needs based on grounds protected by the *Ontario Human Rights Code* (the "Code"). The Organization must provide an accommodation unless doing so would result in undue hardship. An accommodation must be individualized and consider the employee or applicant's unique circumstances.

Advancement: The upward trajectory of an individual's career. This typically refers to promotions or being assigned more responsibilities by an employer.

Diversity: A state or condition that reflects the broad 'mix' and layers, of differences in any setting or community.

Employee: For the purposes of this policy, the term "employee" includes full-time, part-time, temporary, probationary, casual, contract staff, and independent contractors.

Equality: The practice of ensuring equal treatment to all people, without consideration of individual and group diversities.

Equity: The practice of ensuring fair, inclusive, and respectful treatment of all people, with consideration of individual and group diversities. Equity may be considered both an approach and a process that recognizes the existence of systemic social inequalities and introduces actions to proactively reduce, if not remove, institutional structural and cultural barriers to equal opportunity and inclusion.

Inclusion: A sense of belonging and dignity, as well as the experience of meaningful engagement, empowerment, and equality of opportunity in any community. A climate of inclusion is made possible through the intentional and ongoing development of community awareness, knowledge, and skills, and the application of these competencies to enhance personal and interpersonal capabilities, as well as institutional culture and climate.

Licensee: A person licensed as a lawyer or paralegal in the province of Ontario.

Recruitment: The process of discovering, attracting, and hiring an individual for a position.

Retention: The ability of an organization to retain its employees. A number of factors contribute to employee retention, such as career development, opportunity, satisfaction, rewards, and recognition.

Undue Hardship: The limit beyond which employers are not expected to provide an accommodation. Under the *Code*, cost, outside sources of funding, and health and safety are relevant factors in assessing undue hardship. Other factors such as business inconvenience, employee morale, or client preferences are not relevant to this determination. *Bona fide* accommodation requests require more than a minimal effort on the part of the employer. The employer must take all reasonable steps to determine if an employee, job applicant and/or service recipient can be accommodated. However, there are limits on how much the employer is required to do. If the employer can show that further efforts to accommodate would create undue hardship for it, it has met its legal obligations.

LEADERSHIP COMMITMENT TO DIVERSITY AND INCLUSION

The Organization commits to developing, implementing, and maintaining best practices and strategies to enhance equity, diversity, and inclusion at XYZ. The Organization makes this commitment at all stages of the employment life cycle, including recruitment, retention, and advancement.

The senior leadership team at XYZ will demonstrate their commitment to promoting and advancing diversity and inclusion by:

- Establishing and maintaining a **Diversity and Inclusion Committee** comprised of management/executive-level employees or partners. The committee will oversee diversity and inclusion efforts at all levels, and ensure that diversity and inclusion is integrated into all initiatives and aspects of XYZ.
- Retaining a diversity professional and/or designating an internal member of the human resources staff to work with the Diversity and Inclusion Committee to develop and implement a workplace **Diversity and Inclusion Strategy**. This strategy should articulate XYZ's diversity and inclusion goals and identify opportunities to integrate diversity into other relevant workplace efforts, including recruitment, professional development, marketing, and performance management.
- Dedicating **adequate resources in budget and staffing** to meet XYZ's diversity and inclusion goals.
- Encouraging **diversity and inclusion education and training** on diversity and inclusion issues, including discrimination and harassment, unconscious bias, stereotyping, and impacts on performance perceptions.
- Ensuring that **human resources staff has sufficient training and expertise** in human rights legislation, and diversity and inclusion strategies. If there is no

internal staff at XYZ, an external expert may be retained to assist with achieving diversity and inclusion goals.

- **Measuring and tracking** recruitment, retention, and advancement demographics (at least annually), to ensure that diversity and inclusion efforts are resulting in the desired positive changes.

RECRUITMENT

XYZ commits to implementing some or all of the following diversity and inclusion strategies in the recruitment process:

1. Promotional Materials

XYZ will set out its commitment to diversity and inclusion in all recruitment and promotional materials, including job notices, website communications/ads, and formal and informal verbal or written communications with candidates.

2. Legal Education Institutions

XYZ will work with law schools and paralegal education institutions to promote opportunities at XYZ for candidates from diverse communities.

3. Goal Setting

XYZ will set equity and diversity recruitment goals when hiring and aim for recruitment and retention of a proportionate number of employees who have been historically excluded from, and under-represented in, the practice of law across all position levels and in all practice areas and departments.

4. Diverse Community Networks

XYZ will:

- Establish and maintain connections with legal associations formed by lawyers and paralegals from diverse communities (e.g., Arab Canadian Lawyers Association, Canadian Association of Black Lawyers (CABL), Federation of Asian Canadian Lawyers (FACL), Indigenous Bar Association (IBA), Reach Canada, South Asian Bar Association (SABA), Women's Legal Education and Action Fund (LEAF));
- Establish and maintain both formal and informal networks with diverse communities;
- Request referrals from members who have been historically excluded from, and under-represented in, the practice of law, including BIPOC and 2SLGBTQIA+ candidates;

- Advertise and recruit “creatively”, including beyond the typical channels through which recruiting is traditionally done. XYZ will seek advice as to the ways to attract applications from diverse communities; and
- XYZ will limit referral hiring from family and friends.

5. Structured and Fair Interview Process

XYZ will:

- Involve employees from diverse communities and those who have been historically excluded from, and under-represented in, the practice of law in the recruitment and interview processes;
- Provide unconscious bias training for those involved in the recruitment process to ensure that hiring is as fair and objective as possible;
- Establish objective criteria for resume review;
- Establish interview questions in advance and ensure they are linked to the essential duties and *bona fide* requirements of the job;
- Ask all candidates being interviewed the same questions;
- Provide a written copy of the interview questions before the interview. Ask for the questions back and/or for confidentiality if shared electronically;
- Make sure questions comply with the Ontario *Human Rights Code*, as a finding of discrimination could be made even if there was no intention to discriminate;
- Use an interview panel (as opposed to one interviewer) to provide multiple perspectives and reduce bias; and
- Rate interview candidates using clear, consistent rubrics and bolster scores with clear evidence and examples drawn from the interview. The score will be based on the candidate’s answers as matched against the duties of the job.

RETENTION

XYZ commits to implementing some or all of the following diversity and inclusion strategies with respect to retention:

1. Reasonable Accommodations

XYZ will:

- Grant and respect accommodation up to the point of undue hardship for requests such as family responsibilities including child care and elder care, physical accessibility for disabilities, and diverse days of religious significance, etc.¹ Some examples of appropriate workplace accommodation include, but are not limited to:
 - Workstation adjustments
 - Job redesign

¹ Refer to the “Sample Policy on Accommodation and Procedure”.

- Changes to organizational policies and practices
- Technical aids
- Human support
- Providing materials in alternative formats
- Building modifications
- Counselling and referral services
- Temporary or permanent alternative work
- Changes to performance standards
- Leaves of absence
- Changes to scheduling or hours of work (e.g.,
- Changes to work uniforms

2. Mentoring

XYZ will:

- Ensure that partners and managers will mentor employees from diverse communities, and those who have been historically excluded from, and under-represented in, the practice of law;
- Encourage employees from diverse communities, those who have been historically excluded from, and under-represented in, the practice of law to act as mentors; and
- Recommend and leverage mentoring programs, including but not limited to:
 - Coach and Advisor Network
 - Articling Mentorship Initiative
 - The Advocates Society
 - South Asian Bar Association of Toronto
 - Canadian Association of Black Lawyers
 - Women's Law Association Of Ontario
 - Ontario Trial Lawyers Association
 - OTLA Guide to Mentoring (PDF)
 - Ontario Bar Association Mentorship Program

3. Performance Management

XYZ will:

- Develop clear, written, performance management policies and communicate them to employees;
- Ensure that the process for, and the frequency of, performance evaluations are set out clearly so that all managers, partners, and employees know what to expect;
- Ensure that performance reviews are conducted regularly on a set schedule, as well as on an as-needed basis; and
- Mandate training and education on overt bias, as well as unconscious bias training for those who conduct performance reviews.

4. Quality and Diversity of Work

XYZ will ensure that lawyers and paralegals from diverse communities and those who have been historically excluded from, and under-represented in, the practice of law will have access to a diverse range of quality legal work, with a variety of clients and colleagues to build their substantive legal knowledge and skillset.

5. Client Development

XYZ will:

- Support activities that target non-traditional sources of clients from within diverse communities;
- Ensure licensees from diverse communities and those who have been historically excluded from, and under-represented in, the practice of law are involved in client development activities, including events to retain current clients; and
- Meaningfully support/defend lawyers and paralegals who experience disrespectful and discriminatory treatment from clients.

6. Data Collection

XYZ will:

- Survey its partners and employees about its diversity and inclusion efforts, and about any personal experiences of discrimination and/or harassment at XYZ. The survey will be anonymous and confidential and responses will be used only by the Diversity and Inclusion Committee for the purposes of furthering the Organization's goals towards diversity and inclusion; and
- Conduct exit interviews of partners and employees, and ask whether any overt or subtle forms of discrimination played a role in their decision to leave the Organization.

ADVANCEMENT

XYZ commits to implementing some or all of the following diversity and inclusion strategies with respect to advancement²:

1. Clear criteria

XYZ will:

- Develop clear, written, and communicated criteria to evaluate candidates for partnership or senior management positions;

² The strategies set out in the "Retention" section are also applicable to the "Advancement" section.

- Communicate the expectations and time frame for becoming a partner or senior manager; and
- Ensure that regular, documented performance reviews are considered in advancement decisions.

2. Leadership

XYZ will:

- Have a diverse group of partners/employees serve on its leadership team, as chairs of practice groups, and on client service teams;
- Ensure that those in decision-making roles for promotions and advancement have had adequate diversity and inclusion education and training; and
- Ensure that proper training has been provided on how to evaluate candidates for promotion and that the criteria is being applied consistently.

3. Promotions

XYZ will:

- Provide opportunities to promote partners/employees from groups who have been historically excluded from, and under-represented in, the practice of law.

REVIEWING AND UPDATING THE POLICY

The **[designated workplace representative]** will regularly review this policy and will make revisions as necessary. All employees will be invited to contribute to the review process. The Organization will accept comments on the policy at any time and, unless a comment raises an urgent concern, they will be considered during the regular review.

INTERPRETATION

This Policy must be read and interpreted in conjunction with the following policies of XYZ Organization:

- a) Policy on Human Rights Code-Based Discrimination & Harassment
- b) Policy on Workplace Harassment (Including Sexual Harassment)
- c) Policy on Accommodation and Procedure
- d) Integrated Accessibility Standards Policy under the Accessibility for Ontarians with Disabilities Act
- e) Workplace Violence Policy

INQUIRIES

Inquiries about this policy should be addressed to the **[designated workplace representative]**.