

Addressing Recruitment, Retention, and Advancement in Human Rights/Diversity Policies

Commitment to Diversity

A commitment to developing and implementing strategies to increase the equality, diversity and inclusion within the workplace requires examining and evaluating your policies and programs throughout the lifecycle of your workforce.

A commitment to diversity starts with respecting human rights. Human rights legislation in Canada is generally reflective of what is referred to as “negative rights” – that is, the right **not** to be discriminated against, or the right **not** to be harassed. When addressing recruitment, retention and advancement in a workplace, however, **positive** actions, including restorative principles, are also needed in order to affect change.

Recruitment

Recruitment is the process of discovering, attracting and hiring an individual for a job position. Recruitment policies should be consistent with human rights legislation and should emphasize that all stages of the recruitment process will be devoid of discrimination on the grounds listed in the [Ontario Human Rights Code](#) upon which discrimination or harassment is prohibited (eg. age, race, sex (including pregnancy, etc. Note that there are 17 protected grounds;)¹

The [Canadian Bar Association](#)’s “Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations (2007)” recommends the following with respect to recruitment:

- Work with law schools or paralegal colleges to promote opportunities for law or paralegal students from diverse communities
- Set equity and diversity recruitment goals when hiring
- Inform potential recruits of your commitment to equity and diversity
- Establish strategies that will encourage lawyers or paralegals from diverse and under-represented communities to consider your law firm or organization
- Highlight your commitment to equity and diversity in recruitment and promotional materials

¹ Licensees who work at federally regulated workplaces may review the grounds set out in the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 <http://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html>

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- Examine any informal networks used to hire lawyers or paralegals. If informal networks are the source of new hires, make sure you have or develop networks within diverse communities and that informal recruitment is done there as well.
- Involve lawyers or paralegals from diverse communities in the recruitment and interview processes
- Establish connections between legal associations formed by lawyers or paralegals from diverse communities, for example, LEAF, Canadian Association of Black Lawyers, Reach Canada, Indigenous Bar Association, South Asian Lawyers Network, Ontario Paralegal Association
- Provide the interview committee training on how to conduct bias-free interviews
- Provide reasonable accommodation for those who may require it, for example, people with disabilities

Other recommendations include:

- Follow the above recommendations for all licensees (including lawyers and paralegals)
- Provide “unconscious biased training” for those involved in the recruitment process to ensure that hiring is as objective as possible
- Measure and track recruitment demographics to ensure that efforts towards increasing diversity are resulting in positive changes
- Request referrals from other networks of members of historically marginalized groups²
- Ensure that employment equity programs are communicated to interviewers and recruiters³
- Launch specific recruitment campaigns to reach a wide pool of applicants
- Research and reach beyond the typical channels through which recruiting is traditionally done

Retention:

Retention refers to 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.

The Canadian Bar Association’s “Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations (2007)” recommends the following with respect to retention:

² Nova Scotia Barristers’ Society, “Hiring Practices for Equity in Employment: Interview Guide” (2006), online: at 6 [NSBS Articling Interview Guide]

³ Ibid

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- Analyze career development systems to ensure against bias and discriminatory outcomes. How is lucrative work assigned? Who has access to career development activities? On what is the decision based?
- Enable lawyers and paralegals from diverse communities to have access to a range of files
- Include lawyers and paralegals from diverse communities in marketing and client development activities
- Have senior partners and managers mentor lawyers and paralegals from diverse communities, particularly those from under-represented communities
- Develop standard performance reviews, a method, schedule, and format for them
- Train the people who conduct the performance reviews on ways to eliminate bias from their task
- Hold exit interviews with lawyers and paralegals from diverse communities who have decided to leave to find out why they are leaving. Ask about equity and diversity issues and document the answers
- Ensure lawyers and paralegals from diverse communities are involved in client development activities, including events to retain current clients
- Make reasonable accommodations for, e.g. family responsibilities, physical accessibility issues, diverse days of religious significance
- Provide concrete support to lawyers and paralegals from diverse communities who may experience disrespectful and discriminatory treatment from clients
- Support client development activities that target non-traditional sources of clients from within diverse communities
- Provide alternate work arrangements and accommodate family responsibilities including child care and elder care
- Encourage people from diverse backgrounds, including people with a disability, to become mentors

Other recommendations include:

- Follow the above recommendations for all licensees (including lawyers and paralegals)
- Create a diversity committee
 - The Canadian Bar Association identifies that a diversity committee should have *“representatives from diverse backgrounds from all parts of the organization, which includes nondiverse employees as well. The committee should also have a direct link to senior management; it is crucial that firm leaders are visibly present and active on the diversity committee.”*⁴
- Develop affinity groups for under-represented groups in your firm
- Ensure leadership accountability

⁴ CBA Equity and Diversity Guide, supra note 53 at 11

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- Survey your workforce to better understand perceptions of the work, culture, and career opportunities
- Ensuring professional development opportunities are offered on the basis of professional merit
- Diversity and inclusion training for all members of the firm
- Leveraging mentoring programs for Ontario lawyers and paralegals including:
 - [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](#)

Advancement:

Advancement is the upward trajectory of an individual's career and **typically means receiving promotions or additional responsibilities from an employer.**

The Canadian Bar Association's "Equity and Diversity Guide and Resource Manual for Successful Law Firms and Legal Organizations (2007)" recommends the following with respect to retention:

- Analyze career development systems to ensure against bias and discriminatory outcomes. Who chooses who moves ahead? On what is the decision based?
- Provide education and training to lawyers from diverse communities to assist them to move ahead
- Develop clear criteria that include equity and diversity considerations to use to evaluate candidates for partnership or senior management positions
- Communicate the expectations and time frame for becoming a partner or senior manager
- Have lawyers and paralegals from diverse communities serve as chairs of office and practice groups, and participate on client service teams

Other recommendations include:

- Follow the above recommendations for all licensees (including lawyers and paralegals)

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- Establish a clear and consistent performance review practice
- Ensure performance reviews are an important factor in advancement decisions
- Consider opportunities to employ a proportionate number of racialized licensees across all levels and in all practice areas and departments
- Ensure transparency regarding the criteria required for and timing of promotion
- Continually look for opportunities to promote diverse staff from within the organization⁵

Resources

There are a number of resources available to assist with the creation and maintenance of human rights/diversity policies that address recruitment, retention and advancement.

The [Law Society Studies and Scan of Best Practices](#) review was conducted in the context of the Challenges Faced by Racialized Licensees Project and “*provides an overview of The Law Society of Upper Canada (the “Law Society”) studies and initiatives and best practices in other jurisdictions*”. The review outlines best practices and strategies for increasing the presence of racialized licensees in the professions.

The [Nova Scotia Barristers’ Society’s Hiring Practices for Equity in Employment: Interviewing Guide](#) provides recommendations on recruiting diverse candidates.

[2009 Diversity Best Practices Guide](#) created by the National Association of Law Placement (NALP) is a compilation of best diversity practices derived from industry research and interviews of law firm professionals.

[Part IV of “Human Rights at Work”](#), 3rd ed. (Ontario Human Rights Commission: 2008) sets out key principles and best practices relating to the human rights issues that arise in the employment cycle, including: interviewing and making hiring decisions, accommodating disabilities and other *Code*-based needs, and managing performance.

⁵ Minority Corporate Counsel Association, supra note 55 at 19

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The Canadian Bar Association's [Equity and Diversity Guide and Resource Manual for](#)

[Successful Law Firms and Legal Organizations\(2007\)](#) is an excellent source of strategies for increasing diversity of groups that have been historically excluded from, and under-represented in, the practice of law.⁶ This guide is quoted at length throughout this section, in the recommended strategies for addressing recruitment, retention and advancement.

Licensees should also be aware of their obligations under the [Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11](#) ("AODA"), and [O. Reg. 191/11 "Integrated Accessibility Standards"](#) under AODA. Ontario's Accessible Employment Standard (under *Integrated Accessibility Standard*) workplace's employment practices must be accessible to meet the needs of employees and job applicants with disabilities.

Under sections 20-32 of the "Integrated Accessibility Standards," depending on the size of the business, needs must be met in the following areas:

- [hiring](#)
- [workplace information](#)
- [talent and performance management](#)
- [communicate accessibility policies](#)
- [accommodation plans](#) (for 49+ employees only)
- [return to work process](#) (for 49+ employees only)

[Best Practices Standards for the Recruitment, Retention, Development, and Advancement of Racial/Ethnic Minority Attorneys](#) was created by the New York City Bar's Minorities in the Profession Committee and outlines best practices standards.

The American Bar Association created a report entitled [Diversity in the Legal Profession, The Next Steps](#) with recommendations to increase diversity in the different sectors of the profession.

⁶ The guide refers to: Indigenous peoples; people with disabilities; individuals from racialized groups; people of diverse faiths and creeds; gays, lesbians, transgendered people, and others with diverse sexual orientation; women; and francophones outside Quebec (at p. 7)

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The [Minority Corporate Counsel Association](#) (MCCA) provides resources, education and ideas to enhance the diversity and inclusion of the legal community.

[The Leadership Council on Legal Diversity](#) is a network of managing partners that provides a community and resources to create more diverse U.S. legal professions.

[Equity Public Education Series](#): This Law Society program includes lectures, seminars, workshops and consultations to address issues of equity and diversity in the legal professions.

[Model Policies, Publications, Reports](#): The Law Society has developed numerous model policies to guide workplaces in their efforts to promote equity and diversity in their day-to-day practices. Model policies are available for:

- Harassment and Discrimination
- Workplace Equity in Law Firms
- Flexible Work Arrangements
- Promoting Accommodations within Law Firms