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# GUIDELINES FOR EQUALITY IN EMPLOYMENT INTERVIEWS

**Updated by the Equality, Equity and Diversity Committee  
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# GUIDELINES FOR EQUALITY IN EMPLOYMENT INTERVIEWS

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## I. Equality in Employment Interviews

### A. Introduction

The interview is an important part of the recruitment process. It is meant to help match the requirements of a firm with the aptitudes and career plans of qualified individuals. Candidates and employers use the interview to assess the values, interests, capacities, and expectations of each other. Potential employers are interested in discovering whether the candidate has the requisite skill, knowledge, and energy for the position. Employers have the responsibility to make a fair and realistic assessment of each candidate in order to select candidates whose abilities meet their needs. At the same time, candidates should make a fair and realistic assessment of whether they meet stipulated requirements. In this way, honest evaluations by both sides should occur.

### B. Forms of Prohibited Discrimination

Discrimination against job candidates is unethical and illegal. Rule 5.03 of the *Alberta Code of Conduct* prohibits discrimination by lawyers and related commentary explicitly requires lawyers to abide by the obligations of applicable human rights law. Rule 5.03(3) specifically prohibits a particular form of discrimination, sexual harassment. The *Alberta Human Rights Act (A.H.R.A.)*, RSA 2000, c A-25.5, prohibits discrimination in employment, including job advertisements, applications and interviews, on the basis of race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.

Discrimination need not be malicious or even intentional. It may take various forms. Direct discrimination occurs where job candidates are subjected to different treatment from others based upon prohibited grounds of discrimination. Indirect or adverse effect discrimination occurs where job candidates are subjected to the same treatment, but that treatment has a different and adverse effect on individuals or groups identified by prohibited grounds. For example, a driver's license may be useful to facilitate travel to meet clients or attend court or other hearings, but a job requirement that articling students possess a driver's license would have a discriminatory effect on disabled students. Employers must make reasonable efforts to avoid treatment that gives rise to adverse effect discrimination, and to accommodate persons or groups who suffer as a result of such adverse effects. In the example involving the driver's license, exploring reasonable accommodation would involve considering whether other transportation alternatives are available, or whether a disabled articling student could be given assignments that do not require driving to remote locations.

Some forms of discrimination are specific to the employment interview context. Section 8 of the *A.H.R.A.* prohibits employers from making inquiries that express directly or indirectly any limitation, specification or preference based on the prohibited grounds of discrimination. Employers are further prohibited from requiring applicants to furnish information concerning the prohibited grounds of discrimination.

Both the *Code* and the *A.H.R.A.* (in s. 11) permit practices that are reasonable and justifiable in the circumstances. Thus, for example, they would not prohibit special programs reasonably designed to relieve disadvantage for individuals or groups identified on the basis of the grounds of discrimination referred to above.

### C. Evidence of Discrimination During Articling Interviews

There is evidence of conduct during articling interviews that in some cases clearly and in other cases arguably contravenes these laws. In *Touchstones for Change: Equality, Diversity and Accountability* done by the Canadian Bar Association in 1993 the evidence was summarized as follows:

In the Saskatchewan, Alberta and British Columbia surveys, many women referred to inappropriate questions at articling or other employment interviews. The Saskatchewan study addressed this issue in some detail. The highest levels of variance in the kinds of questions asked of male and female candidates related to family status: women were substantially more likely to be asked about number of children or intent to have children in the future. This is borne out by women's experiences in other jurisdictions:

During my articling interviews, one lawyer asked me outright whether I planned to have children and whether my husband would "allow" me to work the long hours required.

I went through articling interviews while visibly pregnant and was asked repeatedly whether I really expected to be able to article and be a mother at the same time.

The Quebec report also draws this connection between family status and difficulties in finding employment.

Questions indicating racial discrimination were also reported. Women of colour reported being asked highly inappropriate questions, including questions about their racial community and how they would respond in the office if called a "nigger". They were also asked to defend affirmative action programs. Some aboriginal students reported that interviewers implied they could not maintain objectivity or confidentiality when handling aboriginal matters. A number of aboriginal students interviewing for government positions were asked questions about their positions on aboriginal issues.

In Ontario surveys, the following questions were reported to have been asked during articling interviews:

*How old are you?*  
*How will your seniority affect negatively the office operations?*  
*Are you what is referred to as a "mature student"?*  
*What is your religion? Are you devout?*  
*Are you married? Do you have a girlfriend?*  
*Would your wife be happy living in Ottawa? Are you a "family man"?*  
*Do you plan to have children? Do you plan to get pregnant and, if so, when?*  
*Are you taking birth control?*  
*How many children do you have? What are your daycare arrangements?*  
*How will you cope?*  
*Where were you born? What is your ancestry? How many years*

*have you been resident in Canada?  
What clubs do you belong to?*

In the same surveys, students reported that disparaging comments had been made about gays and lesbians, and about black and aboriginal lawyers and law students. Female students reported comments about their appearance (e.g., "You got an interview because you probably sent in your picture") and other sexist and sexual comments

#### **D. Purpose of Firm Guidelines on Interviewing Practices**

The adoption by the law firm of written guidelines on interviewing practices has many advantages. They will provide uniform guidelines to members of the firm who may be involved in conducting articling and other job interviews from time to time. They will alert these individuals as to the legal proscriptions against discrimination in employment interviews. They will help to ensure that interviews are conducted with the purpose and effect of facilitating the selection of candidates with appropriate qualifications, aptitudes and interests, and do not exclude or disfavour candidates on the basis of gender, race or other irrelevant personal characteristics. Written guidelines can also be communicated to job candidates to reassure them that their applications will receive fair and realistic assessments. Through such use, written guidelines can help to prevent and respond to complaints and concerns about the interviewing process. In turn, the guidelines will also ensure the best applicants are attracted to the firm.

## **II. Suggestions for Interviewees**

### **How to Respond to Inappropriate Questions**

When a student is asked a discriminatory question it places them in a difficult position. The student may feel one or more of the following ways:

- compelled to answer the discriminatory question to be successful in the interview;
- too uncomfortable to answer the discriminatory question but unsure how to respond in a way that will not threaten their chance at a position; or
- that they do not want to work at a firm that asks discriminatory questions and confront the interviewer directly about the question or refuse to answer it.

In any case the student is placed in an uncomfortable position.

Another consideration for students is that in many cases the interviewer is unaware that their question shows a discriminatory attitude or assumption. In some cases a polite reminder that the question is not appropriate will cause the interviewer to retract it and not make the same mistake again. Another option is for students to use deflection or humour to bypass the question without causing further discomfort for the student or the interviewer.

The following are a few options that students can consider using when asked a discriminatory question:

**Deflection** – the student can respond by saying “That is an interesting question, what have other students’ responses been?” or “Hmm. I hadn’t really thought of that, how do you think it will affect my work here?”

**Humour** – the student can respond with a joke if they feel comfortable doing so – it may send a message to the interviewer that they find the question inappropriate.

**Honesty** – the student can be direct and say, “You don’t really mean for me to answer that do you? We both know that question is inappropriate”. Or “I don’t feel comfortable answering that question”.

**Get Advice** – either before or after the interview the student can call the Law Society’s Equity Ombudsperson Jocelyn Frazer for confidential advice at 1-888-229-4769.

**File a Complaint** – the student can file a complaint with the Law Society for a violation of the Code of Conduct by calling the Complaints Department in Calgary at (403) 229-4700 or toll free at 1-800-661-9003, or in Edmonton at (780) 429-3343 or toll free at 1-800-272-8839. The student can also file a complaint with the Alberta Human Rights Commission by calling (403) 297-6571 in Calgary or (780) 427-7661 in Edmonton, or to call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

### **Suggested Website**

Students may find the following website helpful when preparing for legal interviews:

<http://www.law.suffolk.edu/offices/career/handbook/interviewing.cfm>

### **III. Suggestions for Interviewers**

Law firms who are uncertain what questions they *are* able to ask of candidates may find the following website from the Alberta Human Rights Commission helpful:

[http://www.albertahumanrights.ab.ca/publications/Information\\_Sheets/Text/Info\\_Recomm\\_Guide\\_Pre-employ.asp](http://www.albertahumanrights.ab.ca/publications/Information_Sheets/Text/Info_Recomm_Guide_Pre-employ.asp)

## **IV. Appendix A - Suggested Policy On Interviewing Practices**

### **A. Commitment of the Firm**

[FIRM NAME] prohibits discriminatory interview practices.

[FIRM NAME] is committed to treating all candidates for articling and other positions with equality, respect, and dignity. Candidates have the right to be treated without unlawful discrimination and to receive a fair assessment of their skills and abilities. Interview requirements must be reasonable, related to the job, and apply to all candidates equally.

### **B. Discriminatory Interview Practices**

"Discriminatory interview practices" are any discriminatory behaviours that occur during the interview process, whether intentional or unintentional, based on the candidate's race, creed, colour, national or ethnic origin, gender, religion, marital status, family status, sexual orientation, age, mental or physical disability or any similar personal attribute (collectively "the prohibited grounds of discrimination"). They include:

1. sexual harassment;
2. exclusion or different treatment of candidates based on the prohibited grounds of discrimination;
3. job requirements or practices that have an unreasonable and discriminatory effect on individuals or groups identified with reference to the prohibited grounds of discrimination;
4. inquiries that require applicants to furnish information concerning the prohibited grounds of discrimination;
5. derogatory or degrading remarks related to the prohibited grounds of discrimination;
6. racist, sexist, or otherwise improper conversation or jokes.

Actions taken to promote or implement special programs or practices reasonably designed to relieve disadvantage for individuals or groups identified on the basis of the prohibited grounds of discrimination do not constitute discriminatory interview practices.

### **C. Guidelines for Lawful and Equitable Interviews**

[Name of firm] is committed to using the following guidelines in their employment interviews:

Interview requirements must be reasonable, related to the job, and applied to all candidates equally. Selection criteria should be agreed upon in advance and the same set of questions should be asked of each candidate. More specifically:

1. Discriminatory interview practices are prohibited.
2. Clear descriptions of the firm's expectations should be given to each candidate in order to allow the candidate to discuss her or his ability and willingness to meet those expectations.

3. Candidates may be informed of the firm's policy on Equality in Employment Interviews.
4. The decision-making process to be followed should be outlined to each candidate.
5. Members and employees of the firm should treat all candidates with equality, respect and candour.
6. Each candidate's skills and abilities should be evaluated fairly and objectively.
7. Eligibility requirements should be based on qualifications, rather than individual status or traits.
8. Reasonable accommodation of candidates should be considered.
9. All candidates should be asked the same open and direct questions about their ability to perform.
10. Gender-neutral, respectful language should be used.
11. The firm should regularly review its expectations and screen for discriminatory interview practices.