



NOVA SCOTIA
BARRISTERS' SOCIETY

HIRING PRACTICES *for* EQUITY *in* EMPLOYMENT:

I N T E R V I E W I N G G U I D E



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**Organizational
“fit” is often
an obstacle to
the hiring and
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of historically
marginalized
groups.**

This Interview Guide is intended to assist those responsible for interviewing students for articling or summer positions, in completing their task from an equity in employment perspective. This can also be extended for use in the hiring of associates and support staff.

One of the major obstacles to the hiring and advancement of people from historically marginalized groups is the so-called organizational “fit” that is envisioned by most law firms. The end result is that individuals who do not fit the profile that the interviewer is comfortable with, or accustomed to, will not be successful at the interview stage of the hiring process. Even though we do not always recognize the assumptions behind our behavior, they are always there and are always important.

This Interview Guide for Equity in Employment has been prepared to achieve the following:

- To provide a fair system for identifying *bona fide* job competencies, consistent with Chapter 24 of the Legal Ethics and Professional Conduct Handbook and the *Nova Scotia Human Rights Act*.
- To provide information and skills on bias-free interviewing and assessing individuals based on job-related competencies.
- To provide a format for designing appropriate job-related interview questions.
- To ensure the application of consistent systems and standards for evaluation and selection.
- To increase the number of Aboriginal persons, women, persons with disabilities, and members of racially visible groups, as summer students, articled clerks, and ultimately as associates and partners within firms.
- To achieve and maintain a representative profession.
- To create a qualitative work environment that fosters diversity through practices that are conducive to the recruitment, development, and retention of people from historically marginalized groups.
- To achieve equality in the workplace so that no one is denied employment opportunities for reasons unrelated to ability.

This Guide should be used in conjunction with the following:

1. The *Legal Ethics and Professional Conduct Handbook* (Chapter 24)
2. The *Nova Scotia Human Rights Act*

The aim of the recruitment and selection process is to get the best qualified person, regardless

of race, sex, age, ethnic origin, family status, mental or physical challenge, or any other criteria unrelated to the requirements for successful performance of the job. Beyond making good business sense, firms have a responsibility to have selection policies, programs and practices that are job-related, reliable, valid and fair. As lawyers committed to the fair administration of justice, we must promote and support equity in employment.

Traditional recruiting standards and practices have been successful in recruiting and motivating the relatively homogeneous workforce of the past. However, the emergence of a diverse workforce means that the hiring practices of law firms require new techniques to achieve maximum organizational results.

One of the keys to the success of a law firm is the ability to create a working environment that attracts and retains women, members of racially visible groups, Aboriginal persons, persons with disabilities, and others from historically marginalized groups. Creating such an environment means eliminating systemic barriers, changing attitudes and changing firm culture.

The obstacles facing historically disadvantaged groups are so formidable and self-perpetuating that they cannot be overcome without intervention. It is both intolerable and irresponsible to simply wait and hope that the barriers will disappear with time.

The information provided in this guide is general and applicable to all firms. Some firms may have their own specific policies, practices, and procedures that also address subjects discussed in this guide. This guide should serve to complement the information that already exists in your firm.

THE BUSINESS CASE FOR DIVERSITY

The overriding objective of the recruitment function is to find and employ those individuals whose qualifications match organizational needs. In addition, there is a need to have a diverse workforce where individuals are able to bring differing perspectives to problem solving in a dynamic work environment. The changing demographics of our society require a talented group of lawyers to serve an increasingly demanding and diverse clientele. Also, the firm may be able to attract clients from the various diverse communities, if the members of such communities see themselves reflected in the employees of the firm.

Firms should implement equity in employment measures in order to address any inequity in the hiring process. Such measures necessitate the identification and removal of artificial barriers to the selection, hiring, promotion, and training of historically marginalized group members.

Fostering a diverse workforce requires flexibility in work habits, lifestyle, and social interaction.

As is customary with organizational goals, the pursuit of equity in employment is a policy decision of the firm which should be integrated into the overall human resource planning system.

*Equity in employment
will not happen unless
we make it happen.
In this regard, law
firms must be held
accountable for hiring
goals and practices.*



The successful implementation of an employment equity program depends upon the degree of commitment made by firm management and how this commitment is communicated to all employees.

Requirements for Job Entry

The first step to finding the best qualified person for the job is to establish the knowledge, skills, abilities, education and experience that are necessary to be fully competent on the job. Law firms must decide what qualifications an employee must have upon entering a job, as well as what must be learned once in the position. The qualifications needed upon entry should be the ones used as criteria for recruitment and selection into the job.

Members of the hiring committee or individuals responsible for hiring in the firm should realize that conscious or unconscious assumptions, stereotypes, and personal bias may have a negative impact on decisions that are made regarding recruitment, assessment, development, promotion and the management of diversity.

The essential components of this process are:

- (a) removal of discriminatory barriers to the employment and promotion of historically marginalized groups. This includes the elimination or modification of all human resources practices and systems which cannot be shown to be *bona fide* occupational requirements.
- (b) improvement in the participation of historically marginalized group members throughout the hiring, training, and promotion process.
- (c) internal goals and timetables for an employment equity program by increasing the recruitment, hiring, training and promotion of historically marginalized group members, and by making reasonable accommodations to enable members of such groups to compete with others on an equal basis.

Job-relatedness

Firms should clearly define the requirements for entry into the job to avoid unfairly screening out women, members of racially visible groups, persons with disabilities, Aboriginal people and others from historically marginalized groups. Not only is this fair to the candidates, it also increases the likelihood that you will get the level and type of talent needed for the position, while increasing your chances of having a more diverse work group.

It is very important that only those competencies which are required for a position are used as criteria for recruitment and selection.

Law firms asking for qualifications that are well beyond what is needed to perform in the job may be eliminating candidates who would perform well in the position. Unless the qualifications listed are truly required to perform the job, this could be considered unfair or discriminatory.

Once hired, an inhospitable work environment can affect both the quality of an employee's work and his/her willingness to remain in a firm's employ. Studies have indicated that the loss of an employee in a law firm does have a significant financial impact. Therefore, law firms must work towards establishing a climate conducive to the successful integration of historically marginalized group members within the firm.

AN UNBIASED RECRUITMENT AND SELECTION SYSTEM

It is important that firms review procedures used in the recruitment, selection, training, promotion and termination of employees. Any policy, practice or system, whether formal or informal, which is found to have or likely to have an unfavourable impact should be eliminated or modified.

There are two critical issues to consider when setting up a fair recruitment and selection system:

Each of the selection methods should involve a valid and job-related assessment of the candidate's skills and qualifications.

Each of the criteria should be applied consistently for all candidates.

Please note:

- (i) A stated commitment by firm management to implement an employment equity program must be supported by the assignment of a senior level individual with the necessary authority and responsibility to ensure the program's effectiveness.
- (ii) If uncertain about the best way to set up and implement a recruitment and selection system, seek assistance from the Barristers' Society Equity Officer.

RECRUITING DIVERSE CANDIDATES

Be proactive

- Request referrals of racially visible group candidates/historically marginalized group members.

Be strategic

- Ensure that recruitment opportunities reach members of racially visible group (or historically marginalized group) applicants.
- Specify your employment equity policies to the interviewers/recruiters.
- Take advantage of specific recruitment campaigns.
- Hire members of racially visible or historically marginalized groups as summer students.
- Advertise in the ethnic media.

Advertising & Referrals

By advertising only in mainstream publications, you may not reach the historically marginalized groups you are interested in attracting, or if you do, they may not be encouraged to apply. Consider advertising in ethno-cultural/community/alternative newspapers. All advertising must reflect the employment equity program policy of the firm.

ACCOMMODATING DIFFERENCES IN THE HIRING PROCESS

Awareness sessions for partners, associates, clerks and staff will create a greater understanding of the employment equity objectives and help dispel misconceptions toward the initiative.

Law firms have a responsibility to accommodate differences in the selection process, provided the accommodation will not affect the evaluation of the candidate's real abilities to perform in the job.

Interview Schedule

The scheduling of interviews should be sensitive to the Sabbaths or holy days of different cultural groups. For example, scheduling an interview on a Saturday may preclude certain groups from participating.

Scheduling of interviews only within the "Super-Saturday" timeframe may not be sufficient.

Applications and Resumes

When reviewing applications and resumes the focus must be on content, not style. Also, be flexible and look at the portability of a candidate's overall experience. Information provided by candidates from historically marginalized groups, recommendations, and sponsorships are oftentimes deemed to carry less weight because a firm is less familiar with the sponsors, or views the referees' recommendations as inherently suspect because of the stigma and stereotype attached to minority sources.

SENSITIVITY TO CULTURAL DIFFERENCES

Cultural diversity brings both opportunity and richness to a workplace. It often also brings a new set of challenges, such as differences in work styles, values, and communication patterns. When we cannot understand someone's perspectives, we can feel frustrated. Responses or behaviours of candidates during the interview can be easily misunderstood or misinterpreted because of one's own cultural programming.

The traditional cues that can impress an interviewer such as the quick response, articulateness, prolonged eye contact and a steady handshake are often interpreted as confidence, sincerity, and self-possession. However, these cues do not necessarily reflect potential job success. The quality of the candidate's response is what is important. In the interview situation, differences in cultural and linguistic styles of communication between the interviewer and candidate may be unsettling. This can result in misinterpretation, confusion, and ultimately may negatively influence the interviewer's evaluation of the candidate.

a) Response Styles

- **Self-Promotion**

Many traditional cultures value humility and as a result may downplay their accomplishments, deny compliments and feel uncomfortable talking about themselves.

Consequently, the candidates may give the interviewer a poor impression of themselves

and their skills in comparison with other candidates who may be more comfortable talking about their achievements.

- **Silence**

Some traditional minority group members may prefer to pause and think before speaking.

Many people tend to feel uncomfortable and awkward with silence. Consequently, the interviewer may cut off the candidate before she/he has had a chance to respond. As a result, the candidate may feel pressured and perceive the interruption as rude.

- **Directness**

Some minority group members may initially respond indirectly to questions, leaving the more direct answer to the end of their response.

Consequently, the interviewer may take the initial part of the answer as the response, and interrupt the candidate before the answer is complete or may ignore the latter part of the answer. The candidate may perceive this as disrespectful.

- **Minimal answer**

Some individuals may respond exactly to the questions asked and not elaborate or volunteer information until further specific questions are asked.

Consequently, the candidate may appear suspicious, disinterested, or unconcerned, and give a poor impression of their skills and experience.

b) Language Styles

- **Stress/Intonation**

Members of racially visible groups who do not have English or French as their first language, may have stress and intonation patterns which reflect their native languages. The same sentence spoken by such individuals sounds different to that as spoken by someone whose first language is English/French.

- **Vocabulary**

When English or French is a candidate's second language, their use of these two languages may also reflect their native language. For instance, an applicant may not use courtesy phrases such as "please" or "thank you" because there may be no equivalent in their first language. Consequently, the individual may be inaccurately perceived as pushy or impolite.

c) Non-Verbal Differences

- **Eye Contact**

Some people may avoid prolonged and direct eye contact with figures of authority (such as the interviewer) because this may be considered disrespectful.

- **Hand and Head Shakes**

Some cultures differ in their use of hand shakes and head movements when communicating. Consequently, the interviewer may mistrust the applicant or incorrectly label them as suffering from a lack of confidence. Ultimately, the interviewer may allow non-verbal behaviours to negatively influence the evaluations given by the interviewer.



Some interviewers tend to judge candidates who are similar to themselves, more favourably.

The primary purpose of the interview is to determine whether the interviewee possesses the predetermined job skills. Even though the candidate may appear on paper to possess these qualifications, it can become obvious during the interview that the individual is not suitable. In these instances, the interview will help determine suitability. This may take place during the “Super-Saturday” scenario at a Law School or may take place at the law firm. In essence, interviews help determine who warrants further consideration and who does not. Each firm should develop a written policy on proper interview practices.

THE INTERVIEW

A successful screening interview has the following characteristics:

- Does not elicit detailed background information from the applicant.
- Brief, often lasting no more than a few minutes.
- Is not a final selection interview and should not be construed as such.
- Does not, at its conclusion, overtly reveal to the applicant the status of his/her suitability for employment.
- Is designed to stimulate the interviewee to do most of the talking.

The interview may take several approaches:

- In some instances, the applicant may be asked job-related questions during the screening interview and given responses will determine if s/he remains in the qualified category.
- Another approach is to review the information on the application form or resume, seeking additional input or clarification of certain items.
- A third approach involves describing the job to the applicant to determine his/her level of continued interest.

Rarely will the screening interview be restricted to one of these approaches. However, it is very important that the prospective employee knows what he/she would be required to do at the firm.

When conducting screening or other types of interviews:

- Encourage cultural sensitivity by including employees of historically marginalized groups on the interview committee whenever possible.
- Use pre-interview meetings to enhance members’ sensitivity to cultural differences and diversity.
- Obtain assistance from an Employment Equity Advisor to identify issues and prepare questions, if necessary.
- Assess a candidate’s results, not style.
- Focus on the message and not on an individual’s cultural differences (eg. accent, traditional dress, lack of eye contact).
- Ask direct questions to prompt the candidate to volunteer specific job-related information on skills, abilities and work experience (if your first broad question does not lead to expected responses).
- Check your assumptions! Be open to reevaluating conscious or unconscious assumptions during the criteria process.

Interviewing Pitfalls

In conducting an interview, the interviewer should be careful to avoid the following pitfalls often arising out of bias and personal misconceptions. The presence of any of these pitfalls may result in the disqualification of an excellent candidate or the continued interest in a candidate who should have earlier been eliminated from further consideration. Among these pitfalls are a number of biases and errors, explained in the following:

Stereotyping

- Stereotyping occurs when interviewers develop a mental image of the ideal employee. Those applicants who fit the preconceived image will be treated more favourably than those who do not.

Interviewer-interviewee similarity

- Interviewers often judge candidates who are similar to themselves in a number of ways including experiences and attitudes, as well as ethnic, racial, cultural or social background, more favourably.

Reliance on intuition

- Reliance on intuition alone will cause the interviewer to make some incorrect evaluations about candidates' suitability for employment.

Incorrect interpretation

- Due to cultural differences regarding communication and decorum, an interviewer may misunderstand the responses of a candidate and form a negative impression without attempting to clarify comments made.

Example of topics which are inappropriate to take into consideration in an equitable interview process and therefore should not be discussed unless noted:

Age

- A discussion or reference that suggests a preference for person under or over a certain age.

Gender/Sexual Orientation

- Any inquiry in this area is considered unfair; this includes any questions regarding an applicant's partner.

Family

- Specific inquiries about the candidate's spouse, the spouse's employment or salary, children, childcare arrangements, or dependents.

Disabilities

- It is unlawful to inquire whether an applicant has a disability, or to ask about the nature or severity of the disability.

Pregnancy

- All inquiries regarding pregnancy, including future plans.

Marital Status

- Inquiries related to an applicant's marital status, marital plans, or who the applicant may be living or residing with.



National / Ethnic Origin

- Any inquiry concerning the applicant's lineage, national origin, descent, birthplace, or first language.
- Any questions about citizenship, although it is acceptable to ask if the applicant can provide proof of legal status to work in Canada.
- All inquiries about a name (or its origin) that divulge lineage, ancestry, national origin, or religion.
- Requiring the applicant to disclose cultural, religious, or ethnic organizations, clubs or societies to which he/she may belong.
- Any questions regarding an applicant's accent or where he/she grew up.

Political Belief

- Any questions requiring the applicant to provide information on political affiliation or activity, including an involvement in a political party or its activities.

Race or Colour

- Inquiries into race, colour of skin, etc.

Relatives

- Any inquiry about the candidate's relatives that might reveal discriminatory information.

Religion or Creed

- Questions about religious beliefs, including holidays observed.

GUIDELINES FOR LAWFUL AND EQUITABLE 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 description of the firm's expectations should be given to each candidate in order to allow candidates 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 firms 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.

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PROHIBITED GROUNDS OF DISCRIMINATION

The *Nova Scotia Human Rights Act* and Rule 24 of the Legal Ethics Handbook prohibit discrimination on any of the following grounds:

- Race
- Ethnic, national, or Aboriginal origin
- Creed
- Sexual orientation / gender identity
- Family status
- Religion
- Colour
- Sex
- Age
- Marital status
- Disability
- Source of income
- Political belief, affiliation or activity
- An irrational fear of contracting an illness or disease

There are a number of inappropriate questions or inappropriate topics to avoid during the interview process. Areas that are not considered a bona-fide occupational qualification should be eliminated from discussion during the interview.

If the applicant brings up a prohibited ground of discrimination, ensure that it is discussed but explain that it will not be a factor in the hiring process.

Inquiries can be made after a job offer has been accepted by an applicant regarding any necessary accommodations.



POLICY ON EMPLOYMENT EQUITY FOR CROWN LAW AGENTS

In 2001, the Nova Scotia Government adopted the Policy on *Employment Equity for Crown Law Agents* and put forward a plan to help ensure employment equity in law firms and address the historical under-representation of Black and Mi'kmaq lawyers in Nova Scotia.

Under the policy, law firms in Nova Scotia — as Crown Law Agents — are eligible to perform legal work for the government where the fees are \$5000 per matter or \$5000 per year, whichever is less, if they:

- sign the Commitment for Employment Equity;
- display the signed Commitment in a prominent place in the law firm;
- communicate their commitment to employment equity to current and prospective staff; and
- comply with the *Nova Scotia Human Rights Act*.

Law firms of up to 11 lawyers are also required to report, by July 30, on the representation of designated group members, including Indigenous Black and Mi'kmaq persons, within the law firm.

Law firms of 12 or more lawyers are also required to:

- designate a senior partner of the firm as the firm's coordinator, responsible for ensuring the firm's compliance;
- collect and record information on the representation and employment status of designated group members, including Indigenous Black and Mi'kmaq persons, within the firm, by occupation and level in terms of hiring, promotion and termination in relation to all other lawyers and employees, and to collect and record information on measures taken by the firm to achieve employment equity goals; and
- report such information annually, as well as upon request by the department.

The Government also established the Employment Equity Steering Committee, whose membership included the Deputy Minister of Justice, the Dean of the Dalhousie Law School, the Executive Director of the Nova Scotia Barristers' Society and the Director of the Indigenous Blacks and Mi'kmaq Initiative. The committee developed a questionnaire to collect data on the representation and employment status of designated group members within the firm. The Nova Scotia Barristers' Society agreed to collect this information by sending out the questionnaire to all Crown Law Agents who signed the Employment Equity Commitment (CLA-EEC), analyzing the results and providing a written report of the findings to the Department of Justice.

The Questionnaire requests information on the four designated groups: Women, Visible Minorities, Aboriginals and Persons with Disabilities. In addition, the questionnaire separates out Blacks and Indigenous Blacks from the Visible Minorities category, and Mi'kmaq from the Aboriginal category.

Since 2001, the Nova Scotia Barristers' Society distributed the Employment Equity Questionnaire to the CLA-EEC. The completion of the questionnaire is required under the Province of Nova Scotia's Policy on Employment Equity for Crown Law Agents. Lawyers and law firms are expected to have in place effective procedures to collect the relevant information. Lawyers and law firms who do not complete the questionnaire or who do not collect the relevant statistics are in violation of the Policy. As part of its reporting duty, the Society must inform the Department of Justice of those firms that do not complete the questionnaire or those that do not provide complete information to the questions that they are required to fill out.

SELF-IDENTIFICATION QUESTIONNAIRES

The most effective way to collect the Employment Equity Questionnaire data is to provide self-identification questionnaires to all those working in a firm (including associates and partners) and applicants. Self-identification questionnaires are also effective in collecting information and statistics which can be useful to the firm in implementing internal employment equity policies. In circulating a self-identification questionnaire, a firm should do the following:

- Ensure that everyone working at a firm and applying for a position is provided with a survey.
- Ensure that the completion of the questionnaire is voluntary but that the questionnaire must be returned, whether completed or not.
- Ensure that the employee/applicant has an opportunity to fill out the questionnaire, in private, within a reasonable time. Do not require that the questionnaire be filled out in front of co-workers, supervisors or during an interview.
- Establish clear policies on the collection and use of self-identification information.
- Explain what the information will be used for and how it will be stored.
- Ensure that the information is kept strictly confidential and only used for employment equity purposes.

The Society's Equity Officer is available to provide information and advice to law firms and lawyers on the implementation of the Policy on Employment Equity for Crown Law Agents, the Employment Equity Questionnaire and the collection of self-identification information.

CONCLUSION

In conducting interviews the following points should be kept in mind by the interviewer:

- Distinguish between tasks and skills that are essential and those that are desirable.
- Avoid describing a "desired" applicant.
- Solicit information about the skills and experience that are essential to the job.
- Once interviews have taken place and you have selected a candidate, make sure all application forms and/or resumes are kept on file in your firm.
- Avoid attaching value to particular hobbies or cultural interests.
- The person who conducts the interview should also be aware of the common tendency to look for higher qualifications in minority applicants than in others and efforts should be made to avoid this.
- Identify and check all assumptions.
- Describing the selection procedure in writing increases the likelihood of a fair, consistent, and effective process.
- An employment interview is not the place for questions that reflect the interviewer's curiosity about the applicant's ethnic origin or other personal circumstances.
- Ensure that interview questions do not touch upon prohibited grounds of discrimination.
- Avoid making hiring decisions on the basis of organizational fit.
- Some rules, although applied to everyone, can limit the employment prospects of employees of one sex, a particular creed, ethnicity, marital or family status, or those who have, or later develop, disabilities.

RECOMMENDED PRACTICES

Commonly identified communication barriers including verbal and non-verbal language problems, interference from preconceptions and stereotyping, erroneous evaluation, and stress, often prevents people from communicating accurately. The following examples serve to illustrate this phenomenon:

- Assuming similarities instead of differences.
- Verbal language problems occur when another person uses words you do not understand.
- Nonverbal language problems occur through behaviour which is inaccurately interpreted by others.
- Preconceptions and stereotypes can become so influential that you see and hear only what you expect, ignoring the real person in front of you.
- Evaluation biases result from drawing premature conclusions of value judgments about other persons and situations before you have all the facts.
- Stress barriers arise when you feel danger and try to protect yourself against a real or imagined enemy. Multicultural situations are often ambiguous and result in stress because you are not sure what others expect of you or what you expect of them.
- The rules of the firm may prevent accurate communication, either intentionally or unintentionally.



NOVA SCOTIA
BARRISTERS' SOCIETY

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