

MODEL POLICY ON ACCOMMODATION

Preface

The Nova Scotia Barristers' Society recommends the adoption and implementation of this policy by law firms and other employers of lawyers in Nova Scotia.

Accommodation policies available to lawyers in legal workplaces vary greatly. In many cases, no policies exist and lawyers negotiate with the managing body at their workplace on a case by case basis. Other firms and institutions that employ lawyers have may have policies in place and a concrete practical strategy to guide the employer on how to accommodate individuals. Regardless of what your workplace currently has adopted, it may be useful to review the model policy to ensure that all potential options are covered.

The attached Model Policy was formulated after a thorough review of a variety of policies from various jurisdictions within Canada, including Law Societies and Bar Associations and corporations and governmental agencies. The Equity Officer collaborated extensively with ReachAbility, a charitable organization committed to creating an equal playing field for persons with all types of disability, and their Disability and Law Committee. The Committee has developed the attached policy with a view to it serving as the recommended model for Nova Scotia law firms and other employers of lawyers in Nova Scotia.

As important as a thoughtful policy with a positive tone may be, the best drafted policy cannot succeed without the support of managing partners and senior lawyers. Attitudes, both positive and negative are transmitted in this way. If workplace leadership projects an attitude that the policy is important, and that the workplace actively encourages respectful accommodation strategies, that attitude will become the pervasive attitude of the workplace community. The primary reason for the support of the policy is the recruitment and retention of valued lawyers who adequately represent the population they serve. Adopting the provisions of the attached Model Policy does not need to be an expensive or onerous proposition for the employer; it could simply be a way to shift workplace culture to become more inclusive.

Definitions

- 1) **DISABILITY:** The World Health Organization defines disability as follows: "Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Thus disability is a complex phenomenon, reflecting an interaction

between features of a person's body and features of the society in which he or she lives."

- 2) **UNDUE HARDSHIP:** There is no all encompassing definition of undue hardship nor is there a precise formula for determining whether a specific accommodation will impose undue hardship. However, the Supreme Court of Canada in *Council of Canadians with Disabilities v. VIA Rail Canada Inc.* wrote: "Undue hardship implies that there may necessarily be some hardship in accommodating someone's disability, but unless that hardship imposes an undue or unreasonable burden, it yields to the need to accommodate". Furthermore, the judgment states: "Concrete evidence is required to establish undue hardship." Considerations of health, safety and finances are useful when ascertaining whether an accommodation would impose undue hardship; however this list is not meant to be exhaustive.

Statement of Principles

- Whereas, _____ is committed to ensuring every employee is treated with respect.
- Whereas, _____ is committed to the promotion of full participation of people living with disabilities.
- Whereas, discrimination is prohibited under the Nova Scotia Human Rights Act on the basis of age; race; colour; religion; creed; sex; sexual orientations; physical or mental disability; an irrational fear of contracting an illness or disease; ethnic, national or aboriginal origin; family status; marital status; source of income; political belief, affiliation or activity or that individual's association with another individual or class of individuals having characteristics referred to previously.
- Whereas, the NSBS' practices are guided by both the *Legal Profession Act* and the *Legal Ethics Handbook* but does not currently have an adequate accommodation policy in place.
- Whereas, the NSBS recognizes treating people equally does not always mean treating them identically. Equality is about making the playing field equal, not special and allowing individuals the opportunity to do what they can do, not what they can't do.
- Whereas, the NSBS has committed to accommodating differences up to the point of undue hardship and accommodating on a case by case basis.
- Whereas, each individual has the right to work and study in an atmosphere which promotes equal opportunities.
- Whereas nearly 1 in 4 Nova Scotians self-identify as persons with disabilities (the highest in Canada).
- Whereas persons with disabilities represent a group with unique needs in relation to the issue of accommodation (i.e. assistive devices) and inclusion (stigma and education).

Purposes

_____ recognizes the need to implement a policy, developed for the purpose of encouraging and supporting individuals entering and currently in the legal profession in order to ensure that we are and inclusive workplace and representative of the public we serve. These diverse perspectives are viewed as an asset and we recognizes it is our responsibility to be representative of the community. _____ is committed to providing accommodation to persons from all backgrounds, including those with disabilities, and this policy sets out principles and guidelines with respect to the said accommodations.

Application

This policy applies to all the services offered by _____ including, but not limited to, all employees of _____, articling students, summer students, and clients.

Responsibilities of the Employer

_____ recognizes at times it may be appropriate for to initiate conversation with individuals concerning accommodation, as often the general public is not aware of the principles surrounding the duty to accommodate. The individual seeking accommodation should be presented with all viable options as well as the impacts these options will have on his/her life. Once an accommodation is chosen, the individual should be briefed both verbally and in writing on the impact the accommodation measures will have on their life (i.e. reduced work hours, etc.) prior to the measures being adopted, as well as being informed of his/her responsibilities.

Responsibilities of Individual

The individual seeking accommodation must communicate his/her needs to the appropriate person as well as any concerns with the accommodation. If a person is unable to articulate his/her needs, it may be appropriate in certain circumstances to offer assistance by:

- engaging a disability expert to support engagement/ resolution of issue bringing accommodation to the forefront;
- inviting affected parties (manager, individual, Human Resource support, etc.) to take part in open, meaningful conversations; or
- providing an educated/knowledgeable person in the area of disability awareness to work with affected parties.

When requesting a Doctor's note, individuals will be encouraged to request the Doctor to use directive language. If directive language is not used, interpretation of the note should be in favor of accommodation.

Accommodation

The appropriate accommodation may require experimentation and will be done on an ad hoc basis and will not be provided if it is classified as imposing undue hardship on the society. If the accommodation is too onerous, there may be an opportunity for an interim accommodation, which will be assessed on a case by case basis. Both the relevant stakeholders and knowledgeable persons in the area of disability awareness will be involved. _____ recognizes accommodation requirements may change over time, therefore, we are committed to revisiting accommodation measures as need be.

Principles

No person shall suffer any penalty for seeking accommodation. Accommodation requires a collaborative effort on the part of the individual seeking accommodation, the employer and all other relevant stakeholders. Accommodation may be either on an individual basis or based on the needs of a group.

Confidentiality

All information obtained by the employer during the accommodation will be held in strict confidence and no information will be divulged unless expressly authorized by the individual or where required by law.