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Guide to Developing A Respectful Workplace

1. Introduction¹

The purpose of this guide is to help legal workplaces create a respectful work environment for all members in their firms. A respectful workplace policy aims to prevent conflict from occurring through building positive working relationships. If conflict does occur its prompt resolution is encouraged through a mechanism for early problem resolution. The implementation of a respectful workplace policy will lead to a healthier work environment and high morale amongst firm members. This in turn will result in higher productivity, improved loyalty and less turnover, and ultimately the delivery of higher quality legal services.

Respect for individuals, including valuing their differences, is a key component to a respectful workplace policy. In this sense the review or implementation of other personnel policies that accommodate firm member's diverse needs is also tied to a respectful workplace policy. The policy's goal is to have a workplace where everyone is treated with dignity and is free from discrimination or harassment. In order to accomplish these goals the policy extends beyond the prohibited grounds of discrimination found in Alberta's Human Rights, Citizenship and Multiculturalism Act to also address workplace harassment of a general nature such as rude, degrading or intimidating remarks or emails, threats or intimidation.

Workplace training is used to create awareness about working relationships so that firm members have the skills to prevent and respond to conflicts appropriately. In this sense the policy attempts to identify and rectify problems before they reach the formal complaint stage. When conflicts do occur procedures are in place to resolve them informally if possible. If this is not possible formal complaint and investigation procedures are available.

Implementing a respectful workplace policy is a long-term process towards organizational change. Legal workplaces should be aware that resistance to change is a normal reaction that can be planned for and overcome. Implementation of a successful respectful workplace policy will promote the well being of all at the firm and reinforce the values of integrity and trust that are the foundation of a sound organization.

¹ The Equality and Diversity Committee has a mandate to help the profession identify, understand and address equality, diversity and equity issues. The committee consists of benchers of the law society, designates from both law schools in the province and representatives from the Canadian Bar Association. As part of its mandate, the Committee has developed guidelines and sample policies in key areas, such as parental leave, interviewing practices, and alternative working schedules. Through consultations with members of the profession the Committee concluded that information should be provided to assist firms and legal workplaces in the development and implementation of a respectful workplace policy.

2. Rationale

a. The Business Case

Creating a workplace free of discrimination and harassment is more than a legal and ethical responsibility for employers; it also makes good business sense. A firm that commits to providing a respectful work environment makes a strategic move towards retaining talent, improving relationships with clients, and improving performance by understanding and anticipating the needs of an increasingly diverse workforce and marketplace.

The following studies and experiences in the workplace demonstrate the high cost of not addressing diversity and conflict in the workplace:

Conflict Management

- The need for firms to address workplace conflicts that do not meet the legal definition of harassment is evident from a statistic from B.C. Hydro that found 85% of harassment complaints were personal, not legal.²
- A study by Watson and Hoffman found that 42 % of a manager's time involves conflict management and that 50% of people who leave their employer cite conflict as the main reason.³

Turnover

- Turnover of staff can cost up to 1.5 times the salary of the employee when you account for separation costs, recruiting, training and loss of productivity during the transition. A medium sized company with 300 staff members, an annual turnover rate of 12% and an average salary of \$75,000 would have costs of \$4,050,000 per year to replace the lost talent from turnover.⁴
- Employee turnover is linked to client satisfaction. A study found that when an employee who had direct contact with a client left, the client's satisfaction level dropped from 75% to 55%.⁵

Harassment

- A study that surveyed more than 100 CEOs of both sexes and close to 400 female executives in a variety of public and private sector organizations across Canada, found that 27% of these executive women had left a previous employer because of harassment or discrimination at work.⁶

² Certified General Accountants Magazine, Nov. 97

³ Leadership Quarterly, vol. 7, n. 1, 1996

⁴ Study Merck & Company, Hewlett Packard, KPMG and Fortune, reported in Canadian Human Rights Reporter, February 2000, p G8.

⁵ Diversity: A Business Advantage, Poole, pg. 36

⁶ Creating High Performance Organizations: Leveraging Women's Leadership. Conference Board of Canada. June 2000.

- Imperial Oil estimated that harassment costs them close to 8 million dollars a year in absenteeism, employee turnover, and loss of productivity.⁷

A respectful workplace policy builds policies, processes and skill-building programs to reduce the frequency and intensity of unwanted conflicts. Managing conflicts effectively will lead to increased productivity, improved loyalty resulting in less turnover, continuity in client relationships and improved firm profile. Implementing a respectful workplace policy is an important step to becoming a law firm of choice – attracting clients and top legal talent.

b. Written Policies

Legal workplaces are encouraged to have a written respectful workplace policy. A written policy allows firm members to understand clearly what is expected of them and what they can expect from their workplace. It also provides a focused vision for the workplace environment that can be monitored and adjusted over time to meet the firm's needs. Policies such as a respectful workplace policy can be an asset when recruiting new members to the firm.

Finally, a written policy demonstrates that a firm takes its legal, professional and equality obligations seriously. It will help minimize the risk of workplace harassment or discrimination as well as the risk that a firm will be held liable for unlawful harassment or discrimination.

However a written policy is only one step towards implementing a respectful workplace policy. The success of the policy depends on support and involvement from all levels of the organization. The steps of development, implementation, training, and monitoring of the policy are key to minimizing conflict and harassment. As important as a thoughtful policy with a positive tone may be, it cannot overcome a hostile environment or attitude from others.

c. Legal and Ethical Responsibilities

The Alberta Human Rights Act and the Law Society of Alberta's Code of Professional Conduct prohibit discrimination and harassment in the workplace.

- [Link to comprehensive information on this topic \(see the end of this document\)](#)

3. How to Develop and Implement a Respectful Workplace Policy

a. Establishing a development committee

The starting point is to establish a committee to develop the policy. It is most important that the committee include respected staff and members of the firm who will champion the policy. They should be people who appreciate the importance of the issues to be addressed and who will be willing and able to communicate

⁷ Diversity: A Business Advantage, Poole, pg. 35

these matters to others within. The composition of the committee is critical to the credibility of the process and the policies produced.

The membership of the committee should be diverse. To the extent possible, the committee should be composed of directing minds, partners, associates, and staff of both sexes and of differing age, race, ethnic origin, family status, sexual orientation, and religion, as well as individuals with disabilities. If there are lawyers or individuals in the law firm with expertise in employment and human rights law, one or more should be included. Once the initial drafting work is done some members of the committee should stay on to monitor and review the policy, including people in leadership roles in the firm.

b. Developing the policy

i. Education

The development committee should educate themselves about respectful workplace policies. In doing so they should consider the following points.

- **Business case**
Consider how this policy will help the firm with its overall business plans and strategies. Is there a high turnover of employees? Is retention of women lawyers an issue? Is job satisfaction high among support staff, associates, partners etc? Do firm members generally have a positive attitude about each other, their work, and the firm?
- **Review of firm's current policies**
What current personnel policies exist? What policies should be added or updated? How are workplace conflicts currently dealt with? Do all firm members understand the policies? Do firm members trust that the policies apply equally to all? Do they acknowledge and value firm member's diversity by accommodating needs like alternative work schedules and maternity/parental leave?
- **Review of law/literature**
Are policies up to date regarding employment and human rights law? Is the firm meeting its duty to accommodate?

This initial process will help the committee to determine which areas may need improvement in their working environment.

ii. Consultative Process

- **Why involvement of staff is key**
To get an accurate picture of the working environment it is recommended that information from firm members be collected. There are a variety of methods that can be used such as a survey, a focus group, a request for feedback at evaluation sessions and so on.

Information should be gathered on topics such as job satisfaction, relationships with superiors and co-workers, any experiences with discrimination or harassment, and perceptions of the workplace. If firm members understand that their input is sought after and valued in the creation of the policy they will be more likely to feel invested in the policy's future success. The firm may also want to have a visioning session to determine the goals for the workplace and their working relationships with one another.

- **Communication strategy**

The committee should clearly indicate why the information is being gathered, how it will be used, and provide a guarantee of confidentiality. The firm may also want to hire a diversity consultant to help the committee in planning and implementing the policy. An outside consultant may receive more honest and open responses regarding the workplace and ease concerns about confidentiality.

- **Ongoing Consultation**

After the information gathering is complete the results will provide the committee with valuable information on where the firm is doing well and where it needs to improve. Once the committee comes up with a draft plan and policy it should be distributed to firm members for their comments and feedback.

iii. **Writing the Policy**

The consultation process in itself is a powerful mechanism for changing workplace culture. Once the initial consultations are complete the committee can begin writing a policy to reflect their vision of a respectful workplace. The committee should consider short term and long term objectives of the policy, possible reactions to change within the organization, resources, and integration of the policy into strategic business plans for the firm. They should also consider what type of informal and formal conflict resolution processes they can effectively implement at the firm. The policy should address the employer's duty to not tolerate workplace harassment and to take timely action whenever it has knowledge of behaviour that may constitute harassment.

Attached to these guidelines is a sample policy that legal workplaces may wish to use as a starting point for their discussions on the policy and as a template for their own policy. The more the committee can tailor the policy to their workplace the more effective it will be in addressing their needs.

c. Implementing and Communicating the Policy

i. Communicating with the Firm

- The initial presentation of the policy and a clear statement of management support are critical to its success. A letter explaining the rationale for the policy, including the business case, should go out when the development committee is being formed.
- Once the policy is adopted, it should be distributed to members of the firm with a covering memorandum reiterating the strong support of management.

ii. Training

- Individuals charged with implementing and applying the policy should receive special training to ensure that they are well informed of the specifics of the firm's policy, the law, interviewing techniques and information gathering.
- Workshops should be organized to inform all staff and members of the firm about the provisions of the policy and the objectives that it is intended to meet. Workshops should be tailored to the firm's needs as identified in the survey. Developing these skills will improve not only the immediate workplace environment but also relationships with clients.
- Ongoing workshops should be used to keep the policy fresh in people's minds and guide them through the process. Beyond policy awareness training other workshops could include basic conflict resolution skills, cross-cultural conflict resolution skills, an awareness workshop on a particular dimension of diversity (race, gender), and so on.

iii. Prepare for Organizational Change

- Factors that may cause opposition within the workplace should be identified, and discussed frankly. Resistance to change should be expected and planned for.
- One way to potentially minimize backlash is by ensuring that firm members considered part of the "mainstream" are included in the change process. They are often a large and powerful group whose support is essential to the policy's success. The policy must make a real effort to be all encompassing and benefit all members of the organization.

iv. Ongoing Management Support

- A critical factor in creating a respectful workplace is continued support for, and enforcement of, the policy by management. Members of the firm will believe that management is serious about the policy if they hear about it on an ongoing basis.
- Suggestions on how to show ongoing support include: ongoing awareness and skills training workshops, reminders and tips in the

firm's newsletter, and benchmarking and publicizing the firm's progress through the years.

d. Promoting the Policy

i. Within the Workplace

- The firm should include the policy with their other workplace policies whether in a handbook or online. The firm may also wish to distribute a copy to all personnel when it is initially introduced and/or post copies of it in a common area. Members of the firm should also have up to date information on who to contact regarding the policy.

ii. As a Marketing Tool

- The policy should be made available to all prospective members of the firm at the initial interview stage. Such a practice will make a strong statement about the firm's support for the policy and its objectives. Firms may also wish to publicize the existence of the policy in their recruitment materials and on their website

e. Reviewing, Evaluating and Revising the Policy

The policy must not be allowed to only exist on paper. It must be a living policy that is adjusted to meet the changing needs of the firm and members of the firm.

i. Ongoing Review by the Committee

- The committee should have the responsibility to review and revise the policy on a periodic basis. The first review should take place after there has been sufficient time to evaluate its operation.
- The committee may want to initially work with a five-year plan with goals for each year.
- The policy can contain a sunset clause requiring its review after a certain period of time.

ii. Ongoing Firm Member Involvement

Feedback

- Individual staff and members of the firm should be encouraged to communicate their comments on the policy to the committee, either on an ongoing basis, or during the course of a review. They should also be kept informed of the progress of the policy, including results of the surveys and audits.

Yearly Surveys

- The committee should have a plan to administer employee opinion surveys of the firm on a regular basis, remembering that change is often a slow process. It will also help the committee and management know the strengths and weaknesses of the policy. Yearly surveys will

provide the committee with feedback on whether the committee's goals are being met and help them plan for the future.

- Exit surveys of members that leave the firm may also indicate areas the committee should address.

iii. Organizational Audit

- An organizational audit can be done every couple of years to determine if the policy is successful and if organizational change is occurring.
- The audit would look at formal and informal practices in place at the firm and compare them to the firm's goals for working relationships.
- Possible areas to look at and benchmark include: use of the early dispute resolution system, use of the formal complaint system, job satisfaction and other data from yearly surveys, retention rates of articling students and new associates, use of personnel policies such as parental leave and alternative work schedules, and so on.

f. Tools

- **Office of Equity Ombudsperson's contact info.**
- **Hire a consultant**
- **Sample policy**

4. Conclusion

This guide highlights many of the legal, ethical and policy issues employers in the legal sector may encounter when developing and fostering a respectful workplace. We hope this guide will serve to heighten awareness of these issues in the workplace and assist firms in drafting and implementing policies.

Link

2. Rationale c. Legal and Ethical Responsibilities

Alberta Human Rights Act

Section 7(1) of the Alberta Human Rights Act states that no employer shall:

- (a) refuse to employ or refuse to continue to employ any person, or
- (b) discriminate against any person with regard to employment or any term or condition of employment,
because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, , source of income, family status or sexual orientation of that person or of any other person.

Similarly section 8 (1) of the Act prohibits discrimination on the same prohibited grounds during the hiring process. It states that:

No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant:

- a) that expresses either directly or indirectly any limitation, specification or preference indicating discrimination on the basis of (the prohibited grounds) or
- b) that requires an applicant to furnish any information concerning (the prohibited grounds)

Code of Professional Conduct

The Law Society of Alberta Code of Professional Conduct also prohibits discrimination and harassment under Chapter 1, Rule 9:

A lawyer must not harass any person or discriminate against any person on the basis of race, language, creed, colour, national or ethnic origin, gender, religion, marital status, sexual orientation, age, mental disability or physical disability or otherwise or on the basis of any similar personal attribute.

The general commentary to Rule 9 is very helpful in understanding how this rule is to be applied and makes it explicit that accommodation of differences is an ethical obligation:

C.9 A lawyer has an ethical obligation to recognize the essential dignity of each individual and the principle of equal rights and justice for all persons. Rule 9 applies to lawyers' personal, social and professional relationships with all persons and classes of

persons, including clients and prospective clients, employees, other lawyers, and society in general. Rule 9 is not intended to prohibit practices that are reasonable and justifiable or otherwise permissible under principles of general law. Discrimination is where a person or a group is disadvantaged, denied an opportunity or treated adversely because of a distinction relating to personal attributes within the prohibited grounds. Stereotyped views often cause discriminatory conduct. In some cases strictly equal or even-handed application of rules or policies may be discriminatory against a person or a group because of the differing impact those rules or policies have on those individuals or groups. This is called adverse discrimination and creates a duty to take reasonable steps to accommodate the special needs of those individuals and groups.

Harassment may encompass conduct which:

- (a) undermines another person's dignity by causing embarrassment, discomfort or humiliation;
- (b) creates an intimidating or hostile environment for the recipient of the harassment;
- (c) is an abuse of one's status and exploits the power imbalance between the person or persons engaging in harassing conduct and the recipient of the harassment;
- (d) if submitted to or rejected, affects decisions regarding the person's future. If the recipient of the harassment is a client, this may affect the future provision of legal advice and services. In the employment context this may include matters such as promotion, salary, benefits and job security;
- (e) either explicitly or implicitly must be submitted to as a term or condition prescribed by the harasser; for example, as a condition for the provision of legal services or as a condition of employment.

Harassment can be sexual, discriminatory or personal in nature. Sexual harassment is specifically addressed in Commentary 10. Discriminatory harassment is harassment focused on a personal characteristic within one of the prohibited grounds. It could take the form of name-calling nicknames (for an individual or a group of people), demeaning the character of a person or group of persons or telling jokes about a person or a group of people.

Personal harassment is disrespectful and degrading conduct generally that is not specifically focused within the prohibited grounds. It includes conduct that is rude, insulting, belittling or vindictive (see also Rules #2, #6 and #7 in this chapter and related commentaries).

The key in determining whether conduct is harassment is the impact the conduct has had on the complainant, not the intent with which it was done. Harassment is different from offending a person; it involves undermining another person's personal integrity.

The rule against harassment applies in the workplace. Employers and others in positions of authority have a positive duty to provide a harassment-free working environment that

does not undermine personal integrity, economic potential or both. Legal employers are expected to have a harassment policy in place explaining both the conduct expected in that work place and the steps to be taken if an employee wishes to make a complaint about conduct.

The rule against harassment is a pervasive rule. It applies to lawyers' relations with clients, other lawyers, others who work in the justice system (judges, court officials and staff, the police and prison guards, etc.) and members of the general public.

Sexual harassment is also explicitly prohibited in the Code in Chapter 1, Rule 10 and related commentary in C.10:

R. 10 A lawyer must not sexually harass a colleague, staff member, client or other person.

C.10 A lawyer is ethically bound to promote the dignity and equality of all those in the work environment by avoiding discriminatory practices in compliance with Rule #9 and, specifically, by rejecting sexual harassment.

Verbal or physical conduct having a sexual element constitutes sexual harassment when:

- (a) it undermines another person's dignity by causing embarrassment, discomfort, humiliation or offence;
- (b) it interferes with a person's work performance by creating an intimidating or hostile work environment;
- (c) submission to or rejection of such conduct affects decisions regarding that person's employment, including matters such as promotion, salary, benefits and job security; or
- (d) submission to such conduct is made, either explicitly or implicitly, a term or condition of employment or the rendering of professional services.

Sexual harassment can occur as behaviour by men toward women, by women toward men, between men or between women. Sexual assault is an obvious example of sexual harassment. Other examples include the following behaviours in situations in which the offender knows or ought to know that the behaviour is unwelcome, embarrassing or offensive or will adversely affect a recipient's work environment (see paragraphs (a) through (d) above):

- telling sexist jokes, displaying material of a sexual nature or using sexually suggestive gestures;
- using sexually derogatory or degrading words to describe an individual or persons of one gender or sexual orientation;

- making innuendos, inquiries, propositions, requests or demands of a sexual nature;
- leering;
- pinching, patting, rubbing or other physical contact.