

These materials are intended to assist law firms prepare for and conduct fair and equitable articling interviews. It is important that those involved in the interview and recruitment process understand the firm's legal and ethical obligations as well as the ways in which implicit biases can act as an obstacle to diversity.

Discrimination in hiring is unethical and illegal

Both the Law Society's *Code of Professional Conduct* (Rule 6.3-5) and *The Manitoba Human Rights Code* C.C.S.M. c.H175 (Section 14 (1), (2)) specifically prohibit discrimination in the hiring process on protected grounds, including: ancestry, colour, race, nationality, ethnic background or origin, religion, age, sex, gender, gender identity or other characteristics including pregnancy, sexual orientation, family status, source of income, political belief and physical or mental disability.

Discrimination means treating a person differently because they have or are presumed to have a protected characteristic. It includes harassment and sexual harassment. Discrimination offends a person's dignity because it's based on stereotypes or assumptions and ignores individual merit. It can result from an action or omission that has a discriminatory effect. Intent is not a prerequisite. Failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based on a protected ground can also be discrimination. Some practices may be discriminatory in effect unless it can be shown that they are reasonable and that those affected cannot be accommodated without undue hardship to the employer.

Common mistakes:

- Asking irrelevant questions in an employment interview, for example asking about a person's marital status, or whether a candidate intends to have children. This discriminates on the basis of family status or sex.
- Inquiries that require the candidates to provide information concerning a prohibited ground of discrimination. For example, asking a racialized candidate where they are "really from" discriminates on the basis of race, nationality or ethnic origin. Asking an older candidate if they're sure they really want to work this hard at this stage of life discriminates on the basis of age.

- Denying employment to someone with an accent even though the person's language skills may be equal to that of other applicants. This discriminates on the basis of nationality, national origin or ethnic origin.

Questions about candidates' interests and activities are appropriate as long as they do not intrude into the protected grounds.

While it is appropriate to invite candidates to voluntarily self-identify as being a member of a marginalized group in their application for the purposes of promoting diversity, you cannot ask questions about these aspects of their identity in an interview.

The Case for Diversity and Inclusion

The law requires equitable hiring practices. Taking steps to address diversity and inclusion, starting with who you hire, is also the ethical thing to do and a number of studies show various benefits:

- **It's good for business** - According to a PWC survey, 85%, of global CEOs surveyed whose companies have formal diversity and inclusion strategies said it has improved their bottom line.
- **Yields better decisions, drives performance and innovation** - People from different backgrounds with diverse life experiences bring different perspectives to issues, which leads to greater creativity and more innovative approaches to problems.
- **Improves Hiring and Retention** - Having a reputation for being diverse, inclusive and fair makes it easier for you to attract top talent and more likely that you'll retain it.
- **Expands Your Client Base** - You'll be better able to attract clients from diverse communities if clients see themselves reflected in your lawyers and staff.
- **Enhances firm reputation** - Clients are increasingly asking about firm's policies on equity, diversity and inclusion (EDI) and looking for firms that have adopted EDI policies and practices.

Best Practices for Preparing for and Conducting Interviews

- Engage your recruitment team in a discussion about the concept of "fit: how do you assess fit and how can you ensure your unconscious biases don't affect your appraisal of a candidate. For example, how do you react when you find out a candidate plays the same sport and likes to vacation in the same place as you? Often these type of "affinities" can unconsciously tip the balance between two equally qualified candidates. Remember that "fitting in" doesn't necessarily mean being the same as everyone else.

See the following to learn more about the connection between implicit bias and “fit” and the first hand experiences of racialized lawyers from across Canada:

- [Articling Interviews Are Fast Approaching: Time to Re-think the Meaning of “Fit”](#)
- [In Their Shoes: Stories of Systemic Racism from the Legal Profession](#)
- Thoroughly define the requirements of the position and the skills and qualifications you are looking for in writing in advance. These requirements should be rationally connected and necessary to performing the work. Craft interview questions that allow you to assess each candidate based on these specific criteria.
- Ensure everyone involved in conducting interviews prepares so that they understand what discriminatory practices in hiring are. See the Manitoba Human Rights Commission Guidelines for [Human Rights Considerations in Hiring](#)
- If possible, have several people (or a minimum of two) of varying ages, genders and racial/ethnic/cultural backgrounds conduct the interviews as this will automatically bring diverse perspectives to the process.
- Only ask questions that are logically related to the **essential** requirements of the job.
- Use a structured interview process in which you ask all candidates the **same questions**, which are geared to assessing their ability to meet the specific articling requirements. It’s appropriate to ask candidate-specific follow up questions.
- Provide all the candidates with a clear and consistent description of the job requirements and the skills and qualifications you are looking for, so they can discuss their relevant skills and experiences and their ability to perform the job.
- Take written notes during interviews. This helps you make objective hiring decisions and provides a record of why a candidate was or was not selected.
- The duty to accommodate applies during the interview process. If a candidate discusses their disability in an interview and requests accommodation, you may make inquiries about the nature of the accommodation that is required, but not about the disability. Your questions should be limited to the candidate’s ability to perform the essential duties of the job.

- When considering a candidate's merit, include an assessment of non-academic interests such as volunteer community experience, ability to manage diverse demands, leadership capacities and general life experience. These criteria help to reduce reliance on grades alone, which tends to favour students who can spend more time on academic pursuits because of their financial position or family situation.
- Use gender neutral and respectful language in interviews and treat each candidate fairly and respectfully.
- Do not make jokes based on race, sex, or that reference any other characteristics protected under the *Code of Professional Conduct* and *The Manitoba Human Rights Code*. Even if seemingly innocuous or not intended to offend, they can be discriminatory.
- Do not make comments or observations on a candidate's appearance, age, perceived race, ethnic or cultural background, gender identity, sexuality or any other characteristics protected under *The Manitoba Human Rights Code* and the *Code of Professional Conduct*.
- Keep in mind that cultural traditions can cause candidates to have different styles. Some individuals may consider it rude to establish direct or prolonged eye contact with an authority figure, such as a job interviewer. Others may value humility and feel uncomfortable talking about themselves or may pause and think rather than answering questions right away.
- After interviews have taken place and a candidate has been selected, keep all application forms and resumes on file for a reasonable length of time.

For More Information

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