

COMMENTARY

The Law Society of Manitoba's Equity Ombudsperson Program

BRENLEE CARRINGTON TREPEL*

As it marks its first decade, the Law Society of Manitoba's Equity Ombudsperson program continues to play a unique role for Manitoba's legal profession. Since its inception, the office has received more than 5000 contacts from lawyers, articling students, law students, support staff and clients of the legal profession.¹

I. A DESCRIPTION OF THE PROGRAM

The Equity Ombudsperson began as a pilot project of the Law Society of Manitoba in November of 2001. It became a permanent program in 2003. The Equity Ombudsperson provides confidential and neutral assistance to lawyers, support staff working for legal employers, articling students, law students and clients who have concerns about discrimination, harassment or accommodation. I cannot reveal to anyone, including the Law Society, the identity of those who contact me about a complaint or the identity of those about whom complaints are made. My only reporting to the Law Society is of a general statistical nature in setting out the number and type of calls received.

The goal of the Equity Ombudsperson is to resolve problems and to prevent them where possible. In doing so, I maintain a neutral position and do not provide legal advice. I can tell complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Commission; commencing a civil action, or having me attempt to resolve the issue informally or mediate a discrimination or harassment dispute.

* Equity Ombudsperson, The Law Society of Manitoba; Sessional Instructor, Faculty of Law, University of Manitoba; Lawyer and Mediator.

¹ Brenlee Carrington Trepel, *Annual Report of the Equity Ombudsperson*, (Winnipeg: The Law Society of Manitoba, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010). 2004-2009 online: <<http://www.lawsociety.mb.ca/equity/equity-ombudsperson/annual-reports>>

The Equity Ombudsperson is also available to consult with and assist any private or public law office wanting to raise staff awareness about the importance of a respectful workplace environment. I am available to assist law firms in developing office policies on parental leave, alternative work schedules, harassment and discrimination, accommodation and a respectful workplace. I can provide educational seminars for members of firms, I am available for personal speaking engagements and informal meetings, or I can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge.

The Equity Ombudsperson program has been a growing trend among Canadian law societies since 1995. Currently the Law Societies of Manitoba, British Columbia, Alberta, Ontario and Saskatchewan have Equity Ombuds. The Nova Scotia Barristers' Society has a staff Equity Officer who fulfills a similar role.

The Law Society of Manitoba's Equity Ombudsperson is the fourth-oldest program of its kind in Canada. Of my cross-Canada counterparts, I am the second longest-serving person in the role. Anne Bhanu Chopra, LSBC's Equity Ombudsperson, has been in her role since 2000, while I started the office in Manitoba in November of 2001. Cynthia Petersen, Discrimination and Harassment Counsel for the Law Society of Upper Canada is the third-longest-serving in Canada after having taken her position in 2003. The Law Society of British Columbia established the first Discrimination Ombudsperson program (now called Equity Ombudsperson program) in 1995.² In 1997, The Law Society of Alberta opened its Equity Ombudsperson program.³ The Law Society of Upper Canada established the Office of Discrimination and Harassment Counsel in 1999.⁴

The Equity Ombudsperson program continues to be well-used. In addition to specific issues being raised, there have been numerous inquiries about respectful workplace policies and initiatives. The service continues to be accessed by both men and women, although more women use the program. In 2009 and 2010, the service recorded its highest number of contacts with more than 900 in each of the last two years.⁵

² "New Equity Ombudsperson initiatives", *Benchers' Bulletin* 2007:4 (October) online: Law Society of BC website <<http://www.lawsociety.bc.ca/page.cfm?cid=682&t=New-Equity-Ombudsperson-initiatives>>.

³ Jocelyn Frazer, "A Neutral Corner : Education Key to Resolving Problems", *The Advisory* 8:2 (April 2010) online: Law Society of Alberta website <http://www.lawsociety.ab.ca/advisory_2010/advisory_volume_8_issue_2_Apr2010/practice/neutralcorner.aspx>.

⁴ "DHC - About DHC" online: Discrimination and Harassment Counsel <<http://www.dhcounsel.on.ca/aboutus.html>>

⁵ *Supra* note 1, 2009, 2010.

II. PARENTAL SUPPORT PROGRAM

In October 1, 2008, the Law Society of Manitoba, through the Equity Ombudsperson, introduced the Parental Support Program. The program is the first of its kind to be implemented by any Canadian law society, while other law societies are setting up similar programs. The Equity Ombudsperson began to provide coaching sessions to lawyers and their spouses or life partners to help them plan for maternity and parental leave and how to meet the challenges of becoming new parents.

Six in-person sessions are offered that focus on issues such as how to discuss leave options and transition issues with the lawyer's firm, how to deal with the new dynamics of having a family, and how to successfully re-integrate into practice while juggling career and home life. Sessions are free, completely confidential and supported by the additional resources of Blue Cross Manitoba. Both the Law Society of Upper Canada and the Nova Scotia Barristers' Society have consulted with me about the implementation of a similar program in their jurisdictions.

III. THE *CODE OF PROFESSIONAL CONDUCT* MANDATES RESPECTFUL WORKPLACES

The Law Society of Manitoba's *Code of Professional Conduct* has rules which place a positive duty upon lawyers to treat others in the workplace with respect and dignity. The Equity Ombudsperson brochure, available at the Law Society of Manitoba website at www.lawsociety.mb.ca, has been a key educational tool for the program. The following is an excerpt from the brochure:

The Law Society of Manitoba supports the full participation of men and women in the legal profession regardless of age, disability, race, religion, marital or family status or sexual orientation. The Society also acknowledges the diversity of the community of Manitoba and expects lawyers to respect the dignity and worth of all persons and to treat all persons equally. Discrimination and harassment are against the law and are prohibited by the Code of Professional Conduct for lawyers.

A. What is discrimination?

Discrimination in the workplace involves unwelcome comments or actions that relate to an individual's race, colour, ancestry, nationality or ethnic background or origin, political belief, religion, marital or family status, physical or mental disability, age, sex or sexual orientation. It is an act or omission which effectively denies an individual or group benefits or opportunities available to others because of a distinction relating to their personal attributes.

B. What is harassment?

Harassment means abusive and unwelcome comments or conduct and applies to a range of behaviour, including comments or conduct made on the basis of an individual's ancestry, colour, race, nationality, religion, age, sex, gender, sexual orientation, marital or family status or physical or mental disability. Sexual harassment means one of a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature.

C. What is the impact of discrimination and harassment?

Most employers know that a happy work environment is necessary for a productive and efficient workplace. Employees who are being discriminated against or harassed may suffer from stress, depression and other illnesses that either keep them away from work or reduce their well-being and productivity. If it is an ongoing problem, discrimination and harassment can affect morale, cause a decrease in the firm's productivity and lead to high staff turn-over. Working relationships can break down, work quality may drop, a firm may become a party in unwanted litigation and lawyers may have to respond to complaints about their conduct. Freeing the workplace from discrimination and harassment is essential for an effective and healthy work environment.⁶

Rule 5.03 of the Law Society of Manitoba *Code of Professional Conduct*⁷ prohibits harassment and discrimination. The rule states that "a lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws including the *Human Rights Code*, CCSM c H175." Sexual harassment, harassment in general and discrimination are all prohibited. Specific examples of behaviours are then listed in the *Code*. These include jokes of a racist, sexist, ageist, etc. nature and unwelcome invitations or requests, particularly based on intimidation. Discrimination includes setting unnecessary hiring criteria that effectively exclude some job applicants on prohibited grounds (e.g. requiring a driver's license could exclude persons with disabilities that prevent them from obtaining a licence) and failing to provide reasonable maternity and parental leave.⁸

⁶ Marilyn Billinkoff & Brenlee Carrington Trepel, *Equity Ombudsperson Brochure*, (Winnipeg: The Law Society of Manitoba, 2002).

⁷ The Law Society of Manitoba, *Code of Professional Conduct*, Winnipeg: Law Society of Manitoba, 2011, p 87.

⁸ *Ibid.*

IV. LAW SOCIETY OF MANITOBA EQUITY INITIATIVES

My Equity Ombuds-counterparts and I frequently hear about articling interview questions which violate human rights laws. The Law Society of Manitoba has a number of model equity policies on the website including one entitled *Best Practices for Employment Interviews*.⁹ This document provides helpful guidelines for conducting legal employment interviews. One example of a prohibited question that has been asked of articling students across the country is: "Are you married and do you plan to have children?"¹⁰

Another prospective articling student was asked whether the fact that she had a child would interfere with her ability to do the job and work long hours. A male student characterized his articling interview experience as classic age discrimination. During an interview at a law firm, he was told: "We don't hire people over the age of 35 for our articling program. It's not good business."¹¹ I've also had calls from female lawyers who have been told that if they want to have children, they should find another job. This kind of comment, devastating for the lawyer at whom it's targeted, is also against the law.

Implementing equity initiatives is good for business. Being known as a respectful and inclusive employer is an effective way to attract top staff and clients. Offices which have a reputation for valuing diversity, implementing equity initiatives and caring about their staff are considered desirable places for employees to work and desirable places for clients to place their faith and spend their money.¹²

V. LAW FIRMS EMBRACE EQUITY INITIATIVES

Stikeman Elliott was recently named 2011 Canadian Law Firm of the Year by the *International Financial Law Review*. On its website, the firm advertises that:

Stikeman Elliot is committed to diversity amongst its lawyers, students, and staff to ensure that all firm members are supported, valued, respected. In his address about the firm's defining principles at our 50th Anniversary Retreat, Dick Pound encouraged us to: "Never lose sight of the need for diversity among us. We will need the broadest range of talents and backgrounds as we face a national and international future. Embrace and seek out differences; do not reject them."¹³

⁹ *Best Practices for Employment Interviews* (Winnipeg: The Law Society of Manitoba, 2003) online: <http://www.lawsociety.mb.ca/equity/Best_Practices_for_Employment_Interviews.pdf/view>

¹⁰ Brenlee Carrington Trepel, *Workplace Human Rights Violations: Communiqué*, (Winnipeg: The Law Society of Manitoba, May 2009).

¹¹ Brenlee Carrington Trepel, "Canada's Legal Profession Still Striving for Equality", *The Lawyers Weekly*, 26:24 (October 27, 2006).

¹² *Ibid.*

¹³ "Stikeman Elliott - Careers (Ottawa Students)" online: Stikeman Elliott <<http://www>.

Stikeman Elliott's website goes on to state that "ensuring a diverse work environment at Stikeman Elliott has advanced our culture and overall business objectives and success in several ways. By seeking to attract and retain individuals from all of Canada's diverse communities, we ensure that our people are the best and the brightest that Canada has to offer."¹⁴ The Law Society of Manitoba website also has model policies for law offices on accommodation, maternity and parental leave, respectful workplaces, and alternative work schedules.

When I started as Equity Ombudsperson, I approached the Law Society of Manitoba and the Manitoba Bar Association's Constitutional/Human Rights Law Subsection about co-sponsoring a Continuing Professional Development program on the Duty to Accommodate. We have run this educational equity initiative almost every year since and attendance continues to grow, as does this area of human rights law.

I also recommended the creation of a boundaries program for the Law Society of Manitoba. The boundaries program is a means of helping lawyers to avoid future charges of harassment against them. I connected the Law Society of Manitoba with the individuals administering a similar program for the medical profession and now the Law Society of Manitoba has the first such program of its kind in Canada for the legal profession. This is another positive equity initiative being used to assist lawyers in this province.

Provincial Equity Ombuds and Law Society Equity staff regularly consult through the Law Society Equity Network so that equity experts from across Canada will be aware of one another's initiatives and can brainstorm new ones.

VI. NEW JUSTICIA PROJECT FOR MANITOBA

One of the most exciting new equity initiatives is the National Justicia Project implementation committee. Law Society of Manitoba Deputy CEO Marilyn Billinkoff and I are both members of this committee. This very worthwhile project originated in the United States and was brought to Canada by the Law Society of Upper Canada. Law Societies across the country want to adopt the idea in their jurisdictions. I will help lead implementation of this initiative to retain women lawyers in Manitoba. The Justicia Project is designed to help law firms identify and adopt principles and best practices to promote the retention and advancement of women in private practice. Earlier this year, the Benchers of the Law Society of Manitoba approved in principle a resolution to implement the Justicia project here in Manitoba.

stikeman.com/cps/rde/xchg/se-en/hs.xsl/2963.htm

¹⁴ "Stikeman Elliott - Diversity" online: Stikeman Elliott <<http://www.stikeman.com/cps/rde/xchg/se-en/hs.xsl/12244.htm>>.

According to the Law Society of Upper Canada's website, more than 57 law firms across Ontario and one large firm outside the province have pledged their support to the project. It is the first project of its kind in Canada, and includes representatives from medium and large firms committed to identifying and adopting principles and best practices that promote the retention and advancement of women.

Each of the participating Ontario firms has signed written commitments to achieve ambitious goals in four core areas: tracking gender demographics, flexible work arrangements, networking and business development and mentoring and leadership skills development for women.¹⁵

The creation of the Justicia Project resulted from a cross-Canada trend concerning women in the legal profession. While law schools feature female students in numbers equal to or even greater than male students, most provinces report a "disproportionate loss of women at the senior associate level and significantly fewer women than men as partners."¹⁶

LSUC Justicia Working Group Co-Chair Thomas Conway stated: "From a business perspective, law firms' ability to compete for clients and the best talent is critical. Clients today expect law firms not only to be committed to equality, but also to actively promote diversity in the workplace."¹⁷

Marilyn Billinkoff, Deputy CEO of the Law Society of Manitoba, stressed the importance of implementing the Justicia Project here in Manitoba

...because women lawyers are leaving private practice in Manitoba in record numbers and using their law degrees and legal skills to work in government, corporate and other business settings. This exacerbates the difficulties many members of the public are already experiencing in accessing legal services, particularly in smaller Manitoba centres where "baby boomers" are starting to retire and there are no young lawyers interested in taking over their practices. The Law Society is also hoping that tackling the problem of retaining and advancing of women will lead to the advancement and retention of men and women from under-represented communities.¹⁸

The Justicia Project has unlimited possibilities for success here in Manitoba and across Canada's legal profession, just as it is currently enjoying in Ontario.

¹⁵ "Justicia Project" online: Law Society of Upper Canada <http://www.lsuc.on.ca/justicia_project/>

¹⁶ Retention of Women in Law Task Force, *The Business Case For Retaining and Advancing Women Lawyers in Private Practice* (Vancouver: The Law Society of British Columbia, July 2009) at 4, online: <<http://www.lawsociety.bc.ca/docs/publications/reports/Retaining-women-business-case.pdf>>.

¹⁷ Law Society of Upper Canada, News Release, "Law Society launches cutting-edge think tank to retain and advance women in legal profession" (14 October 2008) online: <http://www.lsuc.on.ca/media/oct1408_justicia_think_tank.pdf>.

¹⁸ E-mail from Marilyn Billinkoff, July 12, 2011.

All the files which the Equity Ombudsperson office handles require a great deal of time, effort and sensitivity. The Equity Ombudsperson was honoured to receive an Honourable Mention in 2010 from LEAF National as one of a total of 25 women lawyers from across Canada who have made a positive difference through the law through mentorship, their legal practice or the advancement of women's equality. In 2007, the Manitoba Bar Association awarded the Equity Ombudsperson with an equality award for helping to promote equality within the legal profession. The Law Society of Manitoba website now features links to many of the Equity Ombudsperson's articles, which is another effective communication and education tool.

Thanks are extended to Law Society of Manitoba's CEO Allan Fineblit and the Law Society of Manitoba for their support of this service and in particular to Deputy CEO Marilyn Billinkoff for all of her assistance and wise counsel. Thanks as well to the Equity Committee for its hard work.

Simply by establishing and maintaining the Equity Ombudsperson program, the Law Society of Manitoba is sending a positive reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensuring a thriving legal profession for the future.

If you have any questions or concerns about respectful workplaces, just call the Equity Ombudsperson at 942-2002 or toll free at 1-866-771-2002. Or e-mail me at <brenleecarrington@shaw.ca>. If you would like to take part in the parental leave support program, please contact me. If you have accommodation issues, or any concerns relating to discrimination or harassment, I can help with those as well. If you would like to implement any equity policies or initiatives, I am happy to consult with you. I am also available to do free training at your office. All communication is strictly confidential and all services are provided free of charge.