



Touchstone Info-Égalité



February/Février 2000

CBA's Standing Committee on Equality/Comité permanent sur l'égalité de l'ABC

Racial Equality Resolution

By P.A. Neena Gupta,
Goodman and Carr

At the Mid-Winter Meeting of February 1994, the CBA Council approved a resolution to conduct a full inquiry into racism in the legal profession. The CBA established and funded the Working Group on Racial Equality in the Legal Profession. Five years later, the CBA was presented with the long-awaited results of countless consultations and hours of research. The report of the working group, titled *Racial Equality in the Legal Profession*, can be viewed on the CBA Website (www.cba.org) under the heading "Publications."

The report contains numerous recommendations with respect to racism in the legal profession, including:

- the role of the CBA in combatting racism,
- barriers to admission into law school,
- the law school experience,
- the recruiting process,
- articling,
- racism in the legal profession,
- racism in the justice system, and
- the aboriginal legal experience.

The report was accompanied by an extensive analysis written by Joanne St. Lewis, one of the two Co-Chairs of the working group, as well as a very useful bibliography on critical race theory.

At the 1999 Annual Conference in Edmonton, members of CBA Council debated the recommendations involving the CBA. The balance of the recommendations were tabled to the Brandon 2000 Mid-Winter Meeting. A number of important recommendations were passed, including one calling for the

recruitment and hiring of a full-time equity advisor at CBA's national headquarters to help coordinate the organization's and the legal profession's efforts in combatting discrimination. The CBA also committed to an annual symposium on issues affecting the profession's ability to represent the needs of members of minority communities. The debate itself was a tremendously moving experience. Members of large and established firms openly acknowledged that the profession needed to deal with the problems facing minorities in the legal profession and committed to supporting the CBA's efforts.

The other recommendations, including those involving the practice of law and the legal profession, will be debated at the Mid-Winter Meeting on February 18 to 20, 2000. This will be an important debate. You can attend Brandon and vote if you are a member of CBA National Council. Even if you are not an elected member of Council, contact your provincial Executive Director regarding the possibility of being appointed an alternate delegate. Alternate delegates have the same rights and privileges as CBA Council members. All elected members of provincial councils are automatically National Council members.

The report confirms that members of minority communities face significant barriers against their full participation in the legal community. The report's introduction summarizes it best:

"...[W]e must acknowledge that systemic racism is still widespread within our profession and that individuals still experience racism.... Although individuals bear the burden of racial discrimination, everyone loses when discrimination is

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Les recommandations sur l'égalité raciale

Lors de son Assemblée de la mi-hiver en février 1994, l'Association du Barreau canadien avait résolu de mener une enquête exhaustive sur le racisme au sein de la profession juridique. Cinq années plus tard, le Groupe de travail sur l'égalité raciale avait rempli son mandat et remettait son rapport final intitulé *Le défi de l'égalité raciale : mettre les principes en application*.

Ce rapport, que les internautes peuvent consulter sur le site Web de l'ABC (www.cba.org) sous le titre **Publications**, contient de nombreuses recommandations visant à éliminer le racisme à tous les niveaux de la profession juridique – facultés de droit, stages, cabinets juridiques, l'appareil judiciaire, etc. Une analyse en profondeur signée par la coprésidente du Groupe de travail, Joanne St. Lewis, accompagne le rapport.

Le débat sur les recommandations a démarré au Congrès annuel de l'Association, à Edmonton, au mois d'août 1999, et se poursuivra à l'Assemblée de mi-hiver, qui a lieu à Brandon en février 2000. Des recommandations importantes ont été adoptées y compris le recrutement d'un conseiller ou d'une conseillère en matière d'égalité au bureau national de l'ABC, et l'organisation d'un symposium annuel sur les questions liées à l'aptitude de l'Association à bien représenter les communautés racialisées.

D'importantes recommandations portant sur la pratique du droit seront abordées à Brandon du 18 au 20 février 2000. Vous pouvez y assister à titre de membre votant si vous siégez au Conseil national de l'ABC, ou si vous êtes nommé délégué substitut. Les délégués substitués ont les mêmes droits et privilèges que les membres du Conseil.

Nous vous lançons un défi. Lisez ce rapport. Pensez-y. Parlez-en à vos collègues. Songez à ce que vous pouvez faire pour mettre fin à la discrimination raciale. Tenez les individus responsables des systèmes dans lesquels ils et elles travaillent. Communiquez avec votre barreau ou avec la direction de l'ABC pour exprimer votre appui au rapport. Ayez le courage de changer le monde.

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Message from the Chair: There's a Change in the Air

By Priti Shah
Praxis Conflict Consulting



I can vividly remember feeling exhausted, demoralized and frustrated at the Mid-Winter Meeting in Jasper Alberta, in February 1994, as CBA Council members debated the resolutions arising from the Touchstone's Report on Gender Equality in the Legal Profession. Often, the struggle for equality truly feels like you are beating your head against a brick wall, but in Jasper, there was no pill to cure the ache I was suffering.

Fast forward to August 1999. The CBA Annual Conference in Edmonton marked the first debate around the recommendations stemming from the Report on Racial Equality. In Edmonton, there was a marked change in the air! Although there was still healthy debate, it focused on improving the recommendations, rather than on whether or not racism exists and whether or not the CBA should be addressing it. Despite the fact that some supported the first block of recommendations for purely political reasons, there was consensus in the room that the CBA needs to move forward to promote equality amongst its membership.

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Message de la présidente

Je me souviens vivement de février 1994. J'étais fatiguée, démoralisée, frustrée alors que les membres du Conseil de l'ABC faisaient le débat sur les recommandations du rapport *Les assises* sur l'égalité des sexes au sein de la profession juridique. Dans la lutte pour l'égalité, on frappe souvent des murs.

Cinq années plus tard, en août 1999, lors des premiers échanges sur les recommandations du Groupe sur l'égalité raciale, quelque chose avait changé. Le débat restait vif, mais il visait à améliorer les recommandations et non à remettre en question l'existence du racisme ou l'opportunité pour l'ABC de s'y attaquer. En dépit d'appuis purement politiques au premier bloc de résolutions, un consensus se dégageait en faveur d'une promotion de l'égalité.

Les réalisations des comités national, provinciaux et territoriaux sur l'égalité témoignent de notre persévérance et de notre progrès. Les réussites sont nombreuses. En voici quelques exemples :

- la très grande popularité du programme de FJP du Comité permanent sur l'égalité au Congrès annuel d'Edmonton;

The achievements of the National and Branch Equality Committees are evidence of both perseverance and progress. Successes across Canada include:

- The Standing Committee on Equality hosted its sixth annual CLE in Edmonton and the program was tied for the top overall rating during the conference.
- The Chair of the Standing Committee on Equality now sits on the CBA Board of Directors as well as on the Nominating Committee.
- The Chair of the B.C. Equality Committee now sits on the B.C. Branch Executive. We are awaiting for other Branches to follow this lead.
- Manitoba and Quebec presented an Equality Award to a member who has advanced the fight for equality.
- Nova Scotia recently presented its Frances Fish Women Lawyers' Achievement Awards to Anne Derrick and Dawn Russell.
- Quebec hosted in November a Women Pioneers Dinner, recognizing not only the contributions of women lawyers and judges in the province,

- la présence de la présidente du Comité permanent sur l'égalité au Bureau d'administration et au Comité des candidatures de l'ABC;
- la présentation de prix de l'égalité à des membres méritants par les divisions du Québec et du Manitoba;
- l'organisation d'un dîner des pionnières par la division québécoise, en hommage aux femmes avocates, notaires et juges qui ont innové dans leur secteur; et
- l'inclusion de clauses égalitaires dans tous les comités et plans d'action du barreau ontarien pour l'an 2000.

Ces réalisations sont importantes et elles doivent se poursuivre. L'ABC doit dorénavant intégrer le concept d'égalité dans ses campagnes de relations publiques, de communications et de recrutement. De plus, les engagements de l'ABC en matière d'égalité doivent s'appuyer sur des ressources humaines et financières suffisantes. Le Comité permanent sur l'égalité ne devrait pas avoir à faire des collectes de fond; son rôle est de mettre en oeuvre une politique très importante de l'ABC.

Mais j'ai le sourire, parce qu'il y a du changement dans l'air.

but also others who have broken new ground in their respective fields.

- The Law Society of Upper Canada has integrated equality considerations into every committee and department action plan for 2000.
- The British Columbia Branch has adopted and implemented a Member Accommodation Policy which states: "CBA-B.C. is committed to the principle that its members are collectively and individually entitled to full participation in the affairs of the organization and to the full realization of the benefits of membership. To that end, CBA-B.C. will accommodate and support its members who are disabled, subject to the provision of reasonable notice, and will give priority to the elimination of barriers encountered by its members who are disabled. CBA-B.C. recognizes that disability should not prevent a member's full participation in the organization, and recognizes its responsibility to advocate for the accommodation of its members who are disabled in all aspects of their professional lives."

These are significant accomplishments and must continue. The next step requires the CBA to mainstream equality by integrating the concept into its public relations, communications and membership campaigns. And of course, the CBA's commitment to eradicate inequality must be paired with a commitment of adequate human and financial resources. The role of the Standing Committee on Equality should not be to raise funds but to implement very important CBA policy.

In the meantime, my headache has left and there is a smile on my face, because there is indeed a change in the air.



Debate of Racial Equality Recommendations Continues

Thirteen of 61 recommendations on racial equality were approved by Council at the Annual Meeting in August 1999. Debate on the remaining 48 recommendations – dealing with law schools, law practice, courts, Aboriginal peoples and access to justice – will continue in Brandon, at the Mid-Winter Meeting.

The CBA Mid-Winter Meeting takes place from February 18-20, 2000. For registration information, please contact the CBA Meetings Department at 1 800 267-8860.

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Mark your calendars!

The date has now been set for the Meeting of the Standing Committee on Equality and the Branch Equality Representatives:

Friday, February 18, 2000
3:00 - 5:00 p.m.
Royal Oak Inn
Brandon, Manitoba

This meeting will be held in conjunction with the 2000 CBA Mid-Winter Meeting, which takes place from February 18-20, 2000. For more information on the CBA Mid-Winter Meeting, please contact the CBA Meetings Department at: 1-800-267-8860.

Changing the *Canadian Human Rights Act*

By Richard Ellis
The Canadian Bar Association

A working group of the Canadian Bar Association has recommended changes to the *Canadian Human Rights Act*. These proposals were made December 1, 1999 to a panel established by the federal government in April 1999 to review the Act. The panel, chaired by former Supreme Court of Canada Justice Gerard La Forest, is required to report to the government with its suggestions by April 2000.

The working group was chaired by David Matas and included representatives from across the country from various CBA National groups, including Administrative Law, Constitutional and Human Rights Law, Immigration Law, Labour and Employment Law, the Standing Committee on Equality, and the Sexual Orientation and Gender Identity Conference. The Labour and Employment Law Section dissented from several of the proposals.

The submission identified serious problems in the processing of human rights complaints. Of particular concern is significant delays in the process.

Currently, the Commission decides whether a complaint goes to a hearing. The working group recommended that this power be eliminated. If the Commission decides it does not wish to be involved, then complainants should be free to pursue the complaint before the Tribunal using their own resources and be subject to potential cost awards. Voluntary mediation should also be part of the human rights process.

In cases of systemic discrimination, the Commission should have more control and a broader investigatory role. The Commission would have the power to engage in a wide-ranging investigation of an organization. If this revealed systemic discrimination, the Commission should be able to choose among various litigious and non-litigious options to rectify the problem.

The submission also recommended that:

1. the Act include gender identity, language and social condition,
2. jurisdiction contained in various statutes regarding hate speech be consolidated under the Act, and
3. the Act cover hate speech on the Internet.

On the immigration front, the group recommended that persons outside the country should be able to file complaints concerning discriminatory treatment by Canadian government officials. The phrase "services customarily available to the public" in s. 5 should include government services such as immigration.

The submission also dealt with remedies. The Tribunal should have the power to interpret and apply the Charter, including the power to treat legislation as having no force and effect. This would make the Tribunal's power more consistent with the authority of other federal tribunals. The Tribunal should continue to have the ability to award cease-and-desist orders and damages. The cap on mental distress damages and the current prohibition on the Tribunal awarding employment equity plans should be removed. The Commission should be empowered to award costs in exceptional circumstances, which would include claims or defences found to be frivolous.

To order a copy of the submission, please contact Nickie Cassidy at (613) 237-2925 (1-800-267-8860) or email: nickiec@cba.org.

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Modifications à la *Loi canadienne sur les droits de la personne*

Un groupe de travail de l'Association du Barreau canadien a recommandé d'apporter des modifications à la *Loi canadienne sur les droits de la personne*. Ces propositions ont été adressées, le 1^{er} décembre 1999, à un comité formé en avril 1999 par le gouvernement fédéral et chargé de réviser la *Loi* d'ici le mois d'avril 2000.

Dans le mémoire, nous soulevons de graves problèmes inhérents au traitement des plaintes relatives aux droits de la personne, et plus particulièrement, la question des retards importants qui entachent la procédure. À l'heure actuelle, c'est la Commission qui décide s'il est opportun de renvoyer la plainte pour audition devant le Tribunal. Le groupe de travail a recommandé de supprimer ce pouvoir. Si la Commission décide de ne pas intervenir, les plaignant(e)s auront toujours la liberté de poursuivre la plainte devant le Tribunal, à leurs propres frais.

Pour commander un exemplaire du mémoire, veuillez communiquer avec Nickie Cassidy, au (613) 237-2925 (1-800-267-8860) ou par courriel à : nickiec@cba.org

Harassment in The Workplace: *A Mock Investigation*

By Marthanne Robson
*Sexual Harassment Intervention Office,
University of Montreal*

It is trite to say that employers have an obligation to ensure the work environment is free from sexual harassment. All employers should have a policy in place. But when there is a complaint, what do you do?

Much of the jurisprudence relating to sexual harassment arises out of the quality of the investigation. The CLE program presented at the CBA Annual Meeting in Edmonton last August by the Standing Committee on Equality demonstrated some of the theoretical and practical aspects of a harassment investigation.

Andrew Finlay, a member of the Scotiabank's General Counsel Department (Employment Law Group), began by summarizing some of the key aspects of prevention, reaction and resolution of sexual harassment complaints in the workplace.

The fundamental rules of an investigation include fairness, respect for the parties and quick resolution. Investigators must be neutral and objective, whether they are internal or external. The need for disclosure (fairness) must be balanced with discretion and confidentiality. But above all, timeliness of the investigation is of the utmost importance.

Moderator Neena Gupta, of Goodman and Carr in Toronto, Vice-Chair of the Standing Committee, put together a complex but realistic case involving allegations of verbal harassment, including homophobic epithets, a poisoned work environment, sexual assault and sexual harassment.

Doug Elliott, of Elliott & Kim, played the complainant, a pharmaceutical salesperson, who, recently diagnosed with AIDS, sells his own business and joins another firm. Doug alleges that the National Sales Director, Sean (played by Sean Dunnigan, of Field Atkinson & Perraton) "picks on him," calling him terms such as "pretty boy" and makes Doug the brunt of jokes with sexual innuendo. Doug also complains that the sales team socializes mainly through sport- and drinking-related activities, in which he does not care to participate.

Doug alleges that back at the hotel, following an after-work drinking party at a strip bar, Sean

grabbed him by the belt, pinched his butt and propositioned him. Sean has no recollection of the event. He denies that he has harassed Doug, adding that Doug is "overly sensitive."

The cast of characters is completed by Garth (played by Garth Smorang, of Deeley Fabbri & Sellen) and Priti Shah, of Praxis Consulting. Garth reports to Sean and they are good buddies. He is a witness to and the source of some of the jokes directed at Doug. He resents Doug joining the sales team. Priti has left the firm, but had been reluctantly recruited by Sean as a witness. She also had been called nicknames by Sean and heard him refer to Doug as "pretty boy." She says that Doug's personality and style did not fit in with the hard-drinking, "boys' club" culture of the sales team.

The investigator, played by Marthanne Robson, of the University of Montreal, interviewed the complainant, the alleged harasser, the hostile and reluctant witnesses in turn. Through the process, she demonstrated some of the practical aspects of the investigation, such as:

- explaining the investigator's role (objective and neutral as between parties and management, conducting fact-finding, making recommendations for discipline and systemic issues),
- explaining the process (recorded interview, signed statement, confidentiality, time frame, deciding who will be interviewed, keeping parties and management advised),
- maintaining neutrality and professionalism (not "siding" with a party),
- existence of a corporate policy, and the dangers of having a policy no one knows about,
- managing expectations (complainant wanting alleged harasser fired now),
- explaining the allegations to the alleged harasser (duty of fairness),
- dealing with anger and hostility (both the alleged harasser and the witnesses),
- dealing with a reluctant witness, and
- dealing with a hostile witness.

Workshop participants found the practical demonstration of interviews useful in bringing the theoretical and legal aspects to life.

Plans are in the works for creating an edited version of the workshop on video.

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Harcèlement en milieu de travail : une simulation

Peut-on affirmer que les employeurs ont l'obligation d'assurer un milieu de travail sans harcèlement sexuel? En principe, tous les employeurs interdisent le harcèlement sexuel mais quand une plainte survient, que fait-on?

Souvent, la jurisprudence en matière de harcèlement sexuel dépend de la qualité de l'enquête. Le programme de FJP présenté au Congrès annuel de l'ABC en 1998 par le Comité permanent sur l'égalité faisait ressortir certains aspects théoriques et pratiques de telles enquêtes.

Andrew Finlay, avocat en droit de l'emploi au contentieux de la Banque Scotia, a évoqué certains aspects importants de la prévention, de l'intervention et du processus de règlement des plaintes de harcèlement sexuel.

Selon lui, à la base, l'enquête doit être juste, rapide et respectueuse des parties. Les enquêteurs, internes ou externes, doivent faire montre de neutralité et d'objectivité. Il faut savoir équilibrer le besoin de divulgation avec le besoin de confidentialité, et conduire l'enquête au moment opportun.

L'animatrice et présidente du Comité, Neena Gupta, du cabinet Goodman et Carr, à Toronto, avait proposé de simuler une situation plausible formée d'allégations de harcèlement verbal, d'agression et de harcèlement sexuel (y compris des épithètes homophobes) dans un milieu de travail empoisonné.

Dans la simulation, un vendeur de produits pharmaceutiques atteint du SIDA s'est trouvé un nouvel emploi. Il allègue que son directeur des ventes lui dirige des blagues à caractère sexuel et l'appelle « joli garçon ». Il allègue de plus qu'après une sortie dans un bar d'effeuilleuses, le directeur lui a pincé les fesses et fait des avances. Ce dernier nie les allégations et ajoute que le vendeur est trop sensible. D'autres participant(e)s se sont joint(e)s à la simulation à titre de témoins et d'enquêteur.

À travers la procédure d'entrevue menée par l'enquêteur, la simulation permet de démontrer quelques côtés pratiques de l'enquête, y compris :

- le rôle de l'enquêteur;
- le processus d'enquête;
- la neutralité et le professionnalisme;
- la gestion des attentes;
- l'explication des allégations à l'auteur présumé du harcèlement;
- comment réagir à la colère et à l'hostilité;
- comment aborder un témoin récalcitrant; et
- comment aborder un témoin hostile.

Les participant(e)s ont trouvé la simulation fort utile, et une version abrégée pourrait être reproduite sous forme de vidéo.

1999 Touchstone Award



Kathy Louis and
Judge Douglas R. Campbell

Kathy Louis, Regional Vice-Chair of the National Parole Board (Pacific Division) in British Columbia, received the 1999 Award at the Touchstone reception, during the CBA Annual Meeting in Edmonton in August, 1999.

Presenting the award to Kathy, Mr. Justice Douglas R. Campbell of the Federal Court of Canada spoke of his high regard for Kathy and the importance of her teachings of the Aboriginal view both nationally and internationally, stating:

“This award commends Ms. Louis for her fundamentally important role in the groundbreaking public and professional education on equality issues that has emanated from British Columbia to the benefit of law and criminology students, police, defence lawyers, judges, federal and provincial prosecutors, parole board members, other justice system professionals, and community members, not only within British Columbia but across Canada. Most importantly, this education has resulted in tangible improvement in the delivery of justice by providing critical decision-makers with greater skill and ability to carry out their important functions in service to the public....

“Over the past ten years, various legal education vehicles...have developed and delivered programs on Aboriginal beliefs and values to help justice system professionals acquire the knowledge, understanding and sensitivity necessary to properly serve the needs of Aboriginal people in the arms of the law. As many of you know, an Aboriginal world view is distinct from others, and the problems faced by Aboriginal people, and the solutions to be found to these problems, are unique. In these experiences, Kathy has made a critically important contribution....

“The Aboriginal world view is that all things are interrelated – everything is a part of a single whole – and the primary objective every person should have is to maintain balance in all things. As a Cree woman, Kathy has explained and demonstrated from an Aboriginal perspective

that a truly fulfilled life comes from service to others, and to be of service to others, in the delivery of justice or in any other way, each of us must be whole as a person....

“Kathy has deeply affected many lives by her commitment to bring people together, to have them see others as they see themselves, to learn the deeper meaning of life, and by this, to have them experience equality. Kathy knows that the power of this experience changes personal, and thus, professional lives, only for the better. Kathy, for this contribution, we are truly grateful.”

In addition to her work with the National Parole Board, Kathy has volunteered for the B.C. Law Society Multi-Culturalism Committee and served on subcommittees of the Gender Equality Monitoring and Disability Advisory Committee. When accepting her award, she stated:

“I am humbled in receiving the Bertha Wilson Touchstone Award. My goal has always been to build bridges of communication between Aboriginal people and the various components of the mainstream criminal justice system, to help sensitize and make people aware of the Aboriginal worldview. It is holistic and a unique worldview, based on the belief that to be truly healthy and have inner peace as a person, the spiritual element of life is as important as the physical, mental and emotional elements. From this belief, and from the teachings that form the basis of our culture, [evolves] an approach that is both rich and effective.

Of specific importance is the fact that in the application of Aboriginal justice, healing is a primary value. This fact is in sharp contrast with the primary value of the existing system [based on] punishment. The appreciation of this difference is the key to understanding that the traditional Aboriginal justice is based on different cultural values than the mainstream system....

“The Aboriginal world view is real; it is neither

New Age nor a figment of someone’s imagination. The elders define world view in a holistic way where there is interconnectedness among all beings....

“We, who work within the mainstream system, need to take risks, challenge ourselves, face our fears and be open-minded about doing things differently. We also need to think differently. We need to move from the compartmentalized linear perspective typical of non-Aboriginal approaches to that of the intuitive rational reasoning, and be more aware of who we are and where we came from. We need to look at our own attitudes and values and consider the way we treat people. We need to feel from the heart and not just say the word of the teachings. Through our relationship with the Creator, our relationship with ourselves and others with whom we come into contact, each and every one of us can make a difference....

“For those of you who are trying to help bring about changes, I applaud you.”

The Bertha Wilson Touchstone Award is presented in recognition of, and to celebrate the accomplishments of, a woman who has excelled in promoting equality in Canada.

SOGIC Hero and Ally Awards Presented

Held in conjunction with the Touchstone Award, the Sexual Orientation and Gender Identity Conference of the CBA presented its first annual Hero and Ally Awards to commend excellence within the lesbian, gay, bisexual, transgendered and two-spirited (LGBT) communities and to recognize those who champion their causes within the legal profession at large.

The Hero Award was presented to Svend Robinson, Member of Parliament for Burnaby-Douglas, for his efforts in changing the laws of Canada and the perception of Canadians regarding gays and lesbians.

The SOGIC Ally Award was presented to Martha McCarthy, a partner in the Family Law Group at McMillan Binch in Toronto, for her determination and devoted advocacy.

Diversity Management and the Quest for Equality

By Sandra Jakab-Hancock

Diversity management strategies are increasingly being adopted by Canadian businesses that want to create a long-term, sustainable, competitive edge in our challenging business environment. Canadian law firms and other legal employers are also expressing interest in diversity management.

How do diversity management strategies fit in with the ongoing quest for social and legal equality in Canadian society? How do these strategies fit in with recommendations that have been made to the legal profession by the CBA and various provincial law societies?

Diversity management strategies have both grown out of and stand separate from legal and public policy initiatives for equality. Properly implemented, they achieve the employment equity objectives of bringing about the passage of legislation and recommending change in the legal profession. Properly implemented, they go well beyond achieving legislative objectives by addressing both employment relationship and customer service issues.

What is diversity management?

Diversity management is about creating workforces that are diverse and understand diversity so that businesses can compete over the long term by maximizing the potential of every employee and developing services and products that meet the needs of a diverse market.

“Diversity” refers to all the differences we each bring with us into the world. “Diversity” is about people with disabilities and able-bodied people. It is about racialized people and non-racialized people. It is about gays, lesbians, bi-sexuals, transgendered people and heterosexuals. It is about people older than 65 and younger than 25, and all those in between. It is about people who are living in poverty, people who are materially privileged, and all those “middle-income” people in between. It is about the literate and the illiterate; those with high education levels and those without. It is about people who adhere to principles of spirituality and those who do not. In short, it is about people.

Diversity management is not designed to redress past or present injustices. It is more than employment equity or affirmative action. It is about maximizing the understanding, abilities and motivation levels of the people who work for an organization. It is also about delivering high-quality, diversity-aware services and designing high-quality, diversity-aware products for the

people whom an organization serves.

Organizational change experts emphasize the need to capitalize on intellectual assets to achieve long-term, sustainable growth. Loosely translated, this means that while it is important (indeed, it is a given) to keep up with technological innovations that contribute to workplace efficiency, organizations with environments that maximize the knowledge, skills and motivation levels of their people will distinguish themselves in the marketplace.

Technology is easily duplicated and transferred across borders. It is not a reliable foundation upon which to build long-term sustainable growth. Maximum utilization of human resources is a reliable foundation upon which to build. There is nothing new about the proposition that maximizing people’s talents is the key to success. What is new is the realization that a diverse local

and global customer base can be better served by organizations that understand and have both valued and planned for that diversity.

Changes Affecting Today’s Business Environment

Certain realities are shaping today’s business environment, including:

- dramatic changes in the demographics of our country;
- the new global economic paradigm, in which uncertainty and constant change are the rule, not the exception; and
- new expectations from workers (equity, participation in decision-making, balance in lifestyle, flexible work conditions).

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La gestion de la diversité, un avantage stratégique

De plus en plus, les entreprises canadiennes désireuses qui veulent damer le pion à leurs concurrents adoptent des stratégies de gestion de la diversité. Cette tendance a aussi ses échos dans le monde des cabinets et autres employeurs juridiques.

La gestion de la diversité suggère l’existence d’une main-d’œuvre diversifiée et d’une main-d’œuvre qui comprend le sens de la diversité. De telles entreprises sont très concurrentielles à long terme parce qu’elles sont en mesure de maximiser le rendement de chaque employé(e) et de développer des produits et services qui répondent aux besoins d’un marché diversifié.

La notion de diversité englobe l’absence et la présence de handicaps, les personnes racialisées et non racialisées, les gais, lesbiennes, bisexuel(le)s, transsexuel(le)s et hétérosexuel(le)s, les vieux et les jeunes, les pauvres et les riches, les gens instruits et les analphabètes, les croyants et non croyants.

La gestion de la diversité ne vise pas à redresser les injustices présentes ou passées. Elle cherche à optimiser les niveaux de compréhension, les compétences et la motivation des individus à l’emploi d’une organisation. Elle a aussi pour objectif de livrer des produits et services de qualité supérieure aux publics desservis par l’organisation.

Le milieu des affaires de l’an 2000 est façonné par certaines réalités dont il faut tenir compte, y compris :

- des changements démographiques majeurs, ayant un effet sur la composition de la main-d’œuvre;

- le nouveau modèle économique mondial, au sein duquel l’incertitude et le changement constant sont la règle; et
- les nouvelles attentes des travailleuses et travailleurs (équité, participation à la prise de décision, équilibre vie privée/vie professionnelle, conditions de travail flexibles).

Ces facteurs influencent la capacité des entreprises canadiennes, y compris les cabinets juridiques, de recruter, conserver et développer des compétences humaines. Ces facteurs de changement ont aussi un effet sur la capacité de ces mêmes entreprises de desservir des marchés grands et diversifiés.

L’absentéisme et le roulement de personnel ont tendance à diminuer dans une organisation qui pratique la gestion de la diversité puisque celle-ci aura tendance à valoriser la diversité des origines et expériences de chaque membre du personnel. Le travail d’équipe qui en résulte est très motivant et stimule la productivité.

Le souci de s’adapter aux besoins diversifiés de marchés locaux et internationaux a également un effet positif.

La création d’un plan d’affaires axé sur la diversité nécessite un engagement solide, du temps et beaucoup d’efforts. Le principe de base veut que la ressource la plus précieuse d’une entreprise soit sa main-d’œuvre. À long terme, les résultats sont probants : atteinte des objectifs d’affaires, clientèle et personnel plus satisfaits, revenus à la hausse et loyauté accrue du personnel envers l’organisation.

In addition, the composition of the workforce is changing.

These changes affect the ability of Canadian businesses, including law firms and other legal employers, to recruit, retain and develop the abilities of employees. These forces of change also affect the ability of businesses, including the legal profession, to access broad markets and serve those markets well.

Employee Productivity

A diversity-managed organization is more likely to have employees who will increase their discretionary efforts to provide better customer service, going beyond the minimum requirements. Employees in a diversity-managed organization are involved, in meaningful ways, in deciding how to better serve their diverse customer bases and in developing policies, practices, procedures, systems and strategies.

Absenteeism and employee turnover are expected to decrease in diversity-managed organizations that value the different experiences and backgrounds each person brings to the work at hand. Besides providing the organization with the best possibilities for innovative and creative thinking, teamwork can be very motivating and exciting for team members, enhancing employee productivity.

Customer Satisfaction

Diversity-managed organizations are better equipped to serve diverse local and global markets than their competitors. Such organizations invest significant amounts of time and effort training their employees about diversity. Employees are aware of general diversity issues, have significant cross-cultural communication abilities and are aware of racism and discrimination.

Employees and the organization's leaders consider how the organization can better serve diverse local and global markets. The organization considers the kinds of marketing efforts that might be meaningful to particular communities and customers. Plans are developed and implemented to take into account more effective strategies.

Conclusion

Creating a business plan focused on diversity requires strong leadership commitment, time and energy.

Diversity management strategies are based on the familiar and established principle that an organization's most valuable strategic resource is its people. Major forces that are changing the demographics of both the workplace and

local/global markets underscore the aptness of this principle.

Legal and public policy initiatives in the quest for equality are built on the presumption that diversity must be understood and valued, and that people must be treated in substantively fair ways. Recommendations for change to the legal profession also presume that understanding and valuing diversity are important qualities for lawyers.

Diversity management allows organizations, including law firms and other legal employers, to go beyond meeting legal and professional requirements for fair treatment and prohibitions against discriminatory behavior. Successful diversity management plans allow organizations to achieve important business objectives over time, including greater customer satisfaction, greater revenue, greater employee satisfaction, and greater employee loyalty and commitment to the organization.

Equal Access to the Canadian Justice System

PRÉCIS

L'accès à la justice pour les malentendants

Fondée en 1982, l'Association des malentendants canadiens (AMEC) est un organisme dirigé par des personnes malentendantes et ayant pour but de répondre aux besoins des personnes malentendantes en général.

Le Comité juridique des droits de la personne de l'AMEC s'est récemment intéressé au dossier complexe de l'accès à l'appareil judiciaire canadien pour les personnes sourdes ou malentendantes qui communiquent par la parole (et non par langage signé).

Plus de 1,3 million de Canadiens et de Canadiennes ont, à des degrés divers, une perte d'ouïe. Ce nombre est appelé à augmenter à mesure que la population canadienne vieillit. On estime qu'une personne âgée sur cinq entend plus ou moins mal. Cela signifie qu'il existe une réelle possibilité qu'une personne malentendante se retrouve devant le tribunal.

Si une personne malentendante doit assister à une audience judiciaire, elle doit pouvoir compter sur l'aide requise pour comprendre ce qui s'y déroule. L'adoption du modèle proposé par l'AMEC mènera à une amélioration de nos systèmes de justice, civil et criminel, en permettant aux personnes malentendantes de participer à part entière.

Il existe souvent dans les palais de justice des obstacles physiques qui créent des problèmes de communications aux malentendants, y compris :

- un faible éclairage empêchant de lire sur les lèvres;
- les téléphones publics sans amplification du volume;
- la disponibilité d'un TTY (teletype);
- une acoustique inadéquate;
- l'absence d'appareils auditifs, de sous-titrage ou d'interprètes; et
- l'incompréhension du langage signé.

Le document politique de l'AMEC propose des solutions dans tous les cas, souvent à des coûts moindres que prévu. L'Association propose aussi la création de programmes d'assistance aux victimes ou aux témoins malentendants, y compris la formation de policier(ère)s, de conseiller(ère)s et des autres intervenants de première ligne.

L'AMEC propose enfin la mise sur pied de programmes éducatifs pour sensibiliser toutes les personnes susceptibles de rencontrer des malentendants dans le cadre des systèmes de justice civile ou criminelle. Les efforts doivent donc porter en priorité sur le personnel de l'appareil judiciaire qui doit aussi être conscient de l'existence d'un réseau de malentendants qui inclut l'AMEC.

“A chance to hear, a chance to be heard.”

The Canadian Hard of Hearing Association (CHHA), founded in 1982, is a consumer self-help organization formed by and for the hard of hearing and deafened.

CHHA's Human Rights Legal Committee has developed a policy paper to address the complicated issues relating to access to the Canadian justice system for persons who are hard of hearing or deafened. The paper, titled “Equal Access to the Canadian Justice System for People Who Are Hard of Hearing or Deafened” focuses on the court-related needs of persons who have “any level of hearing loss, from mild to profound, whose primary method of communication is the spoken language.” This definition of a “person who is hard of hearing” includes any person with a hearing loss, whether or not he or she uses a hearing aid, and it includes persons who are oral deaf and deafened adults. The needs of all people living with hearing loss who have to communicate mainly with the spoken word (as opposed to sign language) are included in this paper on access needs.

Improving access to the courts for persons who are hard of hearing will be of benefit to more than just a few individuals; over 1.3 million Canadians have a hearing loss. With a rapidly aging population, the number of Canadians who are hard of hearing is expected to rise significantly over the next few years. At present, roughly one out of every five seniors in Canada has some degree of hearing loss. This means that in every courtroom, there is a real possibility that a judge, plaintiff, defendant, attorney, accused, juror or witness is hard of hearing.

If a person who is hard of hearing or deafened is to participate in a court hearing, he or she must be provided with assistance in understanding what is being said during the proceedings. Adopting the model proposed in the policy paper will result in substantial improvement to the quality of the justice system, by ensuring that persons who are hard of hearing can fully participate. Even “hearing”

persons will benefit from the improvements proposed in this policy paper.

Courthouses often contain physical barriers that create serious communication problems for persons who are hard of hearing, including:

- poor lighting that inhibits speech reading,
- public telephones that do not have a volume amplifier,
- unavailability of a TTY (Tele-Type),
- inadequate acoustics,
- unavailability of assistive listening devices,
- real-time captioning and oral interpreters, and
- inadequate signage.

The policy paper reviews these issues and proposes solutions in each case. In many instances, the costs of access features are not as significant as might be expected.

In addition, CHHA's policy paper discusses the need for assistance programs for persons who are hard of hearing. Such a program needs to include, for example, widespread training of police officers, counsellors and other front-line interveners on how to communicate with persons who are hard of hearing.

Finally, the policy paper recommends educational programs to sensitize all persons likely to come into contact with a person who is hard of hearing in the context of the justice system. Therefore, educational efforts should be directed at the judiciary, court personnel, court reporters, lawyers, notaries, Crown prosecutors, law students, police officers, prison guards, probation officers and social workers.

It is important for persons working within the justice system at all levels to realize that there is a hearing disability network, including the CHHA, that is ready to work with them to enhance effective access to judicial services. As CHHA's motto reminds us, all persons, whether or not they have a hearing loss, are entitled to: “A chance to hear, a chance to be heard.”

An interesting feature of the policy paper is the Appendix, which provides tips for lawyers, judges, police offices, and court personnel or for anyone communicating with a person who is hard of hearing or deafened. The Appendix was reproduced in part in the August 1999 edition of *Touchstone*, which can be accessed on the CBA website: www.cba.org.