



Reach

EQUALITY AND JUSTICE FOR PEOPLE WITH DISABILITIES
ÉGALITÉ ET JUSTICE POUR LES PERSONNES AYANT UN HANDICAP

Advancing Professional Opportunities and Employment Accommodation for Lawyers and Other Law Graduates Who Have Disabilities

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Reach: Promoting Equality and Justice for People with Disabilities

Reach is an Ottawa-based voluntary organization that empowers people with disabilities to remove barriers in education, work, and the general community. Reach was launched in 1981, the International Year of Disabled Persons. An important part of Reach work involves programs to increase awareness about disabilities and human rights, programs for providers of health and social services, educators, legal professionals and the wider community. Reach activity covers a full spectrum of physical and mental disabilities as well as learning disabilities and other invisible disabilities such as Crohn's and Colitis, and chronic pain.

Reach also helps people in Ottawa and Eastern Ontario to resolve legal issues, partly by facilitating access to lawyers for people who have a disability. Reach handles close to 5000 calls per year. Over 250 lawyers in the Ottawa area volunteer time and expertise. Each lawyer agrees to donate up to three hours as an initial consultation free of charge. If more assistance is required, fees are negotiated between the lawyer and client. A toll-free line enables people throughout Eastern Ontario to call Reach free of charge. Reach is replicating its model in centres across Canada with one affiliate established in Halifax and others opening in the near future.

Reach works with other organizations to provide information and referrals to people with disabilities (and sometimes to their families) – concerning community services including rehabilitation and mental health services. Because of its involvement in law and human rights issues, Reach is particularly aware of problems confronting members of the legal community, including law students and lawyers who have a disability.

Reach is located at 810 - 151 Slater Street, Ottawa, Ontario, K1P 5H3. The telephone numbers are (613) 236-6636, TTY (613) 236-9478 and toll free 1-800-465-8898. Reach can be contacted through e-mail by sending to reach@reach.ca, or you can visit its web site at www.reach.ca.

In addition to this guide, Reach has produced three related resources:

- a manual titled *Navigating Law School: A Practical Guide for Students Who Have Disabilities* (2000 - 126 pages).
- a video on disability accommodation in legal education: *Navigating Law School: Paths for Students with Disabilities* (2000 - 16 minutes).
- a manual titled *A Framework for Action - Law School, Education Equity and Students with Disabilities: Working towards Equitable Access to Legal Education*. (1999 - 105 pages).

These resources were designed to enhance awareness for law students, lawyers, law societies, legal education instructors and administrators, private and public sector employers, disability services providers and others responsible for ensuring that reasonable and appropriate accommodations are provided to lawyers, law students and law graduates who have disabilities.

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Table of Contents

	Acknowledgements.....	8
	Preface	11
1	Introduction to the Reach Employment Accommodation Guidebook	14
1.1	What this Reach Guidebook Looks At.....	14
1.2	Tips for Success in Seeking and Ensuring Accommodated Employment: Advice from Professional Colleagues Who Have Disabilities	14
2	Contemplating and Planning a Career in Law, While Taking Disability into Account	19
2.1	Looking Forward to a Job in the Legal Profession.....	19
2.2	Whether to Go to Law School	20
2.3	Planning and Preparing Your Articling and Long Term Career Paths.....	21
2.4	Private Firm Career Options.....	22
2.4.1	<i>Factoring Disability into the Private Firm Formula</i>	<i>22</i>
2.4.2	<i>Comparing Private Law Firms as Potential Employers</i>	<i>23</i>
2.4.3	<i>Sole Practice</i>	<i>24</i>
2.4.4	<i>In-House Counsel with a Corporation.....</i>	<i>25</i>
2.5	Government and Superior Court Employment.....	25
2.5.1	<i>The Federal Department of Justice.....</i>	<i>26</i>
2.5.2	<i>Judicial Clerkships.....</i>	<i>28</i>
2.6	Non-Traditional Articles and Alternative Careers in Law	29
2.7	Non-Legal Careers That Use Law as a Background	30
3	Seeking and Applying for Articling Positions and for Longer Term Employment	32
3.1	Preparatory Thoughts and Steps	32
3.2	To Disclose or Not to Disclose? ... That is the Leading Question.....	32
3.2.1	<i>Should You Mention Your Disability in Your Job Application Covering Letter?</i>	<i>33</i>
3.3	Accommodation Issues.....	34
3.3.1	<i>Should I Seek Full-time or Part-time Work?.....</i>	<i>34</i>
3.4	Additional Information on Articling.....	35

3.4.1	<i>What Do Articling Students Do, Anyway?</i>	35
3.4.2	<i>Articling Application Procedures for Law Firms</i>	36
3.4.3	<i>Legal Requirements for Provincial Bar Admission</i>	40
3.5	Taking a Second Look at Alternative Careers	41
3.5.1	What Steps Should I Take to Pursue an Alternative Career?.....	41
3.6	A Word about Hire-backs	42
3.7	When is it Too Late to Find an Articling Job?	42
4	Employment-Related Interviews	43
4.1	Anticipating the Interview: Preparatory Thinking and Action	43
4.1.1	<i>Summer Jobs and Co-op Work Experience</i>	44
4.2	Disclosure Issues Related to Interviews	44
4.3	Discussing Disability and Accommodation Issues during Interviews	45
4.3.1	<i>Planning Your Interview Discussion with Respect to Disability Issues</i>	46
4.3.2	<i>Getting the Employer to Ask You the Tough Questions</i>	47
4.3.3	<i>Be Prepared to Ask Your Own Questions</i>	48
4.4	Other Common Sense Considerations Related to Interviews	49
4.4.1	<i>The Benefit of Hindsight: Looking Back on the Articling Interview Process</i>	50
4.4.2	<i>Preparing for a Government Interview</i>	51
4.5	Regional Considerations Relevant to Searching for Articles	52
4.5.1	<i>The Toronto Situation</i>	52
4.5.2	<i>Articling in Ottawa</i>	54
4.5.3	<i>Articling in Atlantic Canada</i>	54
4.5.4	<i>Articling and Summer Jobs in British Columbia</i>	55
4.6	Notes on Equity and Discrimination during the Interviewing and Hiring Process for the Legal Job Market	56
4.7	A Few Recommended Resources to Consult Respecting Interviewing and Hiring in a Legal Context	59
5	Advice, Assistance and Resources for Law Students and Recent Law School Graduates	60
5.1	Introduction to Chapter Five.....	60
5.2	Financial Assistance	60
5.3	Assistance from Law Schools and Universities.....	61

5.4	Assistance from Law/Bar Societies, Bar Admission Programs, and Bar Associations.....	63
5.5	Mentorship Programs.....	66
5.6	Government-based Programs.....	67
5.7	Community and Commercial Services.....	68
5.8	The Online Library Information System (OLLIS).....	69
6	Assistance, Resources and Advice for Lawyers as Employees and Practitioners	71
6.1	Introduction to Chapter Six	71
6.2	Law Societies.....	71
6.2.1	<i>Disability Services Provided by the Law Society of British Columbia.....</i>	<i>71</i>
6.2.2	<i>Disability and Equity Policies of the LSBC.....</i>	<i>72</i>
6.3	Law Society of Upper Canada.....	73
6.3.1	<i>Disability Accommodation and the Law Society of Upper Canada.....</i>	<i>73</i>
6.3.2	<i>Disability and Equity Policies of the LSUC.....</i>	<i>75</i>
6.4	Accessibility of Law-Related Buildings.....	78
6.5	Community and Commercial Services.....	80
6.6	Government-based Accommodation Support Programs	81
7	Finding, Designing and Demanding Accommodations: Seeking and Advocating Good Employment Accommodations.....	82
7.1	Introduction to Chapter Seven.....	82
7.2	Some Thoughts on Self-Accommodation.....	82
7.3	Good and Less Helpful Accommodation Practices That Professional Colleagues Told Us About.....	84
7.4	Policies and Approaches That Help to Create an Accommodative Work Environment	88
7.5	If the Employer Won't Listen to Reason: Seeking Remedies for Discrimination, Including Unreasonable Accommodation	89
8	Incentives, Resources and Advice for Firms, Public Agencies, and Others Who Hire Law Students and Lawyers.....	92
8.1	Introduction to Chapter Eight: More Reasons to Say "You're Hired."	92
8.2	Finding Incentives and Resources for Employers	95
8.3	Subsidies for Employee Income and Related Employee Supports.....	96
8.3.1	<i>Federal Targeted Wage Subsidy Program.....</i>	<i>96</i>

8.3.2	<i>The Opportunities Fund (Human Resources Development Canada)</i>	98
8.4	Adaptive Technology: Financial Support and Advice Regarding Assistive Devices.....	100
8.5	Assistance with Adaptive Renovations	102
8.6	Tax Incentive Programs.....	103
8.6.1	<i>Favourable Federal Income Tax Treatment</i>	103
8.6.2	<i>Ontario’s Workplace Accessibility Tax Credit/Incentive (“WATC/I”)</i>	103
8.7	Accommodation Supports within the Federal Public Sector.....	104
8.7.1	<i>The Rapid Access Program of Canada’s Public Service Commission</i>	105
8.7.2	<i>Employment Equity Enabling Resource Centre for Persons with Disabilities - Public Service Commission of Canada</i>	105
9	Looking Toward a Better Future: Insights and Recommendations	107
9.1	Introduction to Chapter 9.....	107
9.2	Experiences, Insights and Recommendations.....	108
9.3	Scope for Further Research and Outreach.....	114
	Bibliography	117
	Printed Resources	117
	Internet Resources	119
	Search Engines.....	121
	Appendix A: Comprehensive Job Accommodation Policy.....	123
	Appendix B: Policy on the Provision of Accommodation for Employees with Disabilities	132

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Project Researchers, Writers, Translators, and Support Staff

Individuals with disabilities were well represented in the development team for this book. Not everyone involved has a disability, but among the team of lawyers, law students and law graduates who contributed, persons with disabilities made up a strong proportion. Those with the experience of studying and working with law, with or without having to work around disabilities, were able to draw upon personal knowledge to help ensure that the Guidebook is practical and realistic for those who use it as a resource.

Two individuals, in addition to conducting research for the project, wrote parts of draft chapters, which were then added to and revised by the Editor as the Guidebook took shape. Co-Authors with Allan McChesney (the Principal Author) were Dick Nolan (Senior Research Associate) and Martin Schmieg. Other individuals carried out research, verification, and review in consultation with the Project Director during the Guidebook's development. These Project Researchers were (in alphabetical order) Frédérique Couette-Guena, Nicole Druckman, Lesley Gervais, Kent Hehr and Ravi Malhotra.

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Editor's Dedication Note

On behalf of my co-authors and project researchers, I dedicate this guidebook to those involved in the legal profession, in lawyers' organizations, in workplace design and in education who strive for equitable employment environments for individuals who have disabilities.

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Allan McChesney
Editor, Principal Co-Author

Preface

This Guidebook is the result of a study conducted by Reach in 2000-2001. Earlier Reach projects focusing on equity in legal education resulted in two manuals, called respectively *A Framework for Action* and *Navigating Law School*. Those volumes concentrated on law schools, university environments and bar admission programs. The earlier publications, along with the present Guidebook, are intended for use by many groups: lawyers, law graduates and law students who have disabilities; law society, law school and bar admission course managers and staff; those who hire and employ law graduates in the private, public and “alternative” sectors; and providers of disability accommodation services and supports. The present Guidebook assesses the extent and effectiveness of equity-based approaches in hiring practices for law students, law graduates and lawyers. It also considers *accommodation** policies and practices that are or ought to be available for employment of individuals with disabilities in the branches and offshoots of the legal profession.

(**Accommodation* may be defined as the adjustment of a rule, practice, condition, or requirement to take into account the specific needs of an individual or group. To some degree it involves treating individuals differently. Different treatment to adjust for a disability is legally required if the accommodation is needed to ensure that the individual has the opportunity to participate fully and equally.)

The Law Requires Employers to Offer Reasonable Accommodation for Disabilities

Like all employers and managers in Canada, law firms, governments, law societies and others who hire and employ people, whether these people have a legal education or not, must ensure the provision of reasonable accommodation to promote employment equity for individuals who have disabilities. A similar legal duty with respect to education and job placement falls on educational institutions, including law schools and bar admission programs. The legal duty to provide reasonable accommodation is governed by provincial, territorial, and federal human rights law, including the equality rights guaranteed for individuals with disabilities by Section 15 of the *Canadian Charter of Rights and Freedoms*. Judicial and tribunal interpretations of the aforementioned legislated laws have reinforced the rights of employees and others in Canada who have disabilities. The combined effect of legislation and judicial and tribunal rulings has been taken into account in rules issued for lawyers by their provincial and territorial law or bar societies. (See, for example the rule excerpts from Ontario in Chapter 6 of this guidebook.) Further discussion of relevant law is presented in *A Framework for Action*, at pages 14 to 34.

The duty to accommodate in employment, educational and other fields is balanced by the notion that the employer, legal education institution, professional association or other relevant entity is not obligated to provide accommodations that cause “undue” hardship for the employer or entity. The legal obligation to accommodate a prospective or current employee who has a disability does not stop, however, when minor hardships are encountered. In deciding whether hardships are excessive or undue, a court or human rights tribunal might look at factors such as: the financial resources required to provide an accommodation; the degree and kinds of effects that accommodations will have on other employees; the impact of accommodations on the overall firm, department, educational program or other entity; and unusual risks, if any, that

accommodations may pose for others, such as other employees or clients (including those who have a disability).

We make a common sense assumption that reasonable accommodations for employees in lawyers' work environments (which generally have no inherent physical dangers) would almost always be legally required. Provable undue hardship for a public sector employer, a law school, a law/bar society or a medium to large law firm would no doubt be very rare. One potential exception is a situation in which massive renovations are needed to make a building more accessible, when the funds needed are not reasonably available from any source.

In Practical Terms, What is Employment Accommodation?

In legal employment (and in employment generally), accommodation for a disability can take many forms, including: rethinking the factors to be taken into account in deciding which applicants will be hired or promoted (and the appropriate weight to be given to each factor); altering document distribution systems and transaction methods; modifying offices, registries, courthouses, hallways, entrances, and legal libraries to make them more accessible; and facilitating the engagement of note-takers, other kinds of personal assistants, and adaptive technology in offices, courtrooms and other places where lawyers work and conduct their practices. Extensive elaboration on what would constitute appropriate accommodations in the public sector and in many kinds of office-based environments may be found in appendices A and B of this guidebook.

In the career, educational and other fields, accommodations help to give capable people who do not fit a particular "norm" a fair chance to succeed personally and professionally within society. Though employers and others need to offer accommodations based on systematic application of policies and good practices, each person who has a disability usually requires individualized accommodation. The severity of a disability varies among individuals and each person responds to and succeeds differently with a disability. Every situation is unique and must be assessed individually.

Accommodations do not compromise employment or academic integrity or standards because the same requirements are expected of all. Rather, accommodation can ensure that persons with special needs are given a fair opportunity to achieve the applicable professional and working standards. Accommodation facilitates flexibility and recognizes that some individuals achieve the same (and sometimes better) results in different ways.

The Scope of Our Review and How We Did the Research

Much of the information in this Guidebook was obtained through surveys distributed to lawyers, law students and law graduates who have disabilities and through Focus Group discussions involving people from the same target groups. Those who participated in the surveys and discussions were asked to describe barriers and useful accommodation efforts they had encountered and to share their personal survival tips. Participants provided reality-based observations on the quality of employment equity and accommodation initiatives. While this Guidebook looks at "best practices", we also mention a few "worst practices" that our survey partners told us about. These horror stories from real life might alert law students, the legal profession, disability services providers – as well as funders who support projects such as ours -- about potential problems that can be prevented, avoided, worked around or perhaps overcome.

Our survey respondents were representative of people with mobility, physical, sensory, learning and mental disabilities, and other invisible disabling conditions such as chronic pain. Just as the nature and severity of disabilities varies, so do the accommodations required to render each person's employment context more equitable. Most participants indicated that their disabilities had some adverse effect on their career choices and their employment opportunities and realities. Survey respondents identified many areas needing improvement in their educational and employment worlds. Owing to the resource and time parameters of the project, only a small sampling of legal education institutions and law societies was surveyed, though Internet data and publications from a much broader spectrum were tapped. Surveying of individuals who have disabilities was facilitated by officials from professional schools and lawyers' governing bodies, who arranged initial (indirect) communications. This process respected the confidentiality of individuals who had self-identified in order to obtain disability accommodations.

A Few Words about Our Findings

A central goal of this Guidebook has been to provide data and general insights that are useful in real life for legally educated individuals with a disability. As a result of very recent enhancements, the Law Society of Upper Canada and that of British Columbia have taken steps to improve the accommodations for disability that they offer as institutions and promote within and for the legal profession. We have heard much praise for public sector equity-based recruiting and disability accommodation measures. We have also heard a desire expressed for enhancement of what governments offer to private sector and public sector employees and employers through incentive and support programs.

In the experience of many of our survey respondents, law firms and lawyer/employers as a general rule have a long way to go before a majority lives up to the profession's obligations respecting affirmative action and disability accommodation for employees and prospective employees. We hope that this Guidebook will play at least an indirect role in influencing law firms and others who employ law graduates to set an example of practical, improved compliance with laws that pertain to employment equity and disability accommodation.

Because law graduates and lawyers across Canada who have disabilities are not accorded a uniform opportunity for non-discriminatory job recruitment and accommodation in their jurisdictions, the effect is a denial of equal employment opportunity. An objective of this book is to encourage and assist law schools, law societies and bar admission programs to strive for enhanced employment accommodations in the profession and in other areas of work that law graduates choose to pursue. Among the people who researched and wrote this Guidebook there are law students, law graduates and lawyers with diverse disabilities who have successfully dealt with potential career hurdles linked to disability. We trust that this Guidebook will help many individuals with disabilities to become more aware, better prepared, and better equipped to self-advocate. We hope that the collegial tips in Chapter 1, the extensive advice in other chapters and the many bibliographic resources will prove useful for individuals whose interests will draw them to this publication and to the practice of law.

Chapter 1.0

1 Introduction to the Reach Employment Accommodation Guidebook

1.1 What this Reach Guidebook Looks At

This Guidebook focuses on employment for law students, graduates of law school, articling students and lawyers who have disabilities. We are concerned with the opportunities available for such individuals to give serious consideration to careers in law, to seek professional employment and to succeed in their chosen fields - without facing unfair or discriminatory obstacles. In that regard, we examine such matters as: when/if a person with a disability ought to disclose the disability to a prospective employer; the kinds of disability accommodations that should be or are available for law-related employment; and the kinds of supports and incentives that do or should enable law graduates and their employers to ensure appropriate accommodations.

The timing, level of fiscal support and resulting scope of the project that produced this Guidebook did not permit a full-scale examination of legal employment in Canada for those who have disabilities. Nonetheless, we think that this Guidebook will be informative for even the most well-informed professionals, and will open the eyes of others. The Guidebook looks at policies, programs and practices surrounding legal studies and employment of individuals with disabilities, particularly in British Columbia, Ontario and Nova Scotia. Among other matters, it looks at incentive and assistance programs that promote employment accommodations through the public sector. Although we learned of numerous positive steps taken by educational institutions, individual law societies and governments, we discovered that these activities are not always interconnected. Professionals who strive to provide good accommodations and opportunities for employees with disabilities are not always aware of the many small complementary or overlapping support programs that exist. We also identified a number of apparent gaps. In Chapter 9 and elsewhere we offer our own and others' recommendations on how to remedy some of these shortcomings now and in the future.

Because this is primarily a practical rather than a theoretical text, we next present a cluster of advisory tips from law students, lawyers and other law graduates. This constellation of ideas includes hints on how to foster good disability accommodation and professional achievement. Among the ideas are survival tips and common sense suggestions that might help an individual to deal with being a legally trained person who happens to have one or more disabilities.

1.2 Tips for Success in Seeking and Ensuring Accommodated Employment: Advice from Professional Colleagues Who Have Disabilities

Rather than opening with an authors' summary of the issues addressed in this Guidebook, we begin with a collection of thoughts expressed directly by individuals who participated in our focus

groups, interviews, and written surveys. Those quoted here are all individuals who combine a Canadian legal education with personal experience in dealing with disabilities.

Articling and the practice of law can be both rewarding and stressful for anyone. As with many aspects of life and livelihood, work that calls for a legal education background may present unusual hurdles for persons with disabilities. The present section assembles practical and personal observations from lawyers, law graduates and law students who have had to manage disability-related obstacles. (Perceptive commentary from these sources also enriches all other chapters of this Guidebook.)

We know that there is no single “disability experience”. Each person with a disability faces challenges unique to herself or himself. While taking that tenet into account, we trust that the opinions and recollections offered in the remainder of this chapter will prove to be worthwhile reading for you, whatever your disability, personal situation or working environment and however you access the chapter. The following contributions were gathered in the autumn and winter of 2000-2001 from legal profession colleagues in Canada who have disabilities. These collected perceptions came to us through interviews, focus groups and written questionnaires.

***** QUOTATIONS FROM SURVEY RESPONDENTS*****

Editor’s Note: The categories devised for this compilation are not watertight. Many of these tips could have been placed under more than one of the headings. These are the thoughts of diverse individuals, and they do not always agree with one another.

Personal Survival Tips

“You should be aware that many barriers in your career are internal. You should be aware that professional colleagues who do not have known disabilities also get nervous and suffer some doubts.”

“If you want advice you should not be shy about asking for it. I find that lawyers don’t mind telling you stuff if you phone them for help from time to time. Even the senior guys have always been generous with their help.”

“Don’t overwork. It is not worth it. In hindsight I gave too much to my bosses when I was articling. They expected me to come in on weekends and to do work at home. My boss always liked it if I was in the office. I tried to please everyone.”

“A lot of able-bodied people in the legal profession fail to follow this advice I would give to anyone who has a disability – try to balance your life and your work.”

“You should not ignore your own health. For many months prior to the onset of my disability, I felt stressed out, not just mentally, but physically. I ignored the physical evidence, and suffered the consequences.”

“If you have a severe disability you may face a steep learning curve, but that is true of any lawyer the first time he or she takes on a new kind of task. The first time you do something it will take a

really long time and that is multiplied if you have a disability. You have to be well organized to make sure that the task takes less time when you next have to do it.”

“You need to be organized not just so you can do your job well, but so you can keep a lid on your disability. If I have to do my work under added pressure caused by my lack of preparation this adds to my stress, makes me nervous and causes my disability to act up. Being well-organized guards against this danger.”

“The law firm or the government department where you want to work may already have all of the software and equipment that you need. They may just not be aware of it.”

Getting The Right Accommodations

“Neither employees nor employers should rely on assumptions or past experiences to decide what accommodation is needed by an individual.”

“When you are explaining your accommodation needs and proposed solutions to your employer, be specific. Give practical examples not just general requests.”

“If you get your foot in the door, you should disclose your disability. The employer must accommodate you up to the point of undue hardship.”

“Once you have obtained a permanent position in an area of law that you want to practise in you should definitely disclose your disability and start arranging for accommodations. When you have reached that stage, your employer would normally want to invest in you as part of their future.”

“Be open and honest regarding your disability. However, make sure that your disability does not become the focus of your job interview. This is a very difficult line to walk. In regards to your principal, I believe it will be imperative to be fairly detailed regarding your disability. Let's face it, if your articling year is going to be a success, he or she will have to be aware of both your abilities and limitations. This is just the way it is! Sucks to be you but sometimes this is the baggage we carry as people with disabilities.”

“The importance of self-advocacy cannot be emphasized enough. (I learned this through trial and error.) You do have to educate yourself about what you need and want and then aggressively pursue it.”

“If you need something from your employer ask for it. First, establish with the employer that what you are asking for will help you to do your work better.”

Being Professional

“Be aware of what types of accommodation you absolutely need in order to do your job well. Neither the boss nor the courts will accept you saying that you need help but you are not sure what kind of help. Think about it beforehand and take the necessary steps in advance.”

“It is important to bear in mind the necessity to provide a high standard of service for clients. Your clients are entitled to the best possible professional service that you can deliver. Your disability should not be leaned on as an excuse for accepting or delivering a reduced standard of service.”

“Be prepared to work harder than some of your colleagues.”

“Plan your days well. Make sure that the physical parts are taken care of so that you are free to conduct the professional aspects properly.”

“If you know you are going to have a heavy workload four weeks from now because of a deadline or a scheduled hearing you must plan ahead. This is even more important for lawyers with disability than for other lawyers. If I know that I need to submit a factum a month from now, I know that I must begin working on it right away in order to keep ahead of the game.”

“A good attitude to take during an interview and in the early days at the office is that I know I have a disability but I’m here to do the work. I already have done work that was as difficult as this and made the necessary adjustments for my disability. I know how to do this so my disability should not be a real issue as long as you don’t put artificial barriers in my way.”

“In order to be accepted into legal studies, you need to attain a certain level of academic achievement. Since you have been able to achieve this threshold and you have made it through law school you should not use your disability as an excuse not to do your best as a lawyer. Failing to do your job does not help others with disabilities in the profession. It helps no one if you bring down the standards. In return, you should expect your employer to recognize your professionalism.”

Getting Hired

“The articles search process from my perspective is simply a personality contest. If the searcher is optimistic and able to turn everything into a positive then the search should be easy. Again, personality is everything. Have fun and be yourself.”

“Unfortunately, people do have prejudices and misconceptions about the disabled and unless you work hard to overcome these prejudices and demonstrate that they are unfounded, people will continue to think this way. You cannot wait to be given the chance to prove yourself because it won’t come unless you go after it.”

“It is useful to explain to the law firm that you will not present a big economic burden to them.”

“Employers and interviewers who are not familiar with disabilities get really scared. Be aware of this when you are dealing with the managing partner of a law firm. They are afraid that it will cost the firm money and that the people with disabilities will not be as productive.”

“I tried to make it a win-win situation for myself and my prospective employer. I told him enough that he'd be aware of my disability, while not enough to scare him away.”

“People don’t like to hear you say: ‘I need this; this is my right!’ What they want to hear is ‘this adaptation will help me to do my work.’”

“It is essential for persons who have a disability to understand their own needs and make sure that they try to find work that will be able to accommodate these needs. It is a very bad idea for the

person with a disability to accept the first job that comes along out of desperation or fear that she or he may not find other work.”

Thinking Ahead About Articling and Your Career

“Don’t rule out the private sector but realize that government and larger private sector firms are best equipped to make accommodations. Smaller firms very easily reach the undue hardship¹ limit in my experience. If at all possible, try not to be a firm’s only articling student. Until the year I articulated, my old firm only had one student. I was fortunate to have a fellow student. However, my task would have been virtually impossible if I had been the only student.”

“Do extensive research before applying for articling positions. Be selective regarding where you would like to work and research accommodations so that you will be able to tell interviewers exactly what you need.”

“There are different accommodation issues involved with different kinds of law. For example, solicitors’ work relies a lot more on printed materials. So does commercial litigation, in contrast to criminal work. No one should refrain from doing a particular kind of law because of these considerations, but you should think it through.”

“Despite all the hurdles I have faced, I would recommend that someone with a disability enter the legal profession. The work never gets boring and the pay is good. This is important, because disabilities can be very expensive.”

We believe that the observations and coping tips gathered above provide a good bridge to the next chapter and succeeding chapters.

¹ The legal term “undue hardship” is discussed on pages 9-10 of the Preface.

Chapter 2.0

2 Contemplating and Planning a Career in Law, While Taking Disability into Account

2.1 Looking Forward to a Job in the Legal Profession

What's this Guidebook about? It is primarily about reducing the barriers to, and enjoying a job in, the legal profession. That might be as an articling student, a summer student, a new lawyer joining the workforce, or a lawyer in mid-career. Most of the thoughts and techniques outlined in this Guidebook may be useful for any of those employment situations. The primary focus in this chapter will be on getting an articling position, but many of the considerations hold true for any position in the legal field or in other fields where a legal education provides a good foundation.

While giving primacy to considerations that are particularly relevant for lawyers and law graduates who have disabilities, we also present a modicum of more general advice pertinent for anyone contemplating a career as a lawyer. Depending on how you deal with your particular abilities and disabilities, the general advice we have included may be equally valuable for you. In case you desire vast quantities of advice aimed at students about to embark on a legal career, the bibliography directs you toward a shelf full of advisory texts as well as Internet resources published by legal education institutions in Canada and the USA. When selecting or adapting ideas and data from these outside resources, we tried to fix on those that would be of most use to a law student or law graduate who must add a disability to his or her career and life considerations.

If you are a student, you should begin your job search with a visit to the career and counselling office at your law school or bar admission course. It will have many or most of the resource materials we refer to in this Guidebook and from which we have chosen or melded highlights. While writing our own perspectives based on survey results and our own individual professional experiences, we, as co-authors, drew upon the Articling Handbooks of many law schools and bar admission programs. We would suggest a review of those available at your career placement/counselling office as a good early step in your employment research, or even as the starting point.

Some authorities who have thought about this stage in a law student's life have suggested a series of mental preparation steps. You must begin by knowing yourself. What is it that you really want to do professionally? What are the skills and limitations that might help or hinder you in getting there? Do you have the marks and skills to get the job you want with the people you want to work with? Or will the articling experience merely be an exercise endured so that you can get your licence to practice? Is it the beginning of your new life or just another hurdle put in your way? When you have thought through all of that, you need to organize yourself well to achieve your objectives.

2.2 Whether to Go to Law School

Knowing oneself - Do I really want to be a lawyer?

The first thing to decide is this: “What do I really want to do in my working life?” Do I really want to be a lawyer?” Or do you want to use your legal education as a stepping-stone to a career in the public sector, business or politics? That may seem a strange thought. But it may not be worthwhile to article if your goal is to be a policy advisor in government or an executive with a corporation or non-profit organization, or a legal researcher, publisher or professor. You may just be foregoing a year of experience and income without adding anything to your attractiveness for employers in your chosen field. If you have not thought much about your career, you might want to ponder some of the approaches suggested by sources listed in the reference annexes at the back of the current Guidebook. One logical approach to career planning and related self-assessment is that suggested by the University of Windsor Law School at its website <http://athena.uwindsor.ca/law> or its career directory at <http://athena.uwindsor.ca/units/law/career/CareerD.nsf/>. Good tips on general career planning (not specific to law) can also be found at websites accessible through Human Resources Development Canada (HRDC). Of direct interest to readers of this Guidebook is the website of HRDC’s Office of Disabilities Issues. (www.hrdc-drhc.gc.ca/)

For those considering a career in law, regard must be given to both the area of practice and the nature of the disability that the individual must accommodate or overcome. The large investment in time, effort, and financial resources required to attend law school for a period of between 3 and 6 years (for part-time study) dictates that one give some forethought to end goals.² Individuals with disabilities should not be held to a higher standard of forecasting than others who enter a law faculty unsure of what they want to do with a law degree. But someone who has a disability may face more hurdles. Prior to investing time and effort at a law school, one should note the following cautionary words based on research completed in 2001 by the Law Society of British Columbia:

... [Law school] graduates who have disabilities find that equity and diversity policies and accommodations provided by universities are not mirrored in legal practice. Lawyers with disabilities report that they experienced ongoing discrimination, prejudice, negative attitudes and physical access barriers in a profession that is largely driven by the economic bottom line. (Linda Hill, *Lawyers with Disabilities: Identifying Barriers to Equality* (hereinafter *Identifying Barriers*) a report of the Disability Research Working Group-prepared for the Equity and Diversity Committee (Vancouver: Law Society of British Columbia, 2001) at p. 19.)

This bleak representation of prevalent attitudes within the legal profession may give some individuals reason to pause and reconsider their choice of career paths. Yet many with disabilities face negative attitudes in whichever career they choose. It is important that individuals with disabilities make informed decisions, taking into account their own and others’ perceptions of

² The standard law school education in the common-law jurisdictions in Canada consists of one year of “core” or lower-level courses and two years of upper level courses. Some institutions, including the University of British Columbia, the University of Victoria, Dalhousie Law School, and the University of Calgary provide for flexible schedules that allow the student to study over a period of up to six years.

their limitations. On the other hand, even with such limitations a majority can discover a range of career possibilities. One respondent whom we contacted noted: “I think my options are limited, but something like contract work through government agencies etc. or being in-house counsel may be the most plausible option.” Profiles of some lawyers with disabilities who have had remarkable careers can be found in an article in the Canadian Bar Association’s February, 2001 *National* magazine and in *Lawyer’s Weekly* articles from 1998. (These publications are listed in this Guidebook’s Bibliography.)

2.3 Planning and Preparing Your Articling and Long Term Career Paths

Once you have thought through your career concept, you need to integrate this plan with your preferences regarding law firms and working environments. Be realistic. Are your options more limited than those open to some of your classmates? In your case, will you need to be quite creative to get a legal job - or any job at all? One important starting point is to know where you would like to work. Provinces have different approaches to articling and some law societies have prerequisite courses. If you are considering practice outside Canada, take the time to know the appropriate requirements.

When applying for employment that will begin after you finish law school, whether in articling or in a different pursuit, know the applicable timelines and deadlines. Start researching early! The Dalhousie Law School Placement Handbook lists timelines and deadlines relevant to submitting articling applications. This listing can be downloaded from the Dalhousie website(<http://www.dal.ca/~wwwlaw/placement/>). Similar useful information can be found in Chapter 9 of McGill’s *Legal Employment Career Handbook*.

If after contemplating the options outlined in the present chapter you are still interested in articling, the University of Windsor website suggests that you create a profile of what you believe would be the ideal firm to complete your articles. (We do not assume that you will decide to article with a law firm. See the other employment options discussed later in this chapter.) In your profile, says the Windsor site, you would include such criteria as: size of firm, location of firm, specialized versus full service, old and established vs. new and innovative, and so on. “Once you have written down the profile of your ideal law firm, you should go through the firm brochures and find the firms that most closely match your ideal.” Also make a list of the firms that are of secondary interest to you.

The next preparatory step involves researching the firms. There are a number of ways to conduct research, including reading the brochures of law firms and visiting their websites. If you can, contact current and/or past articling students working at the firms to find out such things as how they are enjoying their experience, if they have been involved in any major cases, and what the firm’s policy is on hiring back ex-students as lawyers. If you are very fortunate, you might be able to speak with someone at the firm, or who knows the firm, concerning its climate for lawyers and students who have disabilities. Perhaps the questionnaire for your law school’s annual survey of firms asks, whether lawyers with a disability work at the firm. (The University of Ottawa Common Law Faculty, along with several other law schools, participates in yearly surveys that

include a request for such information.) Your career advice office and/or an articling committee organized by students at your law faculty, should have these survey results.

Based on your initial research, make a final list of those firms with which you are interested in articling. Keep notes on all your research, because you will need them to write your covering letter and to tailor your resume for each target employer.

Let's face it. For many law graduates, the choice of where to article is less a product of their individual interests than a product of the marketplace and the windows realistically open to them. For persons with disabilities, disability plays a crucial role in determining where individuals decide to practise. Here's one person's view:

My decision was solely based on the likelihood of employment, the degree of accommodations available, and attitudinal climate for individuals with a disability. I did not consider, for example, what areas I was interested in practising to determine where to apply.

2.4 Private Firm Career Options

2.4.1 Factoring Disability into the Private Firm Formula

There is a perception by law graduates with disabilities that private firms do not offer the same career openings as the public sector does, or that private firms are somehow less willing to provide disability accommodations. This perception is perpetuated by negative stereotypes and, in some instances, by the current actions of lawyers and law firms. The Law Society of British Columbia reports that:

Prejudice, devaluing and negative stereotypes that equate disability with incompetence appear to be widespread negative attitudes within the legal profession (*Identifying Barriers*, at p. 2)

Some feedback in our own (Reach) study was complimentary about the positive efforts being made in some law firms. Several individuals have done well and continue to flourish in private firms. However, there is a lack of detailed information available about accommodation best practices. And there remains an apparent under-representation of persons with disabilities in this sector of the profession.

In March 2001, the University of British Columbia and the University of Victoria held a joint wine and cheese party. Fifty-five firms from British Columbia, Alberta, Ontario, and New York were represented. About half of the Canadian firms were quizzed by a Reach researcher as to whether they had a formal or written policy concerning accommodation of persons with disabilities. Several small to mid-sized firms stated that they had no formal written policies regarding articling or any other aspects of career development. The majority of the representatives questioned had no idea whether their law partnership had a policy concerning disabilities. Representatives from a few firms stated that accommodation was "no problem" and inferred that a

formal policy was unnecessary. (Yet we note that a former associate of one of the latter firms anonymously accused it of having committed blatant and gross discrimination.)

Sponsored wine and cheese parties are essentially job fairs intended to familiarize potential employment candidates with the major firms. Firms hope to attract the best and the brightest that law schools have to offer. If the majority of employer representatives at such a gathering in early 2001 had little knowledge about disability issues or ways of accommodating, attracting, and recruiting individuals who have disabilities, this may say something about how private firms generally view candidates with disabilities. It certainly underscores a need to promote greater awareness among the legal profession regarding accommodation issues. It also evinces a need to introduce the requisite policies and planning into the culture of law firms. Many of the representatives at the BC gathering were surprised by the questions about accommodation. But a majority expressed willingness, if contacted, to respond at a later date with details concerning any policy in place in their firms. Because the gathering took place in the final weeks of the study which led to this Guidebook, any such follow-up would need to occur as part of a future project.

Private firms need both to be consulted and educated in order to improve their record and reputation for accommodating law graduates. Some law societies offer sample equity policies that firms can emulate. Law society guidelines have also been developed relating to non-discrimination in interviewing and in law practice. But we do not have much evidence of whether these policies and guidelines are widely followed with regard to disabilities. (For example, the Law Society of Upper Canada has produced *A Guide to Developing a Policy Regarding Flexible Work Arrangements* and the Law Society of British Columbia's Equity and Diversity Committee has produced a sample policy for conducting interviews called "Avoiding Discriminating in Hiring Interviews".)³

Individual law firms could play an important role in creatively developing policy, leading the profession by example. Much more work is needed to discover what private firms have done, or are prepared to do, to promote diversity and equity within the legal profession for persons who have disabilities.

2.4.2 Comparing Private Law Firms as Potential Employers

If you decide to seek articles with private practitioners, the decision regarding where to apply is complicated by the choices among large, mid-size and small firms. You may also want to consider government positions, work with non-profit organizations or even creating your own articles in collaboration with a lawyer or organization. The following discussion covers some benefits and drawbacks of these possibilities.

LARGE FIRMS

Benefits: Most large firms have a well-structured and organized articling program, including rotations and mentors. Many large firms offer regular seminars and continuing education

³The BC document can be found in the May-June 1999 volume of the *Benchers Bulletin* on the LSBC website (<http://www.lsbcc.org/library/>). Or it can be obtained directly from Kuan Foo, Equity and Diversity Program Coordinator (telephone (604) 443-5727 or toll-free within BC: 1-800-903-5300; by e-mail, kfoo@lsbc.org)

programs. Because large firms usually handle a wide variety of clients and cases, students are able to gain research experience in many areas of law through rotations among different areas of specialty within the firm. Large firms offer excellent salaries and benefits, and many will pay for a student's bar admission course. When comparing salaries and benefits (if you are lucky enough to have a real choice of offers) note that the size of salary may have as much to do with the market dynamics of a city as with the local cost of living or the size of a firm.

Drawbacks: As a student, you may work for several lawyers at once. Because of the size of the firm and the nature of the student programs, you may not see a file from start to finish. While you may be getting an excellent salary, you may be expected to work long hours, including nights and weekends. If you plan to work as a sole practitioner in the future, you may not get the practical hands-on experience available when working in a smaller firm. If you are hired back after your articles, you may not have a choice regarding the area of practice in which you will be placed.

MID-SIZE FIRMS

Benefits: Many mid-size firms offer salaries and benefits competitive with large firms. You may get more hands-on experience and increased contact with clients. A mid-size firm specializing in your area of interest may enable you to gain more valuable experience during your articles. Generally, it is easier to get an interview or an offer from a medium-sized firm.

Drawbacks: Even at some mid-sized firms, it is possible that you will not handle a file from start to finish. Articling programs may not be as structured or organized as in large firms. Unlike larger firms, many mid-sized partnerships do not have a staff lawyer or manager overseeing matters related to articling student hiring and work.

SMALL FIRMS

Benefits: Small firms provide an opportunity to gain valuable hands-on/practical experience, such as court appearances, etc. Small firms are usually specialized. Therefore, if you have a particular area of interest, a small firm could be your best choice. You may have the opportunity to be responsible for a file from the initial client interview through to litigation. You will gain valuable experience in the running of a practice, such as billing, collections, retainers, etc.

Drawbacks: "Hands-on experience" may include office filing, taking documents to the registry and court offices, and so on. Salary and benefits are lower than those offered by mid-size or large firms. It may be more difficult to get hired back, as many small firms cannot afford the cost of adding another lawyer to the firm.

2.4.3 Sole Practice

Lawyers who become sole practitioners usually come from backgrounds where they have first gained experience in the public or private sector. A sole practice could be your long term goal, or you could be one of those brave souls who starts a sole practice immediately after being called to the bar. As one focus group participant observed, even if one could secure the needed financing, not everyone has the self-confidence or enough experience to hang out his or her own shingle. Largely because of the progressive employment equity policies prevailing inside the civil service, the background of many sole practitioners with disabilities is in the public sector. The 2001 Law Society of British Columbia report on disability suggests that "lawyers with disabilities are

frequently pushed into sole practice because of discrimination”. (*Identifying Barriers*, at p. 23)
During a Law Society of BC focus group, one lawyer commented as follows:

When I started in law, I had no urge whatsoever to be in private practice, my own practice...I think I was forced or pushed into this because of an inability to get an opportunity during my initial years, which is vital to any lawyer who is starting out. (Identifying Barriers, at p. 23)

A sole practitioner who took part in a 2001 Reach survey lamented that:

Basically [I] had to go solo as no one was interested in hiring me. [I] would love to have a part-time position somewhere as solo practice is only part-time, but no one will hire me and my deafness is a significant aspect, I suspect.

Challenges facing sole practitioners include difficulty maintaining a client base that provides constant and consistent employment, and the lack of support structures that would be found in a larger firm. An inability to share files and divide work so that individuals can concentrate on their strengths, while having others take on other aspects of a project, has also been expressed as a pitfall facing sole practitioners. (*Identifying Barriers*, at p. 23).

2.4.4 In-House Counsel with a Corporation

Somewhere between private practice in a regular law firm and sole practice lies employment as in-house counsel with a commercial organization. Articling at an in-house legal department or working directly for a corporate counsel can be an alternative to traditional law firm articles. This type of articling position is rare, but law societies will approve such articles if they feel that the learning experience will be satisfactory and the articling principal’s education plan for the student passes muster. Generally only larger corporate organizations have the budget and capacity to offer students a meaningful articling experience. That being said, among our survey participants were individuals with disabilities who had respectively articulated with a manufacturing company and a bank. Students with prior industry training or a corporate background, or who are completing a joint law-M.B.A. or joint law-M.A. program, may be prime candidates for in-house positions.

An advisor who gave input to our Reach employment project recommends the in-house counsel alternative to law graduates who want to be a solicitor in the private sector, but suggests seeking a venue allowing more flexible or fewer hours than law firms usually demand.

2.5 Government and Superior Court Employment

Provincial and federal governments offer articling positions purported to involve fair and equitable recruiting policies. In BC for instance, equity-based hiring policies are well established for the Ministry of the Attorney General Legal Services Branch. As part of the application package for articles, law students with disabilities are encouraged to:

“Indicate any personal considerations or circumstances that you feel we should be aware of in considering your application, including any considerations or circumstances that may relate to the Ministry’s commitment to achieving employment equity and diversity in its workforce.”

This willingness of public sector employers to encourage diversity is recognized by legal education career development officers and by others within the legal community. Ministry representatives who recruit in the law schools discuss diversity and flexibility. A student who attended one of these sessions in 2000 disclosed the following:

Prior to attending the information session conducted by the Ministry I was not sure if and where I would fit in within the legal profession. After the session I decided this could be a very good fit. All of my experiences thus far have been really positive.

Benefits of articling with the public sector may include valuable hands-on experience similar to that encountered in small or mid-size firms. Often government legal departments are involved in cutting-edge legal matters respecting work specific to the Ministry. For example, you would get excellent criminal law experience working at a Crown prosecutors’ office and environmental regulation experience at a Ministry of the Environment. As is noted below, the federal Department of Justice has a very well developed articling program.

Standard government hours may be less onerous than in private sector law firms, although in the varied experience of two Guidebook co-authors, government lawyers do tend to work more hours than non-lawyer departmental colleagues. Within the public service, “flex-time” is often available, permitting someone to work part-time or to work on an unconventional schedule, for instance to accommodate a disability and/or family responsibilities.

Drawbacks of the civil service include salaries that may be less than in mid-size or large private firms. Also, very few government agencies and departments will cover the costs of undertaking a bar admission program. Some public sector agencies, departments and ministries have well-structured and organized articling programs, while others have no structure at all. It is important to research these differing details well.

Some provincial governments, such as British Columbia’s, (as of early 2001) have a progressive policy for hiring persons with disabilities into the public service. Other public bodies in Canada, such as human rights commissions and tribunals, have often provided employment opportunities for persons with disabilities. One expects their equity hiring practices to be laudable, but there is no good reason why larger law firms with deep pockets should not be just as welcoming.

2.5.1 The Federal Department of Justice

The federal Department of Justice is widely recognized as an equal opportunity employer. The following excerpts from the Department’s career information website (<http://canada.justice.gc.ca/en/dept/ri/rec/lcj>) help to advance this idea:

“The largest single legal organization in the country, the department employs approximately 1,800 lawyers from all over Canada with backgrounds as varied as the country itself. We promote employment equity and actively seek qualified candidates from among aboriginal people, women, visible minorities and persons, with disabilities.

Workplace policies such as employment equity, flexible work hours and Telework enable employees to make choices about their working conditions.

As public servants supporting the Minister of Justice and Attorney General, we are committed to respecting and obeying the Law and upholding the highest standards of integrity and fairness.”

This attitude towards equity and access was confirmed in comments that we gathered from individuals in Ontario and BC who worked as lawyers with, had articulated with, or were planning to apply for articles with the Department of Justice:

Federal Department of Justice was pretty good and provided more than I expected them to.

I will most likely apply for articling positions with the federal government, particularly the Department of Justice, due to the fact that they are known to have equitable hiring practices.

Nevertheless, a few individuals who had experience with Justice Canada expressed misgivings as to the sustainability of a career within this branch of government for individuals with disabilities. Two comments from a Law Society of BC focus group on disability and the legal profession illustrate these concerns. (*Identifying Barriers*, at p. 22)

I articulated with the federal Department of Justice. It was a great experience, but the government's record after articling is very, very poor as far as retaining lawyers.

The federal government has a \$10 million fund there to help people with disabilities with equipment and assistance, but if I actually access that fund, I have all the people asking what's it for and what are the long-term career possibilities for this individual.

The Department of Justice (DOJ) can offer a range of experiences in criminal, civil and tax litigation, administrative, human rights and international law and in other practice areas. The DOJ acts as a recruiter for other federal departments and agencies where legal work is needed. Deadlines for applying for the DOJ's articling program vary according to DOJ Regional Offices. (Information may be obtained on the website: <http://canada.justice.gc.ca>)

According to the McGill articling handbook, the DOJ articling rotation system provides students with experience in advisory, litigation and policy activities. Students are offered the possibility of

rotating through two to four areas of law. The Department hires students of both civil law and common law backgrounds. Students may write the provincial bar exams of their choice. If you want to work in Ottawa, it would be an asset to be called to the Bar in both Ontario and your home province. Nevertheless, the Department can obtain temporary bar membership for staff lawyers, allowing them to work in the different Canadian provinces and territories.

The DOJ offers a summer program for first, second or third year students. To be eligible, students must register with the Federal Student Work Experience Program at the Public Service Commission. For more information, see <http://www.psc-cfp.gc.ca> or <http://jobs.gc.ca>.

2.5.2 Judicial Clerkships

[Note that section 2.5.2 is adapted primarily from the University of Ottawa's Articling Handbook (2000).]

Judicial clerkships are 12 or 24 month terms wherein law graduates assist one or more Justices at the Supreme Court of Canada, the Federal Court (appeal and trial divisions) or other appeal and trial division branches of superior courts across the country. Clerkships are prestigious and highly sought positions normally offered to students with very strong academic records. Duties mainly involve researching points of law and preparing memoranda of law. Clerking is a unique experience in which there is the chance to gain personal contact with judges, familiarity with court procedures, and an insight into how legal and policy arguments are decided. Among current and previous judicial clerks, the authors of this Guidebook know a number of individuals who have disabilities.

A drawback to clerking, however, is that there are no opportunities for "hire-backs" at superior courts. Moreover, clerks' salaries are often significantly lower than those at large firms. As well, student tuition for a clerk's bar admission course is not likely to be paid by the employer. Nonetheless, given the tough competition for clerking posts, a Justice's clerk from the Supreme Court of Canada (for instance) would likely have little difficulty afterwards finding a job in government or at a law firm. As well, the drawbacks of clerking may be insignificant when seen in light of the high prestige of these positions and what are reputedly reasonable working hours. (According to the University of Ottawa's Articling Handbook, judicial clerks usually have a 40-hour work week, but the editor of this Guidebook would suggest that this is an underestimate.)

Please note that application deadlines for clerkships are normally much earlier in the year than for law firms. Most applications must be submitted by the first week of February.

Application requirements for spots as judges' clerks also differ from those demanded by law firms. Court administrators may require an applicant to submit a sample of legal writing, official academic transcripts (not copies), reference letters, and a recommendation from one's Law Dean. Information on clerking options in your jurisdiction and on the application process should be sought from your law faculty's Career Planning/Placement Office. As was noted in section 2.3 above, application deadlines for clerkships and for other kinds of articling positions are found in Dalhousie and McGill publications listed in the bibliography of this Guidebook.

2.6 Non-Traditional Articles and Alternative Careers in Law

For students who view traditional law firm articles with trepidation, an articling term that has a non-traditional component may be the solution. Or you may choose to pursue articles that have little relation to customary private firm clerkships. Below we discuss options that could be additions to, or facets of, articling with a private firm. Nowadays, however, your law society may permit you to undertake the *entire* articling experience outside of the usual private law firm or government legal department. You should bear that development in mind as you read this section.

A student who truly wants to article at a legal clinic, a public interest advocacy centre, a voluntary association or a very small firm need not be deterred by the fact that these organizations can rarely afford full-time articling students. Currently in Ontario and Nova Scotia, and no doubt elsewhere, students are permitted to article for more than one firm at the same time. They may find it easier to market their services on a part-time basis to more than one employer. (This option may also be present in other Canadian jurisdictions.) As well, many provinces permit students to transfer their articles from one principal to another, so a student can work several months at one firm and finish her or his articling term at another.

For those who want to travel or work abroad, most provinces also allow students to have a temporary secondment to another law office that offers experience in areas of law not practised by their principals. As an example, in Ontario students can apply for permission to serve part of their articling term in another province (up to 6 months) or outside the country (up to 4 months). Several large firms routinely offer articling rotations at their branch and affiliate offices.

For students looking for flexibility to get around a disability, to support a family, to work concurrently in another field, or to pursue other interests, Ontario's law society allows for articles to be completed on a part-time basis. In Ontario, up to three years may be allowed to complete the program. No doubt other law/bar societies permit similar arrangements.

Some students may wish to work a portion of their articling term at a non-profit organization or with a regulatory entity. Several law firms offer alternative rotations where students can spend several weeks doing a special research project, or providing community legal services, or working for an outside body such as a human rights commission, while continuing to have their salaries funded by the firm. Other law partnerships will allow a student to complete an articling term outside of the firm by referring out the student's services to one of the firm's corporate clients.

In Ontario, for instance, non-traditional articling placements must be approved in advance by the Law Society, which does encourage students to obtain a broad experience during their articling term. Non-traditional articling placements in private practice firms, in the public sector and in legal departments of corporations must be arranged through the submission of an Education Plan to the Law Society, for approval. Education Plans for joint national and international articles must also be submitted by all parties involved, indicating that the student would gain practical experience in areas that would contribute to the student's lawyering skills and are consistent with the education objectives of articling.

The Ottawa chapter of the Law Union of Ontario recently produced a manual on *Articling in the Public Interest* (written by Nadia Thomas). Included in it are examples of alternative articling

positions developed or experienced by law students, a sample articling proposal and Education Plan, and tips for succeeding at finding and creating job opportunities. The Dalhousie University Law School website has two links that would be excellent starting points for seeking possible placements for this type of experience. The McGill Faculty of Law *Legal Employment Career Handbook* (the 2000-2001 edition or earlier versions) is also an excellent source of innovative ideas and supporting data.

2.7 Non-Legal Careers That Use Law as a Background

We did not carry out extensive research into non-legal career options that use law as a background, as this present study was geared toward lawyers and law school graduates pursuing a career in law. During the course of our investigation, however, several of the respondents commented on possible options held in reserve if their pursuit of a traditional legal career was forestalled due to systemic or attitudinal barriers. Career Development offices in law schools regularly invite guest lecturers to speak to students about alternative careers. Guest speakers at the UBC law school have ranged from film producers to entrepreneurs. Opinions stated by these speakers were mixed as to whether to article or not. Some individuals expressed the view that articling was an integral part of what they considered a legal education. Others had no interest in articling and specifically chose career paths that involved never setting foot inside a law office.

The common thread among all of the UBC law faculty's guest speakers was a sincere and fervent belief that their legal education gave them skills that were readily transferable into any number of alternative careers. The ability to analyze and solve problems, coupled with good verbal and written communication skills, were discussed as the most valuable assets taken away from law school. The wide variety of speakers invited over the last number of years attested to the wide possibilities for alternative careers. The dominant advice offered was to find a niche for yourself and pursue a career that you find rewarding and fulfilling.

One of the individuals we spoke with during the Reach study had been seeking accreditation as a mediator while pursuing a legal education: "Right now I've lined up articles and I hope to practise law in the traditional sense, but at some point I would like to use my mediation training in conjunction with my training as a lawyer."

Careers in alternative dispute resolution provide options for those not wishing to practise law in the traditional sense. Arbitration and mediation training can lead to professional accreditation and employment in the field of dispute resolution. There are programs available through service providers such as the Justice Institute of British Columbia and Continuing Legal Education programs in Ontario and BC. We encountered two law graduates with disabilities who are operating a successful Alternative Dispute Resolution firm (doing mediation and related work). One of the partners had worked in a private law firm for some years.

There are many research and advocacy organizations that could offer employment opportunities for law graduates. Public interest advocacy centres and community organizations obtain funding through government sources and foundations and fundraising efforts to conduct research and help develop public policy. There are numerous possibilities with organizations concerned with gender equity, aboriginal claims, immigration, consumer protection, legal and vulnerability issues of

senior citizens, health matters, environmental causes, advocacy for citizens who have disabilities and so on.

Chapter 3.0

3 Seeking and Applying for Articling Positions and for Longer Term Employment

3.1 Preparatory Thoughts and Steps

Note that some of the issues relevant to this chapter are equally relevant to career planning and were therefore covered in Chapter 2.

There is a perception by law school graduates with disabilities that firms hold preconceived assumptions concerning them as a group. The majority of respondents in our research avoided even applying to private firms. They reasoned that they would not be hired, and they preferred to seek articles with institutions that had proven records on equity issues. One suggestion for overcoming the stigma attached to disability was taking a personal approach to the application process:

Talk to individuals about your application in addition to the written application. There are enough employers out there interested in the notions of equal participation. It is important to surmount the obstacles of the present formalized application process.

The transition from law school to the practice of law poses new challenges to recent graduates. Moving into the business world from academic life, one encounters both business demands and performance concerns. New graduates with disabilities must also face, in many instances, the adjustment from part-time studies to full-time employment. Those that choose to remain part-time, and are able to arrange this, manage to avoid or mitigate some of the physical restraints or issues associated with disability. Yet they still must address attitudinal barriers or constraints. Prior to embarking on a career in the profession, students must ask themselves what form their legal career will take (given the pressures from the business side of law) and whether the imagined picture suits them.

3.2 To Disclose or Not to Disclose? ... That is the Leading Question

The personal view of whether or when to disclose a disability during the application or interview process varies with the personality of the individual, the perceived culture of the employer, the degree of one's impairment or disability, and how visible the disability is to others.

The participants in our study were understandably divided on the issue. There was consensus that disclosure was essential for obtaining accommodations. There was less agreement about whether and when it was the right thing to do in each given circumstance. The following sentiment mirrors the comments made by several respondents to our survey:

I am glad I disclosed my disability; I did not want to find myself in an unsupportive environment by forcing my way in. I think disclosure up-front suits the working climate of law. It is clear to me, however, that the disability will have an impact on the decision to employ. If I had been unsuccessful in my search I would probably have decided against disclosure the second time around, in view of needing the articles in order to move forward in the profession.

Some individuals will only partially disclose the extent of their disability, even after they commence work, for fear that it will affect whether they are taken on or retained. One individual respondent to our surveys was taking a wait and see attitude, hoping to gauge personal performance during summer employment and to judge how well the workload could be managed. The individual was planning on acknowledging the disability only if it proved difficult to complete the required work.

For several others that had not progressed very far in acquiring articles there was uncertainty as to the correct time for disclosure; whether in the covering letter or during an interview. There were real concerns over the issue becoming a barrier to interviews and employment. We advise that career placement officers at the law schools or at the provincial law societies may be good confidential resources for evaluating prospective law firm cultures and making an informed decision.

3.2.1 *Should You Mention Your Disability in Your Job Application Covering Letter?*

Most matters pertaining to covering letters are covered in section 3.4 below. But disclosure was an area of substantial discussion in our Reach focus groups of lawyers, law graduates and students. It is thus appropriate here to address the specific issue of whether to disclose a disability in the covering letter. The view cited below was supported by the overall consensus of focus group participants, but that support was by no means unanimous:

Your covering letter is an advertisement of your abilities, designed to prompt the reader to review your resume. Therefore, rarely disclose the fact that you have a disability.

As was noted earlier, for a number of good personal reasons, some individuals preferred to disclose during the application process. There are also situations in which there may be an objective advantage to disclosure during the application stage:

- If an employer has a specific policy to hire persons with disabilities
- If an employer is well known to be an equal opportunity employer
- If you are applying to an agency that deals with disability issues or with people who have disabilities

For individuals applying to government there is little question of whether or not to disclose. Disclosure of a disability is generally seen to work in favour of the applicant when applying to public sector employers.

3.3 Accommodation Issues

The lack of knowledge possessed by either employers or job applicants regarding possibilities for accommodation was identified by contributors to our research as a serious barrier to greater access to the profession. The website of the Job Accommodation Network (JAN), is an excellent source for examples of accommodations required for different disabilities. (See contact details in the Bibliography.)

The largest consideration for graduates with disabilities is determining how and where to practise. There is a series of linked choices to make, each requiring a degree of introspection. Once an individual has determined the type of career, she or he must turn attention to how to attain that career, given her or his particular disability and ways of dealing with it. The particular work environment will strongly affect both the accommodations available and required. It is no accident that the majority of law graduates with disabilities end up working in agencies and institutions such as government, that have strong equity policies.

3.3.1 *Should I Seek Full-time or Part-time Work?*

For many with disabilities, a pressing question is whether to seek part-time or full-time articles and employment. Elements of the legal profession appear to be strongly biased against part-timers. Whether or not the rationales given by these people are legitimate, this common attitude has the effect of greatly reducing choices for individuals that are unable or unwilling to work fulltime:

I found it particularly disheartening when a lawyer spoke on women's issues and the importance of part-time employment. I approached her about part-time (half-time) opportunities and she replied that, well, she really meant part-time as in a controlled 35-40 hour work week. Less than that probably wouldn't work.

Accommodating of requests for part-time work has been done in some instances by private firms, though they generally are less than enthusiastic about the prospect. They rationalize their failure to accommodate on the basis of accessibility needs for clients and availability of staff for court appearances. One individual surveyed by us was able to arrange the accommodation of a restricted work schedule with limits both on hours in the day, and days of the week. This arrangement appears to be the exception to the rule. Many students that would prefer part-time articles have decided to attempt full-time work and hope that other kinds of accommodations will provide for a reduced burden.

3.4 Additional Information on Articling

Much of the information in this section is gleaned from Ontario sources. Readers should investigate whether (as applicable) there are analogous conditions, policies, practices or services in their jurisdictions.

3.4.1 *What Do Articling Students Do, Anyway?*

Generally every articling student is supervised by a Principal, approved by the relevant law society, who is a member of the firm or organization with which the student is articling and who has had experience as a licensed lawyer for a requisite number of years. What an articling student does day-to-day varies depending on the employer. In Ontario, the Law Society of Upper Canada (LSUC) requires a Principal to draft an Education Plan, which sets out the experience to be provided in a number of skills areas during articles. The Law Society strongly advises that students ensure that an Education Plan has been prepared and approved. To do so, students must contact the Articling and Placement Office at the Law Society. A student with a disability may be keen on discussing the draft Education Plan with the Principal as it is being developed, to ensure that no inadvertent barriers or gaps are built in.

One can purchase or read online the Law Society of Upper Canada's Articling Handbook for Principals and Students. (Other law societies will have similar guidance documents.) Students and Principals must file mid-term and final evaluation forms that are used to assess the quality of experience gained. The Law Society of Upper Canada maintains that an articling student is not only expected to gain knowledge of substantive law and procedures, but must also receive experience in the basic skills used by lawyers in the areas of professional responsibility, interviewing, fact investigation, legal research, file management, office systems, drafting, negotiation and advocacy. As well, the assignment of routine duties (a.k.a. grunt work) does not, according to Law Society guidelines, provide an appropriate quality of education. A student's time committed to such tasks should be kept within limits compatible with the educational goals of articling. (In some instances, students have reported dissatisfaction with constantly being assigned menial tasks that could have been given to other employees who were available and had nothing to do.)

What is typically done in large firms is that students are assigned work on a "rotation" basis. For set periods they focus on one area of law, then transfer to a succession of other areas. For each subject area, a supervising mentor who has expertise in that subject oversees the student. In contrast, supervision at smaller firms involves more opportunity to work with the same lawyers constantly, which might allow for more frequent feedback. The feedback in smaller firms is often delivered on a casual basis rather than through formal evaluations.

Tasks generally expected to be undertaken by articling students include: drafting contracts, pleadings, motions and client correspondence; legal research and memoranda; court appearances that are permitted for articling students; small claims court files and cases; title searches and assisting with real estate closings; attending and assisting at trials and hearings; and drafting legal publication articles for firm lawyers.

Student satisfaction with the articling experience varies drastically and may do so within the same firm. This may depend on which lawyer supervises a student and whether the student's interests are a good fit with the firm's main areas of practice.

For anecdotes about the daily working lives of articulated students, one can read a 1995 magazine piece titled: "Is Articling Obsolete?" (*Canadian Lawyer*, October 1995, 18-22). To get an idea of the income levels of lawyers and articling students, peruse the National Compensation Survey published each year in the spring or summer edition of *Canadian Lawyer*.

A concern of many articling students is the number of hours they will be expected to work during a typical week. There can be wide discrepancies between the numbers reported, depending on whom you speak to, and when. Law firms may cite one figure, while articling students may report a different (larger) statistic. It may depend on the kind of week being experienced by those being questioned. Based on the experience of students in past years, the researchers and co-authors of this Guidebook encountered anecdotal data such as the following: "Hours often fall between 50 and 60 weekly. However, for several large corporate/commercial and litigation-intensive firms, expectations of students' hours may increase to 60 or 70 hours."

In an informal survey done for Reach in early 2001, individuals at large law firms (over 100 lawyers) reported that their workweeks were unpredictable. During one week a student may work 40 hours, in the next, 80 hours. It simply depends upon the amount of client work coming into the firm and the relevant deadlines. Generally speaking, articling students at large firms reported working an average of 65 hours per week. This included many hours during weekends and holidays. Individuals at small firms (fewer than 15 lawyers) also reported having sporadic work weeks, but generally reported working fewer hours than articling students at the larger firms, approximately 50 hours a week. These individuals also reported having to finish up work on weekends and holidays.

Articled students in governmental jobs reported working a more stable working week, generally consisting of a 40-hour week. Yet there were times throughout the year when they were required to come in early or had to stay late. Also, weekend work was required from time to time.

3.4.2 *Articling Application Procedures for Law Firms*

Most of the points raised in this section come from the Queen's University Articling Handbook but all law faculty articling Handbooks deal with similar subjects. Excellent resources are also online from Human Resources Development Canada, the University of Windsor, and Dalhousie University Law School. (See "Internet Resources" in the Bibliography.)

As the Queen's Handbook says, applying for legal jobs is rather more straightforward than applying for jobs in many other fields. Every application will consist of a cover letter, a resume, and law school and undergraduate transcripts. Reference letters are optional but often advisable; and you will sometimes need to submit a writing sample. Send (or deliver) everything in an 8.5 x 11 inch envelope. "That's it - but putting the package together is not always as simple as it sounds."

Because employers receive a lot of applications, and many of them have very similar elements, every subtle distinction matters. You must carefully review all of the information you are

presenting, and make sure that all of your experiences are presented in the best possible light. In addition, you must think about each word and sentence carefully, and make no mistakes in proofreading. Ask one person or preferably more to review your applications before you send them.

Covering Letters

Every application must include a covering letter. For some applications - to specialized or smaller firms, for example - the cover letter may be crucial. At other times, particularly when you are one of hundreds applying to a large firm that is mainly concerned with marks, your cover letter makes no difference at all, unless you forget to sign it, which might be noticed. But you must still send one. Personalize each letter (or group of letters). At section 3.2 above and in Chapter 4 on interviews we discuss whether or not it is appropriate to raise the issue of your disability in the application.

It is always helpful to say why you are interested in articling with that specific employer, and it can be helpful to mention a contact made at a Careers Day, for example. If you are applying to employers who are part of one of the programs arranged to “match” firms and students, as well as applying to employers that are not, do not put your “match number” on the letters (or resumes) that are sent to non-participants. Your letter should almost always, at the beginning of your working career, be no longer than a single page. Do not repeat your resume in the letter; just flag the highlights.

A covering letter is a writing sample, so it must contain no spelling or grammatical errors. A couple of brief paragraphs are usually sufficient. If you are applying for a job at a large firm, those doing the recruiting will likely turn straight to your marks anyway, and there is a school of thought that says the more you write the more errors you make. However, if you are applying for a more unusual job, you may want to take the opportunity to explain why you are a suitable candidate.

The usual letter goes something like this (with lots of room for variation):

- 1) Who you are and what you want. For example: “I am a second year law student at X University (not St. of X, which doesn’t have a law school) and I am applying for an articling position with your firm for 2002 - 2003.”
- 2) What kind of job you are seeking, and why this employer is of specific interest.
- 3) What special experiences or qualities you can offer the firm, and why the firm should be interested in you. For example: “I have been very involved in Legal Aid, the Law Journal, student government and the National Education Association of Disabled Students. I have also worked for two summers for the Department of Justice in Edmonton.”

OR “Prior to entering law school I worked for 14 years as a public health nurse. While I wish to find articles that will provide me with exposure to a broad range of areas of law I am, of course, particularly interested in your health law practice. In addition, I believe that the skills and maturity gained through my previous employment will be invaluable to me in my work as an articling student and a lawyer”.

OR “You will note from the enclosed resume and transcripts that I have received high marks in courses in Evidence, Criminal Procedure, Advocacy, Correctional Law and Advanced Criminal Law. I have gained additional experience in criminal advocacy through my work as a volunteer for Student Legal Aid and the John Howard Society. I recently wrote a paper on the defence of automatism, as a supervised study project.”

That Disclosure Issue Again (See 3.2 above.)

With a bit of creativity, you may be able to fashion a few confidence-asserting phrases that paint a positive picture of your skills and experience at working around your disability or researching, doing volunteer activity or advocating with regard to it. Even if you decide to hold off on disclosure and thus omit submitting the phrases that you draft, the writing exercise will be good preparation for when your disability or need for accommodation is eventually discussed with an employer. (The disclosure may occur at a first or second interview, after you get the job, or never.)

IN YOUR COVERING LETTER, DO:

- Refer to the enclosed resume and transcripts (and reference letters, if included).
- Highlight any unusual or interesting work or extra-curricular experience.
- Explain any connection to the geographical area in which the employer is situated if it is not otherwise obvious. If you do not, as yet, have a connection to the locale, explain why you are interested in relocating.
- Cut and paste properly. Don't address the letter to Gowling Henderson, and in the body of the letter say I am interested in articling at Lang Michener. Don't call the Department of Justice “your firm”.
- Date and sign the letter.

For some good examples of resumes and covering letters, see the Queen's Handbook. You may also want to look at the materials mentioned in the 'Further Reading' list at the back of that Handbook.

References to References

It is preferable if your resume states the names and contact information for two or three references. Many guidebooks and counsellors will advise you simply to state “References Available Upon Request”. This vaguer approach may not benefit you, unless you already have a job and are worried about your employer finding out that you are applying for other jobs, or unless you are truly unable to offer good references.

If you have extensive work experience previous to law school, or you have had law-related summer or part-time work, or highly relevant volunteer experience, you would want to mention references from those backgrounds in your resume. If you include law professors among your references – which would be a standard approach - they should ideally be law professors who know your work well. A professor who has merely taught you in a large, lecture-based course will know less about you than one who has taught you in a seminar or supervised you in a clinical course or a moot. It may be difficult, of course, to have two or three professors who know your capabilities well, especially after first year. It is quite acceptable to use one reference from previous employment, especially if you had a very responsible or law-related position. In fact, if you have come to law school after work in another field, it may be wise to have one reference from that employment, provided you also have at least one academic reference. If you had an outstanding academic or research record prior to law school, you should consider adding a reference from that period as your third or fourth reference. In deciding whom to ask to be your reference, you must weigh factors such

as how well each person knows you and in what capacity, how respected and well known the reference is, and how positive the reference is likely to be.

Note that you must ask your reference before using his or her name. Anyone who agreed to act as a reference but has not been contacted recently should be contacted again. You may want to provide such a reference (or any reference) with a copy of your current resume (with or without enclosing the list of references you are compiling).

Whether to enclose only the names of references in your application documents, or enclose actual letters of reference, is a judgement call. Verify whether the employer asks to receive reference letters with applications. In many cases, even very positive letters of reference may be ignored, but they can do little harm, and may well do some good. Highly positive letters of reference are often mentioned during interviews. Generally, letters are more likely to be useful when applying to more specialized or unusual employers, and less likely to be useful when applying to large firms. The latter get hundreds of applications, so the people who review each application may turn immediately to applicants' law school transcripts.

Advice on Preparation of the Resume (Also known as the “curriculum vitae” or “c.v.”)

Again, there are numerous sources of advice available on this topic. For this section, as our core source of guidance we decided to use material from the UBC Law Faculty. Similar excellent advice is offered in publications from the Law Society of Upper Canada and from many other sources.

Your resume should outline your work experience, education, achievements and activities, and possibly a few of your general interests. As we noted above, you may choose to include references. Law firms generally prefer resume information to be arranged in a “chronological” format. Using this format, the candidate's education and work experience are listed in reverse chronological order (with most recent experience listed first) so it is easy to follow. Whichever resume format you choose, it is most important that your resume be organized in a logical, consistent manner. Your resume should be easy to read. It should be concise. Two pages is sometimes said to be the maximum length advisable at early stages of your career.

The UBC manual opines that if you are one of the fortunate few who have yet to work a day in your life, your first step in preparing a resume should be to do a personal inventory. The authors of the present Guidebook observe that some law students and graduates who have disabilities would have preferred acquiring a wider work experience, but had a few extra hurdles in their paths. Whether you have a substantial work record or not, it is worthwhile to think of your past activities and achievements and what they may signify. Your life experience and accomplishments may show the kind of person you are. Many firms and government employers are concerned with this, in addition to, or instead of, particular work experience.

Do not simply add mention of your latest job to the resume and send it off. Rather, review your original list of skills, experience, and credentials for law-related angles. Stress major accomplishments and responsibilities that demonstrate your abilities. Do not be afraid to include information that is not specifically law-related. As you are starting on a new career, firms do not expect you to have all sorts of legal experience. Try to order such information in ways that suggest their importance and relevance to the position desired. Employers are looking for examples of initiative, responsibility, and one's ability to work well with others.

Part-time work during the academic year may show initiative, discipline, and that you are able to handle priorities. You may wish to state the number of weekly hours, especially if the employment ate into your study time. For each job you should give a brief explanation of duties and responsibilities. Avoid repetitious or irrelevant detail. Be specific and use strong active verbs such as “managed, supervised, organized, created, and administered”. Firms may examine such descriptions for indications of your initiative, responsibility, and other qualities they are seeking in an articling student. Yet there is no law saying that you must list every job you ever had. If you think that there is no positive spin you could put on some low-responsibility, embarrassing job, you are not obliged to mention it. On the other hand, you might decide to note menial jobs you took because you needed the money. Your interviewer might empathize, having had similar experiences before (or after) becoming a lawyer. At an appropriate point in an interview, you may mention how you managed to do that job, while getting through law school and coping successfully with a disability.

Extracurricular Activities and Interests

Many advisers say that these are important to mention, enabling the law firm or other employer to gain some insight into the kind of person you are. Like most employers, law firms and public sector employers are looking for individuals who are well rounded and personable. Law is a stressful profession. If you had a varied extra-cirrucular life after academic hours, you have a better chance of keeping that personal life in balance when you practise law. (They want to know that you can juggle many eggs at once without breaking any.) Community or school involvement, volunteer work, organizational membership, non-academic school involvement, hobbies, sports, musical or artistic interests and travel could all prove important in impressing an employer or making a positive connection with an interviewer. Your interviewer may be as interested in the activity as you are. Publications and professional affiliations may be mentioned, but ensure they are relevant - in the sense of subject matter, skills demonstrated or networking opportunities identified.

Other Skills or Background to Mention in the Resume

You could include mention of any special skills with computers, fluency in second languages or knowledge of other countries, cultures, or legal systems. In some circumstances, your awareness of disability communities and/or related organizations can be presented as an asset.

Should You Mention Your Professional Objectives in Your Application Correspondence?

If you are serious or definite about practising in a specialized area of law, you may want to discuss this in the resume or covering letter. But be careful not to limit your opportunities for securing an articling position or long term job by appearing to be too choosy.

3.4.3 Legal Requirements for Provincial Bar Admission

The following information provides a basic outline to the general format of coursework and articles required for Ontario, Nova Scotia, and British Columbia. The information captured here is current to February 2001. For candidates with disabilities, it is worthwhile knowing that in many provinces, articles and bar admission courses may be taken on a part-time or deferred basis. Course details may change from year to year. If your situation is in any way “non-mainstream”, contact the relevant law society’s equity personnel.

British Columbia has 9 month articles, commencing in February, May, September or November, plus a 10 week Professional Legal Training Course, which may be taken at one of three sessions

before or after articles. There are two qualification examinations. In Nova Scotia, there is a 12-month articling period commencing June, September, December, or March. This includes 7-week skills course (offered 4 times per year), weekend seminars and a Bar Admission exam offered 2 times per year. In Ontario starting in 2001, there are several options available. For a good discussion of the pro and cons of these options, refer to the latest University of Ottawa Handbook on pages 2 – 6 and to the website of the Law Society of Upper Canada (www.lsuc.on.ca).

3.5 Taking a Second Look at Alternative Careers

The subject of non-traditional careers was discussed in Chapter 2 of this Guidebook. It is worthwhile to consider the matter again when you are at the stage of applying for articling positions, longer-term employment, or graduate studies. The University of Ottawa Handbook has advice for students who are unsure whether they should be in law school or who are thinking twice about practising law. It points out that a variety of career opportunities exist, which are interesting both intellectually and financially. Perhaps you originally planned to be a traditional lawyer, with all necessary disability accommodations in place. Yet you may now find that an alternative career is the type of work that appeals most, or is best suited for you as an individual. By “alternative”, we mean work through which your legal education is put to use in a novel legal job or in a non-law occupation or career. This can be achieved without articling at all or can stem from a non-traditional articling placement.

Examples of alternative careers in which legal training may be an asset are as follows:

Law-Related: arbitration and mediation, communications, legal education, law enforcement, legal publishing and research, electoral politics, working for a legislature, banking and financial services, environmental groups, human rights organizations, lobby/advocacy groups, international organizations.

Non-Law: Business/entrepreneurial, non-profit groups, real estate/property management, marketing/public relations, business/management consulting, non-legal work in international organizations, investment, energy, environmental, information technology, sports agent.

Your legal education can be viewed as extensive overall training in skills which are transferable to new areas. For example, a specialized undergraduate background, coupled with your degree in law, can become a competitive advantage in the eyes of prospective employers within the relevant field. As well, moot court and trial advocacy experience can be used to highlight your public speaking and communication skills. Similarly, having gone through final exams or bar admissions, your self-discipline and personal motivation will be evident to some employers. Lastly, your ability to form legal arguments, write major papers and draft factums or memos indicate an ability to write effectively, think quickly and sell ideas, all of which are valuable transferable skills.

3.5.1 What Steps Should I Take to Pursue an Alternative Career?

Once you have made the decision to pursue an alternative career, you may decide to perform again the kind of self-assessment recommended in Chapter 2 when you were initially pondering a career in law. The purpose is to increase your understanding of your interests and skills. You

should seek involvement in groups and organizations that relate to your interests, both as a means of attaining further knowledge of the field, and as a method of making valuable contacts. As mentioned earlier, a good connection to relevant websites can be found on the Dalhousie Law School website. For more information on alternative careers for lawyers, consult *Beyond Expectations: Exploring and Creating Alternatives to Legal Practice* or the McGill *Legal Employment Career Handbook*. If you have set your sights on doing work internationally, a highly recommended resource is McGill Law School's *International Legal Career Handbook*. Other related resources are listed in this Guidebook's Bibliography.

3.6 A Word about Hire-backs

The goal of many students throughout their articling year is to secure a job as a full-fledged lawyer at the end of the articling term. Unfortunately, even for the most successful articling student, hire-back is not guaranteed. This is often due to economics rather than for performance reasons. According to Patricia Towler, author of *Articling in Canada 1996: A Survival Guide*, 60% of a mid-1990s graduating class from Dalhousie Law School remained with the articling employer after bar admission. Her survey of approximately 150 students also indicated that those in urban centres tended to stay with their articling firm more than those working in rural or smaller communities. Of those students who did not continue working with their articling employer, 60% identified the reason as being that the employer did not have a position available for them. The remaining students had rejected hire-back offers from their employers. For those students who had not been hired back by their employers, the survey indicated that 50% found work as a lawyer within six months of bar admission, 15% established new firms and one became general counsel of a major provincial administrative tribunal.

3.7 When is it Too Late to Find an Articling Job?

What if you don't find an articling post after second year? The Ottawa University Handbook suggests that you not panic. For many, there is a delay in finding an articling spot, but almost all eventually find one. Many firms delay loosening their purse strings to hire an articling student right up until the actual year and sometimes the actual month for starting employment. Although the majority of large-firm articling positions are filled a year in advance, several mid-sized and small firms have been keen to hire students in their last year of study. As well, several courts, government departments, and corporate counsel offices had postings for current year articling positions well into the summer following the 2000 graduation.

Chapter 4.0

4 Employment-Related Interviews

4.1 Anticipating the Interview: Preparatory Thinking and Action

A contributor to our project conveyed this opinion to the Principal Author in early 2001:

Don't be under the misguided impression that just because the legal profession has members that are well versed in the laws regarding discrimination that they necessarily apply them. Members of the legal profession are likely to have the same personal biases and inaccurate impressions of persons with disabilities as people in other professions.

Some lawyers' only experience with disability may come from tort litigation or from other kinds of professional conflict that do not encourage the most positive frame of mind. That background could be behind the following anecdote:

I was also informed that the resistance to hiring me was based on a concern that I might have a "chip on my shoulder" like most people with disabilities. My employer told me that he had been successful in convincing them that I was not like that.

Be prepared to discuss your disability if the topic comes up during the interview. The Law Society of British Columbia and the Law Society of Upper Canada have guidelines for interviewers with respect to broaching the subject of disability in an appropriate manner. (See, for instance, the "Hiring Guidelines" issued by the Equity and Diversity Committee of the Law Society of BC.) As one project researcher has opined, employers are discouraged from asking questions like, "What's wrong with you anyways?" The issue of appropriate interviewing approaches is also generally addressed in many law faculty publications targeted at career searches. Provided that questions are legitimately related to the job requirements, employers may raise them during the interview process. The issue of disability and accommodation should not dominate the interview, however. Since there is a legal expectation that employers must accommodate, the subject might not be raised at all.

If you require accommodation for the interview itself, such as a sign language interpreter, it makes sense to provide adequate notice so that arrangements can be made. If you feel you have been discriminated against during the interview process, you should contact the equity or ombuds officer for the Law/Bar Society in your jurisdiction. We have heard of two law students/law graduates lodging complaints in recent years with human rights commissions concerning discrimination associated with a job search process - including alleged failure to accommodate during an interview. (This guidebook cannot elaborate on the individual cases, in one instance because of a settlement confidentiality agreement, and in another because key details are not available.)

4.1.1 *Summer Jobs and Co-op Work Experience*

Few law students with disabilities take part in summer work at a law firm. The horror stories of long hours and the unwillingness of employers to consider part-time “summer articles” create disincentives. In retrospect, a few of our survey respondents would have liked the opportunity to work prior to applying for regular articles. Summer employment and experience gained through co-op programs are seen as good opportunities for persons with disabilities to discover strengths or limitations. Practical experience is also viewed as an opportunity for the individual to gain confidence in her or his abilities, and to demonstrate one’s viability in the workforce.

Disability has prevented me from applying for summer positions and articling positions. I have been concerned about attitudes and structural barriers, which may impact upon my ability to receive fair consideration.

The novel co-op program at the University of Victoria law faculty has recently implemented an equity policy that provides greater access for applicants with disabilities. Respondents surveyed who were involved with the co-op program were extremely positive concerning their experiences.

The availability of the co-op program for gaining work experience and for the guidance in where to seek articles and how to plan employment for the future was invaluable. The Director of co-op is interested in part-time on principle and provided support in arranging part-time employment and developing a positive approach to seeking part-time employment.

We also received input to the effect that choice of co-op placements is limited and postings are generally for full-time positions. Candidates seeking part-time postings may have to wait until full-time students are placed, thus missing out on some of the more sought-after placements.

4.2 **Disclosure Issues Related to Interviews**

The issue of disclosure remains very much alive in the interview process, especially if your disability would easily escape the notice of an interviewer. Disclosure of a disability may not involve a single communication. Incidents at work may arise that are outside the previous experience of an articling student or lawyer, and require accommodation. Physical or mental conditions may change over time, requiring altered and/or additional accommodations. For the aforementioned reasons, creating a dialogue with the employer or principal is extremely important. An employer who is advised in advance of concerns over deadlines or workload is more likely to see a requested time schedule or work adjustment as an “accommodation” or an instance of careful planning, rather than as an excuse for a lapse.

For some individuals surveyed in our research, disclosure had become important in order to protect and maintain a good working relationship with their colleagues and superiors. For these individuals, the stigma of being labelled “dishonest” or “manipulative” outweighed the stigma of being labelled “disabled”. Here is an illustrative reflection:

I felt that it may appear dishonest if I did not disclose my disability... I also was concerned not to alienate future colleagues by not informing them...

For some individuals, non-disclosure results in higher stress. Compensation techniques to deal with, yet hide, the disability often require long hours even in excess of those dictated by an industry that demands lengthy days. On the other hand, there is no guarantee that disclosure will not result in overt or subtle discriminatory practices on the part of the employer. Further, there are no guarantees that once an employee has disclosed a disability, accommodations will be provided. We can imagine an employer denying adequate support, then rationalizing a subsequent job termination or “constructive dismissal”. This dishonourable objective might be achieved with little in no explanation, or with calculatedly sub-par performance evaluations.

A good portion of the analysis and advice expressed in the next few paragraphs is derived from *10 Essentials to Get That Job: An Employment Guide for Persons with Disabilities* (hereinafter called the *HRDC Employment Guide*.) This excellent resource is available in book format, as well as on the Web, from Human Resources Development Canada.

The *HRDC Employment Guide* says that some job seekers, especially when their disability is “not visible”, decide on early disclosure for the following reasons: “Employers do not like surprises. Nor is it fair to hide something that could affect your job performance or the safety of others.” The *Employment Guide* also offers the following advice from the Canadian Human Rights Commission: “A disability is relevant to job ability only if it “threatens the safety or property of others or prevents the applicant from safe and adequate job performance even when reasonable efforts are made to accommodate the disability”.

The *HRDC Employment Guide* notes that if you do not require special accommodation and you feel your performance will not be unduly affected by your disability, then most experts recommend not to disclose - at least not until a job offer is made.

How to Disclose

The recommended procedure is to do so as honestly and factually as possible. Remember that you can play a role as an educator concerning your particular disability. Also, by displaying a sense of humour and/or a positive attitude toward your disability, you are communicating a desire to get on with the important issues, like how well you will do the job.

4.3 Discussing Disability and Accommodation Issues during Interviews

Several components of section 4.3 are adapted from the *HRDC Employment Guide*.

Because you have a disability, you face tougher competition for most jobs. How can you stand out from the competition? One way to stand out is to have a clear idea of what you can do to create added value for the organization:

- If you can, demonstrate how you can get new clients. Since customers are the lifeblood of every organization, talk about your involvement with people. Perhaps you are connected to groups that could benefit from the firm’s services, or could be a funnel for individual clients.

- Be as enthusiastic as possible. Most people find enthusiasm and an upbeat manner irresistible. They conclude that you will contribute to the working atmosphere in a positive way.
- Refer to your disability in a matter-of-fact way so the employer knows you have dealt with it. Sometimes humour is appropriate.

4.3.1 *Planning Your Interview Discussion with Respect to Disability Issues*

Sometimes employers don't hire people with disabilities because the employers are afraid of what it involves and don't know how to ask about the situation. Your first task may be to figure out how to alleviate this fear. Focus group participants during research for the current Guidebook were not unanimous on a particular approach. But some suggest that one must arrive at an interview prepared to address a few basic questions:

1. What can you do as a professional employee?

Be ready to describe your abilities as they relate to the requirements of the position. Don't forget to mention other attributes that reflect on you as a person. For example, it is obvious that you are in a wheelchair, but it is more relevant that you spend time in the community volunteering or performing an interesting hobby. This will assist the interviewer to see beyond the disability.

2. What can't you do?

If you are limited seriously in any way, be up-front and make sure you state what these limitations are. For example, you may be visually impaired or blind and need assistive software. Clarify that although you can make provision for the software, your employers' system needs to be up to speed to handle it. By taking this approach, you are offering an alternative but making it clear that you will require some cooperation. Be sure to mention support programmes that may be available to assist you and the employer to offset any costs and to adapt the workplace (see Chapter 8).

3. How can you overcome what you have difficulty doing?

Remember to point out steps you take that compensate for or aid you to work around things that you cannot readily do. For example if you are deaf, describe how you are adept at lip reading, use a Hearing Ear Dog, the TTY or Bell Canada Relay Service. It is important for the interviewer to understand that there are often several ways to deal well or fully with your disability.

4. What are the benefits in hiring a person with a disability?

We have mentioned above that you can take preparatory and mid-interview steps to help the employer decide to hire you as an individual who has a disability, such as focusing on your personal attitude toward work or toward the kind of work involved in the desired position. Additionally, you can draw attention to the general benefits of engaging articling students or lawyers with disabilities. You can talk about hiring incentives. For example, you may have arthritis and be eligible for a government wage subsidy. Make sure the employer is aware of any programs that can financially benefit the company, such as tax breaks for adaptive equipment or renovations. (Chapter 8 scopes out several such programmes helpful to employers.)

4.3.2 Getting the Employer to Ask You the Tough Questions

The HRDC *Employment Guide* says that the “tough questions” are the ones pertaining to hiring a person with a disability. They are the ones all employers want to ask, but often don’t. It is important to get these on the table, so you have a chance to address them. Essentially, it is to your benefit if you take on the role of educating an employer. The HRDC Guide recommends that if the following concerns (as amended for the purposes of this Guidebook) do not come up during your interview, you may need to take the initiative and bring them up yourself.

Question: What if I hire a person with a disability but there is a problem about adapting the job or workplace to his or her limitations?

Response: “I am confident that I can do the work and if there is a particular task that might give me a problem, I am usually able to figure out a way to get the work accomplished. Give me a day or two to work on it. Also, currently there is government assistance to provide equipment adaptations.”

Question: What if I hire this person and he or she doesn’t work out? Will I be able to let this individual go without a lot of trouble?

Response: The HRDC booklet mentions “a Lou Harris Poll” which concluded as follows: “Nearly all disabled people do their job as well or better than other employees doing the same jobs”. You can then add: “So, if you are willing to take a chance on me I’ll do my very best”.

Question: Will my insurance go up?

Response: “Not likely. Not one insurance company is known to have increased the premiums because the company hired a person with a disability.”

Question: Will this disabled person be away a lot or prone to accidents on the job?

Response: Offer your own safety and attendance record. “Like lots of people with disabilities, we offer a better than average safety record. I’m very proud of my own.”

Question: I don’t exactly understand what this person’s disability is and I am afraid to ask.

Response: Don’t give just the title of your disability; explain it. Detail what you can do well and how you work with the disability. “I have cerebral palsy. In my case, this means I have profound weakness in my legs and lower body. Sometimes I rely on a walker. It does not affect how I think, solve problems or have fun.”

Question: How will she get to work on time?

Response: I will work out in advance a reliable transportation system. I always have.

Question: I wonder what his disability is and how it will affect the other employees.

Response: “My disability is cerebral palsy, which is a condition usually caused by lack of oxygen at birth or due to a severe illness. In my case, I was born with it. It does not affect how I think. It just takes me a little longer to get around. After I describe to my fellow workers what I can and can’t do, I have no trouble at all working in a team.” Remember that it is to your advantage to educate the employer about your particular disability, on how it will affect your performance and whether it will impact on the other employees. Our project advisory group has also suggested that the employer can help by preparing the ground a little with co-workers. The boss could discuss the new employee’s good qualifications with his or her future workmates, explaining something about the disability (if disclosure is not an issue), and how workplace accommodations will be provided to assist the new employee to attain her or his full potential.

4.3.3 *Be Prepared to Ask Your Own Questions*

Those interviewing students for articling or law graduates for lawyer openings will always ask whether you have questions for them or what it is you would like to know about the firm or government department. You should therefore have several questions already in mind. The University of Toronto Articling Handbook presents the following observation from a former student: “My big advice to anyone is to spend the bulk of your preparation time thinking up intelligent questions to ask the firms. Over half of each of my interviews consisted of my posing questions to the interviewer about the firm.”

Generally speaking, don’t ask questions whose answers are easily found in a firm’s brochure. Instead, use the opportunity to demonstrate your knowledge about the firm and interest in its practice. You may want to clarify a point in a brochure or refer to an earlier statement in the interview, both of which indicate that you have been listening throughout the interview and are interested in what the interviewer has been saying. Also, use the opportunity to address concerns that are important to your own evaluation of the firm, from disability accommodation and other perspectives.

The following are samples of questions that you may wish to ask interviewers. They are aimed principally at the private law firm scenario, but as a law trainee, you should be able to adapt many of them for other environments. We have selected most of them from a long list gathered in the University of Ottawa Articling Handbook, choosing those that we thought more likely to be of extra relevance to people with certain disabilities. We have also added questions on one or two matters that did not yet seem fully covered.⁴ Please note that some of these questions may be more appropriately asked of an articling student rather than a senior partner, or at a cocktail party rather than at a first interview. You must exercise good judgement.

- What is the firm’s general character? Its stability and reputation? Work environment? (You might get at the answers to these questions by asking several different lawyers why they came to

⁴ The University of Ottawa questions are a compilation of queries that had been listed in several sources: the McMillan Binch Student Interview Handbook; the Articling Handbook put out by the Young Lawyers’ Conference of the Canadian Bar Association; *Articling in Canada: A Survival Guide* by P. Towler; *Articling and Summer Positions in Canada* by the Osgoode Hall Law School Articling Office, and Yale Law School’s *Introduction to Career Development* handbook.

work there. What attracted them to this particular practice?)

- Describe a few typical projects done by summer/articling students.
- Are articling students assigned to one department or rotated through several? How is their work determined, assigned and evaluated?
- Is any one department responsible for the majority of the firm's business?
- To what extent are articling students involved in a training program? Who conducts it? (Ask current articling students if they would describe their training as educational or more of a "sink or swim" experience.)
- What matters are you (the interviewer) involved in? What kinds of work have you done since you started working for the employer? Describe a typical day/week at work.
- Are articling students' hours billable? What is the average number of billable hours expected?
- Does the firm have an active pro bono program? What kinds of pro bono work does the firm handle? Do summer students participate in working on pro bono issues? If so, what type(s) of issues did they work on last summer?
- What is the firm's policy governing maternity leave? Health-related leave?
- Does the firm require its articling students and associates to participate in Continuing Legal Education events?
- Is there opportunity for articling students and new associates to travel? Are they required to travel?
- Does the firm have any lawyers who work less than full-time?
- How much responsibility is given to summer/articling students?
- How many working hours will be expected of me?
- Will the firm subsidize my Bar Admission Course fees?
- Is there a sabbatical policy?
- What sort of social events does the firm have? Are students invited to all these functions? Are they accessible?
- How does the firm believe it is regarded in the community at large and in the legal community?
- Could you tell me about the people I would be working with?
- Does the firm have any rotations involving community organizations? Which ones?
- Are any firm members instructors in bar admission or university courses?

Some students may be concerned that asking a particular question might negatively affect their chance of receiving an offer from a firm. These questions could involve such subjects as flexible hours, access, time flexibility, hire-back rates, maternity leave policies, pro bono work and others. Again, you will need to assess whether you want to work for a firm whose representatives frown upon these legitimate questions and judge how important or necessary the answers are for you.

4.4 Other Common Sense Considerations Related to Interviews

With or without the formal assistance of your target employer, why not try to meet privately with a current articling student? Few firms arrange such palavers between current and prospective articling students and the information learned may be invaluable in future interviews with the firm.

Arrange to have an answering machine operating during the weeks in your city when interviews are scheduled, especially if there is a designated interview week for articles. It is important that firms be able to reach you then. It is also important that you be able to retrieve messages between your interviews, as you will need to return messages throughout the day. The University of Toronto Articling Handbook and others offer such practical hints as organizing your clothes and packing your briefcase the night before interviews. We know that people with disabilities are accustomed to the need to plan ahead. We simply remind you that you may consult the career advice officer at your legal education institution and the cluster of advice books and Web resources listed in our Bibliography.

The University of Toronto Handbook sensibly suggests that as part of interview preparation, you bring extra copies of your documents. Interviewers may ask for a reference letter on the spot. Or you will find that not all of the interviewers have a copy of your resume or transcript. Having these materials with you “will make you look prepared and helpful”. (That is exactly what you have been, if you have brought extra copies.)

The Queen’s Articling Handbook has advice for when you are offered a second interview. It suggests: “Second interviews may be similar to the first. You may be slightly more relaxed, as you know the interviewer is quite interested. It’s a good chance to ask more detailed questions, to think hard about how much you would like to work there, and, yes, to meet more people.”

Being invited to lunches and dinners presented by potential employers need not be an ordeal. You will know, at least, that you are one of the employer’s ‘favourite’ candidates. Conversation tends to be more relaxed and less business-oriented than in an interview. But do not relax overly. You are still being assessed. Cocktail parties, lunches, and dinners can be very trying for some students. Check the location ahead of time for accessibility.

4.4.1 The Benefit of Hindsight: Looking Back on the Articling Interview Process

The University of Toronto Handbook contains a portion called “What They’d Do Differently”, in which alumni recount tales from undergoing the articling gauntlet. Here are selected (slightly edited) excerpts:

- I would have contacted firms in the spring and gotten to know as many people as possible (lawyers and articling students) and I would have been much more diligent in attempting to make contact with people at the firms I was interested in prior to sending my applications.
- I should have spent more time learning about the differences between the firms.
- I would have talked to more people before the interviews and had more targeted questions for these “friendly” info sources. I would have also relaxed a bit more - I actually enjoyed interview week!
- I would speak to students articling with the government. The very least, they could give hints as to what questions Government departments will ask.

- I shouldn't have scheduled so many interviews - but I lacked confidence and was afraid not to overbook
- I would have kept an open mind and not prejudged the firms too much before the actual interviews.
- Everyone says that, but like most people I thought "oh I just want to be employed at the end of all this". It's not until you "click" with a firm that you realize just how important it is that the people who interview you are really interested in you as a person. The communication of a genuine interest has got to be the most rewarding thing.

Two of the reminiscences listed by the U of T Handbook are particularly relevant for law graduates with disabilities. The first speaker wanted reduced work hours, a situation that some persons with a disability need to seek. The second refers to public sector employment, the field most likely to offer opportunities wherein disabilities will be properly accommodated:

- "I have 2 young children and wanted an alternative work arrangement (i.e. 40 hrs/wk on average at 2/3 pay). I raised this at the first interview with every firm in some cases, this didn't hurt me, but at some other firms it seemed to take over the whole interview process. My advice if you have a sensitive issue to deal with is not to raise it with your primary interviewers but ask to see the Chair of the student committee at your 2nd interview." [Here, the speaker is referring to a committee within the law firm.]
- "I think you can't prepare enough for a Government interview. If you go into a Government interview "cold", it's a waste of time; you must do research. That said, there will likely be questions about substantive law or relevant statutes questions that you won't be able to answer. Handle your lack of knowledge professionally - it's only one part of the interview."

4.4.2 *Preparing for a Government Interview*

The idea and much of the content for this section came from the McGill articling handbook. According to that handbook's authors, the questions one is likely to be asked in a public sector articling interview will be more policy-oriented and knowledge-based than at a law firm and less personality-oriented. A candidate will likely be asked why she or he is interested in government rather than in a private practice firm.

The candidate should speak in advance to other students who are working at the department where the interview will occur, to gain a better idea of the types of questions that will be asked. Questions are often repeated from year to year. As well, the candidate could tell students employed in the department that she or he is keen to work there. Word may get around. It is important to be informed of current issues that the department is dealing with. Are there any recent pertinent cases or any proposed legislation?

Starting at page 107, the 2000-2001 McGill handbook lists "Questions you may be asked" at a Crown Law Office, including "Fact Patterns or Ethical Questions".

4.5 Regional Considerations Relevant to Searching for Articles

This section presents research information that has less of a focus than earlier parts of the chapter on how the hunt for articling positions may be affected by a disability. We have inserted notes to draw out some of the connections to disability issues, however.

Most students seeking articles apply directly to a firm or agency where they are interested in working, but for Toronto and Calgary one can also join Matching Programs. The Matching Program is a computerized recruiting system. It simulates the making of offers by firms, and the acceptance and rejection of offers by students, based on Rank Order Lists submitted by both parties. The Match system used by many firms in Toronto and Calgary is not the exclusive way that law firms' recruitment is done in those cities. The Match rules are complex. For a good discussion, see the Articling Handbooks of the University of Toronto or Queen's law schools.

4.5.1 *The Toronto Situation*

The machinations that one must face in Toronto may pose additional difficulties from some seekers of articles who happen to have a disability. Because of the peculiarities of the Toronto experience and the number of students likely to be concerned about the Toronto articling environment, we include substantial information and advice specific to that city. Many of the lessons may be applicable no matter where one wants to article. As one key resource for this section, we have derived material from a 1999 document credited to Vivian Leung of the University of Toronto Faculty of Law found in the University of Toronto articling handbook. For another good advisory document on Toronto, check the Queen's Articling Handbook.

As part of the Matching process in Toronto, there is a week full of articling interviews. Since scheduling will be tight, anyone whose disability calls for reliance on wheelchair-accessible transport services needs to plan well ahead, and be aware of the reservation system for Toronto's "para-transport". As in other cities, in Toronto, one must book ahead.

To be prepared properly for interview week you must decide in advance when you would like to schedule each firm's interview. Because each firm has its own interviewing schedule, your personal plans could soon go awry. As Ms. Leung's note says: "Stand firm. Be accommodating but don't let the firms force you into anything." During Interview Week (sometimes referred to by students as "Call Week"), Monday and Tuesday spots are very important. You may not want to be interviewed on those prime days by a firm you are not truly interested in. Callbacks from firms begin on Wednesday, so you don't want to fill up a space on Wednesday or Thursday with a first interview unless you are really interested in the firm and could not squeeze it in earlier in the week. "*And don't forget to leave a short break for lunch. It's not very pleasant doing an interview while your stomach is growling.*" Needless to say, if your disability makes it difficult for you to move quickly or requires you to pace yourself or take occasional rests, you must be wary of overbooking and of not allowing enough space between interviews.

One alumnus quoted in the U of T Handbook reflected as follows:

“I would have sent out fewer applications. Call day was hell because firms wouldn’t initially schedule Wednesday interviews. I wound up being double booked and with interviews too close together. I ended up cancelling appointments and annoying people.”

During the phone call from a firm inviting you to an interview, just get the vital information: firm name, time, and date. Generally firms will send out a confirmation letter with more details. If they don’t, you can always call back to confirm your interview. It is also helpful to ask how long the interview is expected to take. It would be a shame to “sit idly in the food court” for 1.5 hours after a quick 1/2 hour interview for which you blocked off two hours. Nonetheless, says the U of T resource, it normally is best to schedule two hours for an interview, including travel time and a quick bathroom break. But firms vary considerably in their interview set-ups, so this scheduling logic may not be easy to achieve.

According to Ms. Leung’s article in the U of T volume, the ideal number of interviews [for most people] is four per day. Interviews are tiring and it is hard to appear fresh and enthusiastic all day long. One has to repeat the same small talk constantly. “You don’t want to sound bored or rhyme off a canned answer to a question you’ve already heard five times that day. Plus, once you schedule in time for lunch and dinner and the receptions you are obligated to attend, it really is impossible to give more than 4, maybe 5, good interviews a day (the big message here is pace yourself).”

Along with their letters confirming an interview invitation, many firms issue invitations to lunches and receptions. “It is very important to go - Big Brother is watching.” Thus, your week quickly begins to fill up with call-backs, lunches, and cocktail receptions.

Cancelling interviews

If you need to cancel an interview, do it as soon as possible; and, says Ms. Leung, don’t feel bad about it. “You don’t want to waste your time and the firm doesn’t want you to waste their time. Generally you can cancel with the receptionist and the process is quick and painless.” It is acceptable, if not exactly desirable, to cancel appointments made for later in the Call/Interview Week in order to make room for second interviews. Leave some room in your initial schedule on Wednesday and Thursday to allow for return visits, and try to resist the temptation to cancel simply because you’re tired. You may miss a great place (and if you are over-confident, you may end up without a job). If you accept an offer, or are assured of a match that you intend to accept, it is mandatory to cancel other interviews. Give employers as much notice of your cancellation as possible, and be very polite.

Once an offer has been made, you may consider asking the employer questions that you were reluctant to ask before. This may be the time to raise questions about benefits and specific rotation requests. It may also be the time to raise the issue of disability accommodation, if you have not done so previously.

There is a whole vocabulary that has developed with respect to Matches. See the Queen’s Handbook at pages 54-56. Note that the historical match rate in Toronto is about 65% (according to the website www.natmatch.com). In other words, about a third of the students who submitted forms may not find a match. In 1999, 272 of 702 students did not obtain a match with a firm.

4.5.2 *Articling in Ottawa*

Ottawa has adopted its own articling guidelines, in accordance with Law Society of Upper Canada rules. Information should be available from your career planning office. A good discussion can be found in the University of Ottawa Articling Handbook.

4.5.3 *Articling in Atlantic Canada*

As one might expect, there is relevant material on the Dalhousie University Law School website. Less information is generally available about articling in the Atlantic Provinces, however, so we offer here slightly edited elements of a pertinent article by Michael Messenger, found in the University of Toronto Handbook.

The legal culture east of Quebec City is unique in Canada. While large Bay Street firms have successfully set up shop in Montreal or cities west of Toronto, their entry into the Atlantic Provinces is doubtful. A strong sense of history, tradition, and independence characterizes the legal community in the Atlantic Provinces. Law firms emphasize their roots and their local connections (many of the firms date back to before Confederation.) A student interested in articling or practising in one of the Atlantic provinces should take note of this emphasis when considering a move east!

With three law schools in the region, (Dalhousie, UNB, and Moncton), there is no shortage of qualified candidates contending for articling positions in the region. Faced with this environment, students from outside these schools who want to pursue legal careers in the Atlantic provinces may find that the competition is stiffer than expected - and that while their legal education may be highly-regarded, a student may be seen as “from away” (Maritime-speak for “not from around here”). During interviews, firms may try to feel out a candidate as to how serious she is about working in the east. Family connections, undergraduate education at an Atlantic university, or even frequent visits to the Atlantic Provinces may be enough to allay interviewers’ fears. Having said that, firms are growing in the Atlantic Provinces, and there is a new emphasis on regional firms (with several recent mergers as examples). With these changes, firms are looking farther afield to recruit top-notch legal talent. As a result, some of the stigma of being “from away” is lessening, but it may never disappear completely.

Articling in Nova Scotia

In Nova Scotia there are four or five large firms, each with about 50 lawyers in their Halifax offices. Some have offices elsewhere in Nova Scotia or in the Atlantic provinces. For an articling experience similar to what you might find in a mid-sized Toronto general service firm, Halifax is the target city. However, there are many smaller firms throughout all the provinces that take articling students. Few of them are listed on the Quick Law articling database, and students are advised to get the latest information directly from the firm. If you are in Halifax, the Dalhousie law library and law school placement office have directories of firm addresses and contacts.

Articling requirements differ slightly from province to province (though there are moves to establish regional standards). In Nova Scotia, articling clerks work in the office of a qualified principal for twelve months, which includes the period required for the Bar Admission Course. The Course consists of three parts: a skills course, qualification exams written in January and July, and a weekend seminar on law office management and professional responsibility. Most

firms cover the cost of the Course. Articles usually start June 1. The guidelines for summering, articling and recruitment differ significantly from Ontario in all of the Atlantic provinces. Students should contact the Law Society in each province as soon as possible in their second year. A key difference is in the recruiting time frame. Articling offers are made early in February of second year.

Michael Messenger says that he was told that summer jobs in Nova Scotia were offered “as a courtesy,” to students who accept an articling position, but they were optional. “There was no expectation that students must work at the firm the summer after second year.”

Mr. Messenger added: “Having a guaranteed articling position before some Toronto students even have summer jobs is great. However, accepting a position in an Atlantic firm means foregoing the chance to compete in the Toronto match or to apply elsewhere. Some students have done this in the past, but it is frowned upon, since it leaves a firm with a vacancy that it can fill only with students who did not secure an articling position the first time around. Firms may ask up front if you intend to participate in the Toronto match - they want to be sure of your commitment to them.”

There is no match program in Nova Scotia. All firms and sole practitioners are equally bound by the guidelines of the Barristers’ Society, and share dates for recruitment; interviews, offers, and hiring. The interviews are held in late January or early February. Interviews for students from schools other than Dalhousie may occur any time, but the offers are all made at the same time. Students may get several offers, and have up to 48 hours to accept or reject an offer. In Nova Scotia, firms are required to grant a first interview to every Dalhousie student who wants one; these are all held on one day, the so-called “Super Saturday”. The following week is when firms hold second interviews, and offers go out at noon on Friday.

Messenger includes a personal note about a couple of Atlantic firms who had come to U of T to do interviews. “I was able to visit firms that did not send a recruiter to Toronto after Christmas exams. Each of the firms was very accommodating. Second interviews usually take place in Halifax (or the firm’s city). I was advised to travel to Halifax after “Super Saturday” so that I was available for second interviews at the same time as local students. But the firms seemed willing to arrange other dates based on my availability.”

Students should contact the Nova Scotia Barristers’ Society at (902) 422-1491 for a copy of the current articling interview schedules and guidelines. General information on articling can also be obtained from their website. (See under Internet Resources in our Bibliography.)

4.5.4 *Articling and Summer Jobs in British Columbia*

This section is based largely on an article by Mark Vesko, in the University of Toronto Handbook.

Regarding articling in Vancouver, Mark Vesko says there is no specific deadline for applying to firms. Most Vancouver firms simply require applications once students receive second year

grades, which would mean that firms expect to receive applications by mid-June. The Vancouver Bar Association sets voluntary guidelines for Vancouver articling firms with respect to interviews and the Law Society of British Columbia mandates certain matters, such as the general timing of when articling interviews may take place. Interviews will usually be given from June to August and most firms can make offers at any time and under any conditions. However, a special rule applies to many core downtown Vancouver firms; please ensure that you secure and read the details concerning making and receiving offers for participating Vancouver Bar Association firms. Time guidelines and a list of participating firms are available from Career Services at the UBC Faculty of Law.

The articling period lasts a year in British Columbia. Approximately ten weeks of this is spent in the Professional Legal Training Course (PLTC), the equivalent of what were recently Phase 1 plus Phase 3 in Ontario. The PLTC runs three times a year, starting in February, May, and September.

Like their Bay Street counterparts, the larger firms in Vancouver offer summer positions to second-year students. Students who are not attending one of the two British Columbia law schools and who are not originally from the province will find it difficult to get a summer position. As Vesko observes, “Candidates are well advised to stress some personal or professional connection to Vancouver both in their initial application (especially the cover letter) and during interviews. Firms have few summer positions to offer. Although one should not be dissuaded from applying, especially if one intends to article in Vancouver eventually, be aware that many strong out-of-province candidates are not even granted interviews at the summer hiring stage.”

4.6 Notes on Equity and Discrimination during the Interviewing and Hiring Process for the Legal Job Market

Not all Articling Handbooks devote much attention to issues of discrimination and employment equity. One that does is the University of Ottawa Handbook. We have adapted a few passages here, giving more emphasis to disability perspectives than in the source document. The U of O Handbook opines that law firms have often been comprised of a homogenous group of lawyers, from the same ethnic, religious and socio-economic backgrounds. The Handbook adds that although recent law school graduates generally reflect the diversity of all Canadians, you will still need to consider a range of intangible factors when assessing whether you like a particular firm's environment.

On the question of disability accommodation, the Handbook says this: “You may be faced with the dilemma of whether to disclose information about your hidden disability at an interview or indirectly, such as through the affiliations listed on your resume. Even if you are not a person who is open about an invisible disability, you will need to assess whether you can be comfortable over the long term working in an environment which may be overtly or subtly discriminatory.” The U of O Handbook offers a number of related common sense pointers, a few of which we have excerpted below:

“Students should research whether a particular employer has a commitment to talent and diversity within its organization. The fact that some firms are now actively looking for a more diverse group of lawyers also means that you will need to assess the motive of each recruiter. You should determine the basis upon which you will be assessed at a particular firm, how fellow employees will view you, and how important this is to you...”

“Given the reality of bias at some organizations, all law students need to determine what, if anything, they are willing to sacrifice for an articling interview or position and if hired what will be the consequences of working in a firm where ‘unwritten’ hiring/advancement policies exist”.

The U of O Handbook recommends that, prior to sending out articling applications and after each interview, there are certain questions one should consider regarding any firm. As adapted by the current Guidebook’s editor, these are as follows:

- Are persons with disabilities or persons from other minorities represented among the firm’s personnel?
- How accessible are the firm’s building, office, etc. to persons with disabilities?
- Do minorities or persons with disabilities hold senior/management positions?
- What should I realistically expect from the type of organization in which I want to work? Is there anything about this firm I cannot accept?
- At XYZ firm, will I be perceived as being hired for an articling position on my merits alone? How important is that to me?
- What role does XYZ firm have in certain community/charity organizations? With what organizations do members of the firm volunteer? (This could include charity donations, sponsorship of community groups or international organization, community events, and so on.)

The McGill articling handbook also has some thoughtful commentary on how to handle inappropriate interview questioning, (in section 6.5.6 “Difficult or Discriminatory Questions”):

Students find themselves in a difficult situation when asked inappropriate questions during an interview. If they refuse to answer, tell their interviewers their question is illegal, or decide to walk away, it is unlikely that they will work for that employer. However, they should know that in Ontario for instance, the LSUC takes inappropriate questions very seriously, as stated in their Articling Interview Guidelines, rule #28: Non-Discrimination [Editor - now covered by Rule 5.04].

Examples of inappropriate questions would be those related to your age, mature student status, marital status, family, children, country or origin, citizenship, religious beliefs, political memberships, ethnic or racial background, minority status, or sexuality.

“[We have edited this paragraph somewhat, mainly to make it more concise.] If you are asked an inappropriate or illegal question, it is up to you to decide whether to answer it. While some people do not mind discussing controversial or personal issues, others would prefer not to disclose personal information. Therefore, you might indicate that you feel the question is inappropriate, or try to understand why the interviewer is asking that particular question. You might then address the concern in another way. You could also ask the interviewer if he or she feels that the question is truly relevant to the evaluation of relevant qualifications. Should the interviewer be insistent, you should try to remain polite, not argue, and show the interviewer that you can handle this situation in a mature manner. It will then be up to you to decide whether you wish to work for that firm.”

In closing this chapter, we offer paragraph excerpts from an article by Professor Rosemary King in the Queen's Articling Handbook (page 58 of the 2000 edition). Professor King's valuable perspectives are in harmony with those stated elsewhere in the current Guidebook, which were written before we had the benefit of reviewing her very good summary:

"...[While] employers inevitably make comparisons, they cannot do so for irrelevant and discriminatory reasons. The legal profession is becoming more representative of the population of Canada, but there are still many barriers to be overcome..."

"If you came to law school with life experience or after another career, you can present the life and/or work experience that you have acquired as an asset to employers - it is not a liability that you may be a few years older than some other applicants. Be sure that employers understand the transferable skills and qualities that you have developed."

"You may wish an employer to know that you have managed to do well in law school despite difficult circumstances, such as a disability, health problems, or family responsibilities, and that by doing so you have demonstrated qualities that an employer should value. Of course, the decision whether to disclose these matters is always yours".

"Know your rights and be forthright about your needs. In Ontario, an employer need not hire a person with a disability if the person is incapable of performing or fulfilling the essential duties or requirements of the position. However, the person will not be considered 'incapable' unless the employer could not accommodate the person's needs without undue hardship, 'considering the cost, outside sources of funding, if any, and health and safety requirements, if any.'"

"If you cannot realistically work 70 hours per week, or perform certain kinds of work, are there some jobs that would be more suitable than others? If you have a disability, will some employers be able to provide appropriate accommodation more easily than others?"

"Decide when you might discuss accommodation with an employer. If your disability is visible, you may decide to disclose it in your cover letter, or in the first interview. It is often helpful to let the employer know how accommodation could be made. Well-intentioned people may not refer to your disability out of a feeling of awkwardness, and while they would then be in the wrong to decide not to hire you because of the disability, it might be simpler to educate them than to combat subtle discrimination."

"If your disability is not visible, you may choose when, and whether, to disclose based on your own needs, your assessment of the likely attitude of the employer, etc."

"If you are interviewing with a large employer, will you be influenced by the attitude of only one interviewer? Would you speak to the interviewer's colleagues about discriminatory practices? Would you deflect them, or confront the employer? Does it depend upon the circumstances? ..."

"You may want to join a group such as the Society of Professional and Graduate Students, the Mature Law Students' Society, or the law school's Disability Advocacy Group. You may also want to locate lawyers or articling students who are similarly situated, and discuss your strategies with them."

4.7 A Few Recommended Resources to Consult Respecting Interviewing and Hiring in a Legal Context

Interviewing Tips For Law Students and Employers

Some career advisors at legal education institutions in Canada distribute free of charge an excellent and (inexpensive) booklet titled *Interviewing Tips for Law Students with Disabilities and Employers Who Recruit Them*. This 1999 resource is available from the National Association of Law Placement (www.nalp.org) and was developed by the NALP Employment Diversity Committee. Some elements are specifically focused on the USA, like the discussion of definitions of disabilities in U.S. legislation. But many facets have universal utility, such as the discussion of the following matters:

- Pre-interview preparation for applicant and employer
- Conducting and participating in the interview
- How to know if a work site is accessible
- Post-interview follow-up

Chapter 8 of this Guidebook

While preparing chapter 8 we located a slew of special programs that might help you with your job search and career by providing you or your employer with financial, physical and professional assistance. Chapter 8 is meant to be a tool for the informing of employers. It is designed as a stand-alone document that can be copied or pulled out for their (and your) benefit.

A New National Website

There is a set of web pages available at www.disabilityweblinks.ca covering disability issues. These pages are presented in cooperation with Canada's federal, provincial, and territorial governments.

Chapter 5.0

5 Advice, Assistance and Resources for Law Students and Recent Law School Graduates

5.1 Introduction to Chapter Five

Note that Chapters 6 through 8 cover topics that are closely related to those discussed in the present chapter. Many support services and programs have overlapping purposes, so what you are looking for may be covered more fully in one of those later chapters. Be forewarned that the majority of vocational planning and job placement services were not designed for lawyers and are not geared towards law school graduates. To convince officials that you should benefit from a program, you may need to use the research, negotiation and advocacy skills that you honed during your legal education.

5.2 Financial Assistance

Certain accommodation, support and advice resources that are open to students during university and law school may no longer be available during the articling period or in bar admission and practical legal training courses. These stages of legal education may not be specifically covered by student loan programs, so there could be a gap in funding for the many students whose current or future employers are not prepared to pay all or part of their Bar Admission Course (BAC) fees. The Law Society of Upper Canada (LSUC) has been able to arrange some provincial coverage for students in need during a portion of the articling/bar admission year. Your own province's law society may be able to assist you in securing similar funding. The LSUC is committed to providing financial relief to students at risk of delay to their call to the Bar because of outstanding BAC fees. This provision occurs through bank loans, LSUC loans, or a BAC bursary.

In an earlier draft of this Guidebook we recommended that ways be found to expand assistance for students during all bar admission training stages, to the extent of offering a "safety net" during the articling period as well. Within the LSUC there is support for the concept of expanded financial backup for students, and we understand that as of May 2001, financial support has been increased and made available for more situations. We recommend that other law societies follow the LSUC example with respect to ensuring adequate financial underpinning for bar admission candidates. In addition to extending the scope of financial supports, the Law Society has increased the total amount of money available for loans, scholarships, and bursaries. If sufficient funds were available for a candidate who had difficulty finding an articling position, this support package might enable someone to negotiate an articling position that was not otherwise available.

In Chapter 8, which is aimed at employers, this Guidebook provides advice on funding resources that can assist employees, including articling students. But it is prudent for individuals to continue to utilize sources currently available to them – as long as possible. Students need to be creative in seeking support and describing funding requirements, and to plan ahead. For example, one western advisor has suggested that when calculating budgetary considerations for loans and scholarships, students should see if they could factor in living costs in the months immediately

following graduation. A law student in an Atlantic province was able to persuade governmental authorities to continue funding adaptive equipment and an assistant during the articling stage, on the reasonable theory that articles are an extension of academic legal education:

I was able to obtain funding from a program ...to help with an assistant for my articling period... I convinced them that articling falls under "school", as ... an articling student ... [attends] classes during this period.

Those who are not yet employed as lawyers should review portions of our 2000 publication, *Navigating Law School* (online at www.reach.ca or in your law school's library). Therein, we discussed loans, grants and related subjects in chapters 13 and 14.3.4. You must verify for yourself whether the data is still accurate and current. We recommend that you look first at the *National Directory of Financial Assistance Programs for Post-Secondary Students with Disabilities*, published by the National Educational Association of Disabled Students. This is available online at: <http://www.neads.ca/norc/funding/>.

5.3 Assistance from Law Schools and Universities

Don't leave all your institutional resources behind when you finish law school. Career development/placement officers at law faculties can still serve as a useful resource for students even after graduation. The listservs and bulletin boards subscribed to by students can continue to provide leads on articling positions. These postings may reveal background information for possible employers and notices about potential staffing needs. You may still be able to gain access to workshops and guidance on resume writing and interviewing strategies when you are no longer enrolled - if you ask.

My law school assisted me with reviewing my CV and cover letter; they also drew my attention to some of the information resources I made use of regarding... dealing with disability issues in the employment application process.

Note that it is fairly common for the position of career development officer at law faculties to be filled by someone near the start of her or his professional career. Although we met thoughtful, professional individuals at specific law faculties during our recent research, we know that such counsellors are not uniformly helpful or keen. Some lack experience and many have multiple duties for their law schools. Although some of our respondents praised the aid they received from their law schools, others said they had not been aware there was a career development office at their faculty, or complained that they had not received useful guidance when they did seek advice. One student said that his law school's brochure claimed the faculty had a great career placement office. It turned out that the office was staffed by one part-time person and was not very good. The student concluded as follows: "You cannot accept at face value what a university says about its career development program". Even a skilled individual may not work fully in your interests however, so you must do job research through more than one route, as this respondent observed:

When it comes to finding out about job openings, the law school seemed to run a lot on favouritism. Only a few students would hear about a good opportunity. The career development officer and members of faculty, like most people, did not act in a totally impartial way.

By luck, your career placement officer could be a young, eager and helpful law graduate or one who is just filling in time. Don't forget that in addition to its career advice officer, the law school will usually have parallel or complementary services operated by law students themselves and may be called an "articling committee".. Try to engage their help with recruitment and hiring. You might even consider joining the articling committee. You could assist yourself and at the same time generate improvements in what the committee does. The law graduate quoted below had a positive experience seeking help from such a committee:

The law school itself did not assist with the articling accommodation process. However, the articling committee (a group of second-year law students) put together an information packet regarding firms. Included in this information packet was whether or not firms had accommodation policies. However, all firms did in explaining their accommodation policies was to either check yes or no in the appropriate box as to whether or not they would accommodate a disability.

The central Special Needs Office or Disability Resource Centre at a university may not officially provide help to students after graduation, but we have heard of exceptions. Certain post-graduation arrangements might be made while the student is still enrolled.

While making accommodation arrangements for PLTC [BC's bar course] I discovered that Continuing Legal Education might not have an experienced person to scribe my bar admission exams for me. The [UBC] DRC [Disability Resources Centre] agreed to provide the PLTC administrator with names of suitable scribes. PLTC was prepared to pay for the service; they just wanted to ensure that I had someone that would meet my needs.

The anecdote above echoes the experience of a bar admission (barreau) student in Québec during 1999-2000, as reported in *Navigating Law School* (2000). The student turned to McGill's Disability Services Office to arrange accommodation services needed during bar admission course sessions held elsewhere in Montréal.

Accommodation policies for bar admission courses require students to identify their disability and request suitable accommodations. Your university's Disability Resource Centre can assist in identifying your personal accommodation needs, and can assist bar admission administrators by providing your background information and documentation.

A campus Disability Resource Centre or Special Needs Office has connections with other university services such as financial aid and career counselling that may assist departing law graduates and those going into graduate legal studies. These Centres/Offices can help one gain access to other resources on campus and may assist in facilitating appointments. As we noted in *Navigating Law School*, universities usually have adaptive technology personnel who work one-

on-one with students to assist in demonstrating and training on assistive devices. These various campus services may be utilized prior to graduation to assist in upgrading skills and garnering advice on what might be needed in the working world. If a good rapport is established with staff, the assistance could perhaps continue beyond graduation.

When planning ahead for one's law career, an individual with a print disability should try to assess which texts used in law school would still be valuable to an articling student or lawyer. It could be wise to arrange for your university's transcription service (at the special needs/disability services centre) to prepare alternate format versions of law texts before you graduate from law school. Particularly if the format you need is Braille, this could lead to considerable cost savings for you.

In *Navigating Law School*, we mentioned some of the software and hardware available to assist students with disabilities in a typical adaptive technology lab at a university. Some of these devices are also available in the Student Success Centre at the Toronto premises of the Law Society of Upper Canada, within its Bar Admission Program. To illustrate the range of technologies that may be sitting somewhere for your benefit, we observe that the Disability Resource Centre at UBC holds Optical Character Recognition (OCR) scanners, CCTVs, Braille printers, 4 track tape recorders, a photocopier to enlarge documents, and large screen computer monitors. UBC's DRC also holds the following assistive software: ZoomText (for students who are visually impaired); JAWS (screen reader software for blind students or those with severely impaired sight); and Live Notes and under-captioning software (for deaf or hard of hearing students).

We are told that a new UBC Law Career Resources Centre is opening in the Spring of 2001. This "one-stop shop" for career services will provide one-on-one counselling and access to three computers with Internet and word processing capabilities. Other office equipment such as a photocopier, laser printer and fax machine will be available for preparing and sending out applications and resumes. Resources to assist in articling and employment searches will include: files on firms in British Columbia, Ontario and the rest of Canada; and handouts on areas of practice, on interview skills, and on resume and covering letter tips.⁵

5.4 Assistance from Law/Bar Societies, Bar Admission Programs, and Bar Associations

As of early 2001, there was no law society policy or program to assist candidates, including persons with disabilities, to find articles in British Columbia. The law society is planning a review of the articling process and curricula. One of the issues that will be considered is whether a permanent articling officer is required. As we write this present chapter, it is too early to tell whether the BC Benchers would support the creation of a permanent office or position, and whether the requisite funding is available.

⁵ Danielle Raymond, the law faculty's Director of Career Services, may be contacted for subscriptions to e-mailing lists and for the current password for the Career Services website. (<http://faculty.law.ubc.ca/4/CPO>)

Ontario's Law Society does have a fulltime Head of Articling and Placement. Among other tasks, she tries to locate and facilitate opportunities for those students (not just those with disabilities) who experience difficulty in finding an articling post. Among her other functions is travel to law faculties to address students about the articling process. Equity issues, including those of concern to students with disabilities, are among the topics she covers in these presentations. Sometimes a colleague from the LSUC Equity Office will accompany her to a law school forum. Two respondents said that at Queen's law school there had been a session held with LSUC representatives at which disabilities and accommodations were the primary topic.

Over the years, a number of individuals have raised what they consider to be a gaping contradiction in the policies of the LSUC. The Law Society requires everyone to obtain an articling position in order to be called to the Bar; but there is no rule or mandate requiring the Law Society to find an articling position for each candidate. There is some sympathy within the LSUC for the critics' view that the Law Society should have an obligation to guarantee articling placements for all candidates. Those expressing sympathy for this position acknowledge that a mandatory duty would prove difficult to fulfil. In any case, the Law Society currently does a great deal to assist students in finding placements. A couple of individuals interviewed worried that if, for whatever reason, the LSUC failed to find a position for a candidate while having a formal obligation to do so, the Law Society might potentially face a lawsuit and/or bad publicity.

In order to obtain a job and get the necessary experience, many individuals, including persons with disabilities, have been willing to accept a low articling salary or have agreed to work *pro bono*. There are ways in which the LSUC could increase the scope of articling opportunities without necessarily guaranteeing that they will find everyone a job. As we indicated above, the Law Society can extend and expand the programs whereby financing can be provided to students in need during the course portions of the bar admission program. It might help many individuals, including some with disabilities, if financial support were available when required during the articling period. We hope that the Law Society of Upper Canada's governors will be open to assisting candidates throughout the Bar program. (As the printed version of this Guidebook went to press, the editor learned that the LSUC has indeed enhanced its financial support programs for students during articling and bar admission stages, commencing in May 2001. For details, readers should contact the bar admission course office or visit the website at: <http://www.lsuc.on.ca/>)

Although the Education Plan for a student's articling experience must be agreed to by BAC officials, the LSUC currently does not have the power to influence the size of remuneration paid to a student. A few participants in focus groups that preceded the writing of this Guidebook said they thought the LSUC should require firms to provide a minimum level of salary for articling students. Others responded that such a move would lead to the loss of many openings in law firms. One participant suggested that a possible solution was to have the profession create a fund on which firms could draw to ensure a minimum level of compensation for everyone.

The Law Society of Upper Canada's approach of requiring bar candidates to gain work experience through articling, yet not guarantee articles for everyone, can be compared with "work experience" study programs offered elsewhere. (We emphasize that this approach is not unique to Ontario's law society but is commonly taken by lawyers' governing bodies in Canada.) Co-op programs operated by some community colleges and secondary schools involve a perceived duty by the educational institution to ensure that each student finds a placement. This duty of the

educator is seen as a norm of the certification process in some institutions. A few educators consulted informally by the Editor have expressed surprise that law societies do not assume a similar responsibility, instead putting the onus on the student to find a placement.

The University of Waterloo, which is renowned for its extensive co-op programs, strives to assure to each participating student a place to work during the employment phases of a program. Course administrators know how many students are participating and try to assure that the correct number of jobs are arranged. The job placements fit into the overall academic agenda and students receive formal evaluations from their employment supervisors. Waterloo officials have told us that their success rate in finding job placements approaches 99% during the academic year, and is about 93% during summer.

In the co-op program operated by the University of Victoria's Faculty of Law (UVIC), students selected to participate are guaranteed an employment placement. They also receive financial compensation for their efforts at the organizations where they are placed. UVIC employs a lottery format to choose which students may enter the co-op program. Every year, approximately 100 students put their names in a hat, and 30 names are drawn at random. An additional five positions are made available annually for people with socio-economic need. Disability is not a factor considered in the selection process. As was stated earlier, once the individuals are selected, each is guaranteed a placement. (Source: telephone conversations with UVIC officials, February and May 2001.)

On a related note, the Matching Program instituted in Toronto, Calgary and elsewhere in recent years has no doubt assisted in generating more opportunities for articling placement. Nonetheless, the small but significant percentage of students who do not find articles through the Match procedure or through more traditional routes (such as referral by a professor) may be those candidates who need Law Society assistance the most.

Thus far, the Law Society of British Columbia's role in assisting someone to obtain articles or placement when disability is a factor appears to have been limited. LSBC staff have advised potential principals or employers on discrimination issues related to the interviewing process. In Ontario, Bar Admission staff have reportedly been somewhat more active, occasionally advising an employer not only on hiring, but also on accommodations related to an articling student's work environment.

As we mentioned in *Navigating Law School*, Ontario's Bar Admission Course has upgraded its system of providing disability accommodations for bar admission students and continues to try to enhance its program. It is clearly in an individual's interests to disclose disability to BAC officials, in order to obtain accommodations. Occasional glitches still do occur, such as late production of alternate format materials needed by individual students for study or exam purposes.

From the vantage point of the law graduate quoted below, at least one other province's legal establishment is not as accommodating as those of Ontario and BC intend to be. (We would add that not all law firm employers, in any jurisdiction, accommodate for a disability to the extent described below):

My employer has been aware from day 1 that bar exams would be very difficult for me especially since the bar committee refused to make the accommodations recommended by the psychologist. My exams are being given over a 3-week period, 3 Fridays in a row. To accommodate, my employer is giving me Tuesday-Friday off for 3 weeks to study and write the exams - with pay.

The law graduate who related the above was critical of a law society committee that appeared to substitute its laypersons' views for that of a professional psychologist who recommended certain accommodations. Nonetheless, the student had praise for the law society's administrator, who was described as deserving much credit for being "sensational throughout". Regardless of what an entity's official policies may state, for real disability accommodation to happen, one or two personnel in an educational institution, law society, law firm or government department must be willing to take the necessary progressive steps. We say that in all such settings there should be a proper accommodations policy and regularized practices in place, so that the individual who needs an accommodation is not simply dependent on someone's good will. Examples of such policy underpinnings are the two federal government policy documents reproduced in the appendices of this Guidebook. An institution such as a law society or law firm could use those documents as one source of precedent for designing its own accommodation policies.

The administrator in charge of arranging and granting accommodations at PLTC (BC's bar admission course) maintains files on accommodations that have been granted in the past by PLTC. Records on particular accommodations have reportedly been useful in determining which accommodations are suitable in more current situations, when, for instance, individuals phone for information on accommodating a disability or a medical condition. Unfortunately, the relevant PLTC files go back to only 1998. Regarding the current approach taken by those responsible for PLTC accommodations, here is a note of one observer's recent experience:

When I spoke with the CLE folks about accommodation for PLTC they were willing to accommodate all of my needs, including scribes, extended time for exams, flexible deadlines, and provision of a note taker. I was told that in other instances accommodations for examinations and deferrals are readily available.

Not all provincial law societies have progressed to the extent that those in BC and Ontario have, as this personal report from one of the smaller provinces would suggest:

"How did the law society assist your search for articles or for accommodations related to articling...?" "They did absolutely nothing but create anxiety for me and make things more difficult by making me "fight" for accommodations. They ...definitely would not have been helpful in convincing an employer to hire me."

5.5 Mentorship Programs

An example of a mentorship program is that offered to UBC law students by Vancouver lawyers. While the scheme is not set up specifically to link lawyers and students who have disabilities and is not designed to follow students into their law career, participating in it could lead to unexpected

employment opportunities for a law student who has a disability. Information about this plan can be found in the UBC Law Faculty's 2001 Articling Handbook.

In Ontario, the Law Society of Upper Canada also has voluntary mentoring programs, coordinated by the LSUC Articling and Placement Office. (Details are available from the Articling & Placement Office at articling@lsuc.on.ca or by calling 416-644-4888 or toll-free at 1-800-668-7380, ext. 4888.) Again, the mentorship schemes are not designed specifically for students who have disabilities, but could be beneficial for such individuals. If a candidate for the Bar approached either mentoring program creatively, the program could potentially make the difference between securing a good articling experience and not doing so.

One mentoring plan permits students who have not yet secured an articling position to request the chance to receive advice in a structured way from a lawyer who has volunteered to be a mentor. The mentor is expected to "meet periodically with an unplaced student to provide advice, support and encouragement in the search for an articling position". When filling in the application form for the scheme, a student indicates interest in a particular locale and in particular areas of law practice.⁶ There is a space in which students are invited to list "other information that would be of assistance in pairing with a volunteer mentor". Here, a student could indicate a desire to be mentored by a lawyer with a disability similar to that which the student has. A similar question appears on the lawyers' form. In addition, however, the lawyers' form contains a specific question allowing a mentor to indicate, by checkmark, particular interest in assisting a student in one of a number of named groups. Among the choices given are student-members who are "mature" and those who have a disability.

A second LSUC plan, the Articling Placement Mentor Program, is less obviously of particular benefit to a Bar Admission candidate with disabilities. Nonetheless, one can again imagine circumstances in which this scheme could help to create an opening for a student who has had difficulty finding an articling placement. Generally, articling principals must have three years experience at the bar. Exceptionally, lawyers with less experience may take on an articling student. One condition is that an approved lawyer with the requisite experience jointly mentors the two. The arrangement to involve an "articling relationship mentor" needs to be authorised through the law society's articling and placement office. In the past, suggested involvement of the ARM has included: Meeting with both the student and Applicant prior to signing the Education Plan, to advise on completion of the Plan; and being available to meet with both the student and Applicant at other times to provide advice and support.

5.6 Government-based Programs

This section touches briefly on the subject of support services that may be available for individuals. The bulk of this subject matter is covered in Chapter 8 which has been prepared as an educational package targeted principally at employers. Employees and job-seekers who have disabilities should also review Chapter 8.

⁶ The students' form says: "I understand that placement with a Mentor will depend on the availability of volunteers in my area."

In British Columbia, a program called Vocational Rehabilitation Services provides vocational planning and career placement services for persons with physical and/or mental disabilities. Ontario and other provinces have similar schemes. Respondents to our Reach surveys have been able to benefit from these programs as law students, law graduates and lawyers - though sometimes they have needed to put up a struggle. The Employment Support division of the Ontario Disability Support Program (ODSP) is under the jurisdiction of the Ministry of Community and Social Services. (<http://www.gov.on.ca/CSS/page/brochure/odspempsup.html>).

In BC, the Vocational Rehabilitation Services scheme is administered within the Skills Development Division of the Ministry of Social Development and Economic Security. Various private contractors provide a range of vocational services for the people with disabilities, under the agency of VRS. VRS is not a funding agency, but two respondents to our surveys cited the office as a potential source for funding during the PLTC program. Our efforts to verify this support pattern failed; no one would admit to funding lawyers or law graduates. It is possible that funding may be supplied as part of other vocational services or that an exceptionally helpful official is wary of having a window closed if a boss thinks that she or he is too generous in interpreting the rules. In 2000, a student in another province conveyed precisely that sort of fear concerning novel provincial support received in that individual's situation, so the writer took special pains to omit any potentially identifying data when he reported on the precedent in *Navigating Law School*.

Regarding adaptive technology equipment, support, and training, it is worthwhile to research what your own province may offer. From the current project and from our 1999-2000 study on education accommodation, we know that in at least four provinces, law and/or bar admission students were able to receive assistance from their province's counterpart to VRS. For example, an articling student in a less affluent province says that a provincial government program supplies an ergonomic chair enabling her to have a working environment that accommodates her disability. When seeking provincial or other aid, you may want to enlist the help of your legal education institution's career placement officer or a university Disability Services Centre/Special Needs Office. Note that the application form for VRS-type assistance may require disclosure of employment history, budget projections, and financial resources. We cannot be sure how these criteria influence the approval or selection process in your province or territory.

BC's provincial Adult Services Program lends adaptive technology to persons in post-secondary institutions and vocational settings. Articling does not fit neatly into either of these categories. The contract manager for the program has suggested that: "Articles would probably be treated similarly to employment. In an employment situation, equipment is loaned for a period of up to a year. The agreement between agency, employer, and client provides for the purchase of the equipment at the end of the contract."

5.7 Community and Commercial Services

Most people who take the trouble to access this Guidebook already know that organizations of and for persons with a specific disability are key sources of guidance on how to cope with the disability in the educational and employment realms. A good printed source of data on these groups is the *Directory of Disability Organizations in Canada* (see Bibliography). A

comprehensive series of disability organizations is also listed on the website of the Law Society of Upper Canada at: <http://www.lsuc.on.ca/equity/disability.shtml>.

The Neil Squire Foundation provides computer skills training and vocational planning for persons with physical disabilities in the Vancouver area of British Columbia. Neil Squire is registered as a contractor under the governmental VRS scheme in BC. It also provides services for other funding agencies and individuals in other provinces. (The Foundation's phone number is (604) 473-9363. The Web address is www.neilsquire.ca/.)

The Tetra Society is a nonprofit organization that provides engineering expertise to assist with access barriers. Volunteer engineers provide creative solutions where commercial options are unavailable. The Tetra Society has its head office in Vancouver and chapters elsewhere in Canada and in the USA. Its phone number is (604) 688-6464 and its website is <http://reachdisability.org/tetra/>. Other Sources of advice on "Assistance with Adaptive Renovations" may be found under that heading in section 8.5.

I AM CARES is an organization that in BC coordinates placement of VRS clients into the Public Service Training program. (I AM CARES is located in Burnaby and may be contacted through telephone numbers (604) 436-2921 or (604) 660-7039). This organization has an affiliate in Montréal (and perhaps in other cities), doing similar work.

One commercial/academic source of aid on assistive devices is the Employment Accommodation Service, a part of the Adaptive Technology Resource Centre at the University of Toronto. This comprises a multidisciplinary support team that offers to assist in the hiring, retraining, retention or advancement of persons with disabilities. The services available include: consulting, work site assessment, equipment trials and compatibility testing, reports to employers with recommendations for accommodation, and a variety of equipment and information resources. Note that ATRC charges assessment fees at \$100.00 per hour for on-site and off-site assessment. (Source: ATRC website, March 2001, at <http://www.utoronto.ca/atrc/service/eas.html>).

A few organizations and agencies that can assist in seeking remedies for discrimination, including denial of reasonable accommodation, are noted near the end of Chapter 7, together with their contact data. (Examples are ARCH, the Canadian Human Rights Commission, and the Council of Canadians with Disabilities.)

5.8 The Online Library Information System (OLLIS)

In the mid-1990's, a few law students at the University of Ottawa inaugurated the Online Library Information System (OLLIS). (The name of the service originally included a word indicating its law school origins, but the service has expanded beyond legal publications.) In 1999, administration of OLLIS was transferred to the Centre for Special Services of the University of Ottawa. Several law book publishers and law schools cooperate by providing publications to OLLIS in electronic form, on a regular basis. The number of titles available through OLLIS has gradually been expanding. Any lawyer, law student or other person with medical proof of a print disability may obtain a password and gain Internet access (free of charge) to this database of

textbooks, casebooks, and other materials.⁷ Each subscriber must formally agree not to distribute materials received through OLLIS.

OLLIS users who have the correct technology on their computers can access data compatible for Braille, large print or voice formats. From the electronic versions of documents, OLLIS staff strip out erroneous formatting and style codes, to make the text more usable in alternate formats. Much of the documentation is available at the OLLIS website (<http://ollis.uottawa.ca>). Some texts are obtainable only by ordering them individually as “e-text” in a format such as Word or WordPerfect.

Note that the OLLIS service is only one component of facilities offered by the Centre for Special Services at the University of Ottawa. As at similar centres in other educational institutions, this centre will scan texts presented by students who have print disabilities and then transform or “transcribe” the texts into usable alternate formats. Although the centre is supported by the university, it may be possible for someone from off-campus to benefit from its transcription service, as is the case with disability service providers at many universities.

⁷ Publishers recognize that individuals with print disabilities would often not be part of their commercial market, in any case.

Chapter 6.0

6 Assistance, Resources and Advice for Lawyers as Employees and Practitioners

6.1 Introduction to Chapter Six

Chapters 5, 7 and 8 cover matters that are related to those discussed in the present chapter. A topic that concerns you may be covered more fully in one of those chapters.

As part of our research, we questioned lawyers with disabilities about the availability of resources and assistance to facilitate their finding, keeping and doing professional work. Governmental support programs are discussed extensively in Chapter 8, dealing with incentives available for employers. The current chapter discusses disability accommodation services and policies, as well as general equity policies, of the law societies of British Columbia and Ontario, together with related topics. We include occasional reference to situations prevailing in other (unnamed) provinces as well, as contributed by our survey respondents.

Accommodation has slowly become more reasonable for lawyers with disabilities in some provinces and territories, and perhaps in all. A few years ago, accommodation was requested on behalf of an individual requiring a sign language interpreter for a law-related conference in Canada. According to one of our survey participants, the body organizing the meeting refused to take steps to accommodate the individual until a Human Rights anti-discrimination claim was launched. It was not until the day of the conference that organizers tried to learn how to book a sign language interpreter. The organizing group was not aware that interpreters must be booked several weeks in advance, and that arrangements could not be made at the last moment. Such a situation could occur even today, but we think it is less likely.

6.2 Law Societies

6.2.1 Disability Services Provided by the Law Society of British Columbia

The mandate of the office coordinating equity and diversity issues (including those pertaining to disabilities) is constantly evolving. The duties of this Law Society of British Columbia (LSBC) office include: assisting in the development of Law Society policies, directing individuals to resources, and answering questions from lawyers, law students, and the general public.

The Law Society of British Columbia employs an ombudsperson two days a week, to provide confidential assistance to lawyers, articling students and law firm support staff in dealing with complaints of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age. The primary functions of the ombudsperson include: receiving complaints of discrimination, providing

information and alternative solutions, managing an informal complaints process, and providing training on issues concerning harassment.

The LSBC equity and diversity coordinator has not been approached to assist firms in helping to place an individual with a disability. Efforts have been made to inform law students, graduating lawyers and law firms that there is a resource person available to facilitate or educate on these matters, although the equity coordinator does not proactively approach individual firms.

While the ombudsperson generally handles complaints about harassment, if the LSBC Equity and Diversity Committee is made aware of a complaint regarding a failure to accommodate, it would investigate and review the situation. This committee is generally made aware of any complaints regarding disability.

In the past, complaints have been raised in BC regarding a failure by course organizers to accommodate adequately in a continuing legal education (CLE) session or program by providing materials in alternate formats. Things have reportedly improved and CLE planners are now more open to taking diversity issues into account.

6.2.2 *Disability and Equity Policies of the LSBC*

The LSBC does not have a model equity policy for law firms that relates specifically to disability. There are general policies on discrimination, equal opportunity, and harassment that make reference to persons with disabilities. Diversity in the profession has generally been regarded in terms of culture and ethnicity. The merging of the Equity And Diversity Committee with the Disability Advisory Committee in 1998 reflects a recognition that as a group people with disabilities must be included when considering diversification within the legal profession.

The Equity and Diversity Committee has put together guidelines for employers conducting interviews. These guidelines conform to standards set by human rights legislation in British Columbia, and steer employers away from asking questions concerning prohibited grounds for discrimination. The LSBC conducted a series of focus groups that considered the issue of disability and the legal profession. The resulting report was released in February 2001. The Law Society contemplates a second phase of this project, which would provide the opportunity to create solutions and model policies from the feedback and concerns of participants. (The Law Society of Upper Canada has already undergone generally similar exercises focused on equity issues.) This review and revamping of model policies relating to equity, including disability matters, is part of a greater effort to update model policies in several areas.

It is encouraging that the LSBC is working to fill the kinds of needs that were identified by those who responded to our project's surveys. The LSBC Benchers have shown support for the concept of a listserv or electronic bulletin board that could be accessed by individuals wishing advice or support on disability related issues. Under this proposal, anyone seeking advice could post a query and receive advice from lawyers with disabilities across the country, or across the world.

Within the last five years the LSBC has seriously turned its attention to disability issues. A Disability Advisory Committee was created in 1996. The Law Society is also starting to get its

own house in order, although it was not until 1998 that an electronic door opener or a TTY machine was made available to facilitate access for clients and visitors with certain disabilities.

6.3 Law Society of Upper Canada

6.3.1 *Disability Accommodation and the Law Society of Upper Canada*

The Continuing Legal Education (CLE) division of the LSUC pledges that equity is a goal of the program, including promotion of disability rights. The CLE group is seen to be acting on that pledge, as it did in November 2000 with CLE sessions stressing the strengthened equity aspects of the new LSUC Rules of Professional Conduct. (See 6.3.2 below.)

To the extent that CLE workshops are held on Law Society premises in Ottawa, a hurdle still exists, in that the Ottawa building (unlike those in London and Toronto) is not fully wheelchair accessible. It should be noted that when our Reach project held videoconference Focus Groups linking Ottawa and Toronto, we received immense cooperation from the BAC Registrar and his colleagues in both Toronto and Ottawa. One facet was the shifting of bulky but essential video equipment in Ottawa from the inaccessible upper floors to the accessible BAC/CLE teaching floor of the Ottawa building. For lawyers with low incomes, which certainly would include some law graduates who have disabilities, financial barriers to CLE courses are eased somewhat by a bursary program enabling lawyers with annual incomes under \$35,000 to attend up to four CLE programs yearly at half price.

Students-at-law may now take the Bar Admission Course from remote locations (not just at one of the three official Bar Admission educational centres) and this may have a positive impact on accessibility issues.

The LSUC has a fairly active Equity Initiatives Department. Its research on disability issues is perhaps indicated by the comprehensiveness of the commentaries on disability issues that appear with the new Rule of Professional Conduct on discrimination. (See 6.3.2 below.) The goals of the Department include:

- (a) promoting equity and diversity within the legal profession by improving awareness of the issues, needs and concerns of equity-seeking groups.
- (b) enabling each department to develop coordinated, integrated equity and diversity activities and plans.
- (c) enabling equity-seeking groups to participate actively in the LSUC's business operations and services.

Through research for this Guidebook, the Editor is aware that both the Equity Department of the Law Society administration and the CLE/Bar Admission administrators are forward thinking when it comes to disability accommodation issues. Prominent lawyers knowledgeable about disability consult regularly with these Law Society personnel. Perhaps to reflect this, the sample list of community consultative groups shown on the Equity Department's web page should

include mention of a well-known disability rights advocacy organization such as ARCH (which was not the case in March 2001.)

The LSUC site has a number of relevant policy documents online, including the *Model Policy Guide to Developing a Policy Regarding Flexible Work Arrangements*. This document includes suggestions for accommodating lawyers with disabilities, such as by assisting them with reading documents and providing adaptive devices. This Policy Guide does not acknowledge the issue of attendant care services, which are essential for many lawyers with disabilities, and were discussed in Reach Focus Group sessions. Disability is also touched upon in a report titled *Model Policy: Guide to Developing a Policy Regarding Workplace Equity in Law Firms*.

The LSUC's establishment of a discrimination and harassment counsel was an important step. The main concentrations of her mandate are sexual and racial harassment and discrimination. It appears that disability issues are not a major component of her work. The counsel may very well deal with disability issues, but the Web references to her office, which elaborate on sexual and racial harassment, do not mention disability or accommodation concerns.

An area in which the Law Society has been taking steps to improve outreach to lawyers is in the use of video and Internet technology for continuing legal education. Although the initial motivation may have been to meet the needs of lawyers in remote locations, the results can benefit lawyers with many kinds of disabilities as well. We understand that the Law Society is planning to build on its earlier experiments in distance education. We trust that LSUC officials will continue to consult with representatives of disability organizations who have expertise in the kinds of alternate communication formats and devices required to ensure full and equal participation by individuals who have disabilities.

Internet and other technologies can and do assist in other areas of Law Society responsibility that affect lawyers and students, such as disseminating information on rule changes and interpretations, filing of required forms and ensuring that members are aware of developments related to services, discipline, insurance, relevant legislation and other matters. Participants in our written surveys and focus groups praised the enhanced access to educational and other materials emanating from law/bar societies when the materials are provided electronically. A few expressed frustration about situations in which electronic options were not readily available:

I don't understand why the Law Society sends packages to me with materials organized on different coloured paper and with everything in small print. My records will tell them that I am blind. I can't even read the Ontario Reports that they send me every week. It would be far less expensive for them to send me everything by e-mail. For example, [our county] law association sends all of its information out to members by e-mail. It is much less costly and I can manipulate the electronic data to suit my needs.

Commenting on the above, the editor observed that for confidentiality reasons, law society administrative staff who send out general documentation would probably not know that a recipient has a disability. Perhaps law societies will and should eventually send information out primarily by e-mail. If so, other forms of communication should continue to be provided. If a

member requests printed material instead, this should be offered. Not having materials available in a printed format could deny reasonable access for certain individuals.

6.3.2 *Disability and Equity Policies of the LSUC*

In November 2000, the LSUC issued new Rules of Professional Conduct. The Rule on discrimination is Rule 5.04 (formerly Rule 28). It is accompanied by commentaries that explain the implications of Rule 5.04 in Ontario under human rights legislation and jurisprudence. Allowing for differences in provincial and territorial human rights legislation, the summaries of law given in the commentaries of Rule 5.04 with respect to Ontario implications would be largely accurate in all Canadian jurisdictions. Together with its interpretive commentaries, Rule 5.04 states:

Rule 5.04 DISCRIMINATION

Special Responsibility

5.04 (1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person. [Emphasis added by Editor.]

Commentary

The Society acknowledges the diversity of the community of Ontario in which its members serve and expects members to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law.

The Ontario Human Rights Code defines a number of grounds of discrimination listed in rule 5.04. For example:

The term disability is not used in the Code, but discrimination on the ground of handicap is prohibited. Handicap is broadly defined in s. 10 of the Code to include both physical and mental disabilities. [Emphasis added.]

There is no statutory definition of discrimination. Supreme Court of Canada jurisprudence defines discrimination as including:

Differentiation on prohibited grounds. Lawyers who refuse to hire employees of a particular race, sex, creed, sexual orientation, etc. would be differentiating on the basis of prohibited grounds.

Adverse effect discrimination. An action or policy that is not intended to be discriminatory can result in an adverse effect that is discriminatory. **If the application of a seemingly “neutral” rule or policy creates an adverse effect on a group protected by rule 5.04, there is a duty to accommodate. For example, while a requirement that all articling students have a driver's licence to permit them to travel wherever their job requires may seem reasonable, that requirement effectively excludes from employment persons with disabilities that prevent them from obtaining a licence. In such a case, the law firm would be required to alter or eliminate the requirement in order to accommodate the student unless the necessary accommodation would cause undue hardship.** [Emphasis added.]

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. **The Ontario Human Rights Code requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.** [Emphasis added.]

A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.

Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of the grounds noted in the Code. [Emphasis added.]

In addition to prohibiting discrimination, rule 5.04 prohibits harassment on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, **or handicap.** Harassment by superiors, colleagues, and co-workers is also prohibited. [Emphasis added.]

Harassment is defined as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome” on the basis of any ground set out in rule 5.04. This could include, for example, repeatedly subjecting a client or colleague to jokes based on race or creed.

Services

5.04 (2) A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Employment Practices

5.04 (3) **A lawyer shall ensure that his or her employment practices do not offend this rule.** [Emphasis added.]

Commentary

Discrimination in employment or in the provision of services not only fails to meet professional standards, it also violates the Ontario Human Rights Code and related equity legislation.

In advertising a job vacancy, an employer may not indicate qualifications by a prohibited ground of discrimination. However, where discrimination on a particular ground is permitted because of an exception under the Human Rights Code, such questions may be raised at an interview. For example... Since marital status has no relevance to employment within a law firm, questions about marital status should not be asked.

An employer should consider the effect of seemingly “neutral” rules. Some rules, while applied to everyone, can bar entry to the firm or pose additional hardships on employees of one sex or of a particular creed, ethnic origin, marital or family status, or on those **who have (or develop) disabilities**. For example, a law office may have a written or unwritten dress code. It would be necessary to revise the dress code if it does not already accept that a head covering worn for religious reasons must be considered part of acceptable business attire. The maintenance of a rule with a discriminatory effect breaches rule 5.04 unless changing or eliminating the rule would cause undue hardship. [Emphasis added.]

If an applicant cannot perform all or part of an essential job requirement because of a personal characteristic listed in the Ontario Human Rights Code, the employer has a duty to accommodate. Only if the applicant cannot do the essential task with reasonable accommodation may the employer refuse to hire on this basis. A range of appropriate accommodation measures may be considered. An accommodation is considered reasonable unless it would cause undue hardship. [Emphasis added.]

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04.

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law. However, the following principles are well established.

If a rule, requirement, or expectation creates difficulty for an individual because of factors related to the personal characteristics noted in rule 5.04, the following obligations arise:

The rule, requirement or expectation must be examined to determine whether it is “reasonable and bona fide”. If the rule, requirement, or expectation is not imposed in good faith and is not strongly and logically connected to a business necessity, it

cannot be maintained. There must be objectively verifiable evidence linking the rule, requirement, or expectation with the operation of the business.

If the rule, requirement, or expectation is imposed in good faith and is strongly logically connected to a business necessity, the next step is to consider whether the individual who is disadvantaged by the rule can be accommodated.

The duty to accommodate operates as both a positive obligation and as a limit to obligation. Accommodation must be offered to the point of undue hardship. Some hardship must be tolerated to promote equality; however, if the hardship occasioned by the particular accommodation at issue is "undue", that accommodation need not be made. [Emphasis added.]

The LSUC is also committed to ensuring that as an employer, its workplace is free of harassment and discrimination. The Law Society has adopted a Workplace Discrimination and Harassment Prevention Policy and is in the midst of working on workplace accommodation policies. Each LSUC department has contributed to the Equity and Diversity Action Plans document, which outlines the initiatives that each department is taking to integrate equity and diversity into its day-to-day operations.

The situation may be less rosy in one or two other Canadian jurisdictions, however. Even in those places there may be an individual legal education, governmental or law society administrator who helps individuals to break through or get around barriers:

The Bar Committee has been the biggest barrier through my articling year... Overall, I have been ... disgusted with [how] I was treated by the law society with respect to accommodations... their ignorance was shameful. However ...the administrator has been sensational throughout and deserves credit.

6.4 Accessibility of Law-Related Buildings

Complaints continue about individuals with mobility impairments being unable to gain easy access to the main courthouse in Vancouver after hours for evening social and educational functions. The design and placement of elevators poses one problem. Building management has attempted to address the problem by instructing security staff to assist visitors in wheelchairs, but these staff and visitors are obliged to use an awkward route through security doors and a less-used elevator. Concerns have been raised over the accessibility of courthouses in some of the outlying areas in BC. The LSBC is beginning to turn its attention to these problems and to begin lobbying for change. (As in other provinces and territories, responsibility for court buildings rests with governments, rather than with the law society.)

The Law Society of Upper Canada's website contains reports on the condition of 47 county courthouses across Ontario. This includes information on accessibility for people with mobility impairments but does not focus on other disability groups. Access for individuals with disabilities seems to be a standard section of each report. One of our contributors reported reading a fairly recent paper (not available to our research team) on the poor state of wheelchair access at several

(mostly rural) courthouses in Ontario. Our respondent added that “wheelchair access to a courthouse is a particularly egregious problem because it arguably has constitutional implications as accused persons are compelled to go to court.” A survey contributor offered this anecdote concerning courtrooms:

Some of those old courtrooms are beautiful but have real access barriers for lawyers with disabilities and anyone else. One year we had a community college student assisting us on a case dealing with disabilities. The student used a wheelchair. It was very dramatic when he had to get help wheeling into the old [superior court] courtroom. There was no way he could get in there without banging the door and making more noise as he dropped down to a different floor level. Eventually, I think that courtroom was renovated.

The following reflections came from three separate survey respondents, based respectively in two large Ontario cities and one in an Atlantic province:

Has your disability hindered your access to public buildings relevant to working as a lawyer...?

- *Court house has lift access*
- *Sometimes, book shelves in library too narrow for scooter*
- *Countertops sometimes too high*

Courtrooms present their own problems for hearing impaired lawyers. For example, it is very difficult (if not impossible) to follow what is happening. Even routine motions may be a problem because the parties are verbally called forward, it is very fast paced and there are numerous distractions. Judges are seated very far from the lawyers and while permission may be granted to “approach the bench” not all judges are willing to allow this. I have found, however, that if judges and court officials are informed of my disability prior to court convening they are usually willing to do what they can to make it easier for everyone.

The Family Court requires a guard to operate their elevator, so independence is negated. Once upstairs, several court rooms are accessed only by stairs. On one occasion, the venue was moved to a lower floor court to accommodate me.

Many public sector buildings that lawyers frequent in their professional lives are not adequately accessible. That is demonstrated within the headquarters of Ontario’s profession, Osgoode Hall in downtown Toronto. On one side of the building are the premises of the Law Society and the Bar Admission Program. These have been rendered accessible, as was confirmed by Reach focus group participants. (We do know that the London premises are even more accessible, and that the Ottawa building is regrettably only partly accessible.) At the west side of Osgoode Hall there sit offices and courtrooms for branches of the highest Ontario courts. Because of classic tall doors,

historic outside steps and other features, the most logical entrances to this portion of Osgoode Hall pose barriers for anyone with a mobility impairment. During the Bar Admission Course in the year 2000, some students complained that they could not open the huge heritage doors. One can press a buzzer at some entrances which will lead to a security officer opening a door. There is also provision for a temporary ramp to allow wheelchair access, but these arrangements have been described by some individuals as being unsatisfactory.

During winter in Toronto, a common pathway for students, staff, and CLE clients headed toward the LSUC quadrant is to enter Osgoode Hall at the southwest and then walk east through the large building, protected from the elements. (Indeed, the Editor/Principal Author of this Guidebook took that internal route more than once in the winter of 2000/2001.) For people with mobility disabilities the big problem is that there is no wheelchair access around or over the short stair set leading between the courts portion of the building and the Law Society premises to the east. The inside shortcut is simply not available to people in wheelchairs. The only way many can gain access to the bar admission course and other the other areas of Osgoode Hall is by travelling outdoors to the far eastern side of the building. A reason many people would want to enter Osgoode Hall through its south or southwest entrances is that these are closer to the street for arrival by taxi, para-transit, streetcar, or subway. Remember that not all persons with a mobility impairment use a wheelchair. (In any case a wheelchair would be blocked by the famous iron cow gates at the entrances to the grounds, so special provision is made for access through an alternate gate.) We recognize that when individuals in wheelchairs arrive at Osgoode Hall, their vehicles can usually park on the eastern sidewalk to gain access to the BAC and to the LSUC. Near the courts' entrance, an authorized vehicle may be permitted to park in the front courtyard, although the cobblestones and ledges can present their own problems for wheelchair users.

The authority responsible for the courts portion of Osgoode Hall is the Ontario Government rather than the Law Society, and we would recommend that they take the necessary remedial renovation steps. These would be beneficial not only for lawyers and law students, but for visitors to Osgoode Hall (including student groups and tourists) who happen to have mobility disabilities. Those responsible for court facilities should bear in mind their responsibility to ensure reasonable access and accommodation. We have heard that aesthetic objections have been raised to the idea of installing more electronic buzzers to permit automatic opening of the huge Osgoode Hall doors. Other observers have suggested that with care, the necessary electronics could be threaded inside the wood without disfiguring its historic face.

We did not hear complaints about the accessibility of land titles offices and other kinds of public registry offices, but that does not mean that there are none. At some time in the future, the increasing capability of conducting transactions online may alleviate many accessibility issues. As options expand for doing more kinds of transactions online, there will still be many reasons why a lawyer or student would want to conduct work in person at one of the various kinds of registry, court-related and alternative dispute resolution offices.

6.5 Community and Commercial Services

Information under this heading, which is relevant to all stages of a legal career, is covered in section 5.7.

6.6 Government-based Accommodation Support Programs

The current chapter focuses on assistance that may be available directly to employees, but a number of governmental programs devised to assist employees involve subsidies or incentives that in fact go to employers. To ensure that our data on such overlapping programs is collected in one spot, we cover all government-based incentives and supports in Chapter 8. If you are a law student, law graduate or lawyer who has a disability, note that Chapter 8 contains information that is targetted at employers but could prove beneficial for you to know about and then bring to an employer's attention.

Chapter 7.0

7 Finding, Designing and Demanding Accommodations: Seeking and Advocating Good Employment Accommodations

7.1 Introduction to Chapter Seven

Often the main obstacle to accommodation is an instinctive objection from an employer based on lack of knowledge or unfounded fears about cost. The employer has perhaps never dealt with a situation in which an employee requested an accommodation or a particular accommodation. Perhaps neither the boss nor the staff person is aware that there is a routine inexpensive accommodation that could be implemented. The positive examples that we highlight in this chapter show that accommodations are generally fairly simple to implement, as well as producing benefits in terms of staff productivity.

7.2 Some Thoughts on Self-Accommodation

This section relates the experiences of a few individuals who pondered how they personally could take ameliorative steps to achieve their accommodation goals. Success in attaining necessary accommodations is usually dependent on the individual taking the initiative. The law graduate with a disability may need to request formal assistance from a law society, legal education official, departmental manager, or partner of a law firm. Yet most often the individual devises his or her own accommodations and provides the main ingredients for them. Failure to do be aware of one's limitations and needs - and of remedial options available - can have consequences. One focus group participant told us that he discovered rather late in the game that he could benefit from accommodation during the articling phase of qualifying as a lawyer in Ontario. He had not seen the need for accommodation during his initial "skills training" phase of the bar admission program (pre-2001). Therefore, he failed to disclose his disability to the Bar Admission Program and lost out on accommodations that would have made his articling life easier.

Several examples of how lawyers with diverse disabilities use adaptive techniques in their daily work are described in three articles published in the September 4, 1998 edition of *The Lawyers Weekly*, and an article that appeared in February 2001 in the *CBA National*. These are cited under "Printed Resources" in the Bibliography. Some universities and one or two bar admission programs have excellent adaptive technology available. There are a number of good places to learn about basic or leading-edge assistive technologies. Worthwhile websites on adaptive technology include those maintained by Dawson College (<http://omega.dawsoncollege.gc.ca/adaptech>), the University of British Columbia (http://www.student_services.ubc.ca/drc/), and Queen's University (<http://library.queensu.ca/inforef/srs>). To learn about many additional kinds of accommodations, readers could refer to other Web-based and printed sources listed in the Bibliography, including those under the heading "Adaptive Technology".

In these next paragraphs, we quote a few observations from Canadian colleagues concerning personal steps one can take to arrange technological and other accommodations. (In one instance, we begin by quoting one of our survey questions, to set a context for the response that is presented.):

"[Since] the accommodations I require are largely technological ... there is actually a little flexibility in how they can be arranged (as I am often experimenting and adapting to new work techniques, etc - as the nature of personal versus work-related technologies is not always clear and tends to evolve, and as technology evolves to the point that there are different versions, models (i.e. different price ranges, etc.), I've tended to think that many of the specifics are best left to a discussion once I'm hired and actually having to organise (along with my employer) the precise accommodations..."

"Although it would make my job much easier to be able to record conversations with clients to get around my disability it would be very intimidating for clients to have microphones in front of them when they are trying to tell their story." A fellow discussant, upon hearing that reservation, had a more optimistic outlook: "There are plenty of ways that a conversation can be recorded without a microphone being in someone's face. As long as permission is obtained from the person being interviewed, recording technology can be quite unobtrusive, and after a few sentences most people would probably even forget that it is there."

"I think a lot of things get done or get overcome through informal arrangements with co-workers (trading favours according to each person's strengths and weaknesses) ... I do rely a lot on assistance for filling out or reviewing forms – [We have a clientele that includes many] Spanish-speaking people [and] I'm one of the few ... who is fluent in Spanish, so I give extra assistance with Spanish."

"[As] a student with a mobility impairment, obviously I would need a firm that was accessible physically as well as open-minded in terms of its attitudes. Since I don't drive, I think I would only have wanted to article with a firm in the downtown core ... rather than a suburban firm."

"To do my job well, I have a student assisting me. My problem was that I have a small office where it was difficult for someone else to work. Yet the best arrangement was for the student to share the same space. Instead of going right to renovation, we thought hard about how we could make good use of the existing space. With a redesigned workstation we were able to get both of us and all of our computing devices in the same room at no real cost to anyone."

“Because of my disability I cannot write with a pen or a pencil. This can be a real drawback during a hearing when you are trying to make notes about what other lawyers and judges have said during oral argument. For me, a simple and effective accommodation is to have a student present to take notes for me.”

“We know that the employer has a moral and legal duty to accommodate but it is sensible for someone seeking a job to learn what they can about their disability and how to accommodate for it. Although it is legally defensible for a young lawyer to go to an interview aware that the boss needs to provide accommodation, it is impractical not to arrive with informed solutions about accommodation that he or she can offer to the employer.”

“Many individuals will decline to seek adequate accommodation for their disabilities regardless of what the law says, for any number of personal reasons. In some instances, they will leave an unresponsive law firm rather than enduring the tension of continually having to ask for adjustments that they may be entitled to under the law. In such a case, an employer might be willing to provide a good reference letter, rather than face the possibility of a complaint to a human rights commission or a law society. It is important to realize that you can often gain some control over what is said in a reference letter and may even be able to negotiate its specific wording.”

When you are explaining your accommodation needs and proposed solutions to your employer, be specific. Give practical examples not just general requests.

Of course, it is often true that if you don't ask, you don't get, as one quoted lawyer now apparently realizes:

As a junior associate, I was often near exhaustion trying to work the same long hours as everyone else despite my disability. I did not seek any accommodation so I do not know whether the firm would have provided some accommodation.

7.3 Good and Less Helpful Accommodation Practices That Professional Colleagues Told Us About

This chapter highlights instances in which practical and appropriate employment and job search accommodations have been provided to articling students, lawyers or others. One of our objectives is to demonstrate that there are specific precedents on which individuals could base their own remedies for barriers that they encounter. To maintain a balance of reality, we also cite a few cases in which our survey respondents said they had faced inappropriate reactions to their accommodation needs.

Frequently, people who want to accommodate for disability have the best of intentions, but their efforts are at least temporarily in vain because no one is sufficiently aware of additional barriers that come into play. In one case in 2000, a blind student-at-law asked bar admission officials for course materials in an alternate format, to manipulate in his computer. He was handed a diskette with a large volume of course materials compressed onto the one disk. Neither he nor the bar course staffer who was trying to be helpful realized that the unusual diskette could not be used without a special peripheral device, a Zip Drive. The student's resources would not have allowed him to purchase a Zip Drive at that time.

Our focus group participants did not display unanimity in their views about how and whether to seek adaptations in an employment situation where accommodations were needed. For example, during one focus group conversation a participant said that to get along in her job she was prepared to make the accommodations herself, to be as little nuisance as possible. She approved of the idea that someone would bring a laptop to work allowing for technological accommodation, rather than pressuring the boss to provide the assistive technology. Another participant said that requiring her to shoulder the burden of accommodation was completely wrong. He did admit that he might do the same thing as her in a similar situation, if he felt forced to in order to keep his job. He indicated that one should always be aware of the option of launching a discrimination complaint against the employer under human rights legislation, for failure to provide reasonable accommodation. (Two people present in that discussion had actually done so, with relative, though slow, success.)

In the statements clustered below, one of our survey questions is occasionally quoted, to set a context for the particular responses that are presented:

“Did your disability affect your ability to participate in any co-op, job-shadowing or internship program?” [At] one clinic in particular, the lack of accommodations was such that I couldn't even do in-takes really; I could have typed the in-takes on my notetaker ... and brought it home, transferred the info onto PC, printed it out, and submitted it; this clinic insisted that in-takes had to be left at the office at the same time when the in-takes were done; I was never able to move past this obstacle in spite of my efforts, so I gave up on this clinic early on; in contrast, at the clinic where I've been working for the past year, I am able to participate fully in in-takes, the carriage of files, representation of clients before courts and tribunals, etc.

[There] is a program in [our province]...through the Department of Human Resources. [This] program gives money to help integrate people with disabilities into the work force. I had gotten funds from this program as a student for a tutor and was successful in obtaining funding this year for an assistant/secretary...generally this program is designed for students but I was able to convince them that as an articling clerk I am still a student because we do the bar course. I was also able to get funds from another gov't program called Equal Opportunity Fund for software and a dictaphone.

[At] the clinic I worked at last summer...the technological accommodation was only partial ... CCTVs (machines that magnify) that were on loan alternately from the law school and the CNIB (and for which myself and the other students were responsible for moving, setting up, returning, etc.); more recently a permanent solution arose wherein Legal Aid purchased a CCTV, a state of the art machine ... [My] other part-time ... work ... is prosecution ... for the City ...; they provided me with a CCTV...

When I began articling, my employer was aware that I was terrified to do research and do memos. He also knows that structure helps me. However, he will not avoid giving me certain work as he is determined to teach and train me. Concrete example: he gave me a research assignment that required a memo. After, he brought me to the library to show me how to do the search and the purpose of certain books. He also spent time showing me how to research on Quicklaw. Then, he sat down with allowing me to brainstorm (hear my arguments which helps me) and then he gave me a plan so I could follow it and write the memo without being overwhelmed. Actually, the result shocked me. I even thought of an argument that he had not thought of and this is a guy who graduated #1 in his law class...

I had no difficulty getting the employer to purchase a CCTV for my use. Also, the employer is very tolerant of my need to sleep on the job to refresh my eyes.

My employer encouraged me to dictate more things, rather than typing.

The law firm had far fewer parking spaces than there were lawyers to fill them. Nevertheless, I was given a space near the door despite my lack of seniority

Having been involved with three clinics ... I'd have to say that I've struggled somewhat with getting full technological accommodations from ... Legal Aid/the clinic system; clinic directors ... have shown different degrees of flexibility, awareness, and willingness to learn/adapt in terms of helping me to carry out "meaningful" clinic work in the face of such technological obstacles; on the one hand, the different entities seem to have some difficulty accepting responsibility for the cost of these accommodations (each pointing to the others as sources of funding); with Legal Aid ..., it's taken a very long time between the time that an order or request gets made (even approved) and the time that equipment or software actually arrives..

... [The public sector] accessibility department director (blind himself) was very knowledgeable about the relevant technological and work issues; a state of the art machine (efficient, relatively economical as compared to previous machines including the one I use for personal use); the machine whose performance met my needs so well (beyond my expectations, actually) that it formed the basis of the proposal which led to recent accommodation by [another employer] by way of an identical machine;

...[When I worked as a lawyer on one case,] I could not find a court reporter because of my speech impairment.

“Could you describe a positive experience you have had, illustrating good assistance or accommodations that you received with respect to articling or legal employment?”

...[The] court allows me to give submissions sitting down.

...funds for attendant-care at work

...[Justices of the peace and clerks are very helpful in easing some of the reading burden for me (e.g. when I call out line numbers of the docket, if they can find the line before I can read the name, they'll read out the name of the defendant for me); this experience has been crucial for me as someone who is very interested in litigation; having had this experience (both in terms of accommodation and in terms of the job itself) has probably helped immensely with my approach, outlook, expectations, and confidence when I've addressed the question of my disability with prospective employers in the articling application process.

I have profound bilateral hearing impairment. I have experienced no difficulty in obtaining any accommodations required. All employers have been more than willing to provide assistive devices (such as TTY). For example, they communicate with me by email rather than telephone and ensure that during conferences or large meetings I am able to follow and contribute to discussions.

In general, I feel my firm did a great job in accommodating my disability. As a progressive and political firm, they are very sensitive. For instance, my fellow articling student did most of the court runs. In return, I agreed to take on extra responsibilities in the office so that it was equitable. During the spring and summer months, I did end up doing court runs because everyone in the firm was extremely busy and stressed. I would have preferred not to do them and other more “clerical tasks” but the firm did do its best. Any overnight or evening shifts were almost always done by my fellow articling student. Given the small size of the firm, I feel they generally did their best. One weakness was the failure to provide me with QuickLaw access at home. In fact, certain members of the firm had such access but for reasons that were never made clear, articling students were not entitled to this benefit. That did prevent me from working from home to some degree.

7.4 Policies and Approaches That Help to Create an Accommodative Work Environment

[When] I applied to be a part-time prosecutor with the City ... I actually turned in my application in person to the Director of Prosecutions (one of the ones doing the hiring); seeing my white cane, he said "Pardon me, but I can't help notice that you have a vision limitation to some extent. Are you aware that we there are lists you'll need to see/work with for this job?" "I have special equipment that I use which magnifies documents, and I expect I'll be able to do the work with such a machine. I'd be happy to tell you more about it at an interview." My initial fear after that encounter was that disclosure in that fashion could have put an end to that job prospect. However, I was called for an interview, and I realized that much of the key to accommodation (not to mention getting hired) is to educate/put fears to rest.

The federal government has excellent policies regarding accommodating your workload. They even assess your workload from time to time to see if there is some way they can accommodate you.

To learn a great deal about what might constitute a working environment that “mainstreams” reasonable accommodation, we invite you to review two documents describing the accommodation policies adopted by two federal government entities – Treasury Board and Agriculture and Agrifoods Canada. These are set out in this Guidebook’s Appendices. These

could be models for larger law firms and lawyers' organizations to consider applying in their own circumstances. (These policy documents also help to explain much of the terminology commonly used in discussions about employment accommodations.)

7.5 If the Employer Won't Listen to Reason: Seeking Remedies for Discrimination, Including Unreasonable Accommodation

Since this is a book aimed at a legally educated audience, it would not be complete without mentioning that a few individuals who participated in our surveys and focus groups have lodged complaints with provincial or federal human rights commissions when recruiters or employers have allegedly not complied with the law.⁸ If you feel that you are being treated improperly, unreasonably, or illegally you can contact your jurisdiction's human rights commission. Their fulltime staff can answer questions free of charge and will potentially assist you, should you decide to file a complaint. If an offending manager, lawyer or recruiter is a member of your provincial or territorial law/bar society and that body has a staff person or committee who focuses on equity issues, you may want to pursue that avenue as a preliminary or alternative step.

Before filing a complaint with a human rights body, you may want to consult one or more lawyer(s) that are knowledgeable about anti-discrimination law - including denial of reasonable accommodation. Personnel of these organizations may be able to advise you about the twists and turns of seeking remedies for discrimination. They can help you to assess your likelihood of success if you file a formal complaint. Examples of organizations that may be sources of pertinent advice for you are national groups that focus on a particular disability (see the national directory mentioned in section 5.7 above), as well as the following:

1. The Canadian Human Rights Commission (which has hotlinks to the websites of other human rights commissions) go to: <http://www.chrc-ccdp.ca/>. At the bottom of the home page, click on "site map". Then click on "how to contact the commission". For provincial and territorial bodies, click initially on "links". At the "links" page, you can find further hyperlinks as follows:

Additional Human Rights Information

Provincial Human Rights Commissions

International Human Rights Commissions

Federal Departments or Organizations with Human Rights Responsibilities

United Nations Organizations dedicated to the protection of Human Rights

United Nations tools for the enforcement of Human Rights

⁸ Elsewhere in this book, we mention the positive view that many people hold about the way the federal Department of Justice (DOJ) hires and accommodates law graduates with disabilities. This opinion is not uniformly held. In April 2001, the Canadian Human Rights Commission (CHRC) reported that a former employee of DOJ had filed a complaint, alleging discrimination on the basis of disability: "Ken Kramer of Vancouver alleges that the Department of Justice discriminated against him by denying him a term position because of his disability. Mr. Kramer suffers from muscular dystrophy and as a result requires some assistance at work. He was hired as a term employee in the Justice Department's Aboriginal Law section, where he required assistance, but was notified that he would not be extended. He claims he was then denied a position within the Tax Litigation section despite being qualified. He believes he was not hired because of his disability." (CHRC News Release, April 24, 2001 at website www.chrc-ccdp.ca)

Non-Governmental Organizations
Acts, Tribunals and Judicial decisions
Universities
Others

2. The Council Of Canadians With Disabilities

The Council of Canadians with Disabilities (<http://www.pcs.mb.ca/~ccd/>) is located at 926-294 Portage Avenue, Winnipeg, Manitoba. (Tel/TTY: (204) 947-0303). Its e-mail address is: ccd@pcs.mb.ca Like the home pages of The Canadian Human Rights Commission, the Council's website covers many topics and has numerous hyperlinks.

3. The Advocacy Resource Centre for the Handicapped (ARCH) is a legal resource Centre for persons with disabilities and a non-profit community legal clinic, located at 405-400 Orchard View Blvd, Toronto M4R 1B9. (The phone number is (416) 482-8255 and the fax is (416) 482-2901). Though ARCH has an important role in law reform and education efforts, concerning cases it reportedly is interested in only precedent-setting matters. All other cases are referred elsewhere, however. The ARCH website is <http://www.arch-online.org>

Chapter 8.0

8 Incentives, Resources and Advice for Firms, Public Agencies, and Others Who Hire Law Students and Lawyers

8.1 Introduction to Chapter Eight: More Reasons to Say “You’re Hired.”

This chapter is intended as a resource tool for firms, public agencies and others who hire law students and lawyers as employees and practitioners. We have tried to discover and provide as much information about supports and incentives as possible, within the confines of our project mandate. The programs we found were not designed specifically to assist law firms and law graduates; on the other hand, they do not exclude provision of benefits to lawyers, articulated students or those who employ them. The majority of these programs were devised to provide entry-level job experience - not to help someone embark on a professional career. It is arguable though, that entry-level experience is exactly what many law graduates are looking for. For some individuals with a disability, this may be their first foray into the job market after acquiring a disability.

Often employers in Canada overlook or downplay the talent and skills of persons with disabilities. This is as true of the legal profession as it is of any other segment of society, although the members of the profession are no doubt generally aware of their legal and ethical responsibility to hire fairly and without discrimination. Whatever motivates potential employers of lawyers and law students to act appropriately when recruiting and managing staff who have disabilities, this present chapter should reinforce their overall motivation. The chapter spotlights positive financial and other incentives available for employers. Certain incentives can assist a professional or organization that chooses to hire a person who has a disability. Others can help to make one’s office or workplace more accessible for persons with disabilities, including staff and clients. There is also plenty of free advice available to the employer or manager on “how to employ” a person with a disability, facilitating the employee’s own drive to make the most of his or her talents – for everyone’s benefit.

The Employer’s Duty to Act Reasonably and without Discrimination

Note that the law pertaining to discrimination and fair treatment related to individuals with disabilities is addressed briefly in the Preface and Chapter 6 of this Guidebook. Even more briefly, we summarise those passages in the current section.

Anyone reading this guidebook may already know that the law in all parts of Canada prohibits discrimination on the grounds of mental or physical disability. Moreover, under section 15 of our constitution, special programs designed to relieve disadvantage caused by past discrimination against individuals or groups identified on the basis of grounds such as disability, race and sex are deemed not to be discrimination.

The law requires employers to offer reasonable “accommodation” for an employee’s disability. *Accommodation* may be defined as the adjustment of a rule, practice, condition, or requirement to take into account the specific needs of an individual or group. To some degree it involves treating individuals differently. Different treatment to adjust for a disability is legally required if the accommodation is needed to ensure that the individual has the opportunity to participate fully and equally.

The employer is not obligated to provide accommodations that cause excessive or “undue” hardship for the employer, although some inconvenience or even hardship must be tolerated to promote equality. Accommodation for a disability can take many forms, including: altering document distribution systems and transaction methods; modifying offices, hallways, entrances and legal libraries to make them more accessible; facilitating the engagement of note-takers and other kinds of personal assistants; and adaptive office technology, such as document scanners and voice recognition computer software that a law firm or government department may already possess.

Law/bar societies across Canada have issued guidelines to the profession dealing with all aspects of discrimination. As the Law Society of Upper Canada puts it, all lawyers who participate in articling student recruitment or in the hiring of any lawyer have a responsibility to ensure that the process reflects favourably on the profession, is free of bias and the appearance of bias, adheres to the Rules of Professional Conduct and complies with the Ontario Human Rights Code. (LSUC website - www.lsuc.on.ca). The tenor of this advice is relevant for all provinces and territories, with respect to the administrative law principles invoked, professional conduct and local human rights legislation.

Ontario’s Law Society goes on to offer specific suggestions with regard to persons with disabilities: “Job requirements must be bona fide, related to the job, and applied to all candidates without discrimination. Setting unnecessary hiring criteria may have the effect of excluding job applicants on prohibited grounds. For example, while it may be reasonable (depending on the size of the firm and the number of articling students) to require an articling student be able to go wherever the job requires, the requirement that an articling student hold a valid driver’s licence effectively excludes those with certain disabilities - *Onischak v. British Columbia* (1990), 13 C.H.R.R. D/87 (B.C. Human Rights Council).” Some elaboration of such issues is provided in the LSUC’s annotations to new rule 5.04, quoted at length in chapter 6 of this guidebook.⁹

The LSUC advises that interview questions should be valid and relevant to the job, and not relate directly or indirectly to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or disability. Exceptions mentioned include inquiries related to the candidate’s ability to perform the essential

⁹ The law on what constitutes a bona fide occupational requirement (BFOR) is extensive. Recent Supreme Court of Canada rulings have attempted to resolve past confusions and inconsistencies in the jurisprudence. For a two-page commentary on recent case law, see Yude Henteleff, “Supreme Court of Canada makes radical changes in responsibility of employers and service-providers to persons with disabilities”, LDAC *National* (Learning Disabilities Association of Canada), Winter 2001, pages 6-7. The publication is available from the LDAC (www.ldac-taac.ca). The LDAC is at 323 Chapel Street, Ottawa K1N 7Z2. Other contact data are: telephone - (613) 238-5721; fax - (613) 235-5391; e-mail - information@ldac-taac.ca

duties of the job, and inquiries as to the nature of any accommodation that may be required. This is because discrimination in employment on the basis of disability does not infringe human rights legislation if the person discriminated against is incapable of performing or fulfilling the essential duties or requirements of the job and accommodation cannot be made without undue hardship to the employer. Only if the applicant cannot perform the essential duties of the job even while receiving reasonable accommodation - considering a range of appropriate accommodation measures - may the employer refuse to hire on this basis. In order to make this determination, those concerned must consider a range of appropriate accommodation measures and not give up too easily.

The Law Society advises employers that if they check references, they should confine questions to job-related issues. "Do not forget that a reference's answer may reflect conscious or unconscious discriminatory attitudes rather than an objective evaluation of the candidate's skills, experience and performance. Pursue ambiguous answers with this in mind." In comparing applicants' suitability for a position, the Law Society requires employers to be mindful of their duty to accommodate. If the only reason an applicant cannot perform all or part of an essential job requirement is because of a personal characteristic listed in human rights legislation, the employer has a duty to accommodate.

There is a realistic appraisal on the Law Society of Upper Canada's site on how an employer can deal with subjective "feelings" that might lead unconsciously to discrimination during recruitment: "Ensure that your selection is objectively reasonable, considering the job and its requirements. Keep a record of why you chose the successful applicant. When faced with applicants whose qualifications are approximately equal, employers sometimes choose on the basis of "fit", hiring the candidates with whom they "feel" most comfortable. Ask yourself why you feel comfortable or uncomfortable, and how closely your level of comfort relates to the applicant's ability to do the job. Putting your deliberations in writing promotes objectively reasonable decision-making."

On its website (March 2001), the Canadian Human Rights Commission offers the following advice with respect to reasonable accommodation for a person newly hired: Invest a lot in common sense and open communication. The CHRC quotes a Supreme Court decision stating that disability means vastly different things depending upon the individual and the context. In other words, says the CHRC, there is no catch-all solution. Not all deaf people require sign language interpreters; not all blind people read Braille; and not all people with physical disabilities use a wheelchair. Without proper communication and assessment of needs, effective employment accommodation cannot be achieved. As will be described below, there is free professional help available to assist in finding the most appropriate accommodation.

The CHRC website raises a number of questions that may be on the minds of prospective employers, then provides responses to its own queries:

"Isn't there a high cost to integrating people with disabilities into my office?"

"The cost of accommodation is reasonably modest. Most employers can accommodate most adaptation needs for \$500 or less. The cost of adapting a workstation to the needs of a person with a disability can sometimes be high, but not prohibitively high -- accommodation is just one part of

the continuum of meeting the needs of your employees. There are also programs ... that may help defray some of your costs”.

“What if I have provided accommodation for an employee, and the situation is still not working out?”

“Remember that employment accommodation is not always a one-time provision; individuals’ needs can change over the course of their employment, as can the job itself. If an employee approaches you to tell you that he or she cannot perform well enough without further accommodation, this may be entirely legitimate. However, if an employee arrives continually late for work, this is a management issue, and not an accommodation requirement of flexible work hours. It is important to ensure that all employees understand what performance level is expected of them, and what workplace ethics are a part of your corporate culture. Accommodation is a means of enhancing an individual’s abilities, and of ensuring that workplace performance standards are met, not compromised.”

“How do I introduce a new employee with a disability, and how do I prepare my staff for his or her arrival?”

“When someone with a disability joins your staff, you introduce him or her exactly the same way you would introduce anyone else. An individual’s disability should not define him or her any more than gender, race or any other personal characteristic. Drawing attention to a new employee’s disability should be avoided, since it focuses on an aspect of that employee which -- if properly accommodated -- is irrelevant to his or her function in your workplace.” [This Guidebook’s editor believes that there can be exceptions to this latter advice. One expert suggested that in some instances a bit of advance preparation with co-workers might ease the acceptance of a new employee who has a noticeable disability. Someone with expertise could meet with fellow employees to dispel myths surrounding the disability. An illustration of how this approach can work is given in Section 9.2 of this Guidebook.]

8.2 Finding Incentives and Resources for Employers

In this chapter we give detailed affirmative answers to the question: *“If I consider employing a lawyer or articling student who has a disability, are there programs that could help with salaries or with accommodation costs related to technology or rearranging an office?”*

Employers can tap several kinds of financial and other supports for their efforts to deal fairly with employees who have disabilities. In each province there are programs that might prove to be of assistance. We researched Ontario and British Columbia and found a few. For any other province or territory it would be worthwhile seeing if the government provides analogous programs.¹⁰ You might also contact the local office of Human Resources Development Canada, a federal department that has relevant expertise. HRDC has a wide range of programs and resources available for persons with disabilities. Some of the available provincial and federal programs are described in summary form in the next few chapter sections. Among the programs highlighted is HRDC’s Opportunities fund for persons with disabilities.

¹⁰ As one example, in New Brunswick one would contact the Department of Human Resources and the Department of Training Employment and Development.

As a first step in your search for supports and incentives, you may want to seek the free advice offered by the Job Accommodation Net. Promoted by the Canadian Council on Rehabilitation and Work and funded by Human Resources Development Canada, JAN-CANADA is the Canadian service of the U.S.-based Job Accommodation Network (JAN). JAN's mission is "to assist in the hiring, retraining, retention, or advancement of persons with disabilities by providing accommodation information". You may call toll-free Monday to Friday. Your call can be handled in French or English, by voice or TTY, and the service is free of charge to all users. The Internet address is: <http://janweb.icdi.wvu.edu/english/homecan.htm>.

After hearing about your situation or challenge, the JAN consultant will give you advice, based on the consultant's expertise and the expertise of other consultants within JAN's team as well as information drawn from the Network's extensive library and database, covering accommodation strategies, methods, and manufactured devices.

The Canadian Council on Rehabilitation and Work (CCRW) operates a virtual employment resource centre (<http://www.workink.com/>). Among other services, this CCRW website offers: networking and discussion of employment issues such as hidden disabilities and soft accommodations like flex time; labour market information; access to national, provincial, and territorial resources; and online experts' assistance.

Contact data for specific incentive and support programs are provided in the remaining sections of this chapter. Resources and databanks capturing large fields of other relevant information are noted in the bibliographic appendices at the back of this Guidebook. The primary sources for information gathered in this chapter were the websites of the respective programs, as they appeared in early 2001.

8.3 Subsidies for Employee Income and Related Employee Supports

Programs are available to assist employers with the salaries of employees (usually new employees) who have disabilities. These programs give employers extra incentive to hire someone who has difficulty accessing employment because of special barriers.

8.3.1 Federal Targeted Wage Subsidy Program

Targeted wage subsidies (TWS) to assist employers to hire one or more workers are arranged either through a contract with the local Human Resource Centre (of Canada) or with a community coordinator designated for the purposes of the wage subsidy program. The program is designed to assist individuals who are eligible for, or have collected, employment insurance. But individuals who have not received E.I. benefits, yet face serious labour market difficulties, as defined by local Human Resource Centre priorities, may also be considered for the TWS.

Temporary wage subsidies offer employers an incentive to hire individuals they probably would not hire otherwise. Employers benefit by having more staff and having the opportunity to assess the abilities of a new talent pool. Unemployed individuals benefit by learning new skills and gaining valuable experience. An employer's TWS proposal is officially evaluated on the quality

of the work experience offered to participants, and on the likelihood that the job will continue in the long term.

Employers Eligible under the TWS Program

a. businesses; b. non-profit organizations; c. municipal and provincial/territorial governments - if specified in a federal-provincial/territorial agreement or Memorandum of Understanding; d. band/tribal councils; and e. public and educational institutions.

Individuals Eligible to Participate under the TWS Program

Unemployed individuals: a. currently receiving Employment Insurance (EI) benefits; or b. whose EI benefit period ended within the last three (3) years; or c. who received EI maternity or parental benefits within the past five (5) years and are re-entering the labour force after having left it to care for newborn or newly adopted children. TWS publicity states that “Other criteria may apply.”

Duration and Nature of a TWS

A TWS can be used for up to a year and a half but the average duration is between 26 and 30 weeks. In normal circumstances, the wage subsidy should not exceed 60% of the total wages paid to the individual for the period of the agreement. The subsidy could also vary. For example, it could be 75% of the individual's wages during the first 26 weeks, 0% during the next 26 weeks, and 40% during the final 26 weeks. The duration of the wage subsidy is negotiated on an individual basis.

This program is intended as a precursor to sustainable employment that will begin after subsidies have been exhausted. Additional contributions from the program may also be negotiated and may relate, among other things, to special costs for persons with disabilities or for "dependant care".

For more information on the TWS program, one can contact the nearest Human Resource Centre of Canada or visit the relevant website: <http://www.hrhc-drhc.gc.ca/hrib/sdd-dds/odi/content/tws.shtml>.

Potential Drawbacks of a TWS for an Employee

Concerns have been raised that wage subsidy programs may stigmatize participants. A federal government report concluded the following:

"They are intended to compensate employers for lost productivity, and are of limited duration. Their effectiveness is mixed... subsidies can have a number of disadvantages. For example, being categorized as eligible for a wage subsidy can reflect negatively on the capabilities of those so categorized and lessen their chances of employment... Thus it is not certain that the wage subsidies result in long-term employment following the end of the subsidy. Alternative approaches, such as barrier removal, generally appear to be more successful."¹¹

For many law graduates with disabilities, however, the importance of having a chance to article and to be called to the bar would outweigh any stigma associated with subsidies, because of the potential for greater opportunities.

8.3.2 The Opportunities Fund (Human Resources Development Canada)

The purpose of the Opportunities Fund is to assist persons with disabilities who are not eligible for employment benefits under Canada's Employment Insurance Act. Employment activities pursued under the Fund are intended to help persons with disabilities to prepare for, obtain, and keep employment or self-employment. The data presented in this chapter were found in February and March 2001 on the website of Human Resources Development Canada (HRDC): <http://www18.hrhc-drhc.gc.ca/programs/opportunitiesfund/>

The Fund's main stated goal is to assist persons with disabilities in preparing for, obtaining, and keeping employment or becoming self-employed. Its listed objectives are: a. To support an array of activities such as, but not limited to...encouraging employers to hire workers with disabilities, increasing the employment skills of persons with disabilities, providing work experience, and

¹¹ Final Report - Evaluation and Data Development Strategic Policy, Disability Policies and Programs (Human Resources Development Canada, Lessons Learned Series, 2000).

assisting individuals with starting their own business; b. To work in partnership with organizations for persons with disabilities, including the private sector, to support innovative approaches to integrate individuals with disabilities into employment or self-employment and to address barriers to an individual's labour market participation.

Duration of Projects Supported by the Fund

Projects may be approved for a period of up to 52 weeks, but may be extended to a total of 78 weeks.

Financial Coverage

a. Funding may be provided to cover costs such as participant wages or related employer costs. b. Funding may be provided to cover overhead costs related to planning, organizing, operating, delivering and evaluating approved activities, including costs such as staff wages and employment related costs. Eligible expenses will be negotiated with program officials.

In addition, contributions may be made to eligible participants to cover the following employment-related costs incurred in relation to their participation in an eligible activity: a. all or a portion of their living expenses; b. all or a portion of the incremental cost of participation such as expenses relating to specialized services, dependant care, transportation and accommodation; and c. all or part of the cost of tuition for a course or a program of instruction.

Eligible Recipients Under The Fund

Contributions may be made to the following when acting as project sponsors or employers in relation to an eligible activity: a. businesses, including federal crown corporations found on Schedule III, Part II of the Financial Administration Act and comparable provincial crown corporations, b. organizations, including public health and educational institutions, band/tribal councils and municipal governments, c. provincial/territorial government departments and agencies if specifically approved by the Minister, and d. individuals. Individuals are eligible to receive contributions directly if they are unemployed with a disability and are not eligible to participate in the Employment benefits available under the Employment Insurance Act.

We are uncertain about the extent to which the Opportunities Fund will help to support employment for lawyers or articled students who have disabilities. We are aware of an instance in which an articling student's law firm received some financial support from the fund. One contributor to the 2000 - 2001 Reach study applied for funding in 2000 – 2001 to pay the wages of a personal assistant needed in a lawyer's practice because of the lawyer's disability. The lawyer obtained funding through a provincial program before the HRDC application process was finalized.

Fund Activities

The Opportunities Fund supports a broad array of employment activities for persons with disabilities who are not eligible for employment benefits under the Employment Insurance Act. Examples of suitable activities include but are not limited to the following: A. encourage employers to hire persons with disabilities; B. assist individuals with disabilities to start their own business; C. provide work experience that can lead to on-going employment; D. assist persons with disabilities to increase their employment skill level; E. assist their integration into the workplace through services tailored to meet their special needs; F. provide personal supports

required to enable persons with disabilities to participate in employment and employment services.

While participating in certain activities such as skills development or self-employment, participants are expected to continue on their current source of income support, if any. Otherwise, living expenses may be covered on the basis of negotiated weekly rates. In addition, participants may receive support toward certain other expenses such as tuition, commuting costs and dependant care. The costs of special arrangements or devices to accommodate a person with a disability may also be available.

How to Apply under the Opportunities Fund

Contact the Human Resource Centre of Canada (HRCC) serving your local area. Organizations or groups that operate in an area “larger than a HRCC labour market area” may contact the regional or national office of Human Resources Development Canada. In many places, community-based organizations that provide specialized employment services may have information available regarding the Opportunities Fund. Staff in the riding office of the local Member of Parliament could prove to be helpful as well.

Information on the Opportunities Fund can be obtained in alternate formats through Infotouch. Call 1-800-788-8282 on a touch-tone telephone or through teletypewriter (TTY).

Local city or provincial initiatives may also be available. A good example of this is the Opportunities Fund of Windsor-Essex-Kent in Ontario, which was set up in partnership with HRDC. This is a project to assist persons with self-identified disabilities who require assistance in preparing for, obtaining and maintaining employment. Local employers may be entitled to a Disability Dividend to assist in hiring on a full or part-time basis.¹²

8.4 Adaptive Technology: Financial Support and Advice Regarding Assistive Devices

In most parts of Canada there are several associations and agencies that cover “assistive devices”, including relevant high technology, as part of their services. In Ontario, there are at least three specific programs to examine, which have counterparts in other jurisdictions.

1. The Assistive Devices Program Program (ADP).

The ADP is administered by the operational support branch of the Ontario Ministry Of Health And Long-Term Care. A stated objective of the ADP is to provide financial assistance to Ontario residents with “long term physical disabilities”. (“long term” means six months or longer.) One goal of the ADP is to enable individuals “to obtain basic, competitively priced, personalized assistive devices appropriate for the individual’s needs and essential for independent living”. ADP covers “over 8,000 separate pieces of equipment or supplies” in several categories, including: prostheses; wheelchairs/mobility aids; specialized seating systems; hearing aids; respiratory equipment; monitors and test stripes for insulin-dependent diabetics; and visual and communication aids.

¹² Source: <http://www.informationwindsor.com/erdir.htm>. Contact numbers: (519) 977-1562 in Windsor; (519) 326-1529 in Leamington, Ontario.

ADP pays up to 75 percent of the cost of equipment.¹³ An individual often gains initial access to the ADP through a medical specialist or general practitioner who provides a diagnosis. In most device categories, an authorizer (e.g. the CNIB) assesses the specific needs of the person and prescribes appropriate equipment or supplies. The client must buy the equipment from an authorized vendor. Most devices must be authorized by a qualified health care professional registered with the program. Registered authorizers work in hospitals, home care agencies or private practice.

Contact data for the ADP are: toll-free telephone in Ontario, 1-800-268-6021; telephone, (416) 327-8804; fax, (416) 327-8192; TTY, 1-800-387-5559; TTY in Toronto, (416) 327-4282.

A law graduate participating in one of our Ontario focus groups said that although he has great difficulty reading and must use very large print, he did not qualify for ADP support because he had not met the standards set by the CNIB for blindness. Without the CNIB's approval, he could not qualify. Fortunately, the criteria at his university were slightly different. He did qualify to have access to the necessary technology through the campus. Similarly, the ADP will require other applicants to be assessed by professionals with expertise relevant to their claimed disabilities. For example, a Reach survey respondent with carpal tunnel syndrome was required to be assessed by an occupational therapist or physiotherapist. Someone needing adaptive technology because of a hearing difficulty was informed that the assessment should be done through the Canadian Hearing Society.

From the perspective of a student or a law graduate who has a low income, a shortcoming of Ontario's Assistive Devices Program is that one must pay up front for the adaptive equipment and then seek reimbursement of the 75% portion.

One individual experienced a long delay in obtaining necessary adaptive technology because the hospital entrusted to transmit the necessary application and background material neglected to do so. Such delays can happen in any kind of program, so it is common sense to verify in these situations that professionals who have promised to assist actually carry out their promises.

2. The ODSP (Ontario Disabilities Support Program).

This program promises to provide people who have disabilities with the supports they need to get and keep a job. A counsellor at a local Ministry of Community and Social Services office will assess whether a person is eligible for "employment supports". There is a range of services potentially available, including: "technical aids ranging from mobility devices and reading aids to adapted computers as well as the training to use them; interpreter, reader, note taker, and intervenor services; job placement support; on-the-job training; and transportation assistance while training for a job."

An individual may be eligible if she or he has "a physical or mental impairment that is expected to last one year or more and that presents a substantial barrier to getting a job".

¹³ The ADP website adds this note: "There are many sources of funding for the client's share of the cost including ... voluntary/charitable organizations e.g. March of Dimes, Easter Seals, Kiwanis, social assistance, DVA, insurance companies, relatives/friends, waiver by vendor."

3. The Adaptive Technology Resource Centre (ATRC) University of Toronto.

This Centre does research and development for innovative solutions to accessibility problems and challenges. They advertise an ability to do work enhancement through technology. For example, it can supply mini keyboards for people with limited hand movement and screen readers to persons who are blind. The ATRC's Employment Accommodation Service offers to assist in the hiring, retraining, retention or advancement of persons with disabilities. The services available include: consulting, work site assessment, equipment, equipment trials and compatibility testing, and reports to employers with recommendations for accommodation. The ATRC charges commercial fees for assessment services. <http://www.utoronto.ca/atrc/service/eas.html>

4. Notes from the Guidebook Authors

If you are bringing technical aids or assistive devices into a workplace, you should check to ensure compatibility, especially before the employer or employee makes a purchase or agrees to rent the equipment.

In addition to the above-noted programs, federal, provincial and territorial governments provide for special treatment of business expenses, including adaptive technology, relating to disability accommodation. See section 8.6 below.

8.5 Assistance with Adaptive Renovations

Governments may allow special tax treatment of business expenses relating to disability accommodation, including renovations. These tax breaks may be legitimately claimed even if the renovations lead to other business-related benefits, as they often will. See section 8.6 below.

What may be needed to accommodate an employee's disability at work could be something as simple as a clever re-arrangement of office furniture and computers. More extensive upgrades of structures and spaces may be called for, however. Resources underscored in Sections 8.2, 8.4, and 8.7 could provide useful advice, but specialized expertise on barrier-free design is also available elsewhere. An employer, home-based lawyer, or public sector manager wishing to obtain guidance could contact the following sources for advice on accommodative building design:

- Canadian Standards Association (CSA International) / Contact Ian Brodie by phone at (416) 747-2670 and by e-mail via ian.brodie@csa-international.org
- Ontario March of Dimes / Contact the staff by phone at (416) 425-3463. Ask about the Assistive Devices Program, "Designability", the Barrier Free Design consultant at the London, Ontario office, and the March of Dimes Employment Services.
- Publications available through the Canadian Standards Association, the Canadian National Institute for the Blind and the Canadian Hearing Society
- The Greater Toronto Hotel Association's Sensitivity Training Manual

The individual who supplied the contact data for the sources listed above has kindly agreed to act as a referral point for readers of this Guidebook who may seek additional direction on barrier-free design. That person is Catherine Smart, Director, Product Innovation, Tourism Toronto. Her contact details are: by e-mail (smart@torcvb.com) by direct phone line (416) 203-3811, and by fax (416) 203-6753.

8.6 Tax Incentive Programs

8.6.1 Favourable Federal Income Tax Treatment

By Regulations passed under the federal Income Tax Act, an employer is entitled to claim as a business expense many of the costs associated with reasonable accommodation, such as the purchase of assistive devices. Under the Act, the Regulations allow a fast one-year write-off of costs, which is in most cases a much more favourable tax treatment than a taxpayer gains through the gradual annual application of a Capital Cost Allowance (CCA).

For Income Tax purposes, it is our understanding that an employer may claim all of its expenditures for making its premises accessible. It is not necessary that a business actually be an employer of persons with disabilities to claim these expenses. Nor does it need to own its premises in order to get the favourable tax treatment under Income Tax Regulations. It is necessary only that the business/company incur the expenditure as part of its operations, intending to benefit employees, customers, tenants, and other persons with disabilities. [Note that we are not tax experts and are not attempting to interpret tax law here. We are merely presenting information that was given to us by cooperative federal employees.]

8.6.2 Ontario's Workplace Accessibility Tax Credit/Incentive ("WATC/I")

In 1998, the Government of Ontario introduced a new Workplace Accessibility Tax Credit/Incentive ("WATC/I") for employers, to assist with the costs of accommodations and support services required by employees (especially new employees) who have a disability. This measure applies to expenditures incurred after July 1, 1998. The maximum expenditure for each employee with a disability is \$50,000. Only expenditures made by the employer over and above subsidization by government programs are covered.

Note that much of this section is derived from an article by Harry Beatty, who kindly gave us permission to borrow from his work. Harry Beatty, long associated with the ARCH legal assistance clinic, described the WATC/I program in the January 2000 edition of ARCHTYPE.

The Workplace Accessibility Tax Credit provisions are found in amendments made by Bill 81 to Ontario's provincial Income Tax Act. The Workplace Accessibility Tax Incentive is enacted in amendments to the provincial Corporations Tax Act, made by the same Bill. The effects of the two sets of legislative provisions are essentially the same with respect to the points described below.

The WATC/I is based on accommodations and supports being provided for employees identified as having a disability and meeting certain conditions. Employees are covered by WATC/I if they qualify for the Disability Tax Credit, if they are Ontario Disability Support Program recipients of either income or employment supports, if they are Canada Pension Plan disability pensioners, if they are registered with the Canadian National Institute for the Blind, or if they are eligible to receive equipment or supplies from the Assistive Devices Program of the Ontario Ministry of Health. Employees who do not fall into any of these categories may also be covered if they obtain a Workplace Accessibility Tax Incentive Certificate from a qualified medical practitioner

certifying that they have a continuous or recurrent physical or mental impairment expected to last at least one year, and that this impairment “constitutes a substantial barrier to employment without accommodations”.

To be covered by WATC/I, employees with disabilities must also meet other conditions. They must “deal at arm’s length” with the employer, so presumably immediate family members of the employer will not qualify. They must work at least 60 hours per month. Their employment must last at least 3 months or more. There is an additional restriction that the employee shall not have worked for the employer during the 12 months prior to the commencement of employment.

Qualifying expenditures include:

- the accommodations provided for in the federal Income Tax Regulations discussed above in section 8.6.1
- passenger elevators, platform lifts or stairway lifts
- environmental control units for individuals with mobility impairments
- ergonomic work stations and seating, and adapted office furniture
- a telephone headset for use by an individual with a mobility impairment
- specialized lighting for an individual with a visual impairment or epilepsy
- a real time captioning or alphanumeric pager for an individual with a hearing impairment
- adapted tools, machinery, or information systems
- computer hardware or an attachment needed to use disability-specific computer software
- expenditures made to train the employee with a disability, or his or her co-workers, in the use of any of the equipment listed.

Support services may also be “qualifying expenditures” under WATC/I, but these are limited to those made in the first 6 months of employment. These include: job coaches, note takers, sign language interpreters, interveners and attendants.

Accommodation expenses incurred by the employer during job interviews are also “qualifying expenditures under WATC/I, and there is provision in the legislation to add other “qualifying expenditures” by regulation.

No expenditures made in any of these categories after the first year of employment qualify, which means that WATC/I does not assist either with the on-going needs of employees with disabilities, or with the accommodation needs of employees who acquire a disability after working with the employer for some time. So WATC/I is apparently targeted at new employees with disabilities. “Qualifying expenditures” are defined in WATC/I far more broadly than in the federal Regulations. On the other hand, the federal Regulations do not limit accommodations to those made specifically for new employees.

Like the federal tax initiative, despite its limitations Ontario’s provincial initiative is valuable in that it represents a starting point for tax support to employers of persons with disabilities. This program could be built upon and improved.

8.7 Accommodation Supports within the Federal Public Sector

As the section title indicates, the next few pages are not relevant for private sector employers.

Many federal government departments and agencies, such as Justice Canada, have budgets set aside specifically to assist with accommodation for employee disabilities. There is a special program for accommodations more widely available in the federal public sector, through the Public Service Commission of Canada (described in section 8.7.2).

8.7.1 The Rapid Access Program of Canada's Public Service Commission

According to the Public Service Commission of Canada (whose view seems logical here), "It has been demonstrated that persons with disabilities increase their chances of being hired when they are given the opportunity to meet directly with managers." The Public Service Commission has therefore set up the Rapid Access scheme, in which hiring managers in the federal public service and persons with disabilities are brought together. As the following excerpts from the PSC's Web pages will show, the plan is targeted at public sector managers rather than employees:

"Rapid Access can be used for the appointment of persons with disabilities to most occupational groups and levels — for either term or indeterminate positions..."

"The Rapid Access Coordinator ... searches for, and screens, candidates with disabilities to ensure that they meet departmental needs. It is also his or her job to coach and prepare candidates to meet with managers..."

"Candidates with disabilities then have an opportunity to meet directly with you to give a brief précis of their work and experience. You will have an opportunity to ask candidates not only about their skills and experience, but also about their accommodation requirements (i.e. workplace modifications and/or assistive devices). The Rapid Access Co-ordinator will be on hand to answer questions about recruitment, referral and job accommodation."

There is no expectation that the Rapid Access presentation will result in a hiring. Candidates are aware that the primary purpose of the presentation is to give them the opportunity to market their skills directly to managers — not apply for specific jobs.

Someone wishing to participate in Rapid Access may contact its Coordinator through a regional or district office of the PSC. Contact data may be found on the PSC Web page www.psc-cfp.gc.ca/ee/rap_e.htm.

We have not been able to judge the utility of this program for law graduates or for others. A student researcher mentioned the Rapid Access program to the Editor during the latter stages of our research. Interestingly, when the Editor arranged for a generally helpful contact at Human Resources Development Canada to be asked about the PSC program, the official was not aware of the PSC program and initially doubted its existence.

8.7.2 Employment Equity Enabling Resource Centre for Persons with Disabilities - Public Service Commission of Canada

The Employment Equity Enabling Resource Centre for Persons with Disabilities (EE Centre) provides operational advice to assist managers to help understand, clarify, respond to, and

accommodate the concerns of employees with disabilities. The EE Centre acquires and makes available to managers a range of assistive technologies and maintains a bank of adaptive devices available for federal public servants. Research and testing of new, work-related, technical aids is also conducted at the EE Centre.

Workplace assessments can be conducted by EE Centre personnel to assist managers in determining the accommodation needs of persons with disabilities. Site assessments, for federal public servants, may be conducted via video conferencing and may be set up through Regional Coordinators. EE Centre staff or representatives of companies that market adaptive equipment are available to demonstrate the use of the equipment. Such demonstrations can be organized at the EE Centre by appointment.

Federal managers may also be provided with design advice and expertise to facilitate access to federal electronic networks by employees with disabilities. (As of April 2001, there is a pilot project underway fostering such networking within the federal public service.)

Chapter 9.0

9 Looking Toward a Better Future: Insights and Recommendations

9.1 Introduction to Chapter 9

We begin the last chapter with a simple but practical recommendation. The current Guidebook and two earlier publications by Reach will be of interest and use to law students who have disabilities, as well as to law faculty staff and educators who are attentive to disability accommodation issues. This manual and its predecessors are being made available free of charge on the Internet (www.reach.ca). We therefore recommend that in orientation materials distributed to students near the beginning of the academic year, every law school include a couple of lines telling students about the Reach resources and the fact that these documents can be viewed without cost on the Reach website. (The Editor/Principal Author wishes to thank Professor Brad Morse, of the equity committee at the University of Ottawa Faculty of Common Law, for this suggestion.)

In the course of our research, we met or heard from a number of impressive individuals who had left the practice of law and were now prospering personally and professionally in other occupations that made use of their legal learning. For many of these individuals, the negative attitudes of a few law firm colleagues, and or of a particular public sector manager who was unreceptive to workplace accommodation ideas was a factor in their personal decisions to stop working as lawyers.¹⁴ The obvious success and self-confidence of the relevant individuals whom we interviewed was evidence that their desire to leave the practice of law bore no relation to their capabilities as legal professionals. Rather, their scope had been restricted by a lack of capacity of others in the profession to adjust their thinking and abandon old-fashioned stereotypes.

For two decades, since the adoption of the *Canadian Charter of Rights and Freedoms* as well other human rights legislation, the law in all Canadian jurisdictions has forbidden discrimination on the basis of mental or physical disabilities and has provided that all are entitled to equitable treatment. The law as interpreted and applied obliges employers and recruiters to make reasonable efforts to find ways to accommodate individuals with disabilities, in the workforce and working environment. Employers, including law firms and public sector managers, do not always take these legal messages to heart.

By not making it easier for legally educated persons with disabilities to work as lawyers and articling students, established lawyers deny themselves and their firms or agencies the chance to collaborate with colleagues who perhaps developed good negotiation and advocacy skills throughout their educational and working lives. These potential colleagues had to do develop such

¹⁴ One law graduate who had been part of the work force for many years approached her boss about arranging possible accommodations for her disability. Rather than having to deal with this, he suggested she go on disability leave, which was not at all what she wanted to do. The law graduate has since launched a human rights complaint.

skills, simply because they needed to find ways to work around their disabilities and the obstacles set into place in communities and in other people's minds.

The information provided in chapters 4-8 revealed that there are many ways to improve the working situations of individual law graduates who have disabilities. The intention of this concluding chapter, as well as of the entire book, is to advance the cause of employment equity for people with disabilities. We can do that by increasing awareness among employers, employees, potential employees, counsellors, disability services providers and educators. Based on the information captured in this Guidebook, we can point to accommodation measures that have been tried and could be replicated elsewhere in lawyers' offices and in the various places and situations in which lawyers conduct their work. We can suggest general approaches and concrete steps to reduce employment barriers and open up opportunities. We can advocate strengthening and extension of public sector and law society programs to decrease obstacles and augment fairness associated with employment of individuals who have disabilities.

Adopting the approach taken in our opening chapter, we present most of the observations and recommendations expressed below in the words of our survey respondents themselves.

9.2 Experiences, Insights and Recommendations

Most of the recollections and suggestions gathered here were offered by law students, law graduates and lawyers with disabilities during our Reach research in 2000 - 2001. These thoughts and recommendations are aimed at individuals with disabilities as well as at law firms, articling principals, policy makers, law societies, government and private sector managers, and others. As elsewhere in this Guidebook, quotations from survey respondents are usually in italics. Analysis contributed by the Principal Author/Editor or drawn from co-authors or advisors is presented in a standard font.

It is advantageous for a prospective employee to educate the employer about the individual's particular disability, on how it will affect your performance and whether it will have an impact on fellow employees. An employer can help by preparing the ground a little with co-workers. The boss could discuss the new employee's good qualifications with future workmates, explaining something about the disability (if disclosure is not an issue) and how workplace accommodations will assist the new employee to attain her or his full potential. That concept has been applied at a federal department by one of our Project Advisors. Carole Théberge, a lawyer and public sector manager, is Chair of the Department of Justice's Advisory Committee on Employment Equity and Persons with Disabilities. One of her observations was outlined as follows: "In some cases a certain preparation may be a good idea to defuse misconceptions. I remember successfully dealing with a group of Justice employees who were concerned about the arrival of a new Deaf employee. Because I met in advance with the new person's future co-workers, and got rid of a lot of the myths around deafness, the new employee had an easier ride into a new workplace."

Managers of firms and departments could also assist by taking disability into account when purchasing and upgrading information systems for their offices. As was mentioned in parts Chapter 8, there are many sources of free (and paid) information on how to do so. Managers could be readier to respond to complaints such as this expressed at one lawyers' focus group:

One of the most useful kinds of accommodation for me would be voice recognition software that could be trained more easily to the nuances of my dictation. I know it is out there, but it is not easy for me to find it available at potential places of work.

Problematic Attitudes and Perceptions among Members of the Legal Profession

Collected below are thoughts and recollections gleaned from questionnaires and focus groups:

I perceived law as mainly a cerebral activity, and my disability is physical. I am limited in my choices of activities that would keep me productive, and law seemed a logical choice. The profession has proven to me to be more “in the closet” with respect to disabilities than I anticipated.

My interviewing experience with the firms has left me with the distinct feeling that, generally, the profession is a closed shop that is largely unwilling to deviate from the traditional way of hiring. My total life experiences have essentially counted for very little, if anything at all.

An area which I feel needs some attention is the attitude of many lawyers toward those working in the profession with a disability. My experience is with the perception of part-time work as somehow 'less'. The individual is viewed as less committed and less serious about their profession. We need to change these perceptions.

The biggest barrier was and still is the lawyers and their attitudes. I was the last student to find an articling position. It was strange because I had a lot of experience in the law field. (I've already worked in a private law firm and in a company.) I'm quite sure that lawyers were not ready to hire a person with a physical disability and furthermore not a woman with a physical disability. I'm not in a wheelchair but I don't walk the way normal people do. In the law profession the image is very important and to them because of my physical disability I don't represent that image of perfection and success they want to reflect.

The law schools should realize that it is in their own interest to be more active in ensuring that students with a disability obtain an articling placement. It does not look good for the school if graduates cannot get placed. Placement rates are one of the things that MacLean's magazine looks at in its annual grading of Canadian law schools. There is no reason why anyone should not get placed. [Editor's note: It is possible the respondent was thinking of the annual rating of law schools by Canadian Lawyer magazine.]

Here is one of our survey questions and four of the responses we received to it: “How did your law school assist your search for an articling position or for accommodations related to articling? What more could your law school have done?”:

I'm not sure this is a law school problem. The firms appear to me to dictate the culture of the law school to a significant degree, and they seem ill-prepared to confront issues of disability within their own confines.

Law school and a legal career are very different. Law school is to a large extent a very accommodating, understanding environment, open to different experiences and perspectives. The legal profession is more close-minded, resistant to change and unwilling (or unable) to accommodate individual differences. It can be a very blunt transition. Unfortunately, you have to expect prejudice in the legal profession and also learn to not take rejection (on the basis of disability or otherwise) personally.

First of all, it took me longer than most of my law school peers to find an articling position. As both an articling student and practising lawyer I feel that I may have been overlooked for advancement because of my disability. In addition, I found that the nature of the work I was given as both an articling student and a lawyer was largely menial and unchallenging, “below” that given to other students or lawyers, which was frustrating and discouraging. The law is a very “verbal” profession and depends to a very considerable extent on presentation and oral communication skills, which is my weakest area. I was given the more menial, low profile tasks and was not as directly involved in many areas as I should have been, which may have compromised the quality of my articling experience. I spent more time on “errands” and research than on cases. I was given carriage of files but client interviews and attendance at court for these files was usually assumed by someone else. I do feel that I was held to a lower standard not because of the quality of my work but because of my disability. In fairness, this is due in part to the fact that I did not assert my presence or abilities as much as I should have. I have since learned that [individuals who have a disability] have to be more aggressive and self advocate more strongly than others in order to achieve the same recognition.

Hopefully one day, accommodation for people with disabilities will be looked upon as ... a normal overhead expense and the cost of doing business.

Demonstration of Positive Attitudes by Law Firms

Not all law offices or lawyers firms are stuck in the early 20th century, as the following two reports from different provinces illustrate:

The firm I received my articling position with, the Calgary office of Fraser, Milner, Casgrain [a large full-service firm], was very positive towards the accommodation process. Since I was hired, they have been in contact with me in regards to my unique situation. They have never had a lawyer in a wheelchair work for them. Therefore, they did not have wheelchair accessible washrooms or an office structure suitable to my needs. Instead of making a big deal about this, they simply asked my opinion on what changes should be made to make their law firm one that is friendly, not only for employees, but customers with disabilities. They took a proactive approach. They realized that this was an opportunity for them to make their commercial enterprise accessible for all.

In the first offer once they learned about my disability they were absolutely confused and terrified because they felt there was no way out. They did not know how they would adapt from the norm and accommodate me. It was them who came to offer me a job. I had not applied so they were not in a good position. I believe that they would not have offered me the job if they would have known. In my present job, my employer ... [a sole practitioner in Atlantic Canada]... was fully aware of my disability. We discussed accommodations that I would require and he assured me that he would accommodate me in any way he could. If I had difficulty learning or doing certain things, he would train me. My employer believes that his job as Principal is to teach me and he takes it very seriously.

A Personal Assistant Could Be the Best Employment Accommodation Measure

The following commonsense thought from a law graduate who is a quadriplegic states an obvious truth about an accommodation that would be ideal for many lawyers who have disabilities:

A part-time assistant would make my life much more successful at a legal firm.

Two colleagues with differing disabilities concur:

My plan is to try and become independent as quickly as possible still being surrounded with lawyers that have experience. I will research potential funding, as I require an assistant and it will be hard to fund this on my own.

The kind of accommodation that would help me most as a lawyer with a visual disability is a paralegal who can research things for me in a hurry, knows his or her way around a law library and the internet and can report back to me quickly in ways that are useful to a litigator. Such assistance would be much more important than having a secretary who does not have paralegal training.

Advice on How Law Societies Could Be More Helpful

A number of respondents had advice on how law societies could offer additional assistance:

The Law Society should reduce the annual fees that it charges for members or create more categories to allow for special circumstances. The fees are far too high for someone who cannot practise temporarily because of a disability, but wants to remain as a member in good standing.

If necessary, the Law Society should assist you in being able to set up a probationary period of employment so that you can get to first base. This would at least allow you to let your work be the judge of your abilities.

If the Law Society took an active role in helping students to find articling placements this would be a great assistance. Although no one can guarantee that you will be hired, it would be helpful if the Law Society arranged for you to at least get an interview. An employer may not even want to consider someone who has a disability, but it would be harder to say no when the Law Society is requesting the chance for someone to get an interview.

One innovation needed for students and lawyers who have disabilities is a law society ombudsman to ensure that they do not face unfair hurdles in their work.

There should be parity or coordination in the level of services provided by all the jurisdictions. This would remove one more limitation and facilitate mobility within the country.

In one province, when a lawyer called the law society for advice on contacts that might lead to appropriate employment opportunities for a lawyer with a disability, a Law Society official concerned with articling gave only the most general phone numbers related to employment help for people with disabilities. None of the advice given pertained specifically to legal employment. In Ontario and perhaps elsewhere, Bar Admission staff make serious and organized efforts to assist articling students who find difficulty obtaining placements. The Law Society's Articling and Placement Office offers to provide a job notice service for newly called lawyers and lawyers with experience at the bar. But there is no special service of the Law Society to help lawyers who have a disability find or keep work in the profession.

In a couple of focus groups, participants suggested that law/bar societies, which require individuals to complete articles before being called to the Bar, should be obligated to ensure that all students find meaningful placements without undergoing months of stressful worry:

One way to ensure that everyone has an opportunity to be placed is for lawyers to be required to pay into a fund. That fund could be used to finance subsidies for salaries to enable articling students to obtain a position with a firm who could not otherwise afford to pay the salary.

Reacting to the above suggestion, a recent graduate said that it was unrealistic and that it would be an administrative nightmare for a law society to have to take find placements for all students. The original commentator responded that such a program would help to avoid stigmatizing people who could not find an articling position. The second speaker retorted that real problems could arise if people at a firm realized that a colleague was there as an “extra“ student supported by a special fund.

Problems with Access to Support Programs

One law graduate in the private sector receives public support for adaptive measures but says she must reapply for funding every year, with a new set of diagnostic papers. She likens the frustrating process to applying for jobs, using these words: *“Can you imagine having to apply every year for the ...job that you are already in?”*

Like the person quoted above, another individual whose disability includes mobility impairments receives some support for adaptive technology. She has also encountered what she perceives to be unreasonable hurdles: *“ I requested to have a briefcase on wheels, because it was too heavy for me to carry by myself, and they refused. Their answer was that the need of that kind of briefcase is not directly related to my disability! I would like them to see me with a heavy briefcase climbing the stairs! Frankly, it makes no sense at all!”*

Public supports and incentives can be very important for facilitating the transition from professional education to the realm of employment:

Academic accommodations and monetary supports are very prevalent for postsecondary students with disabilities. These accommodations and monetary aids seem to disappear after graduation. An investigation into why this occurs could be a relative topic for the researchers of this project to explore. For instance, as a person with a high level disability, I was provided with an academic aide. So far, I have been unable to find funding for this support outside of the postsecondary setting. This seems rather odd to me, as my entire goal in obtaining further education was future employability. The government was of great assistance in providing me with my education. It does not look as if this is going to be true in my future employment. This makes me less attractive to a private legal entity hiring my services, as I become a "more expensive" articling student.

Despite these negative perceptions, there seems to be a general consensus on the following notion:

The only way to help people with disabilities catch up to those without disabilities is with government intervention.

9.3 Scope for Further Research and Outreach

The public sector at all levels plays a leadership role in affirmative action measures focused on hiring. Government departments are also leaders in the provision of reasonable accommodations to enable employees with disabilities to make full use of their talents and professional training. We forecast that if public sector managers were approached with the right information and access to expanded support, most would be willing to augment what they now do to assist in accommodations and recruitment for law graduates (and others) who have disabilities.

The reported experience of employees of the federal Department of Justice demonstrates the value of having a specific financial basket on which to draw for the purposes of accommodation. For instance, this departmental resource is tapped to support attendant accompaniment of legal staff on work-focused travel. When a department lacks a designated fund for accommodation, it is that much harder to finance accommodation among other priorities. The notion of scrounging for money to provide accommodations may not be a central concern of a manager. It is hard to stretch budgets innovatively when cutbacks have meant that long established elements of government programs may no longer be properly funded. It is thus a simple step of logic to recommend that all federal departments and those of other levels of government adopt or improve upon the kind of mechanism used by Justice Canada to fund occasional accommodations for employees who have disabilities.

One co-author suggests that there should be provincial property tax incentives for commercial property owners that expend funds on renovations to improve building and office accessibility. It would be worthwhile to see the extent to which such schemes exist and how they could be extended to increase the utility of lawyers' offices and of edifices containing courts, law libraries, and registry and filing offices of different kinds.

Some law societies offer sample policies that firms can emulate, and guidelines for both interviewing of potential staff and the practice of law. But we do not have evidence of whether these policies and guidelines are widely followed. That kind of research could have a catalytic effect in encouraging compliance, if not immediately, then when the research results are released. Individual law firms could play an important role in creatively developing policy, leading the profession by example. Much more work is needed to discover what private firms have done, or are prepared to do, to promote diversity and equity within the legal profession for persons who have disabilities.

As we said in an earlier chapter, private firms ought to be both consulted and educated, with the objective of improving their records and reputations vis-à-vis offering accommodations to law graduates who have a disability. There is a need to promote greater awareness within the legal profession about accommodation issues, along with a need to introduce the requisite policies and planning into the culture of law firms. We recall that when one of our researchers asked law firm representatives at a BC gathering about accommodations available for their staff, the representatives lacked awareness. But a majority expressed willingness, if contacted, to respond at a later date with details concerning any policy in place in their firms. As part of future research, the co-authors of this Guidebook would like to take up that challenge and contact those law firms and many others. We are hopeful that if we approached lawyers' associations and major law firms with precise and positive information about existing incentives that can foster hiring, retention

and promotion of staff who have disabilities, a good many of those approached would respond positively in word and deed.

The following proposal was submitted to the Principal Author, who has edited it somewhat with the permission of its contributor:

Not all all law schools have counsellors who help students with disabilities with their job search, resume, etc... Perhaps there should be a pilot project funded by the government to deal with disability issues in law.... It should be available to all Canadians contemplating law school, or working in the field. [People] who have disabilities and are either in law school, articling or practising [would] be able to contact [the service] with questions and issues. This project .. may extend to articling clerks and practitioners who are looking for other employment. This service could also help those with disabilities find funding to accommodate.

The preceding idea set fits well with one that the Editor raised in a 1999 focus group: establishment of a national mentoring scheme wherein law students and newer lawyers (not all are “younger”) with disabilities could seek advice from seasoned individuals who have disabilities – lawyers and law teachers, as well as law graduates who have other kinds of careers.

In aid of students searching for articling positions, there is a trend for law schools to conduct annual surveys of law firms, corporations (private and Crown) and others who hire students. The questionnaires used by a number of law schools now ask whether lawyers with a disability are among those employed at the place of employment. We recommend that each law faculty in Canada incorporate questions into its yearly articling survey designed to discover whether target employers have legal staff, or other staff, with disabilities. We suggest that the survey instruments go beyond that, however, and ask whether the employer has a policy or standard supports in place to foster the hiring of, or accommodations for, personnel who have disabilities. Just by asking the question, the questionnaire would perform an educative function.

We believe that leaders in a number of law-centred fields would be willing to explore the idea of creating specific job slots for articling students or law graduates with disabilities. Others would be keen on designing new programs to support hiring and accommodating such individuals through salary supports, priority hiring policies, updated adaptive technology and so on. Individual authors have received good responses when we quietly raised such possibilities with senior individuals in the following categories: federal government policy, program and human resources managers; supreme/superior court judges; partners of law firms; and officials working for lawyers’ organizations. We hope to explore options for future research and pilot initiatives in this domain.

We’ll leave the last word to an individual who contributed thoughtful input to our study and is entering the legal profession:

Now that I have reached the first step in my career I am looking forward to working my hardest to represent my clients to the best of my ability. As well, I also hope to be able to help others in similar situations avoid the barricades that I was forced to face throughout my life simply because I had a disability that made it difficult to fulfill my dreams.

Bibliography

Introductory Note: In 1999, Reach published a detailed Bibliography in **A Framework for Action**. In 2000, another bibliography appeared in **Navigating Law School**. It would be redundant to reproduce a list of titles from those compilations, particularly as both publications are now available on the Reach website at www.reach.ca. What follows is a brief list of relevant printed publications and Internet resources that came to the co-authors attention since the release of **A Framework for Action**. It is also important to note that law schools and bar admission programs in Canada annually publish Articling Handbooks. We do not list these materials here individually.

Printed Resources

Bales, Debbie; Braddock, Dawn; Dennison, Deborah. **10 Essentials to Get That Job: An Employment Guide for Persons with Disabilities** (ON: & [Internet] updated May 22, 1999 http://www.hrdc-drhc.gc.ca/hrib/sdd-dds/odi/content/job_seek.shtml; Enterprise for Youth Group; Human Resources Development Canada 1999)

Benezra, E.; Crealock, C.; Fiedorowicz, C.; **Learning Disabilities and the Workplace** (Ottawa; Learning Disabilities Association of Canada, 2000)

Bhatia, Priya. **Beyond Expectations: Alternatives to Legal Practice** (n.d., University of Ottawa, Faculty of Law)
Public Interest Articling – A Guide for Law Graduates Seeking to Create Non-Traditional Articling Experiences (1999, Law Society of Ontario Ottawa Chapter)

Canadian Abilities Foundation, **Directory of Disability Organizations in Canada** (2000)

Canadian Lawyer, October 1995; n.a. “*Is Articling Obsolete?*”

Caplan, Cindy; Mauro, C.; Ingleton, K. **The Students’ Guide to Career Opportunities in International Law - Édition 1999-2000** (Montreal, Quebec; Career Placement Office, Faculty of Law, McGill University; 2000)

Chittenden, Michele. **Service Resource Manual: Alternate Format Materials for Post-secondary Students with Print Disabilities** (Special Readers’ Services, Queen’s University Libraries; 2000)

The CBA National January-February 2001: Cumming, Jean. “*Access and Justice: Accommodating lawyers with disabilities*”

Fichten, Catherine, Baril, Maria and Asuncion, Jennison. **Learning Technologies: Students with Disabilities in Postsecondary Education-Final Report to the Office of Learning Technology** (Montréal: Adaptech Project, Dawson College; 1999)

- Gerber, P.J.; Brown, D. (Eds.) **Learning Disabilities and Employment** (Austin, Texas; Pro-ed)
- Goundry, Sandra A; Peters, Y. **A Framework for Action** (Ottawa: Reach; 1999)
- Hill, Linda **Lawyers with Disabilities: Identifying Barriers to Equality** (Vancouver: Disability Research Working Group - prepared for the Equity and Diversity Committee; Law Society of British Columbia; 2001)
- The Lawyers Weekly**, September 4, 1998, Vol. 18, No. 16:
- MacInnes, Norman. “*Computer Revolution Key for Blind Lawyers*”
- MacInnes, Norman. “*Windows Poses Problems for Blind*”
- Moulton, Donalee. “*A High-Tech Assist - Deaf And Blind Lawyers Find New Technology Helps Them Practise Law More Effectively*”
- Law Society of Upper Canada *Articling Handbook for Principals and Students* ([Internet] Toronto 2000)
- Law Society of Upper Canada *A Guide to Developing a Policy Regarding Flexible Work Arrangements*
- McMillan Binch. **McMillan Binch Student Interview Handbook** ([Internet] <http://www.mcbinch.com/sss/> (downloaded July 18, 2001)
- National Association for Law Placement. **The Road Not Taken: A Practical Guide to Exploring Non-Legal Career Options** (USA 1991)
- Nicols, E.; **Design for Success: An Employer’s Guide to Learning Disabilities** (Toronto: Learning Disabilities Association of Ontario; 1994)
- Ontario Human Rights Commission, Policy and Guidelines on Disability and the Duty to Accommodate, New Release, March 22, 2000. (Tel: 1-800-387-9080 or (416) 326-9511 / TTY 1-800-308-5561 or (416) 314-6526)
- Riviere, A.; **Assistive Technology: Meeting the Needs of Adults with Learning Disabilities** ([Internet] LDOnline; www.ldonline.org 1996)
- Ryan, Dr. Daniel. **Job Search Handbook for People with Disabilities** (United States; JIST Works, 2000)
- Strausser, Jeffrey. **Judgment Reversed: Alternative Careers for Lawyers** (1997; n.p.)
- St-Laurent, Brigitte; Lafrance, N.; Whiting, K. **Le guide de recherche d’emploi juridique/Legal Employment Career Handbook: Édition 2000-2001** (Montreal, Quebec: Career Placement Office, Faculty of Law, McGill University)

Thomas, Nadia. **Articling in the Public Interest** (Ottawa; Law Union of Ontario, Ottawa Chapter; n.d., [manual])

Towler, Patricia. **Articling in Canada 1996: A Survival Guide** (n.p.; 1996)

Young, G. **To Tell or Not to Tell** ([Internet] LDA Newsbriefs July-August 1996; www.ldonline.org 1996)

Yale Law School *Introduction to Career Development* handbook

Young Lawyers' Conference. **The Articling Handbook** (Canadian Bar Association)

Internet Resources

This section lists web addresses that are useful for law students or law graduates with disabilities who are beginning a search for articles or employment. Other sites listed here may prove helpful for practising lawyers with disabilities, legal education instructors and administrators and disability service providers.

Reach – Equality and Justice for People with Disabilities: <http://www.reach.ca>

Funding and Finances

Canada Student Assistance Program: <http://www.hrdc-hdrc.gc.ca/common/home>
(Click on “income supports” box and then “Canada Student Loans Program”)

Provincial Student Assistance Programs:

British Columbia: <http://www.aett.gov.bc.ca/studentsservices/>

Ontario: <http://www.osap.gov.on.ca>

Nova Scotia: <http://www.ednet.ns.ca>

Opportunities Fund for Persons with Disabilities:
<http://www18.hrdc-drhc.gc.ca/programs/opportunitiesfund/how.asp>

Human Resources Development Canada: www.hrdc/drhc.gc.ca/

Vocational Rehabilitation Services (BC): www.sdes.gov.bc.ca/publicat/vrs.htm
Links to other Government programs and student services.

Opportunities Fund of Windsor-Essex-Kent (Ontario): www.informationwindsor.com/erdir.htm

Grants and Scholarships

Human Resources Development Canada: <http://www.youth.hdrc-drhc.gc.ca/ylink>
Useful links to scholarship sources.

Scholarships Canada: <http://www.scholarshipscanada.com/>
Good reference tool for scholarship opportunities across Canada.

NEADS - National Directory of Financial Assistance Programs:
<http://www.neads.ca/norc/funding/contents.html>

Information Services on Accommodation and Adaptive Technology

Adaptive Technology Resource Centre: <http://www.utoronto.ca/atrc/service/eas.html>.

Crane Resource Centre, University of British Columbia Library: <telnet://library.ubc.ca>

Dawson College: <http://omega.dawsoncollege.gc.ca/adaptech>

Job Accommodation Network: <http://janweb.icdi.wvu.edu/>
Good site for accommodation ideas; discussion of adaptive technology.

Job Accommodation Network Canada (JAN-Canada):
<http://janweb.icdi.wvu.edu/english/homecan.htm>

Neil Squire Foundation: www.neilsquire.ca/officl.htm

Queen's University Special Readers' Programme: <http://library.queensu.ca/inforef/srs>

Tetra Society of North America: <http://reachdisability.org/tetra/>

University of British Columbia: http://www.student_services.ubc.ca/drc

University of Toronto, Adaptive Technology Resource Centre: <http://www.utoronto.ca/atrc>

University of Waterloo: <http://www.lib.uwaterloo.ca/access/>

Resource Sites on Disability

Association of BC Government Employees with Disabilities: <http://www.elp.gov.bc.ca/abcged/>

Office for Disability Issues: <http://www.disability.gov.bc.ca/graphic/about/strat.htm>

PSERC: <http://gww.pserc.gov.bc.ca/>

(BC) Ministry of Environment Lands and Parks (MELP):
<http://www.env.gov.bc.ca/hrb/ed/index.html>
(Good site on equity and diversity)

Canadian National Institute for the Blind: www.cnib.ca

Western Institute for the Deaf: www.wid.org/

Canadian Paraplegic Association: www.canparaplegic.org/

Legal Sites

British Columbia Ministry of Attorney General - Legal Services Branch:
<http://www.ag.gov.bc.ca/programs/legal.htm>

Canadian Bar Association: <http://www.cba.org>

Canadian Human Rights Commission: <http://www.chrt-tcdp.gc.ca/>

Department of Justice, Canada: <http://canada.justice.gc.ca/en/dept/ri/rec/lcj/>

The Law Society of British Columbia: <http://www.lawsociety.bc.ca>

The Law Society of British Columbia - Benchers' Bulletin: <http://www.lsbcc.org/library/>
Useful resource for Law Society equity initiatives.

Law Society of BC Continuing Legal Education: www.cle.bc.ca/resources/

The Law Society of Upper Canada: <http://lsuc.on.ca/>
Searchable website with links to electronic library services. Source on rules of practice, interview guidelines. Practice guidelines and model equity policies for lawyers and law firms.

Canadian Human Rights links through the World Wide Legal Information Association:
www.wwia.org/ca-hr.htm

Faculty of Law Career Development Offices

The University of British Columbia Career Services: <http://faculty.law.ubc.ca/cpo>

Dalhousie University Law School's Placement Office: <http://www.dal.ca/~wwwlaw/placement>

University of Ottawa's Common Law Placement and Career Development Resource Centre (PCDRC): <http://www.uottawa.ca/academic/commonlaw/pgs/eng/index.htm>

The University of Victoria Career Development Office: <http://acpo.law.uvic.ca>
Links to job postings and employer database services.

University of Windsor Law School: <http://athena.uwindsor.ca/units/law/career>

Search Engines

Bell Sympatico: <http://www.sympatico.ca>
A search tool that yields Canadian and international information on disability and educational issues, services and organizations. Click on "Canadian Sites" and search "disability".

Google: <http://www.google.com>
Google has a feature allowing a user to click on a circle and obtain "Pages from Canada". Try this with a Search for the word "disability".

Appendices

Appendix A: Comprehensive Job Accommodation Policy

<http://agrisource.ncr.agr.ca/hr/hrpolicies/cjap/policy.htm>

[Agriculture and Agri-Food Canada]

Effective Date

The effective date of this policy is April 1, 2000.

Introduction

Agriculture and Agri-Food Canada (AAFC) has set as its priority to be the best-performing organization in the Public Service. This includes fostering a motivated and diverse, high-performance workforce, and a supportive work environment. Provision of job accommodations for employees with disabilities is part of this priority. This Policy outlines the specific concepts and procedures required to make workplace accommodation a reality within AAFC.

Policy Statement

Agriculture and Agri-Food Canada is committed to workplace accommodation as a means of supporting the right of every employee to participate in his or her full potential. Workplace accommodation focuses on abilities and recognizes the privacy and confidentiality of employees. AAFC is committed to complying with all relevant legislation.

Legislative Requirements

Legal obligations regarding accommodation in employment flow from the Canadian Human Rights Act and the Employment Equity Act. Protection for persons with disabilities is also specifically included under the equality rights section of the Charter of Rights and Freedoms of the Canadian Constitution. Canadian courts have supported the intent of legislation aiming to achieve equity in Canadian society. The duty to accommodate as a legal obligation has been affirmed by the courts, including the Supreme Court of Canada.

The legal duty of an employer to provide accommodation is only precluded in cases of “undue hardship,” and where health and safety risks cannot be eliminated. The Supreme Court has ruled that some considerable measure of hardship should be anticipated to ensure reasonable accommodation.

Legislation provides for employee accommodations without disclosure of the nature of the disability.

Application

The Comprehensive Job Accommodation Policy is applicable to all AAFC employees, regardless of tenure or status.

Union Involvement

The Canadian Human Rights Commission advises that when the provisions of a collective agreement pose an obstacle to accommodation, unions have a responsibility to work with the

employer and the employee requesting job accommodation to ensure that obstacles are removed. However, the employee's right to confidentiality must be respected in all cases.

Persons with Disabilities

Employees with disabilities include those persons who, for purposes of employment, consider themselves, or who believe a potential employer is likely to consider them, disadvantaged by reason of any persistent physical, mental, psychiatric, learning or sensory impairment. It also includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace. Disability in Canada is determined primarily by self-identification.

Disabilities include any physical disabilities, such as visual, hearing, coordination, dexterity or mobility, and/or psychological, mental and learning disabilities that may require workplace accommodation.

Barriers

Physical barriers are limitations in building design, equipment and furnishings that restrict employees or create hazards for them.

Attitudinal barriers are the judgments or beliefs that limit or restrict the full integration of persons with disabilities.

Systemic barriers, inadvertently, result from the customary application of policies, practices and requirements which are not necessary for the safe and efficient operation of the business and have an unintentional negative impact on an individual or a group of individuals.

Accountability

While job accommodation solutions are recognized as a joint responsibility between the manager, the Job Accommodation Consultant and the employee, the manager is accountable and responsible for the application of this policy and the implementation of job accommodation solutions.

Serving the Needs of Persons with Disabilities

The Job Accommodation Consultant will be directly available to employees who request information and assistance with accommodation needs. The Consultant will be able to assist and support the employee through the entire process. A manager who is approached with a request for accommodation may also choose to involve the Job Accommodation Consultant in order to assist both the manager and employee in any aspect of the accommodation effort.

The Job Accommodation Consultant will recommend spending for legitimate funding requirements of job accommodations above \$1,000. The Job Accommodation Consultant will also be a resource knowledgeable about community support, equipment, suppliers, and external consultants.

Job Accommodation Program:

Definition

A common definition of accommodation is the adjustment that may be required to enable an individual with a disability to perform his or her job responsibilities in a manner which maximises participation in the workplace.

Scope

Job accommodation includes all employment activities, such as recruitment, selection, training, career advancement opportunities, and functional requirements of the job. Accommodation addresses the current functional requirements of an individual employee, except when projected future requirements are known and can be effectively accommodated. Employment accommodation is not necessarily a one-time provision. Job accommodation for persons with disabilities is an ongoing function. Needs can change over time, as can the job itself. Accordingly, further accommodation may be required for the same person. Job accommodation is determined on a case by case basis since the needs of each employee will vary.

The Duty to Accommodate

The duty to accommodate refers to an employer's obligation to take appropriate steps to eliminate discrimination against employees, prospective employees or clients resulting from a rule, practice, or barrier that has—or can have—an adverse impact on individuals with disabilities. Reasonable accommodation must be provided unless there is undue hardship.

Reasonable Accommodation

“Reasonable,” within the meaning of the Human Rights Guidelines, refers to cost, and health and safety considerations as expressed in the relevant legislation. AAFC accepts the letter and the spirit of these Guidelines.

The key factor in providing accommodation is the “individual assessment.” Can the individual perform the essential functions of the job, and if not can he or she be accommodated?

Undue Hardship

The duty to accommodate is qualified by the concept referred to as either “reasonable accommodation” or “undue hardship.” The employer is required to accommodate unless it can be shown that providing accommodation would not be “reasonable” or would impose an “undue hardship” on the organization.

Undue hardship is seen to exist when all options for accommodating the individual have been considered, no other suitable accommodations exist, and the removal of barriers to work for the individual significantly threatens the viability of the employer or the health or well-being of the public or co-workers.

Factors considered in determining undue hardship are:

- cost (i.e. is the accommodation prohibitively expensive?)
- external funding availability

- size of employer's organization
- the interchangeability of the workforce and facilities
- the amount of a safety risk involved, and who bears the risk
- discrimination against other employees
- significant interference with employees' rights.

Note:

Undue hardship, based upon the above factors, has not easily been applied to large corporations or government departments. The expectation to implement significant accommodations is, therefore, quite high for AAFC.

Initiating the Job Accommodation Process

The employee with a disability will initiate the accommodation process by first informing the Job Accommodation Consultant or, if the employee wishes, his/her manager or union representative, that he/she faces a workplace barrier related to a disability, and by describing the nature of that barrier. The employee is not required to reveal the nature of the disability.

The process of accommodation is officially initiated only once the employee's manager is made aware of the employee's need.

When initiating a request for accommodation, the employee and the manager work collaboratively with all other stakeholders to:

- identify the nature of the workplace barrier and the range of possible solutions;
- identify and direct any internal or external consultants;
- evaluate the accommodation process and the accommodation provided.

Strategies for Accommodation

Workplace barriers may be identified by the employee or the manager. The employee or manager will notify the Job Accommodation Consultant at the outset to facilitate a solution and establish funding responsibility. If acceptable job accommodation solutions are known to the employee and the manager, and application of such a solution has no impact on other employees, it may simply be implemented. If the proposed job accommodation affects the work of other employees or impacts on the Collective Agreement, however, the manager should consult with a Departmental Staff Relations Advisor. The employee may opt to include a union representative in the process.

Funding for Job Accommodations

AAFC is responsible for the cost of providing and updating job accommodations required by employees to perform the functions of their job. However, in recognition of the fact that job accommodation for employees with disabilities is a corporate responsibility of AAFC, funding will be available for solutions costing more than \$1,000. This is to assist the unit manager to underwrite the cost of unusually expensive solutions.

To expedite the process, managers can incur the cost of accommodations within their own budgets but seek reimbursement above \$1,000 from the corporate fund through the Job Accommodation Consultant.

Note:

Accommodation solutions are usually not expensive. Job Accommodation Network reports the following typical costs:

- 50% cost less than \$50
- 69% cost less than \$500
- 88% cost less than \$1,000.

Job accommodation is not subject to availability of funding. All requests must be assessed on their own merits. In this sense, there is no cap on the funding available. Ongoing consultation with the Job Accommodation Consultant will ensure appropriate funding for all job accommodation solutions.

Once provided, the accommodation will follow the employee through his/her career in AAFC or in the Public Service.

Note:

It is important to be cognizant of what accommodation funds are not meant for. The funds should be excluded from use for preventive issues, general accessibility issues, and health and safety issues. These matters have value in their own right but they do not fall under job accommodation policy.

Roles and Responsibilities:

Managers

Managers strive to create an environment that is conducive to self-identification by employees with disabilities, by communicating that those requesting job accommodations will not place themselves in a disadvantaged position by making such requests.

Individual managers are responsible for timely provision of job accommodation solutions. AAFC, however, is ultimately accountable for ensuring that appropriate job accommodation is provided, except when undue hardship may exist.

Employees' performance will not be evaluated without the provision of necessary accommodation. Any temporarily diminished output – during the time an employee is working without the necessary accommodation – cannot be a factor in any employment or career-related decisions.

Managers may initiate the job accommodation process by identifying a workplace barrier and discussing the nature and solutions to that barrier directly with the employee. Since managers are not expected to be experts in job accommodation, they should leave it up to the employee or the Job Accommodation Consultant to decide on a solution. Managers, on behalf of the employer, must facilitate solutions to a workplace barrier if one is possible.

When responding to or initiating a request for accommodation, the manager is required to:

- consult with the employee, the union (if agreed to by the employee and in particular if the accommodation affects the collective agreement or job responsibilities of other employees), and both internal and external resources to determine the most appropriate accommodation solution;
- work with the employee to document the accommodation process;
- notify the employee of estimated delivery time;
- process related documentation and payment of expenses.

Evaluation of a request for accommodation is based on direct discussions with the employee. When evaluating the request, the manager considers the following:

- individual merit, without regard to previous experience or traditionally accepted norms;
- exact nature of the required accommodation;
- impact of making and not making an accommodation;
- cost effectiveness of the proposed accommodation;
- impact of the accommodation on employee function and customer service;

Requests for an accommodation expenditure of less than \$1,000 are approved directly by the manager and forwarded to the Human Resources Branch, Ottawa, for documentation purposes.

Employees

The employee with a disability may initiate the accommodation process by first informing the Job Accommodation Consultant, or if the employee wishes, his/her manager or union representative, that he/she faces a workplace barrier related to a disability, and describe the nature of that barrier. The process of accommodation is officially initiated only once the employee's manager is made aware of the employee's need. Therefore, upon being notified by an employee of a need for a job accommodation, the Job Accommodation Consultant and/or the union representative must contact the employee's manager.

When initiating a request for accommodation, the employee is a partner working collaboratively with his/her manager and other stakeholders to:

- identify the nature of the workplace barrier and the range of possible solutions;
- identify and direct any internal or external consultants;
- evaluate the accommodation process and the accommodation provided.

Note:

Although the employee is not required to disclose the nature of his/her disability, organizations cannot be held liable for failing to accommodate needs they could not reasonably have been expected to know about (e.g., medical conditions such as seizures). There may be instances where employees may be asked to provide their managers with a doctor's certificate detailing their accommodation needs.

Job Accommodation Consultant

The Job Accommodation Consultant will be directly available to employees or managers who request information and assistance with accommodation needs. The Consultant will be able to assist and support the manager and the employee throughout the entire process.

Disability and accommodation issues are, in some important ways, individual and unpredictable. There is a need for centralized expertise in the area of persons with disabilities. This is the function of the Job Accommodation Consultant.

The Job Accommodation Consultant is also responsible for maintaining and disseminating information regarding legislation, statistics, accommodation strategies, costs, internal and external expert resources, and other related knowledge.

Job Accommodation Strategies

Accommodation strategies may include communication support, technical devices, workstation and environmental modifications, human support such as a personal attendant, accessible transportation opportunities, job redesign and employment practice modifications. Job accommodation may be as simple as a rearrangement of equipment or a change in work schedules.

Workplace accommodation may include but is not limited to:

- **Human Support Services:** Human assistance as a core accommodation will be integrated within the Department structure when appropriate, if such integration does not diminish the function of the employee. Supports can include attendants, job coaches, sign language and oral interpreters, interveners, readers, electronic note takers and clerical support.
- **Communication services and support:** captioning, conversion of print to Braille, audio tape, TTY telephones, enlarged print or computer disks.
- **Technical aids and devices:** Often an employee or prospective employee is an expert on his or her own strategies for accomplishing many tasks. Managers and those choosing technical aids should consider the need for independent opinions if the employee and the manager are not able to resolve the work barrier. Examples: environmental control units, remote control devices, infrared systems, FM loop or broadcast systems, Braille printers, optional character recognition systems, computer keyboard adaptations, and the training and technical support required to use technical aids and devices.
- **Job redesign:** reassignment of duties or restructuring of specific tasks of employee's job which may in turn affect the jobs of co-workers but does not remove or dilute essential functions of the job for which it was intended. Creative solutions are encouraged to maximize all employees' contributions and maintain a fair work schedule. "Work reorganization" refers to a certain flexibility on the part of the employer with regard to the organizational rather than physical adaptation of the way the job is done.
- **Workstation modifications:** specific furniture, including computer components, signage, modified lighting, workstation design, ergonomic assessment and modification. (Ergonomics is the study of ways to facilitate adaptation of work methods, practices, and the work

environment to the worker's capabilities. Ergonomics stresses an understanding of how humans function in the work environment. The focus strives to reduce or eliminate risk factors from the workplace that result in physical or mental stress to the employee.)

- Environmental changes: ramps, washrooms/doorway modifications, elevator or lift device, alternative signal or operating systems, redundant cuing alarm systems, accessible parking or transit link nodes.
- Accessible transportation: Provide for an employment-related activity outside the place where work is routinely performed and/or if the work demands travel outside customary hours. It may also be necessary to provide accommodation to an employee with a disability while travelling out of town on AAFC business. This may include attendant support, barrier-free rooms, accessible ground transport, etc.
- Employment policy or practice modifications: modifications of specific working conditions to provide flexible hours, a variable work week, telework, or modification of occupational health and safety requirements. When flexible working arrangements are provided to persons with disabilities under the job accommodation policy, they can involve arrangements not generally available to other staff. Employment policies must ensure that no arbitrary job requirements are set which may exclude individuals based on qualifications that are not related to the essential duties of the job.

Independent Workplace Assessment Services

Experts in accommodation who can assess individuals on a case-by-case basis can be utilized on call by the Job Accommodation Consultant. The workplace assessment approach should involve an analysis of the employee's ability to accomplish a goal and determine the flexibility of the process resulting in the desired work outcome. Therefore, within job accommodation, assessment should focus on adjusting or modifying the process to match the abilities of the employee.

Training and Technical Support

There are two aspects to training. One aspect is the accommodation which must be provided when employees are being trained during the normal course of employment. The other is training employees with disabilities to use the accommodation devices which are being put in place – and this is part of accommodation.

When a new accommodation device is purchased or a new accommodation strategy is introduced to the employee, the necessary training must be provided. Accommodation solutions may be unique to the individual and involve skills that are not available from managers or other employees on the worksite, which means that outside training may be required.

In training or orientation sessions for new and existing employees, it may be necessary to provide such accommodations as sign language interpreters, electronic note takers, personal assistants, or other technological or practical aids.

Training on the topic of accommodation itself is a critical step. Managers must be made aware of the policy and informed of organizational supports available.

Return to Work Framework

AAFC recognizes that early reintegration of ill or injured employees into the workplace is an important component of the recovery process for employees suffering from a work-related injury or illness. The Department will therefore make every attempt to allow these employees to return to work as early as is medically feasible and implement any necessary accommodations required to fully reintegrate them into the workforce.

In order to maintain the productive capacity of affected employees, a Return To Work Framework has been developed to support employees' physical, social and psychological rehabilitation following an injury or onset of an illness. These efforts focus on ability, not disability.

Appendix B: Policy on the Provision of Accommodation for Employees with Disabilities

http://www.tbs-sct.gc.ca/Pubs_pol/hrpubs/TB_852/ppaed1_e.html#

Effective date:

This policy becomes effective July 1, 1999. It replaces the version dated October 6, 1994.

Preface

This policy outlines the responsibilities regarding the employment accommodation of employees with disabilities. Key references in this policy are the Employment Equity Act (amended), the Canadian Charter of Rights and Freedoms, and the Canadian Human Rights Act (amended). In discharging this policy, the Government of Canada recognizes that the work environment of employees with disabilities must be adapted to meet their employment-related needs and that the provision of accommodation is a shared responsibility between central agencies, departments, managers, and employees with disabilities themselves.

Policy objective

To ensure that the employment-related needs of employees with disabilities in the federal Public Service are met within reason.

Policy statement

It is the policy of the Government of Canada to provide technical aids, anthropometric equipment, attendant and other specialized services to ensure that the identified employment-related needs of employees with disabilities are met within reason; that is, to make the required accommodations so that the employees can perform their tasks and functions without significant additional effort or risk, thereby eliminating barriers that would obstruct their employment opportunities in the federal Public Service. This may include adjustments to a task and to the work environment of these employees.

Application

This policy applies to all departments and other portions of the Public Service listed in Part I of Schedule I of the Public Service Staff Relations Act.

Policy requirements

It is the responsibility of departments and agencies to do the following:

- inform managers and employees of this policy;
- obtain the commitment and active support of all managers;
- apply best management practices in the following order of priority:
 - a. site accommodations;
 - b. telework and management by objective;
 - c. task accommodations;

- absorb the costs of the technical aids, anthropometric equipment and specialized services provided to indeterminate employees and, when feasible, to term and seasonal employees;
- communicate their willingness to provide the services of an attendant, work-related technical aids, anthropometric equipment, and other specialized services or assistance if requested by employees with disabilities;
- absorb the cost of attendant services arranged on a contract-for-services basis between the department or agency and the service provider;
- ensure that the government's electronic information sites are accessible to people with disabilities, in accordance with the Access to Information Act, the Government Communication Policy, the Fair Communications Practices Policy and the Alternative Format Guidelines. The guiding principle behind these policies, acts, and guidelines is that all Canadians have the right to participate fully in the social and economic mainstream of Canadian life. Information must be provided to people with disabilities in accessible formats, including audiocassette, Braille, large print and diskette;
- ensure that computer system upgrade initiatives include appropriate consultations with employees with disabilities who may be affected by changes to computer systems and networks. These consultations must include specialists in the field. Measures should be implemented during the transition period to ensure that the employee will continue to be productive;
- ensure that employees with disabilities be allowed to retain their technical aids, anthropometric equipment and special materials provided to them from position to position within the federal Public Service;
- refer to the Guidelines for the Policy on the Disposal of Surplus Assets to determine options for the disposal of technical aids, anthropometric equipment and materials provided to employees with disabilities who are leaving the federal Public Service. It is the responsibility of employees with disabilities to do the following:
 - inform their supervisor of their employment-related needs;
 - assist the department or its representatives in finding the most appropriate means of accommodating their employment-related needs;
 - identify the general nature of attendant or other specialized services required, and the frequency of these services; and
 - notify the department when attendant or other specialized services, technical aids or anthropometric equipment are no longer required.

Monitoring

Departments must maintain a record of employees who have been provided attendant, other specialized services or other forms of accommodation, including computer services, and the nature and cost of the service provided; Departments must include this record in their Annual Employment Equity Progress Report, which is submitted to the Treasury Board of Canada Secretariat; employees whose workplaces were accommodated must be invited to self-identify. The Treasury Board of Canada Secretariat and departments and agencies will monitor the application of this policy.

References and Authorities

Canadian Charter of Rights and Freedoms
Canadian Human Rights Act (CHRA)
Financial Administration Act (FAA)
Employment Equity Act (EEA) and Regulations
Public Service Employment Act (PSEA) and Regulations
Public Service Staff Relations Act (PSSRA)

Enquiries

Enquiries should be directed to the person responsible for employment equity in your department or agency. That person may then address policy interpretation questions or any requests for advice to the appropriate officer in the Employment Equity Division of the Treasury Board of Canada Secretariat. Information may also be obtained from the Employment Equity Division's Web site at the following address: <http://www.tbs-sct.gc.ca/ee> or <http://publiservice.tbs-sct.gc.ca/ee>.

Definitions

Anthropometric equipment (équipements anthropométriques) ³/₄ refers to office furniture that has been modified to suit the needs of the user.

Attendant services (services auxiliaires) ³/₄ refers to the provision of non-medical personal services to severely physically disabled employees who require assistance to conduct certain everyday and professional activities during their hours of work. This does not include such paramedical and health care services as would normally be provided by a physician, nurse or therapist.

Persons with disabilities (personnes handicapées) ³/₄ are persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who:

- a. consider themselves to have reduced capability to carry out a job function; or
- b. believe that they risk being placed in this category by their employer or potential employer by reason of that impairment; and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

Reasonable accommodation (mesures d'aménagement raisonnable) is a modification or adjustment to a job or work environment that will enable a qualified applicant or employee with a disability to participate in the staffing process or to perform job functions.