

BLAKES BULLETIN ON Equity and Diversity

MARCH 2006

INTRODUCING BLAKES EQUITY AND DIVERSITY COMMITTEE

As Co-Chairs of the Firm's Equity and Diversity Committee, we thought that the inaugural edition of *Blakes Bulletin on Equity and Diversity* would be the ideal time to outline the purpose of the Committee.

The Equity and Diversity Committee is unique in that it is an operating committee of the partnership, yet it consists of both Partners and Associates from the Firm's different offices. Its goal, briefly stated, is to facilitate thought, discussion and positive change at the Firm regarding equity and diversity issues that arise in the context of our work environment.

Historically, the Committee has played a reactive role, i.e., by administering anti-harassment policies, or representing the Firm at functions that highlight, promote or address diversity issues. But times are changing, and changing rapidly. Continued success for the Firm mandates that diversity become a key priority for Blakes. Client Requests for Proposals and even the most cursory review of the current legal literature make it clear that clients are demanding that law firms staff their files with lawyers who reflect the diversity of the many communities we represent and serve. As we succeed in securing legal work in a very competitive market, we are expected by the business community to attract – and retain – the best lawyers and other legal and non-legal staff who reflect the global marketplace in which we live.

As a result, the Committee has recently decided to become considerably more proactive (and more transparent) regarding what it does to foster an environment in which all persons are provided with an opportunity to thrive and excel as individuals. Our first step is to produce a Blakes Bulletin on Equity and Diversity.

Two members of the Committee – Tina Dion and Linc Rogers – have currently taken stewardship of the task of producing this Bulletin. We anticipate that the Bulletin will provide the reader with valuable information regarding developments in the legal and business worlds relating to equity and diversity, including what Blakes is doing to encourage an equitable and diverse workplace in our own offices. In the process, we hope to create some constructive discussion regarding issues that the Firm needs to address on a going-forward basis.

We hope you enjoy this Bulletin and those that follow. All feedback would be appreciated and suggestions for future articles may be submitted to Tina Dion or Linc Rogers.

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CIBC SEES DIVERSITY AS A BUSINESS IMPERATIVE — TOWARD EQUITY AND DIVERSITY IN THE WORKPLACE

ANDREA YORK

While provincially-regulated private sector employers, such as Blakes, are not governed by employment equity legislation, federally-regulated employers have been subject to employment equity legislation since 1986.

The federal *Employment Equity Act* (the Act) was enacted to improve certain employment inequities experienced by several “designated groups”, including women, aboriginal peoples, persons with disabilities and members of visible minorities. Among other things, the Act requires employers to (i) identify and eliminate employment barriers and to institute positive policies, practices and reasonable accommodations; (ii) collect information and conduct analysis of workforces to determine the degree of under-representation of persons in the designated groups; and (iii) review existing employment systems, policies and practices to identify barriers against persons in the designated groups.

Given that federally-regulated employers have some 20 years of experience in advancing equity and diversity in the workplace, we can learn from their experience as we make attempts to advance equity and diversity in our own workplace. Federally-regulated employers include banks, telecommunication companies and transportation companies, to name a few. With a view to gaining some insight from the federally-regulated experience, I had the pleasure of interviewing Tom Proszowski, the Director of Employment Equity and Diversity of the Canadian Imperial Bank of Commerce (“CIBC” or “the bank”).

THE CIBC EXPERIENCE

CIBC takes its obligations under the Act seriously, and promoting equity and diversity in its workplace is an ongoing effort. Mr. Proszowski’s position is full-time and he has two other full-time staff members who assist him with employment equity and diversity matters at CIBC.

To meet the requirements of the Act, CIBC has implemented an Employment Equity Plan that specifies short term policies and practices for the hiring, training, promotion and retention of persons who are members of the designated groups. As well, CIBC keeps track of its workforce demographics. Approximately 70% of CIBC’s workforce is women, but looking at the workforce as a whole is not sufficient. Designated groups must be represented at all levels of the workforce, from administrative to executive-level positions. According to Mr. Proszowski, based on Statistics Canada data, the overall representation of women and visible minorities at CIBC is “greater than availability”, even at its executive levels. “We are doing very well in hiring

and retaining visible minorities”. With respect to persons with disabilities, Mr. Proszowski believes that CIBC is the only Canadian bank, and one of the few large private sector companies, to meet and exceed the representation rates at all levels in this group.

If a reduction or “gap” in the number of members of a particular designated group is apparent, this may be indicative of a more fundamental problem within the workplace. Mr. Proszowski advised that, “Numbers are the things that tell you whether you have a challenge elsewhere. But it is not enough to simply focus on the numbers.” Determining the root cause of such a gap and finding ways to deal with it are the real objectives. Although identifying the root cause of the problem can be challenging, if successful, such efforts will often lead to the hiring and retention of members in that designated group so that numbers adjust to more equitable levels.

When asked if there was a secret to CIBC’s success, Mr. Proszowski replied that one of the keys is recognizing and respecting the differences in culture, tradition and religion, beyond the mere obligations of human rights and employment equity legislation. CIBC is involved in a number of equity initiatives both inside the bank and in the community. For example, Mr. Proszowski advised that appropriate employee policies are a factor in promoting employment equity within the bank. One of the more important employee policies at the bank is an accommodation policy under which employees make accommodation requests related to family, disability, religion and any other ground protected by human rights legislation. An accommodation policy not only provides information to the employees about the steps to take in making requests for accommodation, but also provides information to managers regarding how to respond to such requests.

Another challenge in today’s society is dealing with family arrangements and work-life balance issues in a competitive business setting. Mr. Proszowski noted that “there is no concrete solution that works in every case” when dealing with work-life balance issues. One of the benefits that CIBC has made available to its employees with young families is retaining a company to provide temporary child care support services in the event that the usual caregiver is not available. The

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program prevents employee absences and provides employees with some peace of mind in having safe alternative childcare arrangements readily available. CIBC employees do not pay anything for these services, but CIBC has found that the cost of the program more than pays for itself.

Does equity and diversity have an impact on CIBC's bottom line? There is no doubt that there is an initial cost related to meeting the requirements of the Act. However, Mr. Proszowski feels that there is an even greater cost associated with a failure to promote equity and diversity in the workplace. Maintaining a diverse workforce is no longer just a statutory requirement according to Mr. Proszowski. "It's a business imperative."

A BUSINESS CASE FOR EQUITY AND DIVERSITY

According to Human Resource and Skills Development Canada, by the year 2016, approximately two-thirds of the Canadian population aged 15 to 64 will be made up of members from the designated groups. Members of designated groups make up a great pool of skills and talents that we must have access to if we want to succeed in the competitive, knowledge-based marketplace. Hiring employees from diverse backgrounds broadens the base of qualified individuals for employment. Attracting top talent is key for firms like Blakes. A good track record from a diversity perspective can build upon itself, ensuring that we continue to have the opportunity to hire the best and most qualified candidates.

A commitment to equity and diversity in the workplace can also help reduce turnover as employees have a greater allegiance with, and affinity to, a work environment where they feel respected and valued. According to a report issued by Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*, the average total cost of an associate's departure is \$315,000. This number is based on approximately twice the average associate's salary. That cost alone provides clear motivation for making efforts to reduce the number of departures related to work-life balance and other issues.

Moreover, as a full-service firm providing services in a number of jurisdictions, our clients now expect that we will be in a position to put together teams that understand their needs and cultures. A diverse workforce can give law firms a competitive edge in a global economy. As Mr. Proszowski stated, diversity "is a business imperative".

For these reasons, many Canadian employers have made proactive efforts to advance equity and diversity in the workplace. For most employers, gone are the days when employment equity initiatives were viewed with the suspicion that existed when political parties successfully campaigned on platforms that included repealing so-called "quota" laws. Today, most Canadian employers are not required by statute to develop programs and policies to promote and advance equity and diversity in the workplace, beyond the requirements of human rights legislation. That said, today's practical realities provide motivation to promote equity and diversity in the workplace, even in the absence of a statutory obligation.



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DIVERSITY INITIATIVES BY U.S. LAW FIRMS — WHAT CAN WE LEARN?

LINC ROGERS

In recent years, largely in response to demands made by their Fortune 500 clients, many U.S. law firms have developed far-reaching diversity initiatives designed to both attract and retain women and minority lawyers.

In fact, U.S. clients will frequently request detailed demographic information about their U.S. legal service provider and require a comprehensive description of the law firm's efforts to promote diversity within their workforce. There is increasing speculation that clients will soon make similar demands of Canadian firms. Indeed, both the feature articles in the March issue of *Lexpert Magazine* (Diversity: the Future Face of Bay Street) and the November issue of the Canadian Bar Association Magazine, the *National* (Many Faces, One Profession) discuss the impact that diversity initiatives in the United States will have on the Canadian legal market.

Those Canadian law firms that understand the diversity initiatives currently being undertaken by their American counterparts will have a distinct advantage over those that do not. Although some of these initiatives may not be applicable in the Canadian demographic and socio-economic context, a review and discussion of those practices will assist in developing and expanding our own initiatives, in accordance with our own unique and distinct perspective. That is, it is important to understand the full spectrum of possible initiatives when developing and expanding our own.

LEADERSHIP AND MANAGEMENT

It is common for large U.S. firms to have a lawyer oversee the firm's diversity initiatives on a full-time basis. The New York-headquartered firm of Sullivan & Cromwell LLP (S&C) has a full-time Diversity Management Attorney, herself a minority lawyer, who co-ordinates recruiting and retention efforts with respect to minorities and women. DLA Piper Rudnick Gray Cary is based in Chicago and has 15 offices across the U.S., in addition to an extensive presence in Europe. DLA Piper has a National Director of Diversity who was formerly Dean of Student Affairs at Northwestern University Law School in Chicago. The New York-headquartered White & Case LLP separates its Women's Advancement Initiative from its Diversity Initiative to "ensure each has a champion and one is not a second priority to the other." There is a firmwide Executive Partner in charge of the Diversity Initiative and a Partner on the Management Board responsible for the Women's Advancement Initiative.

DIVERSITY STATISTICS

Many firms also communicate detailed diversity statistics on their Web sites. For example, S&C's Web site notes that in 2004, 25% of new partners were on a part-time schedule and 16% of the firm's lawyers are minorities. On its Web site, San Francisco-based Morrison Foerster, which is also a Blakes Lex Mundi partner, provides a detailed breakdown of "attorneys of colour" (i.e., seven African American partners, 13 African American associates, etc.). Miami-based Steel Hector & Davis LLP does not provide as detailed a breakdown of its demographics but notes on its Web site that the firm has been named the "most diverse law firm" in the nation in a survey conducted by The National Law Journal and published in the *Minority Law Journal*.

AWARDS AND RECOGNITION FOR DIVERSITY INITIATIVES

Sidley Austin LLP (Sidley's) which has a significant presence in Chicago, New York and other major centres, was the 2005 Catalyst Award Winner. The Catalyst Award "honours innovative approaches with proven results taken by companies to address the recruitment, development, and advancement of all managerial women, including women of colour." Sidley's initiatives in this regard include Mentoring Circles, which allow women attorneys to share experiences across levels, practice areas, and office locations. In addition to being assigned a firmwide mentor, each incoming woman associate is assigned to a Mentoring Circle comprised of three to five women partners and eight to 12 women associates. Each Circle includes women from a cross-section of practice areas and levels at the firm.

In addition to the Mentoring Circles, Sidley's Women and Leadership Series provides women associates access to clients. Programs in the series are tailored to the needs and interests of women in each particular region or office site, and presentations are conducted by one or more prominent women speakers. Also, women-only cocktail parties and receptions are held several times a year as are Maternity Lunches, which provide an opportunity for female lawyers to discuss maternity

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Diversity Initiatives by U.S. Law Firms — What Can We Learn?

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policy, ask questions and share experiences.

In 2005, Boston-headquartered Bingham McCutchen (Bingham) received the first Connecticut Asian Pacific American Bar Association Diversity Award. The award was in recognition of a host of initiatives at Bingham that date back almost 20 years. In 1986, Bingham co-founded the Boston Lawyers Group, a consortium of Boston law firms and other area legal employers, which supports the recruitment, retention and advancement of attorneys of colour, particularly within large law firms. In collaboration with the Boston Lawyers Group, Bingham's Boston office sponsors an annual summer internship program for urban college students from diverse backgrounds who are interested in attending law school. The program includes attorney-student mentoring, interaction with summer associates, and seminars about legal work done at major law firms. In 2004, its New York office hosted over 100 attorneys from across the firm at its first Attorneys of Color Retreat. In 2005, the Los Angeles office hosted a retreat for lesbian, gay, bisexual and trans-gendered (LGBT) attorneys.

In 2005, Blakes Lex Mundi partner Sonnenschein and Rosenthal LLP, headquartered in Chicago, received the Minority Corporate Counsel Association's prestigious Thomas L. Sager Award — in both the Midwestern and Mid-Atlantic regions. The Sager Award is given to law firms to recognize extraordinary commitment to diversity. Among other things, in 2004, Sonnenschein formed an Alliance with Pugh, Jones, Johnson and Quandt, P.C., one of the largest minority-owned law firms in the United States. According to Sonnenschein's Web site "... the Alliance represents a novel approach to racial diversity in that it supports both the continued existence and flourishing of a minority-owned firm and the inherent value and creativity of interpersonal diversity in solving legal problems for clients of both a majority-owned and a minority-owned firm."

The Chicago-based firm of Jenner & Block LLP (Jenner), which is also a member of TechLaw with Blakes, received a perfect score by the Human Rights Campaign in its 2005 Corporate Equality Index. Among other things, Jenner encourages and supports the formation of "Affinity Groups" to provide a setting in which the firm's diverse lawyers can come together to discuss matters of common concern and to form professional and mentoring relationships. The firm's attorneys have formed five such Affinity Groups, including the African-American Affinity Group, the Women's Forum, the Jenner & Block Asian Forum, the Jenner & Block LGBT Forum and Hispanic Lawyers.

Jenner also communicates its various diversity initiatives through its bulletin Equal Time. The firm's diversity newsletter, includes stories about the accomplishments of Jenner & Block's diverse attorneys; legal view points from diverse attorneys and/or clients; the *pro bono* community service the firm may be providing on matters relating to women, minorities or LGBT communities; and other issues of interest. The three Equal Time bulletins published on the firm's Web site focus on attorneys of colour, women attorneys and LGBT attorneys, respectively. The bulletins contain interviews and profiles of various attorneys in these demographic groups.

ADDENDUM

Both U.S. and Canadian clients already request diversity information from Canadian law firms, typically through the RFP process. However, these criteria have not yet been emphasized to the same degree it has been emphasized with our U.S. counterparts, who are to be commended for their efforts to respond to their clients and to promote diversity in their workplace. We have a window which provides us with an opportunity to learn from the practice of U.S. firms and to expand and increase our own initiatives, in accordance with our own core values and beliefs.



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THE IMPORTANCE OF MENTORING AT BLAKES

TINA DION

Success as an associate in the legal profession is much more difficult if the associate does not have a good mentor, or mentors. Successful mentoring relationships can be formal (assign work), and also informal (brainstorm, protocol advice, etc.), but both are essential. This can be particularly the case where the associate works in a large corporate firm.

When the associate comes up for partnership, the associate must already have the necessary skill sets to succeed as a partner. That means that the associate will have had to have been exposed to challenging work and experiences. What is most important for the associate on the partnership track is that he or she be exposed to clients and given the opportunity to demonstrate that he or she can take full carriage of files.

Not surprisingly, mentoring issues have become increasingly important, not only for associates, but for partners who wish to ensure the continued success of their firm as well. There is also an increasing awareness in the legal community that past professional practices do not always meet the needs of today's lawyers who are drawn from a more diverse pool of candidates.

We know that about 50% of today's law graduates are female, and of the remaining 50% of law students who are male, many are visible minorities. Therefore, the make-up of new lawyers is becoming more representative of the diversity reflected in Canadian society. As noted above, mentoring issues are important to all associates, not just women and minority lawyers, however, many have suggested that one of the reasons why women and minority associates leave the profession at higher rates than men or non-minority lawyers is a lack of proper mentoring. Accordingly, the "mentoring movement" is beginning to take hold in Canadian law firms, in part, to ensure the retention of associates and, in part, in recognition of the business case that a diverse workforce can best meet the needs of a diverse client base.

Blakes Equity and Diversity Committee identified a firmwide need to look at mentoring issues more critically to ensure that we are in keeping with best practices. At the fall 2005 national Firm Retreat held in Vancouver, the national Equity and Diversity Committee heard from its lawyers that issues of mentoring were very important to them. The Equity and Diversity Committee wishes to ensure that all of Blakes Associates are treated respectfully, fairly and receive the mentoring necessary to succeed at the Firm, irrespective of their background or gender.

As a result, Blakes Vancouver members of the Committee, in conjunction with our Professional Development and Associates Committees, have undertaken an initiative to update both Associates and Partners on what makes a good mentor and a good mentee. The Blakes Vancouver approach to the mentoring workshop is to ensure that each participating lawyer comes away feeling that the workshop was relevant to them; mentoring is not just for women and minorities.

The mentoring workshop, held on January 31, 2006, was led by Ms Sonya Kunkel, an advisor with the human resources consulting group, Catalyst. Ms Kunkel reviewed best practices and explained how the mentoring movement can benefit both associates and partners, and can result in better communication. A good mentoring program will also foster more meaningful relationships between and among Blakes lawyers.

We hope to follow up on the mentoring workshop in Vancouver with similar initiatives with an equity and diversity component in our other offices. Blakes is committed to fostering equity and diversity within our work environment through the mentoring process.



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MENTORSHIP — ANCHORING WOMEN TO THE LEGAL PROFESSION

SARA KNOWLES

Some members of the legal community may believe that the struggles facing women lawyers are a relic of the past, and that any battles to be fought were won by the previous generation of women lawyers.

The continuing challenges encountered by women in the legal profession was one of the issues that was recently addressed by the CBA Futures Committee (CBAFC). The mandate of the CBAFC is to examine the obstacles facing lawyers and the legal profession, to make recommendations about the direction the CBA should take, and to determine what it must offer lawyers and the legal profession in order to maintain relevance and vibrancy.

Although it is true that many doors have been opened for women in the profession, the CBAFC in a report of August 2005, entitled *Crystal Clear: New Perspectives for the Canadian Bar Association*, made a number of observations about some of the challenges facing women in the legal profession, including the following:

- women leave the profession in disproportionately higher rates than men;
- women lawyers working part-time are an increasing phenomenon;
- women are underrepresented in partnership positions and are less likely to be sole practitioners;
- women lawyers are underrepresented in the over \$200,000 income bracket and the greatest proportion of women lawyers earn under \$40,000; and
- women lawyers are more likely to move laterally during the course of their careers.

Awareness of these issues and effective responses to them are critically important. Although it may be true that there are more women lawyers than in the past, it is equally the case that equality in numbers does not translate into equality of experience. The CBAFC in *Crystal Clear* identifies an important component to the potential amelioration of these circumstances: "It will be important to hear from women who have left the profession, as well as from those who have 'survived'."

Mentoring has the potential to meet these challenges. The value of exposure by female law students to the experiences of women who have been successful in the legal profession is undeniable. Mentoring programs generally bring law students and practitioners together in a non-threatening environment that fosters encouragement and advice. Such programs create healthy environments for women in the legal profession, and may ultimately increase the retention rates of female lawyers in the profession.

There are a number of such programs throughout the country which are worthy of mention. I am particularly familiar with the mentoring program which is currently administered by the Saskatchewan section of the CBA. My friend and former classmate at the University of Saskatchewan Faculty of Law, Dorinda Stahl, was instrumental in starting the program. Under the CBA's leadership, the program has expanded to include both a men's section and an aboriginal person's section. The importance of support for women and mentorship programs was validated when Ms Stahl's efforts were rewarded with a nomination for a YWCA Women of Distinction Award in 2004.

Ms Stahl sums up the objective of the mentorship of women this way: "In order to keep women in the profession, we have to anchor them." The mentorship is effective because it "instills a sense of commitment, even loyalty, to both the individual and the community directing the mentoring." The success of mentorship is linked to the fact that a woman who feels that she is a part of the legal community is less likely to leave it.



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REACHING OUT TO FUTURE LEGAL MINDS

DILANI THURAIRAJAH

On January 23rd, I had the privilege of meeting two grade eight students and their teacher as part of a community outreach program facilitated by Sheila Murray, Chair of the Legal Personnel Committee.

The two students were from Nelson Mandela Park Public School located in the Regent Park area in Toronto. Regent Park may be Toronto's most culturally diverse neighbourhood. A significant percentage of the population is comprised of recent immigrants to Canada. The average income of Regent Park residents is approximately half the average for other Torontonians. A majority of families in Regent Park are classified as low-income, with 68% of the population living below Statistics Canada's Low-Income Cut-Off Rate. Poverty is a reality for seven in 10 Regent Park families.

The students were given the opportunity to visit the Firm through the Supernova program at their school. This program identifies motivated students who would benefit from such experiences. Both students are involved in debating and have an interest in a legal career.

Their visit began with a discussion with Brad Berg, a Partner in the general Litigation Group. The students asked very intelligent and probing questions about the legal profession generally including a number of questions regarding diversity in the profession. They also asked how the Firm aims to represent the diverse face of Toronto.

I, along with Tara Rivers (another articling student), had the opportunity to take the students on a tour of Osgoode Hall, the home of the Law Society of Upper Canada and the Ontario Court of Appeal. Their inquisitive questions continued through-

out the tour, spanning a range of topics that included legal education, the judicial system, traditions and customs followed in the courts, and the logistics of arguing a case. We also sat in on a portion of a criminal trial in the Superior Court of Justice where we observed the Crown's closing arguments. The students were very interested in the set up of the court system and the roles of the various participants in the trial process. I was impressed with the outgoing and inquisitive nature of these two young students. They absorbed every detail put before them.

This program allowed the students to engage members of the legal profession and hopefully demystify some of its more opaque aspects. The experience may have even inspired them to pursue a legal education and explore a legal career in which they would no doubt excel. I found the experience rewarding and enlightening and I would encourage others to participate in similar outreach programs.

EDITORS: LINC ROGERS AND TINA DION

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