

A P P E N D I X F

Model Policy on Equality within the Court *Adopted by the Canadian Judicial Council, September 1998*

BACKGROUND

Equality is a fundamental concept which should be taken into account by a chief justice in carrying out his or her duties.

The chief justice/judge plays an essential leadership role in planning and coordinating the work of the court for which he/she is responsible and has full authority.

POLICY

1. **The work to be done by judges, whether judicial, extrajudicial (such as committees) or administrative, should be allocated in an equal manner.**

Equal workload allocation assumes objective criteria for assigning judges' work.

Assignments to a particular type of work should be allocated on an equal basis.

Although a certain degree of specialization may be desirable to ensure the court operates efficiently, there should be equality of assignments to the extent that is possible.

This does not mean that judges cannot specialize in certain areas if specialization is desirable or necessary. However, exclusive specialization should be

the exception and, generally, judges should not be assigned to just one type of work without his or her consent.

An equal workload allocation may conflict with considerations associated with seniority, however, seniority as desirable as it may be, cannot exclude or prevail over equality.

2. **Achieving an equal workload allocation may require accommodations adapted to individuals' specific needs and situations. These accommodations ensure that individuals with specific needs are not penalized by an across-the-board policy.**

In February 1995 a working group established by the Canadian Bar Association submitted a report¹ on the legal duty to accommodate, which can be described as a legal duty to adapt to individuals' needs in order to avoid discriminatory treatment.

As the report indicates, the "different" treatment required by the legal duty to accommodate should not be considered preferential treatment. It should be seen as a means of achieving equality in the workplace and as an illustration of the principle of equality rather than an exception to the rule.²

A commitment to accommodate could cover specific situations that affect an individual directly,

1 Canadian Bar Association, *The Legal Duty to Accommodate: A Report to Council on Recommendations 5.18 and 5.19 of the Gender Equality Task Force* (Working Group) (Ottawa: Canadian Bar Association, February 1995).

2 Ibid., 16-17.

such as divorce, or indirectly, such as the illness of a spouse, child or parent. The accommodation should relate to both the workload itself and the organization of that workload.

Accommodation relating to workload may include temporary assignments to other than a full-time schedule, parental leave or sabbatical leave.

Implementing an accommodation policy requires a cooperative effort by all judges.

3. The distribution of the work and the workload assigned to each judge should be known to all judges. It should be clear to all judges that each judge is being treated in an equal manner.

This approach would publicize to some extent the criteria for an equal workload allocation. Each judge would be able to make a fully-informed comparison with the other judges and would have access to the criteria used for work distribution. In so far as there is a consensus about these criteria and their implementation, the result may be greater internal cohesiveness and efficiency within the court.

RECOMMENDATIONS

Subject to the responsibilities of the chief justice/ judge to administer the court and the duty of the other judges to comply with the directives in that regard, it is recommended that:

- as far as possible, the allocation and distribution of work to each member of the court should be equal in both quantitative and qualitative terms and should be known by all judges;
- where necessary, arrangements should be made to recognize the specific needs and situations of individual judges.