

Policy and Procedures for Accommodations in the Bar Admission Course

1. Introduction

As the governing body of a profession concerned with justice, the Law Society of Newfoundland and Labrador (the “Law Society”) has a strong public interest in promoting equality. The legal approach to equality recognizes that treating people identically is not synonymous with treating them equally. Substantive equality requires the accommodation of differences that arise from the enumerated grounds listed in the Human Rights Act, 2010, SNL 2010, c. H-13.1 (the “Act”). If a rule, requirement or expectation of the Bar Admission Course (the “BAC”) creates difficulty for a student because of factors related to one or more of the enumerated grounds listed in the Act, a duty to accommodate may arise. This document outlines the policy and procedures for students in the BAC to request an accommodation based on the enumerated grounds listed in the Act. The accommodation policy is consistent with the Act and operates within the overall mandate of the Law Society to ensure entrants to the profession are competent to practise law. This document applies to all students registered in the BAC.

2. Purpose

The purpose of this document is to highlight:

1. the Law Society’s duty to accommodate students in the BAC;
2. the Law Society’s procedures and strategies for accommodation in the BAC; and
3. students’ responsibilities when requesting and receiving accommodation in the BAC.

3. Policy

The Law Society is committed to ensuring the requirements of the BAC are directly and logically connected to the competent practice of law, and persons who wish to practise law in Newfoundland and Labrador are not effectively barred from qualifying because of one or more of the following enumerated grounds (as defined under the Act): race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion.

The Law Society recognizes that its commitment to equality requires that it accommodate individuals, up to the point of undue hardship, in circumstances and situations that arise because of one or more of the enumerated grounds. Assessing whether an accommodation is needed and what accommodation may be appropriate is an ongoing obligation of the Law Society.

Accessibility support for students in the BAC is coordinated and provided by the director of legal education in consultation with the Education Committee. Accommodations will be provided for students who are unable to comply with a condition or requirement of the BAC because of a condition that arises from an enumerated ground listed in the Act. Accommodations are provided by adapting the conditions or requirements of the BAC for individual students, or by providing alternative ways for the student to meet those conditions or requirements, provided that such accommodations do not inhibit a fair assessment of a student's competence or otherwise impose undue hardship on the Law Society.

4. Confidentiality and Disclosure of Information

To protect the interest of students seeking an accommodation, the Law Society will keep information collected from that student in strict confidence and will use the information solely for the purpose of assessing the request for and, if granted, providing the accommodation. Access to this information is restricted to Law Society staff and members of the Education Committee and will not be disclosed without the student's written consent. The Law Society maintains information and records related to a student's accommodation request, including any actions taken and other relevant documentation.

Students have a responsibility to provide sufficient information about their requested accommodation needs in order to facilitate the requested accommodation. The Education Committee has a responsibility to require only information reasonably necessary to the provision of accommodation from a student.

In some circumstances, the Education Committee may have a reasonable basis for requesting additional information from a student, such as further confirmation or diagnosis from a qualified medical professional. In these cases, the Education Committee will request the information from the student. The student's delay in responding to the request may result in a delay in the Education Committee's consideration of the request for accommodation.

Agreement and Undertaking regarding Bar Admission Course Accommodation

Accommodations granted to students by the Law Society are strictly confidential. It is recommended that students not disclose the accommodation(s) granted to them by the Law Society, or any information related thereto, to any other students or persons. It should only be disclosed to a medical professional for the strict purpose of advising or evaluating the student with respect to their participation in the BAC. In some cases, an accommodation granted to a student may cause that student to write a BAC Examination at a time (or times) and/or location that differ(s) from the scheduled hours for a sitting of the BAC Examination(s). This may cause the student or other students to possess information

related to the content and materials of a BAC Examination before all students have commenced and/or completed a sitting of that BAC Examination. In order to ensure the integrity of the BAC Examinations, students who are granted an accommodation to write a BAC Examination are required to execute an Agreement and Undertaking regarding Bar Admission Course Accommodation as a condition of their accommodation. Breach of the Agreement and Undertaking regarding Bar Admission Course Accommodation constitutes a breach of Rule 6.12.

5. Procedure and Responsibilities of Requesting Student

To make a request for a Bar Admission Course accommodation under this policy, students must follow the following procedure:

1. The student must make a written request for accommodation to the Education Committee, in the prescribed form.
2. The request for accommodation and all supporting documents must be received by the Education Committee on or before August 1st of the year in which the student will be participating in the BAC.
3. The student shall identify the ground(s) upon which the accommodation is requested.
4. The student must provide sufficient information to confirm the existence of a need for accommodation and the type(s) of accommodation requested, as well as any further supporting information regarding the accommodation request that may be requested by the Education Committee.
5. The student must cooperate in obtaining necessary information and, when requested by the Education Committee, participate in discussions about solutions.
6. Following a request, if there are any changes to the student's circumstances that could affect the need for accommodation or the type(s) of accommodation required, the student must inform the Education Committee as soon as possible.

Requirements for Supporting Information

A request for accommodation must be made in sufficient detail, and be accompanied by appropriate verifiable documentation, to ensure the Education Committee has all the information it requires to determine the best accommodation. If approved, a request for accommodation must be made within sufficient time to allow the Education Committee to arrange for the accommodation. The Education Committee may not be able to accommodate incomplete requests after August 1st of the year in which the student will be participating in the BAC.

Supporting Information for an Accommodation Based on a Disability

The term “Disability” is defined in paragraph 2(c) of the Act as meaning one or more of the following conditions:

- i. A degree of physical disability;
- ii. A condition of mental impairment or a developmental disability;
- iii. A learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language, and
- iv. A mental disorder.

A student making a request for accommodation based on a Disability must provide verifiable medical documentation in support of the request. Medical professionals must use the Supporting Documentation Form for Medical Professionals Recommending Accommodation(s) to submit their supporting documentation. This completed form, along with any appendices, must be submitted directly by the medical professional to the director of admission and education, by email (churley@lsnl.ca).

A student with a condition that falls within subsection 2(c)(ii), (iii), or (iv) of the definition of Disability under the Act who requests additional writing time for a BAC Examination, must provide a psychological or psycho-educational assessment report to support their request. This is in addition to the Supporting Documentation Form for Medical Professionals Recommending Accommodation(s). A psychological and/or psycho-educational assessment report should identify issues impacting the student’s development, functioning, severity of condition and current treatment. This report should explain how the student is impacted by the Disability, and how the student’s functional limitations are caused by the diagnosed impairment in order to provide a measurable basis to justify the recommendation for additional writing time. All recommendations for additional writing time must indicate exactly how much additional writing time is requested and why that specific amount of additional time is necessary to accommodate the student’s Disability.

All documentation should be as specific as possible. Documentation provided by a professional should clearly indicate the name and qualifications of the professional. Supporting medical documentation must also include the following information:

1. Confirmation that the student is affected by a Disability;
2. An explanation of how the Disability adversely affects the student’s ability to participate in the BAC; and
3. A description of the professional’s recommended accommodation and any alternative accommodations that may be considered (please note that the accommodation provided may not be the professional’s recommended or alternative accommodation).

Requirements for Recommended Accommodations for a Student with a Disability

If the student's request includes supporting information which recommends a specific accommodation(s), that recommendation must explain how that accommodation(s) will negate or mitigate the adverse effect of the student's Disability while writing the BAC Examination. All recommended accommodations should be as specific as possible and must take into account the format of the BAC Examinations. Each BAC Examination is a 3.5 hour open-book examination, which students shall complete using an exam software program selected by the Law Society.

Proof of prior accommodation(s) is just one piece of information that will be considered and is not a guarantee that the same accommodation(s) will be provided in the BAC, as all requests are assessed on a case-by-case basis with reference to the specific conditions and requirements of the BAC. However, students are encouraged to provide information regarding any prior accommodation(s) they have received for a similar Disability from another organization or institution (such as the Law School Admission Council or the student's law school). This information may assist the Education Committee in determining the most appropriate accommodation(s) for the student in the BAC.

6. Procedure and Responsibilities of the Education Committee

When a student requests an accommodation under this policy, the Education Committee has the responsibility to assess the need for accommodation. The following procedures will be followed:

1. The Education Committee respects the dignity of the student requesting the accommodation(s). This means acting in a manner that recognizes the privacy, confidentiality, comfort, autonomy and self-esteem of the student.
2. The Education Committee presumes that the request for accommodation(s) is made in good faith unless there are legitimate reasons for believing otherwise.
3. The Education Committee requests only information reasonably necessary to consider the request for accommodation(s).
4. The Education Committee considers accommodation(s) requests in a timely manner, where the request (including all necessary supporting information) has allowed a reasonable time to do so.
5. The Education Committee considers any suggestions or recommendations offered by the student and/or a supporting medical professional to develop a strategy for accommodation. The Education Committee may consult with the student to determine whether a requested or approved accommodation(s) will be or remains appropriate or should be modified.
6. If a requested accommodation cannot be implemented in part or in full, the Education Committee considers alternatives.

7. If it approves the request for accommodation(s), the Education Committee will provide the accommodation(s) required, unless stated otherwise. In situations where it determines the approved accommodation(s) should be provided by the student, the Education Committee will advise the student accordingly.
8. In the interest of promptly addressing the needs of a student and exploring the utility of various accommodation strategies, an interim or experimental strategy may be implemented.

7. Undue Hardship

An accommodation will not be provided if the Education Committee determines it inhibits a fair assessment of a student's competence or otherwise imposes undue hardship on the Law Society. This determination is made on a case-by-case basis by the Education Committee in consultation with the director of legal education and the executive director of the Law Society. Considerations that may influence this determination include the integrity and security of the BAC Examinations, substantial economic hardship on the Law Society, health and safety considerations, the availability of persons with appropriate expertise, a significant adverse impact on learning opportunities for other students, a significant alteration of the fundamental nature of the program or service or undue disruption of the Law Society's program operations.

A decision by the Law Society not to grant a requested accommodation(s) on the basis of undue hardship and its rationale will be communicated to the student in writing.