



NOVA SCOTIA BARRISTERS' SOCIETY

## SAMPLE POLICY ON MATERNITY AND PARENTAL LEAVE

### Preface

The Gender Equity Committee of the Nova Scotia Barristers' Society ("the Committee") recommends the adoption and implementation of a parental leave policy by law firms and other employers of lawyers in Nova Scotia. This sample policy, which is endorsed by the Committee, is provided as a template from which individual firms and businesses may create a policy that is fully representative of each firm's unique needs.

The Nova Scotia Barrister's Society's Equity Officer is available to provide assistance free of charge in developing policies for your office.

At the time this policy is drafted, the federal *Employment Insurance Act* provides 35 weeks of parental leave benefits and 15 weeks of maternity leave benefits for a total of 50 weeks of paid leave. Current provincial legislation – *The Labour Standards Code*– provides unpaid parental leave of up to 35 weeks combined with 17 weeks of unpaid maternity leave for a total of up to 52 weeks of combined unpaid maternity and parental leave. Parental benefits are available to both biological and adoptive parents and can be shared by both parents. As these two statutes are frequently amended, it is strongly recommended that employers check with both the Federal Government's HRSDC (Human Resources and Skills Development Canada) and the Provincial Labour and Workforce Development Branch for further updating information.

The Committee recognizes that enabling employees with childcare responsibilities to balance career, childbirth, adoption, and family life will ultimately be to the benefit of both firm and employee. Recruitment and retention of lawyers are important reasons to institute a thoughtful parental leave policy. Demonstrating to lawyers that it is possible to be both a good lawyer and a good parent is equally important. A firm's parental leave policy is a visible means of demonstrating to a firm's lawyers its commitment to these goals. Lawyers who believe their firm has done the best possible job of helping them balance work and family are more likely to be loyal and productive. Law students who learn that a firm has developed a sound parental leave policy will note that the firm has made family issues a priority and will be encouraged to accept that firm's offer. Most importantly, the firm's atmosphere will be one of an organization that understands how to maintain human values in a busy, successful legal practice.

The Committee recognizes the physical, emotional, and psychological demands of childbirth and adoption and considers that a period of leave is important for the well-being of both the parent and child.

The attached Model Policy was formulated after a thorough review of a variety of policies from various jurisdictions within Canada, including law societies and Bar associations and existing policies of Nova Scotia law firms, corporations and governmental agencies. Our review disclosed that in some cases, firms simply provide unpaid periods of leave while in other cases, firms supplement the paid benefits which are applicable under the appropriate federal legislation.

A lawyer on maternity and parental leave remains a lawyer and a professional. It is recognized that from time to time issues may arise that require a lawyer on leave to be consulted about ongoing client matters. In order for this to work well, it will be necessary to balance the needs of the clients and the ability of the firm to meet those needs, with the needs of the lawyer on leave.



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As important as a thoughtful policy with a positive tone may be, the best drafted policy cannot succeed without the support of the firm's managing partners and senior lawyers. Attitudes, both positive and negative are transmitted in this way. If firm leadership projects an attitude that the parental leave policy is important to the goals of the firm, and that the firm actively encourages a full family life, that attitude will become the pervasive attitude of the firm. The primary reason for the support of the policy is the retention of valued lawyers.

This policy is meant to be modified for use in your firm you should read it carefully and amend it, as appropriate, to the circumstances of your particular firm. There are a number of blanks and paragraphs left in bold type, which need to be considered. Be aware that this policy has legal ramifications in that it may become part of the employment contract between your firm and its employed or commissioned associates. Neither the Committee nor the Society is providing legal advice on the responsibilities that may flow from the use of this Agreement. The provision of this draft policy does not constitute legal advice from the authors of the draft policy or Nova Scotia Barristers' Society.



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## SAMPLE POLICY FOR EMPLOYED LAWYERS MATERNITY AND PARENTAL LEAVE

### 1. Introduction

The firm has implemented this leave policy to enable partners and associate lawyers of the firm who are new parents to spend time with their newborn or newly adopted children.

Any employed associate in good standing, who gives birth to or adopts a child, and who has been with the firm on a full-time basis for at least 12 consecutive months, or the equivalent in part time work, prior to the date on which a leave period is to begin, is eligible for benefits under this policy. Associates who are spouses of persons giving birth or adopting a child and who have been associated with the firm full time for 12 consecutive months, or the equivalent in part-time work, are eligible for parental leave benefits under this policy, regardless of sexual orientation, marital status or sex.

All partners in good standing who give birth to or adopt a child are eligible for benefits under this policy. Partners who are spouses of persons giving birth or adopting a child are also eligible for parental leave benefits under this policy, regardless of sexual orientation, marital status or sex.

### 2. Maternity Leave for Associates

Maternity leave applies only to associates who are pregnant or who have given birth. In accordance with *The Labour Standards Code*, the maternity leave entitlement offered herein to employed lawyers is 17 weeks, followed by 35 weeks of unpaid parental leave. By the existing Employment Insurance system, salaried employees receive benefits, after a two-week unpaid waiting period of 55% of insurable earnings up to a maximum of \$413 per week for a maximum of 15 weeks following which the parental leave provisions will apply.

Employed lawyers on maternity leave will be entitled to receive from the firm payment supplementary to Employment Insurance benefits (“Top Up”) for \_\_\_ weeks commencing at the beginning of the two-week waiting period provided for under *The Employment Insurance Act*. The top up will be an amount which when added to the gross Employment Insurance benefits, and any other earnings of the employee, will equal \_\_\_% of the employed lawyer’s normal weekly earnings.

It is expected that the associate will be able to avail herself of any existing and applicable group or individual disability benefit plan in the event of pregnancy related illness or disability before or after the maternity leave commences.

Commissioned associates are self-employed and paid on the basis of collected billings. The provincial *Labour Standards Code* does not apply. Commissioned associates can access benefits under the Employment Insurance system if they opt-in as self-employed individuals. Periods of leave will be negotiated between the commissioned



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associate and the managing partner with a view to maximizing leave. The commissioned associate will receive on a monthly basis \_\_\_% of her average income from the firm (based upon the last 12 months prior to taking maternity leave) for the duration of the period of negotiated leave.

Commissioned associates on leave will receive credit for whatever actual billings and collections do occur for work completed by the associate prior to or during the leave along with the firm's benefits. This recognizes that the associate is receiving credit during her leave for work done prior to taking the leave, and further that upon return, the commissioned associate may not have a large amount of work in progress to bill for the first few months after returning.

### 3. Parental Leave for Associates

Consistent with the rationale of this policy, a parent who adopts, takes custody of a child, or is the non-birthing parent is entitled to parental leave.

Under The Labour Standards Code of Nova Scotia, employed lawyers who are the non-birthing parent are entitled to 52 weeks of unpaid parental leave so long as they have been employed by the employer for at least 12 consecutive months and have given the employer at least four weeks' notice before the leave begins. By the existing Employment Insurance system, salaried employees receive paid parental benefits for a maximum of 35 weeks. For a calculation of the benefits please see the section on Maternity Leave.

Where a parent adopts or takes custody of a child, that parent is entitled to 52 weeks unpaid leave under the *Labour Standards Code*. In addition, the parent is entitled to apply for and receive the paid parental benefits for which they are eligible under the *Employment Insurance Act*, currently 35 weeks.

Paid parental leave is available to both men and women in the firm, including lawyers in common law relationships, whether those relationships are between persons of the opposite or the same sex. Salaried associate lawyers should apply for and receive parental benefits for which they are eligible under The *Employment Insurance Act*. The firm's policy is designed to supplement and to add to those benefits, rather than to replace them. Salaried associates on paid parental leave will be entitled to receive top up for \_\_\_ weeks. The top up will top up the gross Employment Insurance benefits to a maximum of \_\_\_% of the associate's normal weekly salary.

Commissioned associates will be paid on the same basis for parental leave as is set out in the maternity leave provisions above.

### 4. Provisions Applicable to both Maternity and Parental Leaves for Associates

a) Employed associates on leave will be entitled to the benefit of any salary increases which they would otherwise have received.

b) If an associate wishes to extend the aggregate period of maternity or parental leave beyond that allowed under the paid or unpaid leave portions of this policy, he or she may apply for an additional period of unpaid leave. The firm will respond within 30 days of receiving such application.



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c) Unpaid leave under subparagraph (b) and (c) above, will be subject to the firm's approval. The criteria for approval will include needs of the employed lawyer and the employed lawyer's family, the needs of the firm, work load, specific client needs, unique skills of the employed lawyer, and time for proper planning to meet the demands of the practice.

d) All regular benefits provided by the firm to the associate will continue to be paid by the firm during all periods of paid leave, so long as the associate continues to make any contributions normally made by that associate. For unpaid leaves extending beyond the period of paid leave, no benefits will be paid by the firm.

### 5. Partners

Partners are entitled to receive maternity and parental leave as negotiated but not less than the periods of leave offered to associates.

**Partnerships vary greatly and it would be impractical to propose in the Model Policy remuneration to be paid to a partner on leave. It is suggested, however, that a partner receive remuneration during leave at a level at least equivalent to the remuneration paid to an employed lawyer on leave.**

### 6. Procedures

#### a) Notice

- i. Whenever possible, any lawyer who wishes to take a leave must notify the firm in writing at least two months prior to the anticipated date the leave will begin. Where a medical emergency or adoption process make this notice period impossible, the lawyer should give the firm as much notice as possible. In either case the notice period should provide the expected starting and ending dates of the leave required and should be directed to the Management Committee (or managing partner, as the case may be). If the lawyer anticipates also requiring unpaid leave, a written application stating the reasons and the estimated additional time, should be included with the leave notice.

#### b) Transitional Provisions

##### ii. Case-Load Advisor

It is the joint responsibility of the leave-taking lawyer and the firm to ensure that: 1) the leave has the least possible impact on the productivity of the lawyer and the firm; and 2) service to the clients is maintained. To assist in achieving this goal, the firm shall designate a partner of the firm to: 1) assist the leave-taking lawyer in transferring work; 2) ensure that the lawyer's work is appropriately distributed; 3) handle any difficulties concerning the distribution of the leave-taking lawyer's work arising during the leave period; and 4) assist the leave-taking lawyer in acquiring work assignments and retransfer of files upon the return to work. The case-load advisor will be the liaison for any emergency contact with the leave-taking lawyer required during the leave and will keep a leave memorandum containing the list and whereabouts of all of the leave-taking lawyers files.



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### **iii. Leave Memorandum**

Where possible, one month prior to the leave, the leave-taking lawyer will develop a leave memorandum directed to his or her case-load advisor and to the appropriate individuals in the firm, identifying each file in his or her case-load and the designated lawyers who will be handling these matters during the leave period. No later than two weeks prior to the expected date of departure, the lawyer will have completed the memo and met with each person taking over any file to review that file.

### **iv. Return to Work**

Three weeks prior to the scheduled date for returning to work, the leave-taking lawyer will prepare a reminder memo to the case-load advisor respecting the date of return to work as well as outlining any proposed reduced work schedule upon returning to work at the firm. The case-load advisor will have the responsibility for circulating the memo to the required persons at the firm. Upon return to work after leave, the case-load advisor, the leave-taking lawyer and the lawyer(s) with temporary charge over any of the leave-taking lawyer's files will meet to decide which files are most appropriately transferred back to the returning work at which point in time.

## **c) Transitional Work Scheduling**

### **i. Transition**

It is the joint responsibility of the leave-taking lawyer and the firm to facilitate the transfer of work both before and after the leave. It is the policy of the firm that leave-taking lawyers have the opportunity to be as productive as possible during the transition periods before and after taking a maternity or parental leave.

### **ii. Reduced Work Schedule Prior to Birth or Adoption**

Lawyers may find that the physical impact of pregnancy or the adoption process necessitates a reduced hour schedule prior to the entry of a child into their families. Lawyers may request to work a reduced hour schedule for a period of up to two months immediately prior to the birth or adoption of a child. In response to such requests, the firm will negotiate that lawyer's work schedule, compensation and benefits for the requested period.

### **iii. Reduced Work Schedule on Return**

Lawyers may find that the demands of child care necessitate a reduced hour schedule on return to work. Lawyers may request to work a reduced hour schedule for a period of up to 12 months immediately following return to work after leave. In response to such requests, the firm will consider and discuss operational requirements, that lawyer's work schedule, compensation and benefits for the requested period.

This limited period of a reduced work schedule is designed to assist the lawyer in making an effective transition back into the workplace after a parental leave and to adjust to his/her role as a working parent. This reduced work schedule portion of the firm's parental leave policy should not be confused with the firm's formal policy on alternative work schedules. Lawyers interested in working reduced



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hours for an extended period of time should consult the procedures and guidelines provided under the firm's alternative work schedule policy.

### **7. Impact on Future Work, Salary and Partnership**

No lawyer will be penalized in any way for taking any leave contemplated by this policy and all lawyers taking such leaves are guaranteed the same or comparable jobs with the firm upon their return to work. The opportunity of an associate to become a partner is not dependent upon whether she/he has taken maternity or parental leaves. The length of the partnership track is a matter of individual professional development of the associate.

### **8. Conclusion**

This policy may be reviewed from time to time and may be modified as the firm learns from experience and continues to grow or change. Changes may reduce the benefits available under this policy would come into effect only after one month's notice to all lawyers and would apply only to leaves commencing after the expiration of the notice period.