



## Tips for Lawyers and Paralegals in Ontario: Accommodating clients by communicating via email

### My client asks to communicate via email as an accommodation. What are my professional obligations?

#### What Does the Law Say?

- The Law Society of Ontario prohibits any form of discrimination, including against persons with disabilities. This prohibition and the obligation to provide legal services in accordance with Ontario's *Human Rights Code* are detailed in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*.
- Legal service providers must accommodate their clients with disabilities to the point of undue hardship, as required by Ontario's *Human Rights Code*.
- When assessing whether an accommodation causes undue hardship, service providers must consider costs, outside sources of funding, and health and safety requirements, specifically related to the accommodation request. Costs, in particular, must be so substantial to alter the essential nature of the service or its viability in order to amount to undue hardship. Mere business inconvenience is not sufficient to rise to undue hardship.
- When a client requires written communication in the form of email because of their disability, the lawyer or paralegal has a duty to accommodate the client to the point of undue hardship.
- Lawyers and paralegals must also be mindful of their duty of confidentiality, client privilege and other professional obligations. In accommodating their client, they must take steps to ensure their professional obligations continue to be fulfilled.

#### In Practice

- Determine with your client whether email communication is needed for all communications. Some clients may need email for all communications, while others may need email only when there is a large volume of information or when the information is complex.
- It may not be appropriate to send some content or information through email, such as a signed agreement or sensitive information. In this case, discuss with your client whether an alternative method of communication would be more appropriate.
- Clients with vision disabilities may require a specific format to read electronic documents, such as Word document or in Rich Text Format (RTF). Ask your client what format should be used for documents sent via email.

- Consider including the agreed upon method(s) of communication (such as email) and the protection that will be used to secure those communications in the retainer or engagement letter.
- Ensure that all communication with your client is in clear language. For clients labelled with an intellectual disability, ensure that communication is in plain language.
- Depending on your client, consider breaking up the information into several, shorter emails.
- Consider adding “Solicitor-Client Privilege” to the subject line and a confidentiality disclaimer in the email as a reminder to the client that the information contained is confidential.
- Consider encrypting all email communications.
- A client that requires written communication (i.e. email communication) may also need an accommodation in other aspects of the litigation process within their file. Discuss accommodation needs with your client for the different stages of their file, such as court or tribunal appearances, settlement discussion meetings and mediation.

### **For more information**

Review sections 3.3 and 6.3.1 of the *Rules of Professional Conduct*:

<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/complete-rules-of-professional-conduct>

Review sections 2.03 and 3.03 of the *Paralegal Rules of Conduct*:

<https://lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct>

The Law Society of Ontario has a podcast series called “New Technology Practice Tips”, where several episodes relate to the use of email

communications: <https://www.lso.ca/paralegals/practice-supports-and-resources/topics/technology-practice-tips>

Ontario Human Rights Commission’s Policy on ableism and discrimination based on disability: <http://www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability>

ARCH offers a free Case Consult service for Lawyers and Paralegals representing persons with disabilities. Lawyers and Paralegals can book an appointment with an ARCH Lawyer to consult on the disability law aspects of a case and how to meet a client’s disability related accommodation needs.

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