

# BAR MENTAL FITNESS QUESTIONS: PERPETUATING THE STIGMA

SARA JOSSELYN<sup>†</sup>

## ABSTRACT

*In order to be admitted to the practice of law, all applicants to provincial Barristers' Societies must respond to a series of questions aimed at ensuring that they are of good character and are generally "fit" to practice. Some applicants must also demonstrate their medical fitness by responding to various mental disability-related questions. This article examines whether the medical fitness questions currently asked of Bar applicants in many provinces are discriminatory and whether they serve to perpetuate the stigma associated with mental illness.*

*The author will evaluate the propriety of broadly worded mental fitness questions in order to show that the inquiries are counterproductive, are of dubious predictive power, and unreasonably impinge upon individuals' privacy rights. A subsequent assessment of narrowly tailored mental fitness inquiries will reveal that they are not a preferable alternative. Ultimately, the author will show that while Bar Societies' goals are laudable, the questions come at too great an expense insofar as they discourage applicants from seeking needed mental health treatment, and potentially violate both the Canadian Charter of Rights and Freedoms and provincial human rights legislation.*

---

<sup>†</sup> B.A. (Hons.) (Toronto), LL.B. (Dalhousie), LL.M. Candidate (2007) (Dalhousie). Sara Josselyn will be articling at McInnes Cooper in Halifax in 2007-2008. She would like to express great thanks to Professor Archie Kaiser and Professor Jocelyn Downie for comments on earlier versions of this article. The article is based on research funded by a Canadian Institute for Health Research Health Law and Policy Training Fellowship.