
A GUIDE TO ABORIGINAL SELF-DECLARATION FOR SASKATCHEWAN BOARDS OF EDUCATION



 SASKATCHEWAN
School Boards
ASSOCIATION

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PURPOSE

Research has been done to inquire how two school divisions and other educational organizations have designed an Aboriginal self-declaration form. This report has been created based on that research and an Aboriginal self-declaration form was created for the Saskatchewan School Boards Association (SSBA). The information gathered serves as the basis for this report. The following information was received through interviewing two school divisions, evaluating two other educational organizations, and seeking advice from the Saskatchewan Human Rights Commission.

The goal of this report is two-fold. First, it will provide the SSBA with information on how other organizations deal with Aboriginal self-declaration. Second, it will contain an Aboriginal self-declaration form for the SSBA to use.

METHODOLOGY

Two school divisions were contacted to determine if they administer Aboriginal self-declaration forms. Inquires were made regarding why they administered the forms, what they did with the collected data, whether the self-declaration forms were administered pre or post employment, and how successful they felt the process was. In an effort to collect comparative information from similar organizations, the Saskatchewan Institute of Applied Science and Technology (SIAST) and the University of Regina were contacted. Saskatchewan Human Rights Commission's (SHRC) policies pertaining to self-declaration are also included. Also gathered, was data on SHRC's policies regarding the following conditions: When and why self-declaration forms can be administered for Aboriginal people; and, what exemptions SHRC may grant.

FINDINGS

A synopsis of the data gathered from SHRC will be presented, and will be followed by a summary of the research of the school divisions surveyed, and information on how SIAST and the University of Regina deal with the subject of Aboriginal self-declaration.





SYNOPSIS OF SHRC GUIDELINES AND POLICIES

By reviewing the Saskatchewan Human Rights Code, SHRC's "official" guidelines and policies on Aboriginal self-declaration was ascertained. Under the Code, employers cannot ask whether potential candidates are Aboriginal. The rationale, is, that to do so, an employer is possibly setting up barriers for that candidate. One such barrier might be that the employer is seeking self-declaration as a pre-employment screening out of certain candidates. Another barrier might be that it is an invasion of that person's privacy to inquire about them being Aboriginal or not. The code stipulates that in order for an employer to ask for such information at the pre-employment stage, that employer must be set up and approved as an Equity Employer with SHRC. By being a registered Equity Employer with SHRC, that employer is legally protected.

Once that employer is registered with SHRC, SHRC can approve them as an Equity Employer. If, in this case, the school division is not registered with SHRC, they are not allowed to ask a pre-employment candidate about their Aboriginal status unless there is deemed to be unusual circumstances for doing so. Those unusual circumstances are not black and white but are evaluated on a case by case basis. To otherwise do so, would be a legal violation under the Human Rights Code unless the employer asked for, and received, a special exemption from SHRC.

If a registered Equity Employer wants to survey existing employees regarding their Aboriginal status that is their prerogative. Although the SHRC does not have an official position on an employer demanding proof of Aboriginal status, they would question why an employer is asking for that proof. For SHRC it becomes a murky situation because of the implications that people are not being honest when they self-declare. The following is taken from the existing Human Rights Code:

Employers typically cannot consider ancestry, gender or disability in their hiring decisions – that would be a violation of the Human Rights Code. But an employer with an equity program can choose to consider a prohibited ground when hiring, for the purpose of developing a representative workforce and within the context of certain limits established by the Commission. Examples: An equity employer may have five qualified applicants for a job opening, including an Aboriginal person. Because equity plans are voluntary, the employer is not required to hire the equity group member. Nonetheless the employer may choose to hire the Aboriginal candidate in order to promote equality goals and develop a workforce that reflects the make-up of the working age population. In this example, the Commission's approval makes it legal for the employer to consider Aboriginal ancestry in the hiring decision.

SHRC has defined policies regarding when an employer can and cannot ask people to self-declare. If an employer makes self-declaration a pre-employment matter, SHRC would have some definite policies that would govern that. If an employer makes self-declaration a post-employment matter, SHRC is less stringent in their policies. Finally, SHRC cautions employers to adhere to the laws governing the self-declaration process, and for those who seek to have Aboriginal people self-declare post-employment. SHRC would prefer that it be totally on a volunteer basis, and if possible, that it be anonymous.

SUMMARY OF SCHOOL DIVISIONS AND SIMILAR ORGANIZATIONS

The rationale for surveying these particular school divisions in Saskatchewan is because of their being in larger centres and their potential high Aboriginal population. The school divisions surveyed were Greater Saskatoon Catholic Schools (GSCS) in Saskatoon and Saskatchewan Rivers School Division (SRSD) in Prince Albert.

SRSD does not administer an Aboriginal self-declaration form nor is SRSD an equity employer through SHRC.

GSCS has a comprehensive plan and process of Aboriginal self-declaration. According to the contact from that school division, they are registered as an equity employer with SHRC. Also, people are asked to participate in self-declaring in the pre-employment stage and that this is an ongoing initiative. The reason that it is ongoing is because the GSCS is “absolutely pro-active” in the identification of potential and existing Aboriginal employees for the purposes of tracking numbers. These numbers are used as a barometer to establish where they stand in achieving their goals of Aboriginal employment.

GSCS also sent out a self-declaration survey to gather information on how many existing Aboriginal employees there were in the school division. This was done to augment the data collection process to see if they could get a more accurate count of the total number of Aboriginal employees.

When asked how people reacted to being asked to participate in the self-declaration process, the contact felt that the people surveyed were amenable because participation was voluntary and also because names were optional. However, the contact thought that making participation voluntary defeated the purpose of obtaining accurate numbers. After GSCS administered the pre- or post-employment self-declaration forms it did not ask for verification that the person filling out the form was actually Aboriginal. Again, the contact thought that by not asking for verification, it skewed the accuracy of the numbers of Aboriginal employees within the school division.

On their self-declaration form for existing employees there were questions about area of employment. The contact thought that at least they could get a sense of where Aboriginal people were being employed. Finally, the contact indicated that when the forms were filled out, a company called Fast Consulting in Saskatoon collected and compiled the data. GSCS found that by having an outside firm gather the data people would be encouraged to participate in the process. GSCS informed candidates that nobody from that school division would see the results and noticed that people were much more amenable to filling out the forms. When someone from GSCS spoke to a few of the Aboriginal candidates to ask why they were more amenable he was told that because GSCS was not seeing the direct result of the self-declaration they were not afraid of being singled out or concerned that someone from GSCS was going to misuse that information.





The final stage of the research collection involved obtaining information on two similar organizations. Those organizations were the University of Regina and SIAST. The data collected from SIAST was a result of a telephone survey while the University of Regina's website was perused to get their information.

SIAST does not have candidates fill out self-declaration forms as part of their pre-employment process. Rather, SIAST administers a self-declaration form as soon as someone goes through the orientation process after being hired. Filling out the self-declaration forms is voluntary, but SIAST encourages those new employees to participate in the process. While filling out the forms is not mandatory, if a position is deemed to be designated for an Aboriginal person, then the person must fill out the self-declaration form. When someone fills out a form names are optional but they are encouraged to provide their names as information on the forms is confidential.

The following comes from SIAST's self-declaration information sheet which includes the word diversity as SIAST also works with other employment equity groups for the purpose of self-declaration.



SIAST DIVERSITY SELF-DECLARATION FORM INFORMATION SHEET

What is the purpose of the SIAST self-declaration form?

This information is used for the purpose of calculating diversity statistics to enable SIAST & SGEU to evaluate our progress to achieving a representative workforce. Our goal is to have a workforce that is representative of the demographics of diversity group members in the Saskatchewan working population. Diversity groups include Aboriginal peoples, visible minorities, persons with disabilities and women and men in occupations where their gender is underrepresented. SIAST and SGEU collaborated in the development of the Diversity Self-Declaration Form.

How will SIAST use the data collected and how is it stored?

Your information is traced for statistical purposes only and kept confidential. This form is kept confidential from your supervisor and work unit and is not stored in your employee file. The form is stored in a self-declaration file in the office of the AVP, human resources.

Why have individuals in the past chosen not to self-declare?

We acknowledge that some people are hesitant to self-declare as a diversity group member for fear of being marginalized or because of past experiences. We want to assure you the use and intent of our collection of this data is for statistical purposes alone and will not be used in any other way.

SIAST and SGEU collaborated in the development of this form. Both SIAST and SGEU encourage voluntary self-declaration by all employees and members.

For more information please contact SIAST Human Resources or your union Campus Chairperson.

The following comes from the U of R's self-declaration information sheet which includes the word representative workforce as the U of R works with First Nations and Métis Relations and it reflects FNMR's language. The information sheet also applies to other employment equity groups for the purpose of self-declaration.

Why is there a Representative Workforce Strategy at the University of Regina?

In 1989, the University of Regina signed on as an Employment Equity Employer with the Saskatchewan Human Rights Commission. In 1999, the University signed an Aboriginal Partnership Agreement with Government Relations and Aboriginal Affairs, further renewing our commitment to Aboriginal employment. The Representative Workforce Strategy at the University of Regina incorporates these initiatives and builds on them to help address barriers to full participation in the workplace by all demographic groups.

What is "self-declaration"?

This is a voluntary process of identifying yourself to your employer, or potential employer, as a member of the following groups: Aboriginal people, member of the visible minority group, persons with a disability, and/or being female.

Do I have to fill out the self-declaration part of the survey?

No. Questions 1-5 in the survey are voluntary and you are not required to complete them if you choose not to. The University of Regina monitors the demographics of the applicant pool and the effectiveness of its recruitment and retention strategies. We encourage all representative workforce members to self-declare in their cover letter, on their resume or via the self-declaration questions in this survey.

Will this information be confidential?

This information is held in strict confidence and a limited number of personnel have access to this information. Only specific Human Resources Department personnel and involved search committees have access to an employee's self-declaration information. Employees, including supervisors, are not permitted to access another employee's self-declaration information.

How will this information be used?

There are three main purposes for collecting this data:

- Statistical reporting;
- Analyzing the effectiveness of recruitment and retention strategies; and,
- Developing mechanisms to achieve a representative workforce.





Does this mean if I am not a representative workforce member, that I will not be considered for employment?

That is not correct. The main purpose of the self-declaration questions is for statistical reporting and evaluating recruitment and retention strategies. However, if a search committee has identified two equally qualified candidates, preference may be given to the representative workforce member who has self-identified.

Do representative workforce applicants have to meet job qualifications?

Yes, the University of Regina hires on merit. All applicants must meet the requirements outlined in the position advertisement.

Recommendations

After researching the self-declaration process of two school divisions and similar educational organizations this report will lay out some recommendations.

Communication is the lifeblood of any organization. Good communication does not just happen, it must be intentional. Hence, it is essential that school divisions communicate what their intentions are before they consider administering an Aboriginal self-declaration form. The communication will need to take place between the school division and potential Aboriginal candidates, between the school division and existing Aboriginal employees and the school division and all its employees. Finally, before a school division considers utilizing an Aboriginal self-declaration form it might want to identify the various stakeholders and what their vested interests are.

The first step that a school division might consider taking is to inquire with SHRC on what it means to become an equity employer. The author does not recommend this because of necessarily agreeing with all the positions that SHRC takes, but rather, in order to be able to be as comprehensive as possible, each school division should consider all options. If a school division desires to become an equity employer it would want to get SHRC to clearly set out the obligations of the school divisions and the obligations of SHRC. This would preclude misunderstanding and would not place the school division in a position of agreeing to onerous demands from SHRC.

Before administering the self-declaration form, the school division will want to clearly let the potential Aboriginal candidate know why self-declaring is beneficial to that Aboriginal candidate. The school division should also clarify what the data will be used for and communicate that to the person, as well. In order to clearly communicate what the data will be used for the school division will want to clarify for itself what the data is being collected for, and who will have access to the data. By using an outside company to administer and collect the data, this would provide more confidence to the Aboriginal person filling out the form. They might be less afraid to be open and honest if they knew that no one from the school division would be privy to the private data. This is consistent with the findings of GSCS who had Fast Consulting administer the forms and compile the data. If people are not concerned about the potential use of their personal information, they are more likely to agree to participate.

It is suggested that the person who will be asked to self-declare be given every assurance, which includes the assurance in writing, that the information will be confidential. Only those who use or store the data will have access to it. The school division might want to tell the person that the use of their name is optional, but that even if the name is given the data is still confidential.

It is the author's contention that school divisions consider administering an Aboriginal self-declaration form to every new employee at the time of orientation. The self-declaration form could even be a part of the orientation process. It is also recommended that a self-declaration form be administered to existing employees. By administering the self-declaration form to potential and existing employees a school division is getting the most accurate statistics possible.

It is important to note that the term Aboriginal is strictly a legal term. According to Canada's constitution the following section denotes Aboriginal people:

Section 35 (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Though all three groups are considered Aboriginal from a legal perspective, they are not individually accorded an equally accepted legal definition. Because there is no accepted definition of all three groups, it makes the area of self-declaration and, even more so, the proposed recommendation of verification of Aboriginal status a very difficult issue.

The following will serve as definitions for the three individual groups:

i. The *Indian Act* definition of a Status Indian:

6. (1) *Subject to section 7, a person is entitled to be registered if:*

that person was registered or entitled to be registered immediately prior to April 17, 1985;

(B) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a Band for the purposes of this Act;

C) the name of that person was omitted or deleted from the Indian Registrar, or from a Band list prior to September 4, 1951 under subparagraph 12 (1) (a) (iv), paragraph 12 (1) (b) or subsection 12 (2) or under subparagraph 12 (1) (2) (iii) pursuant to an order made under subsection 109 (2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(D) the name of that person was omitted or deleted from the Indian Registrar, or from a Band list prior to September 4, 1951, under subparagraph 12 (1) (a) (iii) pursuant to an order made under subsection 109 (1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;





(E) the name of that person was omitted or deleted from the Indian Registrar, or from a Band list prior to September 4, 1951;

(F) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

6 (2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

- ii. According to the Métis National Council (2002), “Métis means a person who self identifies as Métis, is of historic Métis ancestry, is distinct from other Aboriginal peoples and is accepted by the Métis Nation.”
- iii. Inuit means an Aboriginal people in Northern Canada who live above the tree line in the Northwest Territories, Northern Quebec and Labrador. The word essentially means “people” in the Inuit language.

Even though the definition for Status Indians is long and convoluted, it is still a legally accepted definition and thus they are the only Aboriginal group that can produce a card (a status card) that is recognized by the legal community and the government. The other two groups are more difficult to verify. For the Métis, a Métis card could serve as verification but there is no guarantee that an individual can access one let alone has one to produce. For the Inuit, there exists even less verifiable evidence. Finally, Métis can self-identify and that is permissible, the Inuit can possibly self-identify and that can also be permissible. For those claiming to be Status Indians this cannot be done through the process of self-declaration. It is only through recognition by the Indian Act that one is a Status Indian – not by claiming to be one because that is how that person self-identifies.

Aboriginal Self-Declaration Form

Please respond to the questions below as they relate to you.

1. Aboriginal Person (Métis)

Do you have a valid Métis card? Y N

If yes, would you be willing to provide it? Y N

If no, on what basis do you self-identify as being Métis? Please explain below.

2. Aboriginal Person (Indian)

Do you have a valid Indian Status card? Y N

If yes, would you be willing to provide it? Y N

If no, on what basis do you self-identify as being Métis? Please explain below.

4. Aboriginal Person (Inuit). Please explain below.





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