Discrimination in Employment on the Basis of Nationality or Place of Origin

Promoting and protecting individual dignity and equal rights - that's the goal of The Saskatchewan Human Rights Code. It's the job of the Saskatchewan Human Rights Commission to discourage and eliminate discrimination against everyone under provincial jurisdiction.

Under sections 16 and 19 of the Code, discrimination is prohibited in employment with regard to job application forms, job interviews, and recruitment advertisements related to employment. This guide can help employers and human resource professionals determine which questions are okay to ask prospective employees and which aren't. Although the list which follows is not exhaustive, it covers most questions. Call either the Regina or Saskatoon office for more information.

Citizenship and Employment

Most employers know they can't refuse to hire someone because of their ancestry, but many don't know that The Saskatchewan Human Rights Code also stops employers from asking certain questions on application forms or in interviews which might allow them to eliminate candidates based on nationality or place of origin. After all, these questions won't help employers find the best candidates because they are not relevant to the job.

During the hiring process (recruitment advertisements, job application forms, and job interviews), potential employers are entitled to ask applicants if they are legally entitled to work in Canada but not about their specific citizenship status or where they were born. To be “legally entitled to work in Canada” you must be a citizen, permanent resident, or hold a valid work permit or visa. Asking this question ensures the potential employer that the applicant is not applying for work illegally. A person must be legally entitled to work in Canada so the employer can make required deductions of income tax, employment insurance, Canadian Pension Plan or other required deductions.

DEFINITIONS - the following are immigration and employment terms used in Canada:

**Canadian citizenship**: is usually obtained by birth in Canada or birth abroad when at least one parent is Canadian. Citizenship can also be obtained by the process of naturalization.

**Naturalization**: refers to when a person acquires citizenship different from their citizenship at birth. To naturalize in Canada, you must be a permanent resident and have lived in Canada for at least three years of the past four years before applying for citizenship.

Naturalization can lead to “dual citizenship,” as long as the applicant’s country of origin allows for this, because Canada does not require individuals to give up their citizenship status in their country of origin.

**Permanent resident**: formerly known as a “landed immigrant,” this term refers to someone who is not a Canadian citizen but has been granted permission to live and work in Canada without a time limit on their stay. A permanent resident must live in Canada for 730 days out of every five years in order to maintain their permanent residency status. In the past, a permanent resident had to live two years in a row out of a five-year period. Now, the 730 days can be accumulated in any manner during the five-year period and need not be consecutive.

A permanent resident has many of the same rights and responsibilities as a Canadian citizen but cannot vote in Canadian elections, run for elected office, hold a Canadian passport, or serve on a jury.
Inquiries before hiring:
During the hiring process, potential employers cannot ask questions related to:

- Birthplace
- Nationality of ancestors, spouse or other relatives
- Canadian citizenship
- Permanent resident status
- Naturalization
- Requests for proof of Canadian citizenship, or a Social Insurance Number (SIN) which may contain information about an applicant’s place of origin or citizenship status
- “Canadian experience” for a particular job which is indirect preferential treatment based on nationality or place of origin
- Membership in organizations which are identified by a prohibited ground of discrimination, such as an Anglo-Canadian organization
- The name and location of schools the applicant attended
- The candidate’s mother-tongue
- Where or how a person learned another language
- The candidate’s religion.

These questions are discriminatory based on nationality and/or place of origin, and/or religion.

Applying for Federal or Provincial Government Jobs
- The Government of Canada can give preference to Canadian citizens in order to enhance the meaning of citizenship as a unifying symbol for Canadians and to encourage permanent residents to naturalize.
- The Government of Saskatchewan does not have a citizenship preference for provincial jobs and merely asks if applicants are legally entitled to work in Canada.

Employment Agencies
Employment agencies are subject to the Code, as well. If they screen someone out on the basis of nationality or place of origin, they could have a human rights complaint brought against them. That’s also true if they ask questions that are prohibited during the hiring process.

The Complaint Process
If you think someone has discriminated against you, you may make a complaint to the Commission. Our fact sheet, “How to File a Complaint,” describes the complaint process. Please note that you must make a complaint within one year of becoming aware of the discrimination.

You can download The Saskatchewan Human Rights Code and Regulations from our Web site.