



METALLIC LAW

BARRISTERS & SOLICITORS

Indigenous Identity Fraud

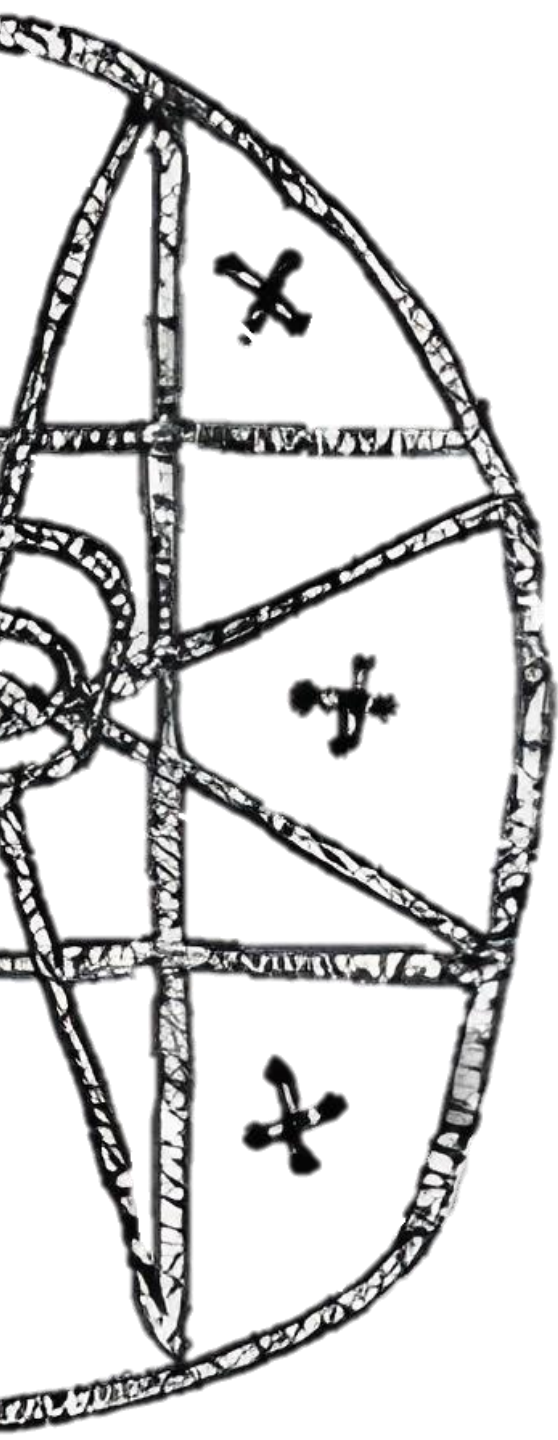
Intervening to Enact Meaningful Inclusion

Candice S. Metallic

*Inclusion Works, Beyond the
Checkmark: A New Era in Indigenous
Inclusion*

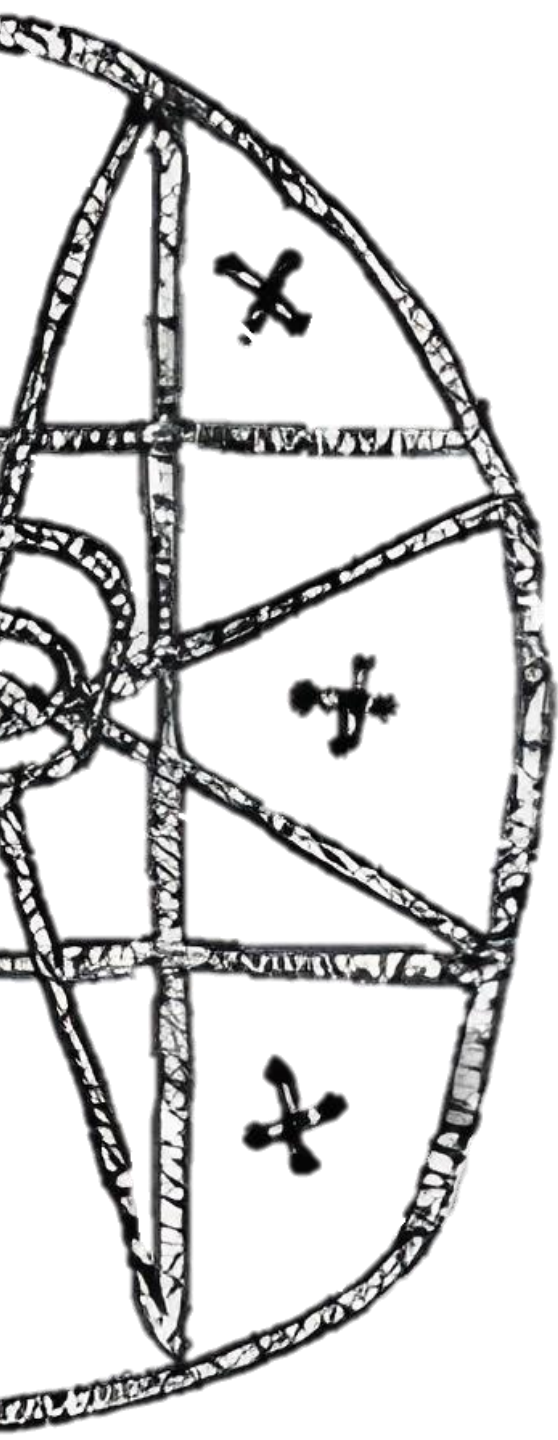
October 9, 2024

Outline



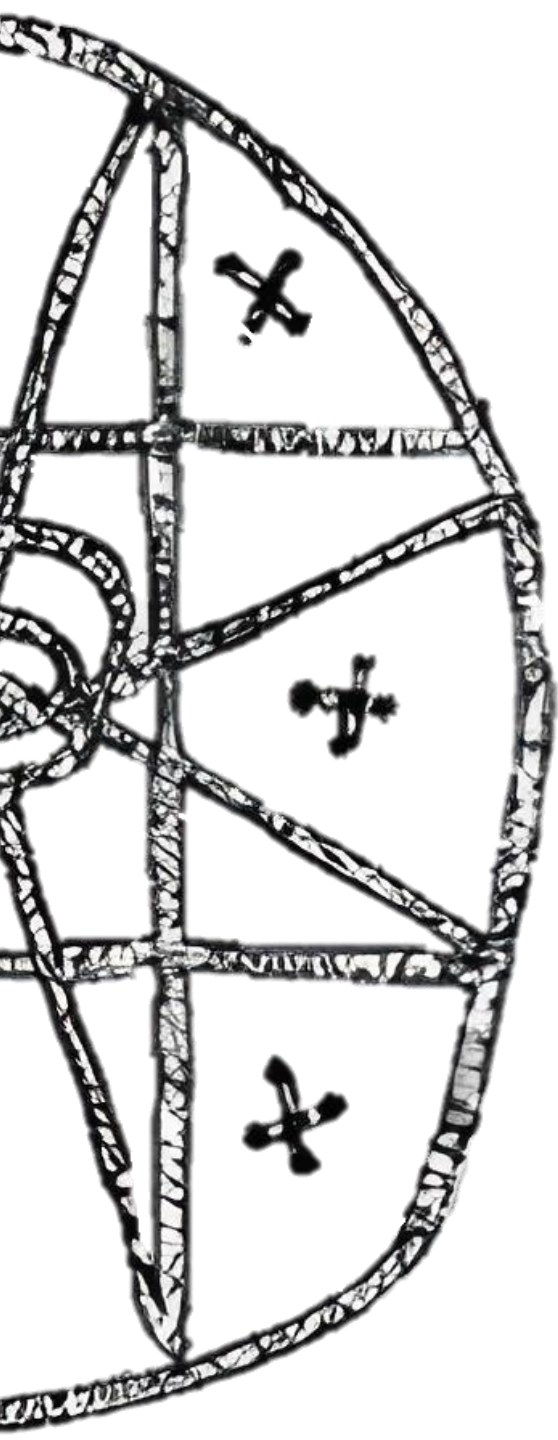
- + What is Indigenous identity fraud?
- + The pitfalls of self-identification
- + Action and inaction on Indigenous identity fraud
- + Strategies and wise practices
- + Legal considerations
- + Discussion

What is Indigenous Identity Fraud?

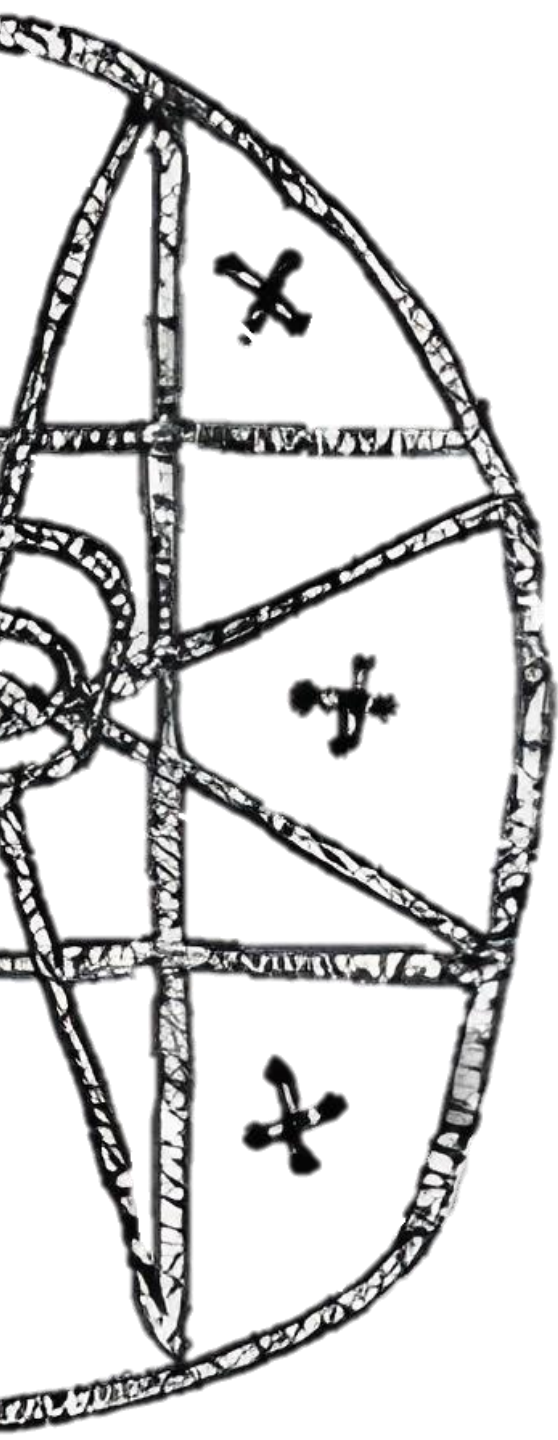


- ✦ Falsely claiming to be Indigenous, often to secure a benefit
 - ✦ Benefits can be tangible or intangible
- ✦ Harms actual Indigenous people
 - ✦ Takes away opportunities
 - ✦ Attempts to supplant their voices and perspectives
 - ✦ No accountability and minimizes colonization harms, historic injustices, inter-generational trauma
 - ✦ May cause litigation harms
 - ✦ Undermines reconciliation efforts which ultimate objective is to honour respect, integrate Indigenous values, perspectives, ways of knowing
- ✦ Not a new phenomenon
 - ✦ Roots in early days of settler colonization of Turtle Island
 - ✦ Works in concert with national (settler colonial) mythology
 - ✦ Has also been called “Kin-less Indian” (Joanne Barker, Lenape scholar), “settler nativism” (Tuck & Yang), “self-indigenization” (TallBear), “pretendianism,” “race-shifting,” and “the Indian-grandmother complex” (Deloria)

Legal Considerations: Fraud

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- ✦ Criminal fraud:
 - ✦ Offence of fraud: *Criminal Code*, RSC 1985, c C-46, s 380
 - ✦ Elements:
 - ✦ dishonest act/statement
 - ✦ proof of detriment to the economic interests of the complainant in connection with the dishonest act/statement
 - ✦ proof of subjective knowledge of the prohibited act on the part of the accused that causes actual deprivation
 - ✦ Offences related to forgery: *Criminal Code*, RSC 1985, c C-46, ss 367-378
 - ✦ Specific to birth, baptismal, marriage, death registries: s 377
 - ✦ Civil fraud
 - ✦ Elements:
 - ✦ a false representation made by the defendant
 - ✦ some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness)
 - ✦ the false representation caused the plaintiff to act
 - ✦ the plaintiff's actions resulted in a loss
 - ✦ Regulatory complaints – Law Societies

The Pitfalls of Self-Identification



- ✦ Open to abuse
- ✦ Must balance attempts for inclusion with the need for *meaningful* inclusion
- ✦ Indigenous identity as citizenship, kinship, relationship
 - ✦ Who claims a person, rather than who the person claims
 - ✦ *“Identity is based in life experiences, talking with Elders, and spending time with people who can convey teachings about where we come from, why we are here, and where we are going. Ceremony and storytelling help us learn about what has come before and what we need to be. This is the essence of knowing who we are as Indigenous peoples.”*

(The Honourable Murray Sinclair, 2022)

Action and Inaction on Indigenous Identity Fraud

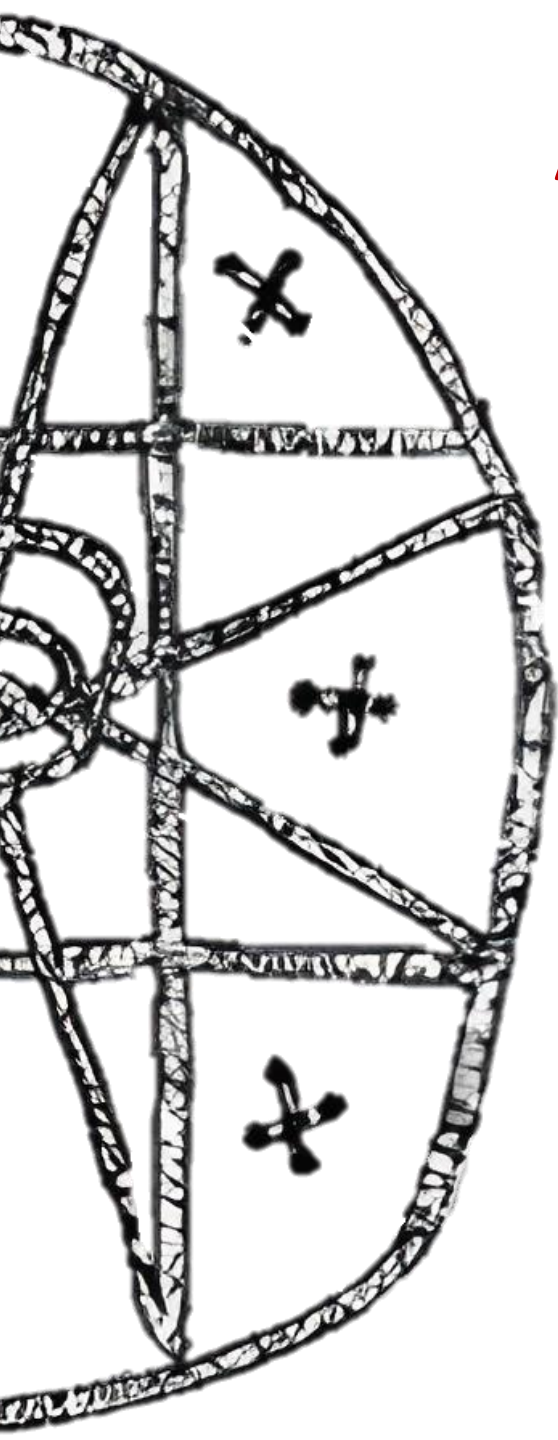
+ Post-secondary institutions

+ University of Saskatchewan:

deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy on Indigenous Citizenship/Membership (2022)

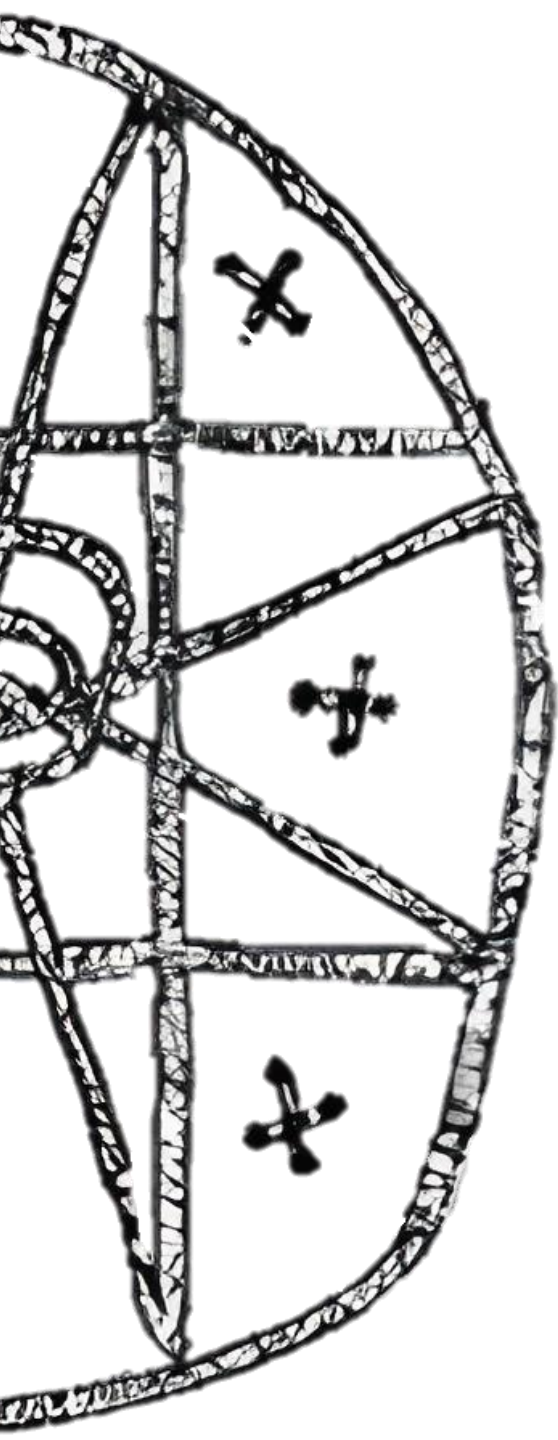
- + Applies to incoming assertions of Indigenous membership
- + Verification may also be required to pre-existing assertions where there is reason to question the authenticity of the claim
- + Requires documentation as determined and defined by Indigenous governments and conveyed to the Standing Committee
 - + Specific forms listed for Inuit, Métis, First Nations, and Indigenous peoples from other countries
 - + Where an Indigenous community does not participate in colonial documentation, an affidavit and two or more references may be submitted instead

Action and Inaction on Indigenous Identity Fraud



- ✦ Public Sector
 - ✦ Government of Canada
 - Affirmation of Indigenous Identity Form
 - ✦ Based on self-identification; does not require verification
 - ✦ False or misleading claims may lead to an investigation
 - Procurement Strategy for Indigenous Businesses
 - ✦ Relies on Government of Canada's Indigenous Business Directory and Modern Treaty Business Directories/Lists
 - ✦ Open engagement on Transformative Indigenous Procurement Strategy
 - ✦ Private Sector
 - ✦ Canadian Council for Indigenous Business
 - Certified Indigenous Business
 - ✦ Requires proof of Indigenous heritage of business owner(s), with documentation requirements.
 - ✦ Online directory available to public

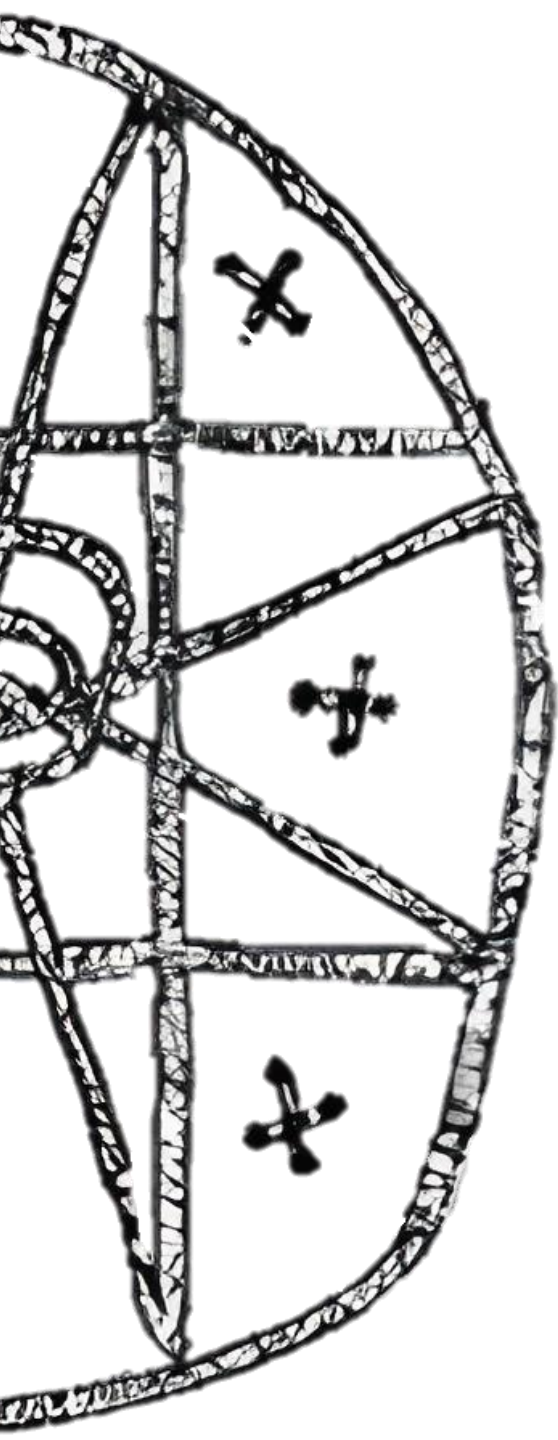
Strategies & Wise Practices



- ✦ Commit to authenticity, beware of “family lore”
- ✦ Build relationships with local Indigenous communities
- ✦ Determine what your goals are in your Indigenous inclusion efforts and tailor your process accordingly
- ✦ Create a vetting process
 - ✦ Empower Indigenous staff and/or seek external guidance
 - ✦ Requires appropriate compensation
 - ✦ Notify applicants that validation procedure will be followed, including contacting the Nation they claim
 - ✦ Validate claims through the Nation they claim
 - ✦ Create a list of legitimate and illegitimate organizations in your area
 - ✦ Clearly outline consequences for fraudulent claims
 - ✦ Provide training
- ✦ Be open to feedback from Indigenous staff and community members

See: FNUniv & NIULSA, *What Was Heard Report* (2022)

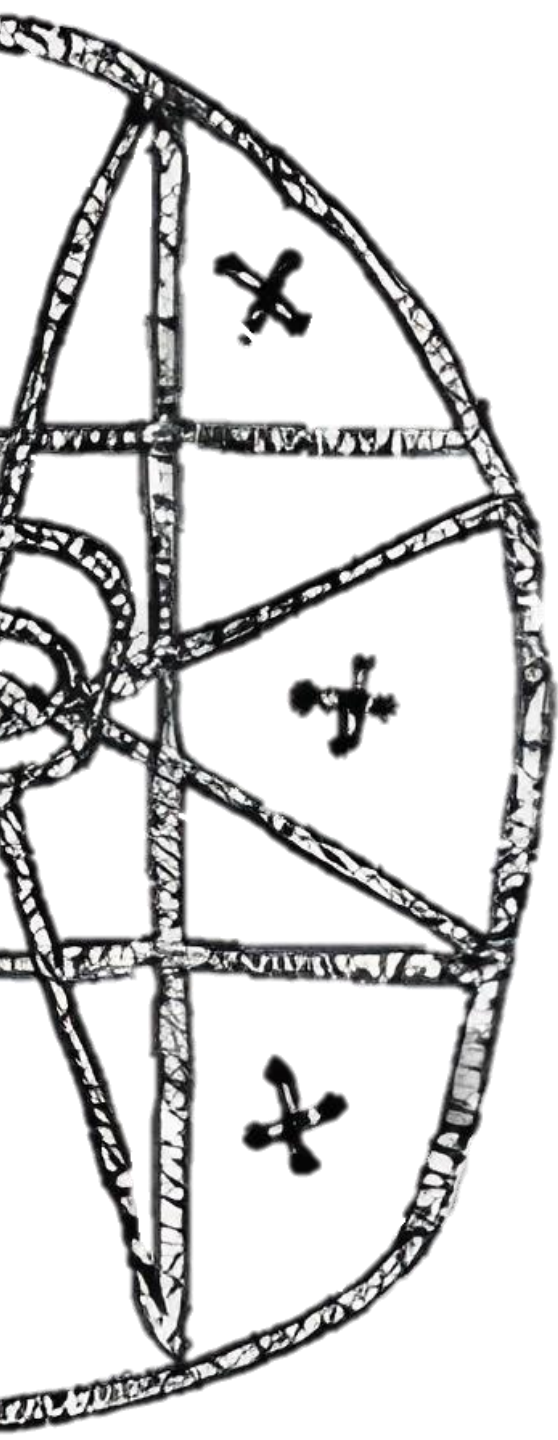
Strategies & Wise Practices



- + Some themes to explore:
 - + *Experience with Indigenous communities*
 - + *What is your experience working with Indigenous peoples and communities as it relates to this position (or as it informs your research, teaching, and relationship building)?*
 - + *Relationship to Indigenous Community*
 - + *Describe how your research and work experience demonstrates your commitment to and responsibility to your community, nation.*
 - + *Lived Experience*
 - + *How has being Indigenous impacted the research/work you have undertaken?*

**Queen's University, Hiring of Indigenous Specific Positions - Interim Policy*

Legal Considerations: Human Rights



- ✦ Special programs under human rights legislation
 - ✦ Federal: *Canadian Human Rights Act*, RSC 1985, c H-6, s 16
 - ✦ BC: *Human Rights Code*, RSBC 1996, c 210, s 42
- ✦ Guidance from the Canadian Human Rights Commission:
 - ✦ Organizations do not need to prove Indigenous peoples are disadvantaged within their organization to apply a preferential employment policy -- an Indigenous employment preferences policy automatically meets most of the criteria for a special measure, as it is widely understood that Indigenous peoples face ongoing systemic discrimination.
 - ✦ If an Indigenous employment preferences policy results in the exclusion of other Indigenous peoples, the organization responsible for the policy must be able to demonstrate that the eligibility requirements are justified by the policy's objective. In these situations, it is essential that the organization carefully design the eligibility requirements so as to not unnecessarily exclude people from the target group on the basis of a ground of discrimination.



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Discussion / Questions



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Wela'lioq. Huy tseep q'u. Thank you.

Sources

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- † First Nations University of Canada & National Indigenous University Senior Leaders' Association, *Indigenous Voices on Indigenous Identity: What Was Heard Report* (2022) <www.fnuniv.ca/wp-content/uploads/Indigenous-Voices-on-Indigenous-Identity_National-Indigenous-Identity-Forum_Report_March-22_June-22-FINAL.pdf>.
- † Darryl Leroux, "Proximity, Family Lore, and False Claims to an Algonquin Identity" (2024) 8:4 *Genealogy* 125 <<https://www.mdpi.com/2313-5778/8/4/125>>.
- † Kim TallBear, "Self-indigenization, Genocide, and Native Resistance" (April 2023), online: *Unsettle Substack* <<https://kimtallbear.substack.com/p/self-indigenization-genocide-and>> .
- † Eve Tuck & K Wayne Yang, "Decolonization is Not a Metaphor" (2012) 1:1 *Decolonization: Indigeneity, Education & Society* 1 <<https://jps.library.utoronto.ca/index.php/des/article/view/18630>>
- † University of Saskatchewan, *deybwewin | taapwaywin | tapwewin: Indigenous Truth Policy on Indigenous Citizenship/Membership*, (2022) <<https://indigenous.usask.ca/indigenous-initiatives/deybwewin-taapwaywin-tapwewin.php>>