

**INTERPRETATION
BULLETIN
No.**

ESKIB-2014/01

DATE: OCTOBER 15, 2014

SUBJECT

**LETTERS OF AUTHORIZATION
ON FIRST NATIONS RESERVES**

REFERENCE

**SECTION 65, 72.1 OF *THE ELECTION ACT, 1996*
SECTION 2.1, 2.2 AND APPENDIX, PART 1, TABLE 1 OF
*THE ELECTION ACT REGULATIONS (E-6.01 REG 1)***

This bulletin relates to a review by the Chief Electoral Officer concerning certain administrative provisions introduced by Elections Saskatchewan in advance of the 2011 general election. Those provisions permitted a First Nations Chief, or the Chief's designate, to use a Letter of Authorization form (E-360) to verify the residency of a person (or persons) living on the reserve administered by that Chief.

The Letter of Authorization was introduced to provide a standard approach on First Nations reserves for establishing one form of original identification indicating a voter's name as well as that voter's address to meet one of two information requirements that are set out in section 72.1 (2)(b) of the Act. The voter also needed to produce another acceptable identification document establishing their name in order to be issued a ballot.

The Letter of Authorization worked in a similar manner to the Attestation of Residence form, used to provide proof-of-residency by authorities responsible for a student or seniors' residence, and the Letter of Stay form, used by authorities responsible for a homeless shelter, soup kitchen or long-term care health facility to establish documented evidence of residency at such facilities. In all cases the voter was required to provide a second piece of acceptable identification in order to be issued a ballot.

It has been recognized by the Canadian judiciary that residents of First Nations living on reserves may have difficulty in producing identification documents that indicate their address of residence as well as their name, making such residents particularly vulnerable to disenfranchisement as a result of voter identification requirements.¹ Similar difficulties are experienced by post-secondary students living in dormitories, seniors

¹ *Henry v Canada (Attorney General)*, 2010 BCSC 610, aff'd 2014 BCCA 30, leave to appeal dismissed [2014] SCCA No 123.

living in special long-term care and assisted living arrangements, and homeless persons who do not have an established place of residence. Legal and administrative provisions must be made for citizens in these groups so they are able to exercise their constitutionally guaranteed “right to vote in an election of members of the House of Commons or of a legislative assembly.”² At the same time, the integrity of the electoral process must be upheld and opportunities for voting fraud must be minimized.³

While Attestation of Residence and Letter of Stay forms are specifically referenced in *The Election Act Regulations* (E-6.01 Reg 1, Appendix, Part 1, Table 1, 2-2 and 2-15), there is no reference to the Letter of Authorization form. However, in *The Election Act Regulations*, in the Appendix, Part 1, Table 1, under the heading ‘Valid Original Identification Documents’, the final provision prescribes as valid:

1-30 any other piece of identification issued by the Government of Canada, the Government of Saskatchewan, a Saskatchewan municipality, a school division or an Indian band in Saskatchewan, or an agency of one of these entities bearing the individual’s name. [emphasis added]

The Chief Electoral Officer has considered possible concerns arising from the fact that the Letter of Authorization allows for an “attached list of persons” to all have their address of residence verified with a single signed form and, in particular, whether in some cases the attached list might include all band members, regardless of their age, citizenship or actual residence on the reserve.

Consistent with the Attestation of Residence and Letter of Stay forms where the signature of a person in authority must sign the form, the Letter of Authorization form requires the Chief or Chief’s designate only to verify that the named person, or attached list of named persons, are ordinarily resident on the reserve. It should also be noted that the rules of ordinary residence specifically allow temporary absences, within the provisions of section 18 (3) and (4) of the Act:

- (3) An individual’s ordinary residence is the place in which the individual has his or her established habitation and to which he or she intends to return.
- (4) An individual does not lose his or her ordinary residence by reason of temporary absence from his or her established habitation.

It remains the duty of each Enumerator to confirm eligibility (citizenship, age and residency) before registering any voter, in accordance with instructions issued by the Chief Electoral Officer (section 22(4)). It remains the duty of the Deputy Returning Officer for each polling station to confirm the eligibility of anyone

² Per section 3 of the *Canadian Charter of Rights and Freedoms*

³ *Opitz v Wrzesnewskyi*, 2012 SCC 55 at para 38.

who is required to register before voting, including through the making of a voter's declaration (sections 65(3) and 68). It remains the right of a Candidate or a Candidate's Representative to request a Deputy Returning Officer to require any voter whose name is on the voter's list to make a voter's declaration verifying their identity and eligibility (section 67(2)). Furthermore, in any case where a Candidate or a Candidate's Representative suspects impersonation, they may object to a specific voter being given a ballot, and the Poll Clerk must record the pertinent information in the poll book (section 82 (2)).

The Chief Electoral Officer has determined that the administrative provisions surrounding the use of the Letters of Authorization on First Nations reserves provide a workable mechanism that establishes a legally prescribed means of voter identification and that such provisions should and will continue to be permitted. The existing practice is consistent with what is used in other Canadian electoral jurisdictions, contains sufficient safeguards to ensure levels of procedural integrity expected in the fair conduct of elections, and enables eligible citizens who would otherwise be vulnerable to disenfranchisement to exercise their constitutionally guaranteed right to vote. This interpretation of the Act is consistent with the well-accepted judicial approach to the interpretation of electoral legislation.⁴

A handwritten signature in blue ink that reads 'Michael D. Boda'.

MICHAEL D. BODA, D.PHIL., PH.D.
CHIEF ELECTORAL OFFICER
PROVINCE OF SASKATCHEWAN

ATTACHMENT: LETTER OF AUTHORIZATION FORM (E-360)

⁴ *Ibid* at para 37 citing *Haig v Canada*, [1993] 2 SCR 995.



Letter of Authorization

E-360
(Oct. 2011)

For voters residing on a First Nations reserve

Issued by:

_____ (Name of person in authority)
 _____ (Position of above named person)
 _____ (Address)
 _____ (telephone number) _____ (Band Number)

_____ (Signature of above named person) _____ (Date)

In my capacity as the Chief (or Chief's designate), I verify that:

the following person

_____ (First name and last name of voter)

or

the attached list of persons

are ordinarily resident at:

(Full name of Reserve and complete address)

Any person who wilfully applies, except as authorized by *The Election Act, 1996*, to be included in a list of voters for a polling division in which the person is not ordinarily resident commits an offence under *The Election Act, 1996*, subsection 202(1).

NOTE to the voter: You may use this document, once completed, as proof of identity and ordinary residence for the purpose of registering on the Saskatchewan Voters' List and voting.

However, please note that you will still be required to provide a second document as per *The Elections Act Amendment Regulations, 2011, Table 1* showing your name to register and vote on polling day.

**** THIS FORM TO BE COMPLETED IN ADVANCE OF ATTENDANCE AT POLLING STATION**