



Yukon  
Information  
and Privacy  
Commissioner

## ***Elections Act***

**Consultation under paragraph 5.01 (1)(a)(i)**

**Information and Privacy  
Commissioner's Comments**

## Authority

Under subparagraph 5.01 (1)(a)(i) of the *Elections Act*, the Chief Electoral Officer is required to invite submissions from the Information and Privacy Commissioner in respect of the following.

*... the kinds of identification that electors should be able to use for the purposes of this Act.*

On March 3, 2016, I received a letter from the Chief Electoral Officer inviting my submissions.

## Law

The relevant law is the *Elections Act*, RSY 2002, c.63; amended by SY 2004, c.9; SY 2009, c.14; SY 2012, c.14; SY 2015, c.11. The relevant provisions of the *Elections Act* follow.

### *Definitions*

*“authorized identification” of a person means any document, or any combination of documents, in respect of the person that is described in the list published by the chief electoral officer under section 5.01;*

*“elector” means any person qualified to vote at an election under this Act;*

### *Qualification as an elector*

**3** *Except as otherwise provided in this Act, every person who is or becomes resident in a polling division between the issue of the writ and the close of polls on polling day and who*

*(a) on polling day has reached the age of 18 years;*

*(b) on polling day is a Canadian citizen;*

*(c) on polling day has been resident in the Yukon for the previous 12 months; and*

*(d) at a by-election only, continues to be resident in the electoral district until polling day, is qualified as an elector to vote in that polling division.*

*Right to vote at a polling station*

**4** Every person may vote at a polling station in the person's polling division if

(a) qualified as an elector under this Act; and

(b) qualified to be included on the list of electors in the polling division.

*Elector identification*

**5.01(1)** The chief electoral officer shall

(a) within six months after the day on which this section comes into force

(i) invite submissions from the public and from each registered political party, each member of the Legislative Assembly who is not a member of any party caucus, the Information and Privacy Commissioner and any other person or group that the chief electoral officer considers relevant, as to the **kinds of identification that electors should be able to use for the purposes of this Act**, and [My emphasis]

(ii) having regard to the submissions and with the prior approval of the Members' Services Board, publish on the internet website of the office of the chief electoral officer a list of the kinds of identification that an elector may or must use; and

(b) within six months after the return to the writ for each general election, review and update the list in the manner set out in paragraph (a).

(2) The list published under subsection (1) may

(a) include any document of any kind;

(b) categorize documents in any manner; and

(c) treat any combination of documents as equivalent to any other document or combination

(3) The chief electoral officer may institute alternative means by which electors who lack all of the kinds of identification listed in accordance with subsection (1) may identify themselves for the purposes of this Act.

(4) If the chief electoral officer institutes alternative means of identification under subsection (3), each provision of this Act that refers to authorized identification is to be read as referring also to those alternative means and applies subject to any necessary modifications.

## *Residence*

**6 (1)** *“Residence” and similar expressions used in relation to a person, means the person’s true, fixed, permanent home or habitation to which, whenever absent, the person has the intention of returning.*

## *Temporary residence*

**8 (1)** *At a general election, an elector who would otherwise be resident in a particular polling division may choose to be considered instead a resident of another polling division if the person*

*(a) has, since the date of the issue of the writ, been temporarily living in the other polling division while employed at their ordinary occupation or attending an educational institution; or*

*(b) began living in a hospital in the other polling division after the 24th day of the election period.*

## **REGISTER AND LISTS OF ELECTORS**

### *Interpretation*

**49.01 (1)** *In this Part*

*“information” includes personal information;*

*“list of electors” at any time means*

*(a) in respect of a polling division, the most recent version of a printed or electronic document that is intended to be a complete list of qualified electors for the polling division, and*

*(b) in respect of an electoral district, the set of all documents described in paragraph (a) in respect of polling divisions in the electoral district;*

*“personal information” and “public body” have the same meanings as in the Access to Information and Protection of Privacy Act;*

### *Maintenance of register*

**49.02 (1)** *The chief electoral officer shall establish and maintain a register of electors in accordance with this Part.*

*(2) The chief electoral officer shall take reasonable measures to ensure that the register includes information in respect of a person only if*

*(a) the person has reached the age of 16 years;*

*(b) it is reasonable to expect that the person will (or would, if they were of the age specified in paragraph 3(a)) be an elector when a list of electors for a general election is next prepared; and*

*(c) the person is not excluded under paragraph 49.03(1)(b).*

*(3) The chief electoral officer may, before including a person in the register, require the person to provide authorized identification.*

*(4) The register must contain, in respect of each person it includes, no personal information other than*

*(a) the person's surname and given names;*

*(b) their date of birth;*

*(c) their gender;*

*(d) their residential address and, if different, their mailing address;*

*(e) if the chief electoral officer assigns identifiers under subsection (5), the identifier assigned to them;*

#### **VOTING BY SPECIAL BALLOT**

##### **Special ballot**

**97 (1)** *A special ballot is a ballot paper, in prescribed form, on which an elector may write the name of a candidate or of a registered political party.*

*(2) A special ballot that is provided to an elector must be accompanied by envelopes in the prescribed forms and instructions approved by the chief electoral officer that describe how to use the special ballot.*

##### **Absent electors**

**98 (1)** *An elector who is qualified to vote at an election in an electoral district, but who reasonably expects that they will be able to vote neither at an advance poll nor at a polling station on polling day, may vote by special ballot in accordance with this section.*

*(2) To obtain a special ballot under this section, an elector must apply*

*(a) to the returning officer for the electoral district, within the first 31 days of the election period; or*

*(b) to the chief electoral officer, at any time that is*

*(i) after the fourth anniversary of the most recent general election before that time, and*

*(ii) not in an election period.*

*(3) An application under subsection (2) must be made in person, in writing, by telephone, by email or in a manner that is prescribed by regulation.*

*(4) When the returning officer for an elector district or the chief electoral officer receives an application under subsection (2) for a special ballot from an elector who is eligible to vote in the electoral district and who has not already voted, they shall as soon as practicable provide the elector with a special ballot.*

*(5) An elector who applies for a special ballot otherwise than in person must*

*(a) apply in reasonable time to allow it to be delivered to them and returned to the returning officer on or before polling day; or*

*(b) arrange, at their own expense, for it to be delivered to them and returned to the returning officer.*

*(6) If an elector applies under this section within the first 29 days of the election period, and indicates in the application that they are housebound, the returning officer may cause a special ballot to be delivered in person to the elector.*

#### *Return of special ballot*

**104** *(1) An elector who has received a special ballot and wishes it to be counted must, after completing the special ballot*

*(a) during the election period and no later than the close of polls on polling day, return it to the returning officer for the elector's electoral district; and*

*(b) include with the completed special ballot*

*(i) authorized identification of the elector, and*

*(ii) the elector's declaration of qualification, if any, under section 99.02.*

### *Inter-district voting*

*105.02 (1) An elector who is qualified to vote in a particular electoral district at a general election may vote under this section if the elector*

*(a) would be eligible to vote by special ballot under section 105;*

*(b) reasonably expects that they will be unable to obtain a special ballot from the returning officer for the particular electoral district and return it to the returning officer;*

*(c) applies within the first 24 days of the election period, in person and during ordinary office hours, at the returning office for another electoral district or at an office of the chief electoral officer that is identified for this purpose; and*

*(d) presents authorized identification.*

The definition of personal information in the *Access to Information and Protection of Privacy Act* (ATIPP Act) is also relevant. Section 3 of the ATIPP Act defines “personal information” as “recorded information about an identifiable individual.”

## **Issue**

The focus of my submission is on answering the following question.

*What kinds of identification should electors be able to use for the purposes of the Elections Act?*

## **Voting in an Election**

In order to vote in a polling division in Yukon during an election, the *Elections Act* requires a voter to be a “qualified elector.” Section 3 of the *Elections Act* identifies that to be a qualified elector a person must, between the issue of the writ and close of polls on polling day, be or become resident in a polling division of Yukon, and on polling day,

1. be 18 years old,
2. be a Canadian citizen,
3. have been resident in Yukon for the previous 12 months

At a by-election only, a person must continue to be resident in the electoral district until polling day.

There are a number of ways an elector may vote in an election under the *Elections Act*. They are as follows.

1. at a polling station provided they are both qualified as an elector and included on the list of electors (see below) in the polling division, or if not on the list and they provide authorized identification, or if they cannot provide authorized identification through a vouching elector or by signing a declaration;<sup>1</sup>
2. by special ballot if after receiving the ballot, they return it to the returning officer for their electoral district along with authorized identification and a completed declaration of qualification; and<sup>2</sup>
3. through inter-district voting if eligible to vote by special ballot, expect not to be able to return a special ballot in time, applies within the first 24 days of an election period in person at the returning office or other office of the Chief Electoral Officer as identified by her, and presents authorized identification.<sup>3</sup>

### List of Electors

A list of electors is defined in the *Elections Act* as:

(a) in respect of a polling division, the most recent version of a printed or electronic document that is intended to be a complete list of the qualified electors for the polling division; and

(b) in respect of an electoral district, the set of all documents described in (a) in respect of polling divisions in the electoral district.<sup>4</sup>

The Chief Electoral Officer is required to create a register of electors that will be used to generate the lists.<sup>5</sup>

To be in the register an elector must be minimum 16 years old and is expected to be an elector when the list is prepared for the next general election.<sup>6</sup> The register must contain the following personal information for each person in the register:

- surname and given names,
- date of birth,
- gender, and
- residential address and mailing address if different.<sup>7</sup>

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<sup>1</sup> *Elections Act*, section 4.

<sup>2</sup> *Ibid.*, subsection 104(1).

<sup>3</sup> *Ibid.*, subsection 105.02(1).

<sup>4</sup> *Ibid.*, paragraphs 49.01(1)(a) and (b).

<sup>5</sup> *Ibid.*, subsection 49.02(1).

<sup>6</sup> *Ibid.*, subsection 49.02(2).

<sup>7</sup> *Ibid.*, subsection 49.02(4).

The Chief Electoral Officer may require the person to provide authorized identification.<sup>8</sup>

## Authentication Procedure

In speaking with the Chief Electoral Officer, I was informed that identification of an elector will generally only be requested in two circumstances.

The first is when an elector arrives at a polling station to vote and is not on the electors list. When this occurs, an identification document is requested by an elections officer or scrutineer (Elections Staff) who views the identification document for the purposes of authenticating the name and address of the elector.<sup>9</sup> A photocopy of the identification document is not made by Elections Staff. Scrutineers are prohibited by paragraph 217 (4)(b) from recording personal information from an identity document.

The second is when the elector votes by special ballot. In this circumstance, when returning the special ballot, an elector is required to include a photocopy of his or her identification document to authenticate his or her name and address.

In addition to the foregoing, there are two additional circumstances in the *Elections Act* where identification documents may be used to authenticate an elector. When the elector votes using the inter-district voting procedure, he or she will be required to provide a photocopy of authorized identification to send in with the special ballot. In addition, the Chief Electoral Officer will view an identification document when exercising her discretion to require an elector to provide authorized identification for the purposes of creating or managing the register.

## Preliminary List of Voting Day Identification Requirements

Attached to the letter received from the Chief Electoral Officer is Appendix 3. Appendix 3 contains a list of identification documents proposed by the Chief Electoral Officer as the kinds of identification that electors should be able to use, when required, for voting. In her letter, she states, *inter alia*, the following about the proposed identification documents.

*I am seeking to avoid disenfranchisement of electors by creating a comprehensive list of identification to meet the needs of electors across Yukon.*

*The requirements for “swearing in” electors in conjunction with voting in the 2011 General Election were thought to impose an administrative barrier in some cases.*

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<sup>8</sup> *Ibid.*, subsection 49.02(3).

<sup>9</sup> This will not occur if the elector is voting by appointing a vouching elector or signs a declaration because he or she does not have proper identification.

*Recent amendments to the Elections Act make this process more accessible for electors by:*

- *increasing the types of identification that will be accepted for proof of identity and residency*
- *allowing the use of identification with a current residential or mailing address*
- *seeking public input and additions into the list of acceptable identification documents*

## **Analysis**

There are competing rights at issue here that need to be considered and properly balanced in order to identify the kinds of identification documents an elector should be able to use, when required, to vote in an election.

The right to privacy has been considered by the Supreme Court of Canada as a quasi-constitutional right deserving of protection. In order for an elector to vote in an election, the *Elections Act* authorizes election officials to collect personal information for the implied purpose of ensuring the person who is voting is who they say they are and is eligible to vote in the electoral district in which they are voting. Because of the nature of the right to privacy, any collection, use and disclosure of personal information for the purpose of voting should be done in a privacy sensitive way notwithstanding that the personal information collected under the *Elections Act* is not subject to privacy law.

The Canadian Standards Association Model Code for Privacy is a Code that was developed to guide the creation of privacy laws in Canada. There are 10 principles in the Code. The fourth and fifth principles in the Code are of particular relevance to the question at hand. They are as follows.

### *4. Limiting Collection*

*Personal information should only be collected as necessary for the purposes that the organization has identified. This includes limiting the amount and type of information. The information should be collected by fair and lawful means.*

### *5. Limiting Use, Disclosure and Retention*

*An organization should not use personal information for new purposes, unless it has the consent of the individual, or as required by law. Personal data should only be retained as long as is necessary to fulfill the organization's stated purposes. An organization should develop specific guidelines and procedures governing the destruction of personal information.*

The right to participate in the democratic process is a constitutional right.<sup>10</sup> Any barriers to the exercise of this right by citizens due to lack of proper identification should not unnecessarily infringe on this right.

As indicated by the Chief Electoral Officer, identification from electors is only sought for the purpose of authenticating an individual's identity and residential address when they present at a polling station, when they return a special ballot, and when required by the Chief Electoral Officer in order to create or maintain the register.

### Voting at a polling station

When presenting at a polling station, Election Staff who receive the identification document only views the document and does not photocopy or otherwise record any information from the document. As a result of this practice, in my view, the correct balance between the competing rights of privacy and the right to vote in an election has been achieved. Therefore, with the exception of the Yukon Health Care Insurance Plan Card (Health Plan Card), I am satisfied that for the purposes of authenticating the name and address of an elector at a polling station that electors should be able to use the kinds of identification documents listed in Appendix 3 to vote in an election under the *Elections Act*.

Regarding the Health Plan Card, subsection 18 (1) of the *Health Information Privacy and Management Act* (HIPMA) prohibits the collection,<sup>11</sup> use or disclosure of an individual's Yukon public health insurance plan number (Health Plan Number) by a "person"<sup>12</sup> except for those purposes set out in subsection 18 (2). Authenticating the name and address of an elector to enable the elector to vote in an election does not appear among the exceptions listed in subsection 18 (2). Subsection 18 (3) of the HIPMA prohibits a person from *requesting production* of a Health Plan Card except as authorized in subsection 18 (4). Here again, authenticating the identity of an elector to enable the elector to vote in an election does not appear among the exceptions identified in subsection 18 (4). It is an offence under subparagraph 121 (1)(a)(iv) and (v) to violate the prohibitions contained in subsections 18 (1) and 18 (3) of the HIPMA. The HIPMA is not yet in force and as such the prohibitions contained in subsections 18 (1) and (3) of the HIPMA are not yet law. The HIPMA is expected to be brought into force in June of 2016.

The regulations to the HIPMA have not yet been finalized and it may be that the regulations will authorize the collection, use, and disclosure of a Health Plan Number or the ability to request production of a Health Plan Card by elections officials for the purposes of authenticating an

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<sup>10</sup> Section 3 of the Canadian Charter of Rights and Freedoms states that "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

<sup>11</sup> The HIPMA applies to information as opposed to records. As such, in my opinion, viewing the Health Plan Number would likely constitute a collection by the person viewing the Number.

<sup>12</sup> The definition of "person" in subsection 2 (1) of the HIPMA is non-exhaustive and in my opinion would likely include the Chief Electoral Officer and any person employed by or volunteering for Elections Yukon.

elector. Unless or until this occurs, the Health Plan Card should be removed from the kinds of identification documents an elector should be able to use to vote in an election.

### Voting by special ballot

The process of collecting photocopies of identification documents from electors through the special ballot process create implications to the privacy rights of electors that need to be considered and addressed to ensure these rights are not unnecessarily infringed upon.

Among the identification documents listed in Appendix 3 are documents containing highly sensitive information, such as banking and credit documents, social insurance numbers, and taxation documents. To ensure the privacy rights of electors who provide photocopies of highly sensitive identification documents to Elections Staff through the special ballot process are adequately protected, I recommend the following.

To ensure the limited collection principle is met, I recommend that electors be informed that only their name and current address is required from the identification document in order to submit their special ballot and that they should redact from the photocopy all personal information other than name and current address to avoid an over collection of personal information by Elections Yukon. I also recommend that for any photocopies received by Elections Yukon that contain unnecessary personal information, for those records that will be retained for any length of time, unnecessary personal information should be immediately redacted prior to retention. For those records that will not be retained but used immediately upon receipt to authenticate the information contained in the special ballot, following this use the photocopy be securely destroyed as soon as reasonably possible.

To ensure the limited use and disclosure principle is met, I recommend the photocopies be used only for the purpose of authenticating the elector's name and address and securely destroyed immediately following this use. I further recommend that until the photocopies are destroyed, the documents are properly secured from any unauthorized access.

Provided my forgoing recommendations are accepted and implemented, the Chief Electoral Officer will have, in respect of the collection of identification documents for the special ballot process, achieved the correct balance between the right to privacy and the right to vote in an election. With the exception of the Health Care Card for the reasons I previously noted, I am satisfied that for the purposes of authenticating the name and address of an elector submitting a special ballot to Yukon Elections, that electors should be able to use the kinds of identification documents listed in Appendix 3 to vote in an election under the *Elections Act*.

### Creating or Maintaining the Register

Given that the Chief Electoral Officer only views identification documents when exercising her discretion to require an elector to provide authorized identification to create or maintain the register, my comments are the same for this process as those stated above about the kinds of identification documents an elector should be able to use for voting at a polling station.

I would like to express my appreciation to the Chief Electoral Officer for inviting my comments in respect of the foregoing.

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