

Controverted Elections Act

CHAPTER 96 OF THE REVISED STATUTES, 1989

as amended by

2011, c. 5, s. 362; 2020, c. 8, s. 66



© 2021 Her Majesty the Queen in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

This page is intentionally blank.

CHAPTER 96 OF THE REVISED STATUTES, 1989
amended 2011, c. 5, s. 362; 2020, c. 8, s. 66

**An Act Respecting
Controverted Elections**

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
Jurisdiction	
Jurisdiction of Court.....	3
Judges to arrange duties.....	4
Petitions	
Petition.....	5
Petition complaining of no return.....	6
Returning officer deemed respondent.....	7
Cases may be tried together.....	8
Presentation of petition.....	9
Service of notice.....	10
Service as in civil matters.....	11
Preliminary Examination of Parties	
Preliminary examination of parties.....	12
Oral examination of candidate.....	13
Method of oral examination.....	14
Depositions.....	15
Transmission and copies of depositions.....	16
Attendance enforced by subpoena.....	17
Examination of prisoner.....	18
Notice of oral examination.....	19
Contempt of court.....	20
Use of only part of examination.....	21
Production of Documents	
Production of documents.....	22
Service of order.....	23
Form of affidavit.....	24
Contempt of court.....	25
Trial of Petitions	
All petitions dealt with as one.....	26
Trial by judge without jury.....	27
Time limit on commencement of trial.....	28
Court may enlarge time for trial.....	29
Trial similar to sitting of Supreme Court.....	30
Jurisdiction of judge.....	31
Charge of corrupt practices.....	32
Subpoena of witnesses.....	33
Judge may compel attendance of witness.....	34
Examination of witness by judge.....	35
No refusal on ground of privilege.....	36

Fees for witnesses	37
Employment of stenographer.....	38
Respondent may give evidence	39
Determination to be made by judge.....	40
Report after charge of corrupt practice.....	41
Judge may make special report.....	42
Proceedings of Provincial Secretary Upon Report	
Duties of Provincial Secretary	43
Order as a result of special report	44
Member not entitled to take seat.....	45
Writ for new election	46
Special Case	
Special case.....	47
Appeal of decision of judge	48
Time for hearing appeal	49
Notice of appeal	50
Judgment on appeal	51
Court to draw inferences of fact	52
Powers of Court on appeal.....	53
Judge may make report to Court.....	54
Order for costs	55
Judgment to be certified.....	56
Court may grant new trial	57
Costs	
Costs of petition	58
Costs awarded out of deposit.....	59
Withdrawal and Abatement of Petition	
Withdrawal of petition	60
Withdrawal result of corrupt practice	61
Abatement of election petition.....	62
Respondent no longer involved in petition.....	63
Respondent cannot appeal or sit in House.....	64
Petitioner may withdraw petition.....	65
Rules of Court	
Rules of Court.....	66
Deemed rules	67
Rules laid before House of Assembly.....	68
General rules to be followed.....	69
General Provisions	
Court may extend time periods.....	70
Expenses of judge and sheriff	71
Persons entitled to practice before Court.....	72
Proceedings on petition continued.....	73
Trial notwithstanding prorogation of House.....	74
Questioning of election or return.....	75
Principles regarding computation of time.....	76
Swearing of affidavits	77
Form of notice given by returning officer	78
Duty of prothonotary	79
Schedule	

Short title

1 This Act may be cited as the *Controverted Elections Act*. R.S., c. 96, s. 1.

Interpretation

2 In this Act,

(a) “candidate” means a person elected to serve as a member, and any person who has been nominated as a candidate at an election;

(b) “corrupt practices” or “corrupt practice” means acts in reference to the election which are declared to be corrupt practices by the *Elections Act* or any other Act of the Legislature, or recognized as such by the common law of Parliament;

(c) “county” includes an electoral district;

(d) “Court” means the Supreme Court or any judge thereof;

(da) “day” means a calendar day;

(e) “election” means the election of a member or members to serve in the House of Assembly;

(f) “judge” means the judge trying the election or performing any duty to which the enactment in which the expression occurs has reference;

(g) “member” means a member of the House of Assembly;

(h) “prescribed” means prescribed by this Act or by the rules of court made pursuant to this Act;

(i) “respondent” means any member whose election or return is complained of by a proceeding pursuant to this Act;

(j) “rules of court” means rules made as in this Act mentioned. R.S., c. 96, s. 2; 2020, c. 8, s. 66.

JURISDICTION**Jurisdiction of Court**

3 The Supreme Court or a judge thereof shall, subject to this Act, have the same powers, jurisdiction and authority with reference to an election petition and other proceedings thereon as the Court or judge would have if such petition was an ordinary cause within the jurisdiction of the Court or judge. R.S., c. 96, s. 3.

Judges to arrange duties

4 The rotation or order in which any duties assigned by this Act to a single judge shall be performed by the judges of the Court respectively, shall be arranged by the judges. R.S., c. 96, s. 4.

PETITIONS

Petition

5 A petition complaining of an undue return or undue election of a member, or of no return, or of a double return, or of any unlawful act by a candidate not returned, by which he is alleged to have become disqualified to sit in the House of Assembly at any election, may be presented to the Court by any one or more of the following persons:

(a) a person who had a right to vote at the election to which the petition relates; or

(b) a candidate at such election,

and such petition is, in this Act, called an "election petition." R.S., c. 96, s. 5.

Petition complaining of no return

6 A petition under this Act, complaining of no return, may be presented, and shall be deemed to be an election petition within the meaning of this Act, and such order may be made thereon by the Court or judge as is deemed expedient for compelling a return to be made, or the Court or judge may allow such petition to be tried in the manner herein provided with respect to ordinary election petitions. R.S., c. 96, s. 6.

Returning officer deemed respondent

7 Where an election petition complains of the conduct of a returning officer, such returning officer shall for all the purposes of this Act, except the admission of respondents in his place, be deemed a respondent. R.S., c. 96, s. 7.

Cases may be tried together

8 Two or more candidates may be made respondents to the same petition, and their cases may for the sake of convenience be tried at the same time, but in respect to the security required pursuant to Section 9, and for all other purposes of this Act, such petition shall be deemed to be a separate petition against each respondent. R.S., c. 96, s. 8.

Presentation of petition

9 The following provisions are made with respect to the presentation of an election petition pursuant to this Act:

(a) the petition may be in any prescribed form, but if, or in so far as, no form is prescribed, it need not be in any particular form, but it shall complain of the undue return or undue election of a member, or that no return has been made, or that a double return has been made, or of matter contained in any special return made, or of some unlawful act as aforesaid by a candidate not returned, and it shall be signed by the petitioner or all the petitioners, if there are more than one;

(b) the petition shall be presented within twenty-one days after the return day of the writ for the election to which the petition relates, unless it questions the return or election upon an allegation of corrupt practices, and specially alleges a payment of money to have been made, or other act of bribery to have been committed, by any member, or on his account, or with his privity, since the time of such return in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-one days after the date of such payment or act so committed;

(c) presentation of a petition shall be made by delivering it at the office of the prothonotary of the Supreme Court for the county in which lies the electoral district to which the petition relates between the hours of ten o'clock in the forenoon and four o'clock in the afternoon;

(d) at the time of the presentation of the petition or within three days afterwards, security for the payment of all costs, charges and expenses that shall become payable by the petitioner to

- (i) any person summoned as a witness on his behalf,
- (ii) the member whose election or return is complained of,
- (iii) the returning officer if his conduct is complained of, or
- (iv) the candidate not elected, whose conduct is complained of as aforesaid,

shall be given on behalf of the petitioner;

(e) the security shall be to the amount of four hundred dollars, and shall be given by a deposit of money with the prothonotary of the Court;

(f) the deposit shall not be valid unless it is made in gold coin or Dominion notes, being a legal tender under the statutes of Canada at the time when the deposit is made, or in notes of any chartered bank doing business in Canada;

(g) the prothonotary shall give a receipt for such deposit, which shall be evidence of the sufficiency thereof;

(h) on the presentation of the petition the prothonotary shall send a copy thereof by mail to the returning officer of the county to which the petition relates, and such returning officer shall forthwith publish a notice thereof once in a newspaper published in the county, or, if there is no newspaper published in the county, then in a newspaper circulating in such county and such notice may be in Form A in the Schedule to this Act. R.S., c. 96, s. 9.

Service of notice

10 (1) Notice of the presentation of a petition pursuant to this Act and of the security, accompanied with a copy of the petition, shall within five days after the day on which the petition has been presented or within the prescribed time, or within such longer time as the Court or any judge thereof under special circumstances of difficulty in effecting service allows, be served on the respondent or respondents.

(2) If service cannot be effected on the respondent or respondents personally within the time granted by the Court or a judge, then it may be effected upon such other person or in such other manner as the Court or a judge on the application of the petitioner directs. R.S., c. 96, s. 10.

Service as in civil matters

11 An election petition pursuant to this Act and notice of the presentation thereof, and a copy of the deposit receipt, shall be served as nearly as possible in the manner in which an originating notice is served in civil matters, or in such other manner as is prescribed. R.S., c. 96, s. 11.

PRELIMINARY EXAMINATION OF PARTIES

Preliminary examination of parties

12 A party to an election petition, whether petitioner or respondent, may, at any time after the petition is served, before or pending the trial thereof, be examined by or before a judge or an examiner in the manner hereinafter directed, by a party adverse in point of interest, touching any matter raised by the petition, and a party so examined may be further examined on his own behalf in relation to any matter respecting which he has been examined in chief, and when one of several petitioners or respondents has been so examined, any other petitioner or respondent united in interest may be examined on his own behalf, or on behalf of those united with him in interest, to the same extent as the party so examined, but such explanatory examination shall be proceeded with immediately after examination in chief, and not at any future period except by leave of the Court or judge. R.S., c. 96, s. 12.

Oral examination of candidate

13 Where a petition has been presented claiming the seat for a candidate, such candidate, although not a party to the petition, may be orally examined as if he was a petitioner. R.S., c. 96, s. 13.

Method of oral examination

14 Any party to be examined orally pursuant to this Act, shall be so examined by or before a judge, ~~a local judge of the Supreme Court~~, prothonotary of the Court in which such election petition is pending, or before any barrister-at-law named for the purpose by the Court or the judge, and such examination shall take place in the presence of the parties, their counsel, solicitors or agents, and the party so examined orally shall be subject to cross-examination and re-examination, and such examination, cross-examination and re-examination shall be conducted as nearly as may be in the mode now in use in the Supreme Court on a trial of an action. R.S., c. 96, s. 14; revision corrected.

Depositions

15 (1) The depositions taken upon any such oral examination shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness

and signed by him in the presence of the parties, or of such of them as think fit to attend.

(2) If the witness refuses or is unable to sign the deposition, the examiner shall sign the same, and such examiner may upon every examination state any special matter to the Court if he thinks fit.

(3) It shall be in the discretion of the examiner to put down any particular question or answer if there appears to be any special reason for so doing, and any question which is objected to shall at the request of either party be noticed or referred to by the examiner in or upon the deposition, and he shall state his opinion thereon to the counsel, solicitors, agents or parties, and if requested by either party he shall refer to such statement on the face of the deposition. R.S., c. 96, s. 15.

Transmission and copies of depositions

16 When the examination before the examiner is concluded the original depositions, authenticated by the signature of such examiner, shall be transmitted by him to the prothonotary's office at which the petition was presented, and any party to the petition may have a copy thereof, or of any part or portion thereof, upon payment for the same in such manner as is prescribed by the Court in that behalf. R.S., c. 96, s. 16.

Attendance enforced by subpoena

17 The attendance of a party or other person for oral examination or cross-examination before the examiner may be enforced by subpoena *ad testificandum* or *duces tecum*, in the like manner as the attendance of such party or person at the trial of the petition may be enforced, and any party or person upon being served with such subpoena shall be bound to attend before the examiner, but such party or person shall be entitled to the like payment for attendance and expenses as if he had been subpoenaed to attend upon the trial. R.S., c. 96, s. 17.

Examination of prisoner

18 The sheriff, jailer or other officer having the custody of any prisoner, may take such prisoner for examination before the examiner under the authority of this Act, if so ordered by the Court or a judge. R.S., c. 96, s. 18.

Notice of oral examination

19 Forty-eight hours notice of any such oral examination or cross-examination shall be given to the opposite party or parties. R.S., c. 96, s. 19.

Contempt of court

20 Any party or person who refuses or neglects to attend at the time and place appointed for his examination or cross-examination, or who refuses to be sworn, or to answer any lawful question put to him by the examiner or by any party entitled to do so, or his counsel, agent or solicitor, may be punished as for a contempt of court, but if a witness demurs or objects to any question put to him, the

question so put and the demurrer or objection of the witness thereto shall be taken down by the examiner and transmitted by him to the prothonotary's office at which the petition was presented, and the validity of such demurrer or objection shall be decided by the Court or a judge, and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court or judge. R.S., c. 96, s. 20.

Use of only part of examination

21 Any party may at the trial or other proceedings of such petition use in evidence any part of the examination of the opposite party, provided always that in such case the Court may look at the whole of the examination, and if it is the opinion that any other part is so connected with the part so to be used that the last mentioned part ought not to be used without such other part, it may direct such other part to be put in evidence. R.S., c. 96, s. 21; revision corrected.

PRODUCTION OF DOCUMENTS

Production of documents

22 (1) Any party to an election petition, whether petitioner or respondent, may at any time after such petition is served, before or pending the trial thereof, obtain an order of the Court or a judge requiring the adverse party to produce within ten days after the service thereof, under oath, all documents in his custody or power relating to the matters in question, saving all just exceptions, and to deposit the documents with the prothonotary of the Court at the office at which the petition was presented, and upon such documents being produced, the party requiring such production, or his solicitor or agent, may inspect the same and take copies thereof.

(2) When any person upon whom an order to produce has been served wishes to avail himself of any such exception as above mentioned, he shall in his affidavit on production assign a sufficient reason why he should not produce and deposit the same in the manner aforesaid.

(3) Such order may be granted in vacation. R.S., c. 96, s. 22.

Service of order

23 The order for the production of documents need not be personally served, and it shall be sufficient to serve the same upon the solicitor or agent of the party. R.S., c. 96, s. 23.

Form of affidavit

24 The affidavit on production, to be made by the party who has been served with the order for production, may be in the Form B in the Schedule to this Act. R.S., c. 96, s. 24.

Contempt of court

25 Any party who neglects or refuses to obey an order for the production of documents may be punished as for a contempt of court. R.S., c. 96, s. 25.

TRIAL OF PETITIONS

All petitions dealt with as one

26 Where more petitions than one are presented relating to the same election or return, all such petitions shall be dealt with as one petition. R.S., c. 96, s. 26.

Trial by judge without jury

27 (1) Every election petition shall be tried by one of the judges of the Court without a jury, and it shall be competent for the judge, on such trial, to decide any question raised as to the admissibility of the evidence offered or to receive such evidence under reserve and subject to adjudication at the final hearing.

(2) The trial of an election petition shall take place in the county the election or return for which is in question, but if it appears to the Court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in such county, the Court may appoint such other place for the trial as appears most convenient.

(3) Notice of the time and place at which an election petition will be tried shall be given in the prescribed manner not less than fourteen days before the day on which the trial is to take place.

(4) The judge at the trial may adjourn the same from time to time and from any one place to another place as to him seems expedient. R.S., c. 96, s. 27.

Time limit on commencement of trial

28 (1) The trial of every election petition shall be commenced within six months from the time when the petition was presented, and shall be proceeded with from day to day until such trial is over, but if at any time it appears to the Court or a judge that the respondent's presence at the trial is necessary, the trial shall not be commenced during any session of the Legislature, and in the computation of any time or delay allowed for any step or proceeding in respect to any such trial, or for the commencement thereof as aforesaid, the time occupied by such session of the Legislature shall not be included.

(2) If at the expiration of three months after the petition has been presented the day for trial has not been fixed, any voter may, on application, be substituted for the petitioner on such terms as the Court or a judge thinks just. R.S., c. 96, s. 28.

Court may enlarge time for trial

29 The Court or a judge may, notwithstanding anything in Section 28, from time to time enlarge the time for the commencement of the trial if, on an appli-

cation for that purpose, supported by affidavit, it appears that the requirements of justice render such enlargement necessary. R.S., c. 96, s. 29; revision corrected 1990.

Trial similar to sitting of Supreme Court

30 The judge shall be received and attended at the place where he is about to try an election petition pursuant to this Act, in the same manner, so far as circumstances will admit, as if he were about to hold a sitting of the Supreme Court. R.S., c. 96, s. 30.

Jurisdiction of judge

31 On the trial of an election petition, and in other proceedings pursuant to this Act, the judge shall, subject to this Act, have the same powers, jurisdiction and authority as a judge of the Supreme Court presiding at the trial of an ordinary action, and the Court held by him for the trial of an election petition shall be a court of record. R.S., c. 96, s. 31.

Charge of corrupt practices

32 Unless the judge otherwise directs, any charge of corrupt practices may be gone into and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect to such corrupt practices. R.S., c. 96, s. 32.

Subpoena of witnesses

33 Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in the trial of an ordinary action. R.S., c. 96, s. 33.

Judge may compel attendance of witness

34 On the trial of an election petition pursuant to this Act, the judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition relates, and any person who refuses to obey such order is guilty of contempt of court. R.S., c. 96, s. 34.

Examination of witness by judge

35 The judge may examine and re-examine any witness so compelled to attend, or any person in court, although such witness or person is not called and examined by any party to the petition, and after the examination of a witness as aforesaid by a judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them. R.S., c. 96, s. 35.

No refusal on ground of privilege

36 No person shall be excused from answering any question put to him in any action, suit or other proceeding in any court, or before any judge, commissioner or other tribunal touching or concerning any election, or to the conduct of any person thereat or in relation thereto, on the ground of any privilege, but no answer given by a person claiming to be excused on the ground of privilege shall be

used in any proceeding under any Act of the Legislature against any such person. R.S., c. 96, s. 36.

Fees for witnesses

37 (1) The fees for travel and attendance payable to any person appearing to give evidence at the trial of an election petition pursuant to this Act shall be the same, and payable in the same manner, as those allowed to witnesses in an ordinary action in the Supreme Court, and may be allowed to such person by a certificate under the hand of the judge or prothonotary, and such fees shall be deemed costs of the party calling the witness, and shall be taxed against such party interested in the trial of such petition as the judge determines.

(2) If the witness was called and examined by the judge the fees of such witness for travel and attendance shall be deemed part of the expenses of providing a court. R.S., c. 96, s. 37.

Employment of stenographer

38 The judge may, in his discretion, employ a stenographic reporter to take down the oral evidence given by witnesses at the trial of the petition, and the expense of employing such shall be costs in the cause. R.S., c. 96, s. 38.

Respondent may give evidence

39 On the trial of a petition pursuant to this Act, complaining of an undue return and claiming the seat for any person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if such person has presented a petition complaining of such election. R.S., c. 96, s. 39.

Determination to be made by judge

40 The judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and other matters arising out of the petition and requiring his determination, and shall forthwith certify in writing such determination to the Provincial Secretary, and upon the certificate being given, the determination shall be final to all intents and purposes, subject only to the appeal hereinafter mentioned. R.S., c. 96, s. 40.

Report after charge of corrupt practice

41 When a charge is made in an election petition of a corrupt practice having been committed at the election to which the petition relates, the judge shall, in addition to such certificate and at the same time, report in writing to the Provincial Secretary

- (a) whether any corrupt practice has or has not been found to have been committed, whether with or without the actual knowledge and consent of any candidate at the election, stating the name of the candidate and the nature of such corrupt practice;

(b) the names of any persons who have been proved at the trial to have been guilty of any corrupt practice;

(c) whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates;

(d) whether the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. R.S., c. 96, s. 41.

Judge may make special report

42 The judge may at the same time make a special report to the Provincial Secretary as to any matters arising in the course of the trial an account of which, in his judgment, ought to be submitted to the House of Assembly. R.S., c. 96, s. 42.

PROCEEDINGS OF PROVINCIAL SECRETARY UPON REPORT

Duties of Provincial Secretary

43 (1) The Provincial Secretary shall at the earliest practicable moment after he receives the certificate and report, if any, of the Court or judge, give the necessary directions and adopt all the proceedings necessary for confirming or altering the return, or for the issuing of a writ for a new election, or for otherwise carrying the determination of the Court or judge into execution, as circumstances require.

(2) The Provincial Secretary shall, without delay, if the Legislature is then sitting, or if it is not then sitting, within five days after the beginning of the then next session of the Legislature, communicate to the House of Assembly the determination, report and certificate of the Court or judge and his own proceedings thereon. R.S., c. 96, s. 43.

Order as a result of special report

44 Where the judge makes a special report, the House of Assembly may make such order in respect of such special report as it thinks proper. R.S., c. 96, s. 44.

Member not entitled to take seat

45 If the judge determines that the election or return was void, the member returned shall not be entitled to take his seat or vote in the House of Assembly pending an appeal from the decision. R.S., c. 96, s. 45.

Writ for new election

46 A writ for a new election shall not be issued until after the expiration of eight days from the decision of the judge declaring the election or return to be

void, and if an appeal is taken from the decision or from the part declaring the election or return to be void, the writ shall not issue pending the appeal. R.S., c. 96, s. 46.

SPECIAL CASE

Special case

47 Where, upon the application of a party to an election petition duly made to the judge, it appears to the judge that the case raised by the petition can be conveniently stated as a special case, the judge may direct the same to be stated accordingly, and any such special case shall, as far as possible, be heard before the judge, who shall thereupon hear and determine the same, and the judge shall, except in the case in Section 48 mentioned, certify such determination to the Provincial Secretary, and upon the certificate being given, the determination shall be final to all intents and purposes. R.S., c. 96, s. 47.

Appeal of decision of judge

48 Any party to an election petition pursuant to this Act, who is dissatisfied with the decision of the judge on any question of law or of fact, and who desires to appeal to the Appeal Division of the Supreme Court against the decision, may, within eight days from the day on which the decision was given, deposit with the prothonotary of the Supreme Court for the county in which lies the electoral district to which the petition relates the sum of one hundred dollars as security for costs of the appeal, and thereupon the prothonotary shall forthwith notify the Chief Justice of Nova Scotia that the deposit has been made. R.S., c. 96, s. 48.

Time for hearing appeal

49 The Chief Justice of Nova Scotia shall without delay fix a time for the hearing of the matter of the petition on such appeal at an early day, notice whereof shall be given by the prothonotary at Halifax to the party appealing. R.S., c. 96, s. 49.

Notice of appeal

50 The party so appealing shall thereupon within three days after receipt of the notice, or within such further time as the Court or a judge thereof upon application allows, give to the other parties affected by the appeal or the respective solicitors or agents by whom the parties were represented on the trial of the petition, notice in writing that the matter of the petition will be heard on appeal at the time so fixed, and in and by the same notice the party so appealing may, if he desires, limit the subject of the appeal to any special and defined question or questions. R.S., c. 96, s. 50.

Judgment on appeal

51 The appeal shall thereupon be heard and determined by the Court, and such judgment shall be pronounced, both upon a question of law and of fact, as in the opinion of the Court should have been delivered by the judge whose decision is appealed against. R.S., c. 96, s. 51.

Court to draw inferences of fact

52 Upon any appeal involving questions of fact, the Court shall review the decision upon questions of fact as well as of law, and shall draw such inference from the facts or evidence as the judge who tried the case should have drawn. R.S., c. 96, s. 52.

Powers of Court on appeal

53 The Court shall have all the powers and duties as to amendment or otherwise of the judge from whom the appeal is had, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before any judge or other person whom the Court names. R.S., c. 96, s. 53.

Judge may make report to Court

54 Where a decision given by the judge depends in whole or in part upon the credit given by him to particular witnesses, and the decision is appealed against, the judge may make a written report as to the demeanour of the witnesses and their mode of giving their evidence, together with the reasons of the judge for giving credit to particular witnesses, and, with or without such report, the Court, in view of the whole case as it then appears, may reverse or confirm the decision appealed from, or the Court may require any witnesses to be re-examined, and further evidence to be given, orally, before the Court or otherwise, upon any question of fact, and after such re-examination and further evidence, the Court shall pronounce the proper judgment in the case. R.S., c. 96, s. 54.

Order for costs

55 The Court may make such order as to the return of the deposit and as to the costs of the said appeal as the Court thinks just. R.S., c. 96, s. 55.

Judgment to be certified

56 The prothonotary of the Supreme Court at Halifax shall thereupon certify to the Provincial Secretary the judgment and decision of the Court upon appeal. R.S., c. 96, s. 56.

Court may grant new trial

57 The Court, upon such conditions as to costs and otherwise as the Court thinks fit, may grant a new trial and may remit the case back to the judge who tried the same or to some other judge, and, subject to the directions given by the Court, the case shall be tried as if there had been no previous trial. R.S., c. 96, s. 57.

COSTS

Costs of petition

58 (1) All costs, charges and expenses of and incidental to the presentation of an election petition pursuant to this Act, and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this

Act otherwise provided for, shall be defrayed by the parties to, or those opposing, the petition in such manner and in such proportions as the Court or a judge determines, regard being had to the disallowance of any costs, charges or expenses which, in the opinion of the Court or judge, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

(2) The costs may be taxed according to the same rules as costs are taxed in the Supreme Court between parties in ordinary actions, and such costs may be recovered in the same manner as costs in such actions, or in such other manner as may be prescribed. R.S., c. 96, s. 58.

Costs awarded out of deposit

59 If costs are awarded in favour of any party against any petitioner, such party shall, after the expiration of thirty days from the rendering of the decision by the Court or a judge, upon the production of a certificate of taxation from the taxing authority, be entitled to receive out of the deposit the amount so taxed, if the aggregate of the costs taxed against the petitioner, certificates whereof are within the period of thirty days filed with the prothonotary, does not exceed the deposit, or if the total amount of the certificates so filed as aforesaid exceeds the deposit, then his proportion thereof, and in the event last aforesaid such party shall be entitled forthwith to issue execution according to the practice in ordinary actions against the petitioner's goods or lands for the residue of the costs so taxed to him as aforesaid. R.S., c. 96, s. 59.

WITHDRAWAL AND ABATEMENT OF PETITION

Withdrawal of petition

60 (1) No election petition pursuant to this Act shall be withdrawn without the leave of the Court or judge upon special application to be made in and at the prescribed manner, time and place.

(2) No such application shall be made until the prescribed notice has been given in the county to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition.

(3) On hearing of the application for withdrawal, any person who might have been a petitioner in respect to the election to which the petition relates may apply to the Court or a judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

(4) The Court or judge may, if it or he thinks fit, substitute as petitioner any such applicant as aforesaid and may also, if the proposed withdrawal is, in the opinion of the Court or judge, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner,

and that to the extent of the sum deposited as such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

(5) If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner, before he proceeds with his petition and within the prescribed time after the order of substitution.

(6) Subject as aforesaid a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities, as the original petitioner.

(7) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent, unless the Court or judge otherwise orders.

(8) Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners. R.S., c. 96, s. 60.

Withdrawal result of corrupt practice

61 In every case of the withdrawal of an election petition pursuant to this Act, if the Court or a judge is of the opinion that the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, the Court or a judge shall report such opinion to the Provincial Secretary, stating the reasons therefor and the circumstances attending the withdrawal. R.S., c. 96, s. 61.

Abatement of election petition

62 (1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2) The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

(3) On the abatement of a petition, the prescribed notice of such abatement having taken place shall be given in the county to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect to the election to which the petition relates may apply to the Court or a judge, in the prescribed manner, and at the prescribed time and place, to be substituted as petitioner.

(4) The Court or judge may, if it or he thinks fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition. R.S., c. 96, s. 62.

Respondent no longer involved in petition

63 If before the trial of any election petition, any of the following events happens in the case of the respondent, that is to say,

- (a) if he dies;
- (b) if the House of Assembly has resolved that his seat is vacant;
- (c) if he gives notice to the Court or judge in and at the prescribed manner and time that he does not intend to oppose or further to oppose the petition,

notice of such event having taken place shall be given in the county to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect to the election to which the petition relates may apply to the Court or a judge to be admitted as a respondent to oppose the petition, or so much thereof as remains undisposed of, and such person shall on such application be admitted accordingly to oppose such petition or the undisposed portion thereof, either with the respondent if there is one, or in place of the respondent, and any number of persons not exceeding three may be so admitted, and if either of such events happens during the trial, the judge shall adjourn the same, in order that notice that such event has happened may be given as herein provided, and the person or persons so admitted shall be subject to the same liability as the respondent with respect to any costs thereafter incurred. R.S., c. 96, s. 63.

Respondent cannot appeal or sit in House

64 A respondent who has given the prescribed notice that he does not intend to oppose or further to oppose the petition, shall not be allowed to appeal or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Assembly until the House has been informed of the report on the petition, and the Court or a judge shall, in all cases in which such notice has been given in the prescribed time and manner, report the same to the Provincial Secretary. R.S., c. 96, s. 64.

Petitioner may withdraw petition

65 When an election petition pursuant to this Act complains of a double return, and the respondent has given notice in the prescribed time and manner that it is not his intention to oppose the petition, and no person has been admitted in pursuance of this Act to oppose the petition, then the petitioner, if there is no petition complaining of the other member returned on such double return, may withdraw his petition, by notice addressed to the prescribed officer, and upon such withdrawal the prescribed officer shall report the fact to the Provincial Secretary, and the House of Assembly shall, thereupon, give the necessary directions for amending the double return in such manner as the case required. R.S., c. 96, s. 65.

RULES OF COURT

Rules of Court

66 The judges of the Supreme Court or a majority of them may from time to time make, revoke and alter general Rules of Court, for the effectual execution of this Act and of the intention and objects thereof, and the regulation of the practice, procedure and costs with regard to election petitions and the trial thereof and the certifying and reporting thereon, and such rules shall be forthwith published in the Royal Gazette. R.S., c. 96, s. 66.

Deemed rules

67 Any general rules not inconsistent with this Act shall be deemed to be within the powers conferred by this Act, and shall from the date of their publication in the Royal Gazette and while unrepealed be of the same force as if they were herein enacted. R.S., c. 96, s. 67; revision corrected.

Rules laid before House of Assembly

68 Any Rules of Court made in pursuance of this Act shall be laid before the House of Assembly within three weeks after they are made, if the Legislature is then sitting, and if the Legislature is not then sitting, within three weeks after the beginning of the then next session of the Legislature. R.S., c. 96, s. 68.

General rules to be followed

69 (1) The general rules of the Supreme Court in relation to controverted elections, made in pursuance of Chapter 6 of the Revised Statutes, 1900, *The Nova Scotia Controverted Elections Act*, shall continue in force until the same are revoked, altered or amended under the authority of this Act.

(2) So far as such rule or rules from time to time made under the authority of this Act do not extend the principles, practice and rules on which election petitions touching the election of members of the House of Assembly were on the day immediately preceding the sixth day of May, 1875, dealt with, shall be observed, so far as consistently with this Act they can be observed by the Court and the judges thereof. R.S., c. 96, s. 69.

GENERAL PROVISIONS

Court may extend time periods

70 The Court or a judge shall, upon sufficient cause being shown, have power on the application of any of the parties to a petition, to extend, from time to time, the period limited by this Act or by Rules of Court for taking any steps or proceedings by such party. R.S., c. 96, s. 70.

Expenses of judge and sheriff

71 The travelling and other expenses of the judge, and all expenses properly incurred by the sheriff or other officer in consequence of any sitting for the trial

of an election petition, and providing a court room and accessories, shall be defrayed out of the General Revenue Fund of the Province. R.S., c. 96, s. 71; 2010, c. 2, s. 84.

Persons entitled to practice before Court

72 In cases of election petitions and all matters relating thereto before the Court or judge, every person who is entitled to practise as a solicitor in the Province may practise as solicitor or agent, and any person who is entitled to practise as a barrister-at-law may practise as a counsel. R.S., c. 96, s. 72.

Proceedings on petition continued

73 An election petition may be presented, and the trial of an election petition shall be proceeded with, notwithstanding the acceptance by the respondent of an office of profit under the Crown, or the resignation of his seat, but the respondent may, notwithstanding anything in this or any other Act, accept office at any time after the election. R.S., c. 96, s. 73.

Trial notwithstanding prorogation of House

74 The trial of an election petition shall be proceeded with notwithstanding the prorogation of the House of Assembly. R.S., c. 96, s. 74.

Questioning of election or return

75 No election or return to the House of Assembly shall be questioned except in accordance with this Act. R.S., c. 96, s. 75.

Principles regarding computation of time

76 For the purposes of this Act, the same principles and practice regarding computation of time shall apply and obtain as in ordinary actions and proceedings in the Supreme Court. R.S., c. 96, s. 76.

Swearing of affidavits

77 Any affidavit made in proceedings on an election petition or in any proceedings incidental thereto may be sworn in the same manner and before the same person as an affidavit in an ordinary action in the Supreme Court. R.S., c. 96, s. 77.

Form of notice given by returning officer

78 Where the returning officer is by this Act required or authorized to give any public notice, and no special mode of giving the same is mentioned, he may give the same by advertisement, placards, handbills or such other means as he thinks best calculated to give the information to the voters. R.S., c. 96, s. 78.

Duty of prothonotary

79 The prothonotary of the Supreme Court for every county in which an election is held shall

(a) if no petition has been presented pursuant to this Act relating to the election within the time prescribed by this Act, forthwith after the expiration of such time; and

(b) if such petition or petitions have been presented, forthwith upon the determination of every such petition,

certify in writing under the seal of the Court to the Chief Electoral Officer at such election that no such petition has been presented or that every such petition has been determined and finally disposed of. R.S., c. 96, s. 79; 2011, c. 5, s. 362.

SCHEDULE

Form A

(Section 9 (h))

Notice is hereby given that a petition has been presented under the *Controverted Elections Act* against the return of Esquire, as member of the House of Assembly of Nova Scotia, for the County of, and (*where the seat is claimed, claiming the seat for*) (*or if the petition is for no return or double return, or for any other reason, state the reason of the petition and its purpose*).

Dated at, the day of 19.

.....
A.B.,
Returning Officer

Form B

(Section 24)

FORM OF AFFIDAVIT ON PRODUCTION OF BOOKS AND PAPERS

In the Supreme Court. 19. . . . , No.

Election for, holden on the day of, 19.

Between

....., *Petitioner,*

and

....., *Respondent.*

I,, of, (occupation), make oath and say:

1. I have in my possession or power the documents relating to the matters in question set forth in the first and second parts of the first schedule herewith produced and shown to me, and marked Exhibit A to this affidavit.

2. I object to produce the said documents set forth in the second part of the said first schedule.

3. *(state upon what grounds objection is made, and verify the facts as far as may be)*

4. I have had, but have not now in my possession or power the documents relating to the matters in question set forth in the second schedule herewith produced and shown to me and marked Exhibit B to this affidavit.

5. The last mentioned documents were last in my possession or power on *(state when)*.

6. *(state what has become of the last mentioned documents, to whom given, and in whose possession they now are)*

7. According to the best of my knowledge, remembrance, information and belief, I have not now and never had in my own possession, custody or power, or in the possession, custody or power of my agents or solicitors, agent or solicitor, or in the possession, custody or power of any other person on my behalf, any deed, account, book of accounts, minutes, vouchers, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document or other document whatever relating to the matters in question, or any of them, or wherein any entry has been made relating to such matters or any of them, other than and except the documents set forth in the first and second schedules herewith produced.

Sworn, etc.

(The schedules must be signed by the person before whom the affidavit is sworn and must mention the documents in question).

R.S., c. 96, Sch.; revision corrected.
