

RULE 78
RULES MADE UNDER THE
DOMINION CONTROVERTED ELECTIONS ACT

INTERPRETATION

78.01 (1) In rule 78

- (a) "Act" means the *Dominion Controverted Elections Act*;
 - (b) "court" means the Supreme Court or any judge, or two judges thereof;
 - (c) "petition" means an election petition;
 - (d) "Prothonotary" means the Prothonotary of the Supreme Court at Charlottetown unless otherwise expressed;
 - (e) "sheriff" means the sheriff of the county wherein the election petition is to be tried or is being tried;
 - (f) "returning officer" means the returning officer of the electoral district to which the petition relates.
- (2) A reference to a section in Rule 78 is to the applicable section of the *Dominion Controverted Elections Act*, or to the section as amended.
- (3) The *Interpretation Act* (Canada) shall apply to Rule 78.

Petition

78.02 (1) A petition shall state,

- (a) the right of the petitioner under section 5 to present a petition to the court;
 - (b) the holding and the result of the election; and
 - (c) the complaint, and the particulars relied upon in support of the complaint and prayer.
- (2) A petition may be in Form 2 in the Schedule to the Act.
- (3) A petition shall be divided into paragraphs with each being confined to a distinct subject and numbered consecutively.
- (4) A petition shall conclude with a prayer, as for instance, that a specific person be declared duly returned or elected, or that the election be declared void, or that a return be enforced.
- (5) A petition shall be signed by the petitioner, or by all the petitioners if there are more than one.

- (6) Evidence shall not be stated in a petition.

Endorsements on Petition

- 78.03** (1) There shall be endorsed upon a petition and any copy thereof the name of the petitioner's solicitor, or a statement that the petitioner acts for himself.
- (2) The endorsement shall give an address within the City of Charlottetown at which any notice or document may be served upon the petitioner.
- (3) In default of the endorsement, any notice or document may be served on the petitioner by posting it in the office of the Prothonotary.
- (4) There shall also be endorsed on a petition and all copies thereof a memorandum to the effect that in default of the respondent giving an address for service as provided in Rule 78.07 within one week after service of the petition, any notice or document may be served on him by posting it in the office of the Prothonotary.
- (5) The endorsements may be in Form 78.03A.

Presentation of Petition and Copy for Returning Officer

- 78.04** A petition is presented by delivering it and a copy to the office of the Prothonotary within the time prescribed by section 10, and the Prothonotary shall send a copy to the returning officer as provided by section 14.

Security and Cost of Publication

- 78.05** (1) The deposit of money, as security for the payment of any costs, charges and expenses that are payable by the petitioner, shall be made with the Prothonotary as provided by section 12.
- (2) The Prothonotary shall, on receipt of the deposit on the filing of the petition, forthwith deposit the same to bear interest in a chartered bank having an office in Charlottetown.
- (3) The cost of publication of any matter required to be published by any officer shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

Title of Proceeding

- 78.06** Any document in the proceeding may be entitled as in Form 78.06A.

Appointment of Solicitor by Respondent

- 78.07** (1) A person returned as a member and any other person who may be a respondent under the Act may, at any time after the election, file with the Prothonotary a memorandum signed by him or his agent appointing a solicitor to act for him in case a petition is presented against him, or stating that he intends to act for himself.
- (2) The memorandum shall give an address within the City of Charlottetown to which any notice or document requiring service may be served upon the respondent.
- (3) When the memorandum is not received by the Prothonotary within one week after service of the petition on the respondent, any notice or document may be served on the respondent by posting in the office of the Prothonotary.

Interlocutory Proceedings

78.08 Any interlocutory question or matter shall be heard and disposed of on application to a judge in chambers.

Petition When at Issue

78.09 After the expiration of fifteen days after personal service of a petition as provided by section 18, the petition shall be deemed to be at issue.

Counterpetition

78.10 A counterpetition may be in Form 3 in the Schedule of the Act.

Production and Inspection of Books, Etc.

- 78.11** (1) When a petition is at issue under Rule 78.09, the court may order the production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents and returns, relating to the election that are in the possession of the returning officer, an adverse party or any other person, at such place and in such manner, and upon such terms as the court directs.
- (2) The books, lists, commissions, ballots, certificates, statements, documents, papers and returns shall be returned to the custody of the returning officer, adverse party, or other person after the trial of the petition, when the purpose has been served for which their delivery or transmission was required.

Particulars

- 78.12** (1) A copy of all particulars delivered shall forthwith be filed in the office of the Prothonotary.
- (2) The Prothonotary upon request, shall allow inspection by, and furnish office copies of the particulars to all interested parties.

Election List

78.13 The Prothonotary shall make out an election list in a proceeding which contains the names of the solicitor of any petitioner and respondent, and the address to which notices may be sent, if any. The list may be inspected at the office of the Prothonotary at any time during office hours, and shall be posted in the Prothonotary's office.

Trial: Notices Thereof, Postponement

78.14 (1) The time and place of trial of a petition shall be fixed by the court and notice thereof shall be given in writing by the Prothonotary by,

- (a) affixing the same in a conspicuous place in his office;
- (b) sending by ordinary mail a copy thereof to each of the following persons,
 - (i) The petitioner or his solicitor at the address stated in the endorsement;
 - (ii) the respondent or his solicitor at the address given under Rule 78.07, if any; and
 - (iii) the returning officer;

not less than fourteen days before the day appointed for the trial.

- (2) The returning officer shall forthwith publish the notice in the electoral district by causing copies thereof to be posted up in the most public places therein.
- (3) The affixing of the notice of trial in the office of the Prothonotary shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and the notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent or posted as herein directed.
- (4) A notice of trial may be in the Form 78.14A.
- (5) The court may, from time to time, upon the application of a party to the petition or by notice in such form as the court may direct to be sent to the sheriff, postpone the commencement of the trial to such day as he may name, and the notice when received shall be forthwith made public by the sheriff.

Local Clerk

78.15 (1) The court may appoint a person to perform the duties of the clerk of the court in relation to a trial in any electoral district

other than Hillsborough who shall perform the duties incident to the office of the clerk of the court, and such other duties as shall be prescribed by the court.

- (2) The officer shall be called the local clerk, and shall perform his duties himself, or if necessary by a deputy.

Adjournment of Trial

- 78.16** (1) In the event of the failure of the judges to arrive at the time appointed for the trial or to which it is postponed, the commencement thereof shall stand adjourned to the ensuing day, and so from day to day until the arrival of the judges.
- (2) No formal adjournment of the trial shall be necessary, but unless otherwise ordered by the court, it shall be continued from day to day until it is concluded.
 - (3) Should the judges who begin the trial, or either of them, be disabled by illness or otherwise, it may be recommenced and concluded by any two judges assigned for that purpose.
 - (4) In the event of one only of the trial judges being so disabled, the other judge shall have the same power of adjourning the trial as is conferred on the trial judges.

Returning Officer to Deliver Poll Books

- 78.17** The returning officer shall, on or before the day fixed for the trial, deliver or cause to be delivered to the Prothonotary the poll books relating to the election, and the Prothonotary shall, if required, give a receipt therefor and safely keep the books until the termination of the trial, and then return them to the returning officer.

Copies of Proceedings for Judges

- 78.18** (1) At the time appointed for the trial of an election petition, the petitioner shall leave with the Prothonotary for the use of judges at the trial, two copies of the petition and all proceedings thereon that show the several matters to be tried, including all particulars delivered on either side, and he shall forthwith transmit one copy to each of the trial judges.
- (2) The judges may allow an amendment of the copies, or in default of these copies being delivered, the judges may refuse to try the petition, or may allow further time for delivery of the copies, or may adjourn the trial, in every case upon such terms, as to costs or otherwise, as the judges see fit to impose.

Special Case

78.19 An application to state a special case may be made on notice to the opposite party.

Report of Judges

78.20 After the trial of an election petition, the judges shall return to the Prothonotary the evidence and proceedings before the judges and their determination of the petition, and forthwith certify in writing their determination to the speaker as provided by sections 57 to 60.

Appointment of Reporter

78.21 The judges may appoint a suitable person to take the evidence at the trial before them who, before entering upon his duties, shall be sworn to the faithful performance of the same.

Withdrawal of Petition: Substituted Petitioner

- 78.22** (1) Notice of an application for leave to withdraw a petition shall be in writing in Form 78.22A, signed by the petitioner or his solicitor, and it shall state the grounds of the application.
- (2) The notice shall be filed with the Prothonotary.
- (3) A copy of the notice shall be served by the petitioner on the respondent.
- (4) The court shall fix the time and place for hearing the application, but the time fixed shall be not less than a week after the notice of the application has been given to the Prothonotary, as herein before provided, and notice of the time and place appointed for the hearing shall be given to the respondent.
- (5) Subject to section 78, the court may also direct any other notice to be given as it sees fit.

Application for order for Publication of Notice by Prothonotary Under Section 78

78.23 In case of the petitioner dying, becoming incompetent, or being authorized to withdraw, any person may apply to the court for an order directing the Prothonotary to publish the notice applicable to the circumstances in the form prescribed by section 78(4).

Death of Respondent, Etc.

- 78.24** (1) When a respondent dies, or the House of Commons resolves that his seat is vacant, or the respondent gives the prescribed notice that he does not intend to oppose or further to appeal the petition, or he is summoned to Parliament as a member of the Senate, any person who might have been a petitioner may give

notice of the fact in writing signed by him or his solicitor.

- (2) The notice is given by filing it in the office of the Prothonotary.
- (3) When the trial has already begun elsewhere than in Charlottetown a copy of the notice shall also be filed with the local clerk of the court where the petition is being tried.
- (4) Upon receipt of the notice the Prothonotary shall forthwith,
 - (a) affix it in a conspicuous place in his office;
 - (b) notify the judges, if any, assigned to try the petition that the notice has been received;
 - (c) send a copy thereof by registered mail to the petitioner or his solicitor at the address stated in the endorsement, and
 - (d) send a copy thereof by registered mail to the returning officer.
- (5) The returning officer shall forthwith publish the notice in the electoral district by causing copies thereof to be posted up in the most public places thereof.
- (6) A respondent, who does not intend to oppose or to further oppose the petition, may give notice of the fact in writing signed by him or on his behalf.
- (7) The notice in paragraph (6) shall be given in the manner prescribed by paragraphs (2) and (3) of this Rule, and the Prothonotary and returning officer shall forthwith deal with the same in the manner prescribed in paragraphs (4) and (5) of this rule with regard to the notice therein referred to.

Application to Be Admitted as Respondent

78.25 The time for applying to be admitted as a respondent in any of the events mentioned in section 80, shall be within ten days after the notice is published as directed in Rule 78.24 or such further time as the court may allow.

Non-Compliance

78.26 (1) Non-compliance with any rule shall not render any proceeding void, unless the court so directs, but the proceeding may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with, in such manner and upon such terms as the court thinks just.

- (2) An application to set aside a proceeding for irregularity shall not be allowed, unless made within a reasonable time, or if the party applying has taken any fresh step after knowledge of the irregularity.
- (3) Where an application is made to set aside any process or proceeding for irregularity, any objection intended to be relied upon shall be stated in the notice.
- (4) Where an application is made to set aside any process or proceeding for irregularity, and the application is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.
- (5) A proceeding under the Act shall not be defeated by any formal objection.

Money Deposited: How Dealt With

- 78.27** (1) Any claim to money deposited, or to be deposited, for payment of costs, charges and expenses, payable by a petitioner pursuant to the Act, shall be disposed of as the court orders.
- (2) Money so deposited shall, if and when it is no longer needed for securing payment of the costs, charges and expenses, be returned or otherwise disposed of, as the court orders.
 - (3) An order may be made after proof that all just claims have been satisfied, or otherwise sufficiently provided for, as the court may require.
 - (4) An order may direct payment either to the party who deposited the same, or to any person entitled to receive it.
 - (5) Upon an order being made, the amount may be paid by the Prothonotary.
 - (6) The Prothonotary is, on the payment out of any money on deposit, entitled to deduct five percent of the bank interest accrued thereon as compensation for investing and handling the money.

Rules of Supreme Court to Apply

- 78.28** In all cases not provided for by Rule 78, the Civil Procedure Rules of the Supreme Court of Prince Edward Island apply with any necessary modification, to any proceeding under the Act.

Costs

- 78.29** (1) The Prothonotary, local clerk, sheriff and returning officer shall respectively receive such fees and allowances for services performed under Rule 78 or the Act, including proper disbursements, as would be allowed for like services in a proceeding in the Supreme Court, and they shall form part of the costs on the petition.
- (2) All costs, charges and expenses of and incidental to the presentation of an election petition under the Act, and to any proceedings consequent thereon, except such as are otherwise provided for by the Act, shall be taxed by the taxing master.

All Previous Rules Annulled

- 78.30** All Rules heretofore in force in relation to controverted elections of members of the House of Commons are hereby annulled.

DOMINION CONTROVERTED ELECTIONS ACT

Made by the Judges of the Supreme Court of Prince Edward Island this 21st day of December, 1989 to become effective on the coming into force of the new Rules of Civil Procedure with respect to proceedings commenced on or after that date, and all rules heretofore made under the *Dominion Controverted Elections Act* shall cease to be in force except as to proceedings commenced before the coming into force of the new Rules of Civil Procedure.

Amendments to Rule 78.01(1)(b) as necessitated by the proclamation of the *Judicature Act* were approved by the Judges of the Supreme Court of Prince Edward Island this 25th day of June, 2009, to become effective on the coming into force of the new Rules of Civil Procedure.