

RULE 77
RULES MADE UNDER THE
CONTROVERTED ELECTIONS (PROVINCIAL) ACT
(PRINCE EDWARD ISLAND)

INTERPRETATION

- 77.01** (1) In Rule 77,
- (a) "Act" means the *Controverted Elections (Provincial) Act*;
 - (b) "court" means the Supreme Court, or any judge thereof;
 - (c) "petition" means an election petition;
 - (d) "Prothonotary" means the Prothonotary of the county in which lies the electoral district to which the petition relates;
 - (e) "sheriff" means the sheriff of the county in which lies the electoral district to which the petition relates;
 - (f) "returning officer" means the returning officer of the electoral district to which the petition relates.
- (2) A reference to a section in Rule 77 is to the applicable section of the *Controverted Elections Act*, or to the section as amended.

Petition

- 77.02** (1) The petition may be in Form 77.02A and shall state,
- (a) the right of the petitioner under section 5 to present a petition to the court;
 - (b) the holding and result of the election; and
 - (c) the complaint, and the facts and grounds relied upon in support of the complaint and prayer.
- (2) A petition shall be divided into paragraphs with each being confined to a distinct subject and numbered consecutively.
- (3) 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.
- (4) A petition shall be signed by the petitioner, or by all the petitioners, if there are more than one.
- (5) Evidence shall not be stated in the petition.

Endorsements on Petition

- 77.03** (1) There shall be endorsed upon a petition and any copy thereof the name of the petitioner's lawyer, or a statement that the petitioner is self-represented.
- (2) The endorsement shall give an address within the jurisdiction to which a 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 the 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 77.07 within one week after service of the petition, any notice or document may be served on the respondent by posting it in the office of the Prothonotary.
- (5) The endorsements may be in Form 77.03A.

Presentation of Petition and Copy for Returning Officer

77.04 A petition is presented by delivering it and a copy at the office of the Prothonotary within the time prescribed by section 12(1) and the Prothonotary shall send a copy to the returning officer by registered mail.

Security and Cost of Publication

- 77.05** (1) The deposit of money as security for the payment of costs, charges and expenses that are payable by the petitioner, shall be made with the Prothonotary as provided by section 14.
- (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 the county where the office of the Prothonotary is situate.
- (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

77.06 Any document in the proceeding may be entitled as in Form 77.06A.

Appointment of Lawyer by Respondent

- 77.07** (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 the

person or the person's agent appointing a lawyer to act for the person in case a petition is presented against the person, or stating that the person intends to be self-represented.

- (2) The memorandum shall give an address within the jurisdiction where 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

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

Petition When at Issue

77.09 Unless otherwise ordered by the court, after the expiration of ten days after personal service of a petition on the respondent or respondents as provided by section 12 the petition shall be deemed to be at issue.

Production and Inspection of Books, Etc.

- 77.10** (1) When a petition is at issue under Rule 77.09, 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 Chief Electoral Officer, returning officer, 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 Chief Electoral Officer, returning officer, adverse party or other person, after the trial of the petition, or when the purpose has been served for which their delivery or transmission was required.

Particulars to Be Delivered

77.11 (1) Where a petitioner claims a seat for an unsuccessful candidate alleging that the candidate had a majority of lawful votes, the party complaining of and the party defending the election or return shall each, six days before the day appointed for trial, deliver to the Prothonotary and also at the address, if any, given by the petitioner and respondent, a list of the votes intended to be objected to, and of the nature of the objection to each such

vote.

- (2) Where a petition alleges corrupt practices against a respondent or their agents, the petitioner shall, six days before the day appointed for the trial, deliver to the Prothonotary, and also at the address, if any, given by the petitioner, particulars in writing of the specific corrupt practices charged, which shall state,
 - (a) the name and address, as far as known, of any person alleged to have been guilty of each such act;
 - (b) the time and place where each such act was committed; and
 - (c) each illegal practice intended to be relied upon as affecting the result of the election.
- (3) Where a respondent, who is complaining of an undue return and a seat from some person, intends to give evidence to prove the election of the person was undue under the Act, the respondent shall, six days before the day appointed for trial, deliver to the Prothonotary, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which the respondent intends to rely.
- (4) The court may, at any time, order any further and other particulars by a party as may be necessary to prevent surprise or unnecessary expense and to ensure a fair and effectual trial, and upon such terms as to costs and otherwise as the court may order.
- (5) The Prothonotary shall, upon request, allow inspection by, and furnish copies of the particulars specified in the four next preceding paragraphs to all interested parties.
- (6) Evidence shall not be given against the validity of any vote, or upon any objection to the election, or of any corrupt or illegal practice not specified in the particulars delivered, except by leave of the court granted upon such terms as to amendment of the particulars, postponement of the inquiry, payment of costs, or otherwise, as may be ordered.

Election List

77.12 A Prothonotary shall make out the election list. In it the Prothonotary shall insert the names of the lawyer of any petitioner and respondent, and the addresses 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 put up for that purpose upon a notice board appropriated to proceedings under the Act, and headed the "*Controverted Elections Act*".

Trial, Notices Thereof, Postponement

- 77.13** (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,
- (a) affixing the same in some conspicuous place in the office of the Prothonotary; and
 - (b) sending by registered mail a copy thereof to each of the following persons,
 - (i) the petitioner or their lawyer at the address stated in the endorsement,
 - (ii) the respondent or their lawyer at the address given under Rule 77.07, if any,
 - (iii) the sheriff, and
 - (iv) the returning officer,
- not less than fourteen days before the day appointed for the trial.
- (2) The sheriff shall forthwith publish the notice in the county 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 is deemed and taken to be notice in the prescribed manner within the meaning of the Act, and the notice is not 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 77.13A.
- (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 the court may name, and the notice when received shall be forthwith made public by the sheriff.

Adjournment of Trial

- 77.14** (1) In the event of the failure of a judge 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 judge.

- (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 judge, who begins the trial, be disabled by illness or otherwise, it may be recommenced, and concluded by any other judge.

Returning Officer to Deliver Poll Books

77.15 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 thereof, safely keep the books until the termination of the trial, and then return them to the returning officer.

Copies of Proceedings for Court

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

Special Case

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

Findings of court

77.18 After the trial of an election petition, the court shall return to the Prothonotary the evidence and proceedings before the court, and forthwith certify in writing its determination to the speaker as provided by sections 58 to 61 of the Act.

Appointment of Reporter

77.19 The court may appoint a suitable person to take the evidence at the trial, who before entering upon their duties shall be sworn to the faithful performance of the same.

Withdrawal of Petition, Substituted Petitioner

- 77.20** (1) Notice of an application for leave to withdraw a petition shall be in writing in Form 77.20 A, signed by the petitioner or their lawyer, and state the grounds of the application.
- (2) The petitioner shall file the notice with the Prothonotary who shall forthwith cause a notice thereof in Form 77.20 B to be published in at least one newspaper, if any, published or circulating in the electoral district.
- (3) Any person who might have been a petitioner in respect of the election to which the petition relates may, within five days after the notice is published, give notice in writing signed by the person or on their behalf, to the Prothonotary, of their intention to apply at the hearing to be substituted for the petitioner, but the failure to give the notice shall not defeat the application.
- (4) The court shall fix the time and place for hearing the application, but the time fixed shall not be 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 and to every person who has given notice to the Prothonotary of their intention to apply to be substituted as petitioner.
- (5) The court may also direct such other notice to be given as it sees fit.

Abatement of Petition, Application to Be Substituted

- 77.21** Notice of the abatement of a petition by death of the sole petitioner or surviving petitioner shall be given by the respondent or any person who might have been a petitioner, in the same manner as notice of an application to withdraw a petition, and the time within which application may be made to the court to be substituted as a petitioner, shall be one calendar month or such further time as the court may allow.

Respondent, Death of, Etc.

- 77.22** (1) When a respondent dies, or the House of Assembly resolves that the respondent's seat is vacant, or the respondent gives the prescribed notice that the respondent does not intend to oppose or further to oppose the petition, any person who might have been a petitioner may give notice of the fact in writing signed by the person or their lawyer.
- (2) The notice is given by filing it in the office of the Prothonotary.
- (3) Upon receipt of the notice, the Prothonotary shall forthwith,

- (a) affix it in a conspicuous place in the office of the Prothonotary,
 - (b) notify the judge assigned to try the petition that the notice has been received,
 - (c) send a copy thereof by registered post to the petitioner or their lawyer at the address stated in the endorsement, and
 - (d) send a copy thereof by registered post to the sheriff.
- (4) The sheriff shall forthwith publish the notice in the county by causing copies thereof to be posted up in the most public places therein.
- (5) A respondent, who does not intend to oppose or to further oppose the petition, may give notice of the fact in writing signed by the respondent or on their behalf.
- (6) The notice in paragraph (5) shall be given in the manner prescribed by paragraphs (1) and (2), and the Prothonotary and sheriff shall deal with the same in the manner prescribed in paragraphs (3) and (4) with regard to the notice therein referred to.

Application to Be Admitted as Respondent

77.23 The time for applying to be admitted as a respondent in any of the events mentioned in section 81, shall be within ten days after the notice is published as directed in Rule 77.22, or such further time as the court may allow.

Non-Compliance

- 77.24** (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 a 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

- 77.25** (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.

Rules of the Supreme Court to Apply

- 77.26** In all cases not provided for by Rule 77 the Civil Procedure Rules and practice of the Supreme Court of Prince Edward Island apply and, with any necessary modification, to any proceeding under the Act.

CONTROVERTED ELECTIONS ACT (PRINCE EDWARD ISLAND)

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 *Controverted Elections (Provincial) 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 the corresponding forms to Rule 77 as necessitated by the proclamation of the *Judicature Act* were approved by the Judges of the Supreme Court of Prince Edward Island on the 25th day of June, 2009, to become effective on the coming into force of the new Rules of Civil Procedure.

