

The Controverted Elections Act

being

Chapter C-32 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1983, c.66; 1996, c.E-6.01; 2000, c.C-42.1; 2004, c.65; and 2016, c.28.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER C-32

An Act respecting Controverted Elections

SHORT TITLE

Short title

1 This Act may be cited as *The Controverted Elections Act*.

INTERPRETATION

Interpretation

2(1) In this Act:

(a) “**court**” means the Court of Queen’s Bench for Saskatchewan or a judge thereof;

(b) “**judge**” means a judge of the Court of Queen’s Bench for Saskatchewan;

(c) “**registrar**” means the registrar of the Court of Queen’s Bench for Saskatchewan.

(2) Except where the context otherwise requires, all other words, names and expressions used in this Act have the same meaning as ascribed to them by *The Election Act, 1996*.

R.S.S. 1978, c.C-32, s.2; 1996, c.E-6.01, s.288.

PETITIONS

Petition against undue return or election

3 Any defeated candidate or any duly qualified elector of the constituency in which the election was held may petition the court against the undue return or undue election of a candidate at the election in that constituency.

R.S.S. 1978, c.C-32, s.3.

Form and contents of petition

4 The petition may be in form A and shall contain:

(a) a statement setting forth the right of the petitioner to petition;

(b) a statement setting forth the holding and the result of the election in general terms;

(c) a statement complaining of the undue return or undue election of the candidate;

- (d) a statement in summary form of the material facts and grounds relied on to sanction the prayer, together with such particulars as may be necessary to prevent surprise or unnecessary expense to the respondent and to ensure a fair and effectual trial;
- (e) a prayer that the election be declared void and set aside;
- (f) if the petitioner so desires, a prayer that a candidate at the election other than the one certified was duly elected; and
- (g) the signature of the petitioner.

R.S.S. 1978, c.C-32, s.4.

Filing of petition

5(1) The petition shall be filed in duplicate in the office of the registrar at Regina within twenty days after the publication by the Chief Electoral Officer of the notice prescribed by section 171 of *The Election Act, 1996*.

(2) The registrar shall note on one copy of the petition the date on which it is filed and shall sign and seal the copy and return it to the person who filed it; and thereupon the proceedings under this Act shall, subject to section 6, be deemed to be commenced.

R.S.S. 1978, c.C-32, s.5; 1996, c.E-6.01, s.288.

Security for costs

6 The petitioner shall, at the time he files the petition, deposit with the registrar at Regina the sum of \$1,000:

- (a) in Bank of Canada notes;
- (b) by cheque for such sum drawn upon and accepted by a chartered bank carrying on business in Canada or a credit union or a trust company carrying on business in Saskatchewan; or
- (c) partly in one and partly in the other;

as security for the respondent's costs of and incidental to the petition and the proceedings thereunder.

R.S.S. 1978, c.C-32, s.6.

SERVICE

Service of petition

7 A copy of the petition shall be served on the candidate against whom the petition is filed, in this Act called the respondent, within five days after it is so filed and service may be effected:

- (a) by personal service on the respondent;
- (b) by leaving a copy thereof at the address for service set out in the respondent's nomination paper;

- (c) by personal service on the business manager of the respondent; or
- (d) in the same manner that service of a statement of claim in an ordinary civil action in the court is effected.

R.S.S. 1978, c.C-32, s.7; 1983, c.66, s.4.

Extension of time for service, etc.

8 Where a judge is satisfied by affidavit, either before or after the time limited by section 7 for service of a copy of the petition, that every reasonable effort has been made to effect service and that service has not been effected, he may *ex parte* extend the time for effecting service for a period not exceeding ten days, and so from time to time until service has been effected; or the judge may make an *ex parte* order for substituted service of the petition in such manner as he may direct.

R.S.S. 1978, c.C-32, s.8; 2016, c28, s.8.

Petitioner's address for service

9 The petitioner shall endorse on the petition filed with the registrar, and on the copy thereof served on the respondent, an address for service, which shall not be more than three miles from the registrar's office, at which any summons, notice, demand and other paper in the proceedings may be served on him; and if he fails to so endorse the petition and copy thereof a summons, notice, demand and other paper in the proceedings may be served on him by being filed with the registrar.

R.S.S. 1978, c.C-32, s.9.

Respondent's address for service

10 The respondent shall, within five days after being served with a copy of the petition, file with the registrar a notice in writing specifying an address for service not more than three miles from the registrar's office at which any summons, notice, demand and other paper in the proceedings may be served on him; and if he fails to do so a summons, notice, demand and other paper in the proceedings may be served on him by being filed with the registrar.

R.S.S. 1978, c.C-32, s.10.

PRELIMINARY OBJECTIONS

Application to have petition set aside

11 The respondent may, within ten days after service on him of the petition, apply to a judge to set the petition aside on any of the following grounds:

- (a) that the petitioner is not qualified to file a petition;
- (b) that the petition was not filed within the prescribed time;
- (c) that the deposit has not been made as provided in section 6;

(d) that the petition does not on its face disclose sufficient grounds or facts to have the election set aside and declared void;

(e) that service of a copy of the petition has not been made on him as prescribed under this Act;

and the judge may, if satisfied that the application is well founded, order that the petition be set aside, with or without costs, or, if not so satisfied, may dismiss the application with or without costs.

R.S.S. 1978, c.C-32, s.11.

Particulars in petition

12 Evidence need not be set out in the petition and the failure to state sufficient particulars in the petition with respect to the grounds or facts relied upon in the petition is not a ground upon which the petition shall be set aside; but the respondent may, within ten days after service on him of the petition, unless he makes an application under section 11, and if he does, then within five days after the application is disposed of, if it is refused or dismissed, apply to a judge for further and better particulars of the grounds and facts relied on to sustain the prayer of the petition; and the judge may order such particulars as may be necessary to prevent surprise and to ensure a fair and effectual trial, and may prescribe the time within which the particulars shall be delivered and may in the order direct that, in case such particulars are not delivered as prescribed, the petitioner shall not be at liberty to give any evidence at the trial with respect to any grounds and facts of which particulars are ordered and not delivered.

R.S.S. 1978, c.C-32, s.12.

Petition claiming seat, objections

13 Where the petitioner claims the seat for a candidate other than the one certified to be elected, the respondent may within ten days after service on him of the petition, unless he applies to set aside the petition under section 11, and if he does then within five days after the application is disposed of, if it is refused or dismissed, filed with the registrar a statement in form B claiming that the seat ought not to be awarded to the candidate for whom it is so claimed because:

(a) he is not qualified to be elected a member of the Legislative Assembly;
or

(b) he, at the election in question, was guilty of a corrupt practice within the meaning of *The Election Act, 1996*;

and the respondent shall sign the statement and serve a copy of the statement on the petitioner.

R.S.S. 1978, c.C-32, s.13; 1996, c.E-6.01, s.288.

Setting aside statement of objection

14 The petitioner may, within ten days after service on him of the statement mentioned in section 13, apply to a judge to set the statement aside on any of the following grounds:

- (a) that the statement was not filed within the prescribed time;
- (b) that the statement was not served on him as prescribed by section 13;
- (c) that the statement does not on its face disclose sufficient grounds to have the election declared void as against the candidate for whom the seat is claimed;
- (d) that the petition does not claim the seat for any other candidate;

or, if the statement is not served on the petitioner as prescribed by section 13, he may apply at any time to have it set aside; and the judge may, if satisfied that any application under this section is well founded, order that the statement be set aside, with or without costs; or, if not so satisfied, shall dismiss the application with or without costs.

R.S.S. 1978, c.C-32, s.14.

Evidence and particulars respecting statement

15 Evidence need not be set out in the statement mentioned in section 13, but the petitioner may, within ten days after service on him of the statement, unless he makes application under section 14 to set the statement aside, and if he does, then within five days after the application is disposed of, if it is refused or dismissed, apply to a judge for particulars or for further and better particulars of the grounds and facts relied on for the claim that the seat ought not to be awarded to the candidate for whom it is claimed in the petition; and the judge may order such particulars as may be necessary to prevent surprise and ensure a fair and effectual trial in the same manner and with the same consequences as prescribed in section 12.

R.S.S. 1978, c.C-32, s.15.

PETITIONS AT ISSUE**Petition, when at issue**

16 Where the petition is not ordered to be set aside, the petition shall be at issue when all other orders, upon applications hereinbefore authorized, have been made by the judge whether granting or refusing the applications or when the time for making such applications has expired if no such applications have been made.

R.S.S. 1978, c.C-32, s.16.

Application for time and place of trial

17 At any time after the petition is at issue the petitioner may apply to a judge to appoint a time and place for the trial of the petition; and the judge, on being satisfied that the petition is at issue, shall appoint a time and place for the trial.

R.S.S. 1978, c.C-32, s.17.

Application for dismissal of petition

18 Where the petitioner does not, within fifteen days after the petition is at issue, apply to the judge to appoint a time and place for the trial of the petition, the respondent may apply to the judge to dismiss the petition; and the judge may thereupon at the return of the motion if the application is properly made, either dismiss the petition with costs or appoint a time and place for the trial of the petition.

R.S.S. 1978, c.C-32, s.18.

Petition void and deemed dismissed in certain cases

19(1) Where:

- (a) no time and place for the trial of the petition has been appointed under section 17 or 18; or
- (b) no order has been made under subsection (2) extending the time for making an application to a judge to appoint the time and place for the trial of the petition;

within twenty-five days after the petition is at issue, the petition shall be deemed to have been dismissed.

(2) At any time before the expiration of the twenty-five day period mentioned in subsection (1), the petitioner or the respondent may apply to a judge for an order extending the time for making an application to a judge to appoint the time and place for the trial of the petition; and the judge, on being satisfied that special circumstances exist that make it impractical to appoint the time and place for the trial of the petition, shall, in such manner as he deems advisable, extend the time for making an application to a judge to appoint the time and place for the trial of the petition.

(3) Where no application is made to a judge to appoint the time and place for the trial of the petition within the extended time ordered under subsection (2), the petition shall be deemed to have been dismissed.

(4) Where a petition is deemed to be dismissed pursuant to this section, the respondent or the Chief Electoral Officer may apply to a judge for an order declaring that the petition is dismissed; and the order has, when it is served upon or is obtained by the Chief Electoral Officer, the same effect as a judge's report made under section 22.

(5) Where a petition is deemed to be dismissed pursuant to this section, the respondent may apply to a judge for an order for costs and the judge shall make such order as he deems proper.

R.S.S. 1978, c.C-32, s.19.

List of petitions at issue

20(1) The registrar shall make a list of all petitions filed under this Act that are at issue placing them in the order in which they were filed; and he shall keep a copy of the list at his office available for inspection by any person who requests to inspect the copy of the list.

(2) Where two or more petitions at issue are filed relating to the same election, all those petitions shall, in the list mentioned in subsection (1), be bracketed together and shall be dealt with, as far as may be, as one petition; but the bracketed petitions shall, unless the court otherwise directs, stand in the list in the place where the last of them filed would have stood if it had been the only one filed as to that election.

R.S.S. 1978, c.C-32, s.20.

TRIAL**Trial and adjournment thereof**

21(1) The trial of a petition shall be tried by a single judge sitting without a jury.

(2) The judge shall attend at the time and place appointed for the trial and try the matters of the petition and the matters arising thereout; and the place of trial shall be an open court at which the usual officers of the court shall attend and perform their respective duties as in the case of any other trial in the court; and the trial may be adjourned from day to day or for such further time as the judge may direct.

R.S.S. 1978, c.C-32, s.21.

JUDGE'S REPORT**Judge to report to Chief Electoral Officer**

22(1) Where on the trial the judge finds that the respondent was unduly returned or elected a member of the Legislative Assembly by reason of any of the matters alleged in the petition, he shall, forthwith after the expiration of fourteen days from delivering his judgment, unless his judgment is appealed and application is made for a stay pursuant to section 30, report the finding to the Chief Electoral Officer; and shall certify in the report for what cause he finds that the respondent was unduly returned or elected; and, if the seat is by the petition claimed for a candidate other than the respondent, and the judge finds at the trial that the other candidate is entitled to the seat, he shall so certify in his report, and thereupon the other candidate shall be entitled to the seat in the place and stead of the respondent; but the judge shall not so find or certify that the other candidate is entitled to the seat under any circumstances if he finds that he is not qualified by law to be a member of the Assembly or that at the election in question he was guilty of a corrupt practice within the meaning of *The Election Act, 1996*, if the want of qualification or act, as the case may be, has been charged against the candidate in a statement filed under section 13.

(2) Where the judge does not in his report certify that another candidate is entitled to the seat, the election is void and set aside and a writ of election shall be issued to fill the vacancy so created.

R.S.S. 1978, c.C-32, s.22; 1996, c.E-6.01, s.288.

Dismissal of petition

23 Where the judge at the trial finds that the matters set forth in the petition are not proved to his satisfaction he shall dismiss the petition.

R.S.S. 1978, c.C-32, s.23.

WITHDRAWALS

Withdrawal of petition

24(1) The petitioner may at any time withdraw his petition by:

- (a) filing with the registrar and with the Chief Electoral Officer a statement in writing that he withdraws it; and
- (b) serving the respondent with a notice of withdrawal;

and in that case the judge may on application order the petitioner to pay the respondent's costs of and incidental to the petition and the proceedings thereunder.

(2) On receipt of the statement the Chief Electoral Officer shall publish in the *Gazette* a notice that the petitioner has withdrawn his petition, and thereupon any duly qualified elector of the constituency within which the election was held may, within ten days of the appearance of the notice in the *Gazette*, apply *ex parte* to a judge in chambers for leave to be substituted for the petitioner in the proceedings, and the judge, upon being satisfied as to the qualifications of the applicant, may by order grant him leave to proceed with the petition as if he had been the petitioner in the first instance.

(3) The order under subsection (2) may be made on such terms and conditions as to security for costs and otherwise as the judge deems just.

R.S.S. 1978, c.C-32, s.24.

Withdrawal of statement by respondent

25 The respondent may at any time withdraw any statement filed by him under section 13 by:

- (a) filing with the registrar a statement that he withdraws it; and
- (b) serving the petitioner with a notice of the withdrawal;

and in that case the judge may on application order the respondent to pay the petitioner's costs of and incidental to the statement.

R.S.S. 1978, c.C-32, s.25.

ADMISSION OF UNDUE ELECTION

Filing of admission by respondent

26(1) The respondent may at any time admit that he was unduly returned or elected by:

- (a) filing with the registrar a statement in writing admitting that fact; and
- (b) serving the petitioner with a notice that the statement has been filed;

whereupon the judge may on application order the respondent to pay to the petitioner his costs of and incidental to the petition; and unless the seat is claimed for a candidate other than the respondent the judge shall report to the Chief Electoral Officer that the respondent has admitted that he was unduly returned or elected, whereupon the election is void and set aside, and a writ of election shall be issued to fill the vacancy so created.

(2) Where the seat is claimed for a candidate other than the respondent, the petition shall, unless it is already at issue pursuant to section 16, be at issue upon the filing of the statement mentioned in clause (a) of subsection (1) and the serving of the notice thereof, and thereupon the petition shall be dealt with, and, if necessary, tried as if the respondent were still a party to the proceeding; and in such case the respondent is not entitled to notice of any further proceeding or to be heard at the trial of the petition.

R.S.S. 1978, c.C-32, s.26.

COSTS

General provisions respecting fees and costs, etc., and taxation

27(1) The judge may determine that the fees or any portion of the fees of any witness called at the trial of the petition shall be paid by one or more of the following persons:

- (a) the party calling the witness;
- (b) the opposing party;
- (c) the witness himself;
- (d) the returning officer of the constituency in which the election was held where in the opinion of the judge the petitioner and the respondent and their respective business managers were not guilty of any corrupt practice or illegal act that constituted the grounds for having the election voided and set aside.

(2) Where the judge determines that the returning officer shall pay all or part of the fees of any witness, the returning officer shall pay the fees in accordance with the determination of the judge and shall include the payment in his election expense account.

(3) All costs, charges and expenses of and incidental to the presentation of a petition under 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 paid by the parties to or by those opposing the petition, in such manner and in such proportions as the judge determines, regard being had to:

- (a) the disallowance of any costs, charges or expenses that, in the opinion of the judge, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part of the petitioner or the respondent; and
- (b) the discouragement of any needless cost, charge or expense by placing the burden of defraying the cost, charge or expense on the parties by whom it has been caused;

whether those parties are or are not on the whole successful.

(4) The costs, charges and expenses may be taxed according to the same principles as costs are taxed between parties in ordinary civil actions in the court and such costs, charges and expenses are recoverable in the same manner as the costs in such ordinary civil actions.

(5) No greater counsel fee or fees shall be taxed as between party and party, in respect of or in connection with the trial, than:

- (a) \$150, where the trial does not continue beyond one day; and
- (b) \$100, for each additional day the trial continues;

whether one or more counsel are engaged at the trial.

(6) Notwithstanding subsections (4) and (5), the total amount of the costs, charges and expenses, including counsel fees, allowed by the judge to a party to the proceedings shall not exceed \$500 together with any actual disbursements made by the party.

(7) Where the judge at any time orders costs, charges or expenses to be paid by the petitioner, he may, when the petition and all matters arising thereout have been finally determined and disposed of, order that the costs, charges or expenses be paid out of the moneys deposited by the petitioner on the filing of the petition; but nothing in this subsection shall be construed as preventing the respondent from proceeding at any time to recover any costs, charges or expenses that may have been awarded to him according to the ordinary practice of the court.

APPEAL

Appeal to Court to Appeal

28 An appeal lies to the Court of Appeal from any order or determination of a judge; and the appeal and all proceedings relating thereto shall, subject to sections 30 and 31, be had and taken and the Court of Appeal shall deal with the appeal in the same manner as appeals and the proceedings thereunder are had, taken and dealt with under *The Court of Appeal Act, 2000* and rules of court.

R.S.S. 1978, c.C-32, s.28; 2000, c.C-42.1, s.25.

Interlocutory appeals and stay

29(1) If an appeal is from an order or determination other than a finding or determination under section 22 or 23, it shall not operate as a stay of proceedings unless so ordered by the judge; and the judge may for reasonable cause at any time set aside any stay of proceedings he may so order.

(2) Where a stay of proceedings is ordered, the time prescribed by this Act for the taking of any step or the happening of any event shall cease to run during the operation of the stay.

R.S.S. 1978, c.C-32, s.29.

Stay of proceedings on appeal from final judgment

30(1) Where an appeal is from a finding or determination under section 22, the appellant shall, before the expiration of the fourteen days mentioned in that section, apply *ex parte* to a judge for a stay of proceedings; and the judge, on being satisfied that notice of the appeal has been duly given, shall make an order staying proceedings and shall not forward his report as provided in section 22 until the appeal is finally determined.

(2) The other party may apply to the judge, at any time before the appeal is lodged with the registrar or other proper officer of the court, to have the stay set aside and the appeal quashed on the ground that the appeal is not being prosecuted with sufficient dispatch; and the judge may, if satisfied that there has been undue delay in prosecuting the appeal, set aside the stay of proceedings and quash the appeal and in that case shall forthwith forward his report to the Chief Electoral Officer as provided in section 22.

(3) No order shall be made as provided in subsection (2) if, at the time of the application, the appeal has been lodged with the registrar or other proper officer of the court.

R.S.S. 1978, c.C-32, s.30.

Hearing and adjudication of appeals

31(1) When an appeal to the Court of Appeal is duly lodged with the registrar or other proper officer it shall, subject to subsection (2), be proceeded and dealt with according to the practice of that court in appeals in civil causes; and the adjudication and finding of the court on the appeal shall be duly certified by the registrar or other proper officer to the judge appealed from; and, if the appeal is from a finding or determination of a judge under section 22 and the finding or determination is affirmed in whole or in part, the judge shall forthwith forward his report to the Chief Electoral Officer as provided in section 22 and as varied or modified by the order of the Court of Appeal.

(2) The appeal shall be heard by the Court of Appeal within thirty days after the notice of appeal is served by the appellant on the last of the persons to be served with the notice unless the Court of Appeal or a judge thereof, on application made within such thirty days, extends the time for hearing the appeal.

R.S.S. 1978, c.C-32, s.31.

GENERAL**Petition and proceedings thereunder deemed cause in court**

32 The petition and all proceedings thereunder shall be deemed to be a cause in the court and all the provisions of *The Queen's Bench Act, 1998* and rules of court made thereunder, insofar as applicable and not inconsistent with this Act, shall be applicable to the petition and proceedings; and the tariff of costs for the registrar and local registrars, sheriffs, solicitors and counsel and interpreters whether prescribed by *The Queen's Bench Act, 1998*, under its authority or otherwise by competent authority shall be applicable to the proceedings.

R.S.S. 1978, c.C-32, s.32; 2004, c.65, s.6.

Long vacation rules not to apply

33 The rules of court respecting long vacation do not apply to any proceeding or appeal under this Act.

R.S.S. 1978, c.C-32, s.33.

Applications to judge in chambers

34 Applications to a judge shall be made in chambers and unless authorized to be made *ex parte* shall be made by notice of motion.

R.S.S. 1978, c.C-32, s.34.

When application in time

35 An application by notice of motion shall be deemed to have been made within the time prescribed by this Act, if the notice of motion is filed, served and made returnable within the prescribed time.

R.S.S. 1978, c.C-32, s.35.

Powers of judge

36 The judge hearing an interlocutory application made under this Act has the same powers, jurisdiction and authority as a judge in chambers in ordinary proceedings of the court.

R.S.S. 1978, c.C-32, s.36.

BALLOTS NOT TO BE COUNTED**No count or recount authorized**

37 Nothing in this Act shall be construed to authorize the judge to count or recount the ballots cast at an election; but the count of such ballots and the recount, if any, under *The Election Act, 1996*, shall be considered conclusive.

R.S.S. 1978, c.C-32, s.37; 1996, c.E-6.01, s.288.

SCHEDULE

FORM A
[Section 4]

In the Court of Queen's Bench for Saskatchewan

Between: *A.B., Petitioner,*
and
C.D., Respondent

The petition of *A.B.*, of _____ showeth:
(stating petitioner's residence and occupation)

1. The petitioner was a duly qualified elector at such election (or the petitioner was a defeated candidate at such election).

2. An election was held on the _____ day of _____, 19 _____
(state the date of the general polling day)

for the constituency of _____
(state the name of the constituency)

at which *C.D.* and *E.F.* were candidates, and the said *C.D.* has been certified to be the person elected at such election.

3. The petitioner says _____ .
(make here the statements required by clauses (c) and (d) of section 4)

Wherefor the petitioner prays that it may be declared that the election of the said *C.D.* is void and that it be set aside and (if the seat is claimed for another candidate) that it may be declared that the said *E.F.* was duly elected.

Dated the _____ day of _____, 19 _____ .

Petitioner's signature

FORM B
[Section 13]

In the Court of Queen's Bench for Saskatchewan

Between: *A.B., Petitioner,*
and
C.D., Respondent

The above named respondent, *C.D.* says that the seat claimed in the petition herein for the said *E.F.* ought not to be awarded to him because _____

(here state the grounds and facts on which the respondent relies)

Dated the _____ day of _____, 19 _____ .

Respondent's signature