The Controverted Municipal Elections Act

being

Chapter C-33 of the *Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan,* 1979-80, c.92; 1982-83, c.6; 1983, c.66 and 77; 1983-84, c.61; 1986-87-88, c.18; 1988-89, c.25; 2002, c.C-11.1; 2005, c.M-36.1; 2010, c.E-9.22 and c.N-5.2; and 2015, c.L-30.11 and c.21.

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.

Table of Contents

SHORT TITLE

1 Short title

INTERPRETATION

2 Interpretation

CORRUPT PRACTICES

3 Bribery
4 Threats, etc.
5 Personal expenses
6 Evidence on quo warranto
7 Forfeiture and disqualification
8 Disqualification
9 Recovery of penalty
10 Imprisonment
11 Report of liability to penalty
12 Record of disqualified persons
13 Witnesses
14 Privilege of witnesses
15 Limitation
16 Exemption
17 Duties of clerk
18 Trial of contested election
19 Notice of motion
20 Contents of notice
21 Affidavits, etc.
22 Service
23 Time of service
24 Claim of seat
25 Combination of motions
26 Grounds of decision
27 Production of papers
28 Returning officer, etc., may be added
29 Intervention of other parties
30 Hearing and determination
31 Judgment
32 Liability of returning officer, etc.
33 Form and effect of order
34 Return
35 Disclaimer after motion
36 Transmission
37 Disclaimer before motion
38 Effect of disclaimer
39 Transmission

CHAPTER C-33

An Act respecting the Punishment of Corrupt Practices at Municipal Elections and the Trial of Controverted Municipal Elections

SHORT TITLE

Short title

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

INTERPRETATION

Interpretation

2 In this Act:

(a) **"clerk of the municipality"** means the clerk of a city or town or the secretary of a village, northern municipality or rural municipality;

(b) **"council"** means the municipal council of a city, town, village, northern municipality or rural municipality;

(b.1) **"election"** means an election of members pursuant to *The Local Government Election Act;*

(c) **"judge"** means a judge of Her Majesty's Court of Queen's Bench for Saskatchewan sitting at the judicial centre within the municipality or, if none, at the judicial centre nearest to which the municipality, or a part thereof, is situated;

(d) **"municipality"** means a city, town, village, northern municipality or rural municipality;

(e) **"voter"** means a person entitled to vote or voting at an election of members or on a bylaw or question pursuant to *The Local Government Election Act*.

R.R.S.1978, c.C-33, s.2; 1979-80, c.92, s.14; 1982-83, c.6, s.2; 1983 c77 s15; 2005, c.M-36.1, s.421.

CORRUPT PRACTICES

Bribery

3(1) The following persons shall be deemed guilty of bribery and shall be punishable accordingly:

1 Every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or lend or offers or promises money or valuable consideration or gives or procures or agrees to give or procure or offers or promises any office, place or employment to or for any voter or to or for any person, in order to induce a voter to vote or refrain from voting at an election or to vote or refrain from voting upon a bylaw or question, or who corruptly does any such act on account of a voter having voted or having refrained from voting at an election or upon such bylaw or question;

2 Every person who directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise or agreement as aforesaid to or for any person in order to induce that person to procure or defeat, or endeavour to procure or defeat, the return of any person to serve in the council, or to procure or defeat the passing of such bylaw or question or the vote of any voter at an election or at the voting upon such bylaw or question;

3 Every person who by reason of any such gift, loan, offer, promise, procurement or agreement procures, or defeats or engages or promises or endeavours to procure or defeat the return of any person in an election, or to procure or defeat the passing of such bylaw or question or the vote of any voter at an election or at the voting upon such bylaw or question;

4 Every person who advances or pays or causes to be paid money to or to the use of any other person, with the intent that the money or any part thereof shall be expended in bribery at an election or at the voting upon such bylaw or question, or who knowingly pays or causes to be paid money to any person in discharge or repayment of money wholly or in part expended in bribery at such election or at the voting upon such bylaw or question;

5 Every voter who before or during an election or before or during the voting on such bylaw or question directly or indirectly, by himself or any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or any other person for voting or agreeing to vote, or refraining or agreeing to refrain from voting, at such election or upon such bylaw or question;

6 Every person who, after such election or the voting upon such bylaw or question, directly or indirectly, by himself or any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at such election or upon such bylaw or question;

7 Every person who hires horses, teams, carriages or other vehicles for the purpose of conveying voters to or from the polls, and every person who receives pay for the use of any horses, teams, carriages or other vehicles for the purpose of conveying voters to and from a poll.

(2) Every person who becomes qualified to be registered as a voter at the election of any member of the council of a municipality by becoming the owner of land, or otherwise becoming entitled to be so registered, for the purpose of influencing the result of the vote is guilty of an offence against this Act.

(3) Every person who, directly or indirectly, by himself or by any other person on his behalf, counsels or procures any other person to become the owner of land, or to otherwise become qualified to be registered as a voter at the election of any member of the council of a municipality, for the purpose of influencing the result of the vote is guilty of an offence against this Act.

(4) Every person who, directly or indirectly, by himself or by any other person on his behalf, counsels or procures any other person who, for the purpose of influencing the result of the vote at an election of a member of the council of a municipality, is the owner of land or is otherwise entitled to be registered as a voter to vote at the election of a member of the council of a municipality is guilty of an offence against this Act.

(5) Every person who:

(a) prior to the coming into force of this subsection became qualified to be registered as a voter at the election of any member of the council of a municipality by becoming the owner of land, or otherwise becoming entitled to be so registered, for the purpose of influencing the result of the vote; and

(b) after the day on which this subsection comes into force:

(i) continues to be the owner of land, or otherwise entitled to be registered as a voter, for the purpose of influencing the result of the vote of the election of a member of the council of a municipality; and

(ii) votes at any election of a member of the council of a municipality;

is guilty of an offence against this Act.

(6) Every person who, directly or indirectly, by himself or by any other person on his behalf, counsels or procures any other person who, prior to the coming into force of this subsection, became qualified to be registered as a voter at the election of any member of the council of a municipality by becoming the owner of land, or otherwise becoming entitled to be so registered, for the purpose of influencing the result of the vote to:

(a) continue to be the owner of the land, or to otherwise remain qualified to be so registered, for the purpose of influencing the result of the vote; and

(b) vote at any election of a member of the council of a municipality;

is guilty of an offence against this Act.

R.R.S.1978, c.C-33, s.3; 1982-83, c.6, s.2; 1988-89, c.25, s.3.

Threats, etc.

4 Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of force, violence or restraint, or inflicts or threatens to inflict by himself or by or through any other person any injury, damage, harm or loss, or in any manner practises intimidation upon or against any person in order to induce or compel that person to vote or refrain from voting at an election or at the voting upon a bylaw or question or on account of that person having voted or refrained from voting thereat, or who by abduction, duress or a fraudulent device or contrivance impedes, prevents or otherwise interferes with the free exercise of the franchise of a voter, or thereby compels, induces or prevails upon a voter to give or refrain from giving his vote at an election or at the vote upon a bylaw or question, shall be deemed to have committed the offence of undue influence.

R.R.S.1978, c.C-33, s.4; 1982-83, c.6, s.2.

Personal expenses

5 The actual personal expenses of a candidate, his expenses for actual professional services performed and all *bona fide* payments for the fair cost of printing and advertising shall be held to be expenses lawfully incurred and the payment thereof shall not be a contravention of this Act.

R.R.S.1978, c.C-33, s.5.

Evidence on *quo warranto*

6 When, upon a motion in the nature of *quo warranto*, a question is raised as to whether the candidate or any voter or other person has been guilty of a violation of section 3 or 4, affidavit evidence shall not be used to prove the offence but it shall be proved by *viva voce* evidence.

R.R.S.1978, c.C-33, s.6.

Forfeiture and disqualification

7 A candidate elected at an election who is found by a judge, on the hearing of a motion in the nature of a *quo warranto*, guilty of an act of bribery or of using undue influence or of an offence against subsection 3(2), (3), (4), (5) or (6) shall forfeit his seat and shall be ineligible as a candidate at any election for four years.

1988-89, c.25, s.4.

Disqualification

8 A person, who is adjudged guilty of an offence within the meaning of section 3 or 4, shall incur a penalty of $1,000 and shall be disqualified from voting at any election or upon any bylaw or question for the next succeeding two years.

R.R.S.1978, c.C-33, s.8; 1982-83, c.6, s.2; 1988-89, c.25, s.5.

Recovery of penalty

9 The money penalty imposed by section 8 shall be recoverable with full costs of suit by any person who sues for the penalty in Her Majesty's Court of Queen's Bench for Saskatchewan, and a person against whom judgment is rendered shall be ineligible either as a candidate or an elector until the amount so recovered against him has been fully paid.

R.R.S.1978, c.C-33, s.9; 1983, c.66, s.5.

Imprisonment

10 The judge may direct that, in default of payment of the penalty and costs within the time fixed by him, the offender shall be imprisoned for a period not exceeding thirty days and in case of default of payment the judge may issue a warrant for the arrest and imprisonment of the offender in accordance with the judgment until the penalty and costs are fully paid.

R.R.S.1978, c.C-33, s.10; 2015, c.21, s.14.

Report of liability to penalty

11 The judge who finds a candidate guilty of a contravention of section 3 or 4, or who condemns any person to pay a penalty imposed under section 8 shall report the matter forthwith to the clerk of the municipality.

R.R.S.1978, c.C-33, s.11.

Record of disqualified persons

12 The clerk of the municipality shall enter in a book to be kept for that purpose the names of all persons who have been adjudged guilty of an offence within the meaning of section 3 or 4 and whose names have been reported to him by the judge.

R.R.S.1978, c.C-33, s.12.

Witnesses

13 Every witness shall be bound to attend before the judge, upon being served with a subpoena directing his attendance and upon payment of the necessary witness fees and conduct money, and in default thereof he may be punished for contempt.

R.R.S.1978, c.C-33, s.13.

Privilege of witnesses

14 No person shall be excused from answering any question put to him upon the hearing of a motion in the nature of a *quo warranto,* or in any proceeding touching or concerning an election or the voting upon a bylaw or question or the conduct of any person in relation thereto, on the ground of privilege or on the ground that the answer to the question will tend to criminate him; but no answer to any such question shall be used in a proceeding under this Act against such person, if the judge gives him a certificate that he made full and true answers to his satisfaction.

R.R.S.1978, c.C-33, s.14; 1982-83, c.6, s.2.

Limitation

15 All proceedings under this Act, other than an application in the nature of a *quo warranto* against a person for violation of section 3 or 4, shall be commenced within four weeks after the election at which the offence is alleged to have been committed, or within four weeks after the day of the voting upon the bylaw or question.

R.R.S.1978, c.C-33, s.15; 1982-83, c.6, s.2.

Exemption

16 No pecuniary penalty or forfeiture imposed by this act shall be recoverable for an act of bribery or a corrupt practice at an election or at the voting upon a bylaw or question, if it appears that the person charged and another person or other persons were together guilty of the act charged, either as giver or receiver or as accomplices or otherwise, and that the person charged has previously *bona fide* prosecuted the other person or persons or any of them for the said act; but this provision shall not apply if the judge before whom the person claiming the benefit thereof is charged certifies that it clearly appears to him that the person so charged took the first step towards the commission of the offence charged and was in fact the principal offender.

R.R.S.1978, c.C-33, s.16; 1982-83, c.6, s.2.

Duties of clerk

17 The clerk of the municipality shall, prior to every election or the voting upon a bylaw or question, furnish every deputy returning officer with at least two copies of sections 3, 4, 7 and 8; and it shall be the duty of the officer presiding at every polling place to post the copies in conspicuous places at his polling place and to see that they are kept so posted during the hours of polling.

R.R.S.1978, c.C-33, s.17; 1982-83, c.6, s.2.

TRIAL OF CONTESTED ELECTIONS

Trial of contested election

18(1) If the validity of the election of a member of a municipal council or his right to hold the seat is contested, other than on the basis of a contravention of section 142 or 144 of *The Municipalities Act* or section 160 or 162 of *The Northern Municipalities Act, 2010* or pursuant to Part VIII of *The Cities Act*, the same may be tried by a judge; and a candidate at the election or a voter who gave or tendered his vote thereat or, in case of an election by acclamation or if the right to sit is contested on the grounds that a member of the council has become disqualified or has forfeited his seat since his election, any voter may be the relator for the purpose.

(2) Subsection (1) does not apply in the case of an election that has been voided pursuant to section 8 of *The Local Government Election Act, 2015,* as a result of a tied vote.

R.R.S.1978, c.C-33, s.18; 1983-84, c.61, s.2; 1986-87-88, c.18, s.2; 2002, c.C-11.1, s.376; 2005, c.M-36.1, s.421; 2010, c.N-5.2, s.451; 2015, c.L-30.11, s.190.

Notice of motion

19(1) If, within six weeks after an election, a relator shows by affidavit to a judge reasonable grounds for supposing that the election was not legal or was not conducted according to law or that the person declared elected thereat was not duly elected or for contesting the validity of the election of any member of the council, or if at any time a relator shows by affidavit to a judge reasonable grounds for supposing that a member of the council has forfeited his seat or was not duly qualified for election or has become disqualified since his election and has not resigned his seat, the judge may grant his fiat authorizing the relator, upon entering into a sufficient recognizance as hereinafter provided, to serve a notice of motion in the nature of a *quo warranto* to determine the matter.

(2) The recognizance shall be entered into before the judge, or before a commissioner for oaths, by the relator in the sum of $200 and by two sureties each in the sum of $100 who shall furnish affidavits of justification and who shall be approved by the judge; and who shall be conditioned to prosecute the motion with effect and conditioned to pay to the party against whom the motion is made, who is herein called "the respondent", any costs that may be adjudged to him against the relator.

(3) When the sufficiency of the sureties has been determined and the recognizance has been allowed as sufficient by the judge, he shall note or endorse thereon and upon the fiat allowing service of the notice of motion the words "recognizance allowed" and shall initial the same.

R.R.S.1978, c.C-33, s.19.

Contents of notice

20(1) The notice of motion shall be at least a seven clear days' notice, and it may either state the return day of the motion or it may state that the motion will be made on the eighth day after the day of service of the notice excluding the day of service.

(2) The relator in his notice of motion shall set forth his name in full, his occupation, place of residence and the interest that he has in the election as a candidate or a voter, and shall also state specifically under distinct heads all the grounds of objection to the validity of the election complained against and in favour of the validity of the election of the relator or of any other person or persons where the relator claims that he or they or any of them have been duly elected, or the grounds of forfeiture or disqualification of the respondent, or as the case may be.

R.R.S.1978, c.C-33, s.20.

Affidavits, etc.

21 Before serving his notice of motion the relator shall file all the affidavits and material upon which he intends to rely except where *viva voce* evidence is to be taken; in such case he shall name in his notice the witnesses whom he proposes to examine.

R.R.S.1978, c.C-33, s.21.

Service

22 The notice shall be served in the manner directed by the judge.

R.R.S.1978, c.C-33, s.22.

Time of service

23 Services of the notices of motion shall be made within two weeks from the date of the fiat granted by the judge unless otherwise ordered.

R.R.S.1978, c.C-33, s.23.

Claim of seat

24 If the relator alleges that he or some other person has been duly elected, the motion shall be to try the validity both of the election complained of and of the alleged election of the relator or other person or persons.

R.R.S.1978, c.C-33, s.24.

Combination of motions

25 If any of the grounds of objection apply equally to two or more persons elected, the relator may proceed by one motion against all such persons.

R.R.S.1978, c.C-33, s.25.

Grounds of decision

26 Upon the hearing of the motion the relator shall not be allowed to object to the election of the respondent or to attack his right to sit or to support the election of a person alleged to have been duly elected upon a ground not specified in the notice of motion; but the judge, in his discretion, may entertain any substantial ground of objection to or in support of the validity of the election of either or any of the parties that may appear in the evidence before him.

R.R.S.1978, c.C-33, s.26.

Production of papers

27 The judge may require the clerk of the municipality to produce before him such ballot papers, books, voters' and other lists, and such other records of the election and papers in his hands connected therewith, as to the judge may from time to time seem fit.

1R.R.S.1978, c.C-33, s.27.

Returning officer, etc., may be added

28 The judge may if he thinks proper, at any stage of the proceedings, make an order adding the returning officer or any deputy returning officer or any other person as a party thereto.

R.R.S.1978, c.C-33, s.28; 1982-83, c.6, s.2.

Intervention of other parties

29 The judge may allow any person entitled to be a relator to intervene and prosecute or defend, and may grant a reasonable time for that purpose; and an intervening party shall be liable or entitled to costs like any other party to the proceedings.

R.R.S.1978, c.C-33, s.29.

Hearing and determination

30 The judge shall, in a summary manner without formal pleadings, hear and determine the validity of the election or the right of the respondent to sit; and may, on affidavit or affirmation or by oral testimony, inquire into all the facts, including the qualification of the respondent.

R.R.S.1978, c.C-33, s.30.

Judgment

31 If the election complained of is adjudged invalid, the judge shall by the judgment order the respondent to be removed and his seat shall *ipso facto* be vacated; and, if the judge determines that any other person was duly elected, he shall forthwith order that other person to be admitted to the office.

R.R.S.1978, c.C-33, s.31.

Liability of returning officer, etc.

32(1) Where an election has been held invalid owing to the improper refusal of a returning officer or deputy returning officer to receive ballot papers tendered by duly qualified voters, or to give ballot papers to duly qualified voters, the judge may in his discretion order the costs of the proceedings to unseat the person declared elected or any part thereof or any other costs to be paid by the returning officer or deputy returning officer.

(2) Nothing contained herein shall affect any right of action against a returning officer or deputy returning officer, or shall be deemed to relieve such officer from any other penalty or punishment to which he may be liable.

(3) Where the validity of an election is contested, for reasons other than those set out in subsection (1), on the grounds that it was not conducted according to law, the municipality shall be a party to the proceedings for the purpose of defending the election, and the judge may order the municipality to reimburse the person whose election was contested for:

(a) the costs of his solicitor, including both party and party and solicitor and client costs; and

(b) any other costs and expenses that the judge deems proper.

R.R.S.1978, c.C-33, s.32; 1982-83, c.6, s.2.

Form and effect of order

33 After the adjudication upon the case an order shall be drawn up in the usual manner which shall state concisely the ground and effect of the decision, and which may be at any time amended by the judge in regard to any matter of form, and the order shall have the same force and effect as a writ of *mandamus* formerly had in the like case.

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

Return

34 The judge shall, immediately after his decision, return his order with all things had before him touching the same to the proper court officer acting at the judicial centre in which the proceedings are entitled, there to remain of record as a judgment of the court; and as occasion requires the judgment may be enforced in the same manner as an order of *mandamus* and, for the costs awarded, as a judgment of the court.

R.R.S.1978, c.C-33, s.34; 2010, c.E-9.22, s.151.

Disclaimer after motion

35 A person whose election is complained of, unless on the ground of corrupt practices on his part, or a person whose seat is attacked on the ground that he has become disqualified or has forfeited his seat, may, within one week after the service on him of a notice of motion under this Act, transmit postpaid through the post office directed to the local registrar of the Court of Queen's Bench and also to the relator or his solicitor, or he may cause to be delivered to the local registrar of the Court of Queen's Bench and to the relator or his solicitor, a disclaimer signed by him in the form or to the effect following:

I, *A. B.,* upon whom a notice of motion in the nature of a *quo warranto* has been served for the purpose of contesting my right to the office of mayor *(or* reeve, overseer, alderman *or* councillor, *as the case may be)* of *(name of municipality),* do hereby disclaim the said office and all defence of any right I may have thereto.

Dated this _____ day of_____, 19 _____ .

(Signed) *A. B.*

R.R.S.1978, c.C-33, s.35; 1979-80, c.92, s.14.

Transmission

36 The disclaimer or the envelope containing the disclaimer shall be endorsed on the outside thereof with the word "disclaimer", and shall, if sent through the post, be registered at the post office where it is mailed.

R.R.S.1978, c.C-33, s.36.

Disclaimer before motion

37 When there has been a contested election the person elected may, at any time after the election and before his election is complained of, deliver to the clerk of the municipality a disclaimer signed by him as follows:

I, *A. B.,* do hereby disclaim all right to the office of (mayor, reeve, overseer, alderman *or* councillor, *as the case may be)* for *(name of municipality)* and all defence of any right I may have thereto.

Dated this _____ day of_____, 19 _____ .

(Signed) *A. B.*

R.R.S.1978, c.C-33, s.37.

Effect of disclaimer

38 A disclaimer filed under section 37 shall relieve the person making it from all liability to costs, and, where a disclaimer has been made in accordance with section 35 or 37, it shall operate as a resignation and the vacancy so created shall be filled in the manner provided in *The Local Government Election Act* for the filling of vacancies on the council.

R.R.S.1978, c.C-33, s.38; 1982-83, c.6, s.2; 2005, c.M-36.1, s.421.

Transmission

39 Every person disclaiming under section 35 shall deliver a duplicate of his disclaimer to the clerk of the municipality who shall forthwith communicate it to the council.

R.R.S.1978, c.C-33, s.39.

REGINA, SASKATCHEWAN
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