

*Laws of Her Majesty's Province of Newfoundland, passed in the year 1860.*

23 Victoria – Chapter 11

**An Act to Regulate the Trial of Controverted Elections or Returns of Members to Serve in the House of Assembly. (Passed 14th May, 1860.)**

Whereas it is necessary to provide for the speedy and efficient Investigation of Election Petitions:

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Session convened:

I. That when a Petition complaining of an undue election or return of a Member to serve in the House of Assembly shall be presented to the House, a day and hour shall be appointed by the House for consideration thereof, and the Speaker shall forthwith in writing notify all parties concerned, or their agents, commanding their attendance at the Bar of the House at the time appointed; and if at such time the Petitioner shall not appear, either personally, or by counsel or agent, the order for taking the Petition into consideration shall be discharged and the Petition shall not be further proceeded in, unless the House, on sufficient cause shewn, shall order otherwise: no such Petition shall be received after thirty days shall have elapsed from the time the Member whose return is complained of shall have taken his seat.

II. No proceedings shall be had upon any such Petition, unless a Petitioner shall within ten days after the presentation thereof, or such further time as shall be limited by the House, personally enter into a recognizance to Her Majesty the Queen, with sureties, in the sum of Two Hundred Pounds, and which recognizance shall be in the form in the Schedule to this Act; and if at the expiration of the said ten days the recognizance shall not have been so entered into, or been received by the Speaker, he shall report the same to the House, and the order for considering the Petition shall be discharged, unless upon matter specially stated and verified on oath before a Justice of the Peace, the House shall enlarge the time for entering into such recognizance; and if enlarged, the order may be postponed, but no petition shall be taken into consideration till after the recognizance shall have been entered into and received by the Speaker.

III. The recognizance shall be entered into before the Speaker, or, if taken out of the Electoral District of St. John's, before a Justice of the Peace, and the sureties shall in all cases severally justify before the Speaker or Justice, by affidavit, that they are severally worth double the sum for which they are respectively bound by such recognizance after payment of all their just debts, which affidavit may be dispensed with by the parties.

IV. In every Controverted Election or Return the parties shall at such time as the Select Committee may appoint therefor, and before proceeding on the Petition, cause to be delivered to the Chairman lists of the votes objected to, or those improperly rejected or omitted, specifying the nature of the objections or grounds against, such rejection or omission, and no evidence shall be allowed before such Committee on such lists unless on the grounds therein specified as aforesaid.

V. Previously to reading the Order of the Day for considering the Petition, the House shall be called, and if there be less than Twenty Members present, the House shall forthwith adjourn to a particular hour the next day, when they shall proceed in like manner, and so from day to day till there be Twenty Members present at the reading of such order, in which number the Speaker shall not be included.

VI. If, after a call, Twenty Members be present, the parties, by themselves, their counsel, or agents, shall be ordered to attend at the Bar; the doors of the House shall be locked and no Member shall enter into or depart therefrom until the parties, their counsel, or their agents, shall be directed to withdraw. When the doors are locked, the Order of the Day shall be read, and the names of the Members of the House then present written on distinct pieces of paper, as near as may be of equal size, and rolled up in the same manner, shall be put in equal numbers into two boxes, placed on the table and shaken together; the Clerk or his assistant shall publicly draw out of the said boxes, alternately, the said pieces of paper, and deliver the same to the Speaker, who shall read them to the House, and so continue to do until Eleven names of the Members then present be drawn.

VII. If the name of any Member be drawn who shall have voted at the Election complained of, or who shall be a Petitioner complaining of an undue Election, or against whose return a Petition shall be then pending, it shall be set aside; and if the name of a Member of another Election Committee during the same Session be drawn, he may be excused; and the House may also excuse any member from serving if it appear on the oath of such Member, to be taken before the Clerk of the House, to be attended with great detriment to him; and the drawing shall continue until the whole number of Eleven Members be complete, when the Petitioner and sitting Member shall then each name- one from among the Members then present, to be added to those drawn; but either of the Members so named, may be set aside or excused for any of the same causes as those drawn, and another shall be nominated by his nominee, and so on until his nominee is admitted.

VIII. If, at the time of the drawing, the number of Eleven Members cannot be completed, the House shall proceed in the manner prescribed in Section V. of this Act.

IX. When the drawing shall be completed the door of the House shall be unlocked, and lists of the Eleven Members so drawn shall be given to each party, and they shall immediately retire with the Clerk or his assistant, and each party, his counsel, or agent; beginning on the part of the Petitioners, shall alternately strike off one of the Eleven Members until the number shall be reduced to Five; and the Clerk or assistant, within one hour, at the furthest, from the time of the lists being given, shall deliver into the House the names of the Five Members then remaining with the names of the nominees added thereto; and the said Five Members, with the nominees, shall be sworn at the table, by the Clerk or his assistant, well and truly to try the matters of the Petition referred to them, and true judgment to give according to the evidence, and who, when sworn, shall be a Select Committee to try and determine the merits of the said Return or Election, and shall meet at the time and place to be determined by the House.

X. When the name of any Member shall be drawn, and either of the parties shall declare that he is intended to be a nominee, and he consent thereto, his name shall be set aside, and unless objected to for any of the causes hereinbefore mentioned, he shall serve as such nominee, and the name of

another Member shall be drawn to supply his place; if the parties shall not nominate a Member then present, the name of one or two Members, as the case may require, shall be drawn in like manner, and subject to like objections and excuses as members already drawn, who shall be added to the list, and shall be liable to be struck off in the same manner, leaving always the number of Seven Members for the Select Committee.

XI. If, at the time appointed for considering the Petition, the sitting Member shall not appear by himself, or his counsel, or agent, the Committee shall be appointed as follows: the names of Eleven Members shall be drawn in manner hereinbefore prescribed, but, in reducing the lists, the Clerk or Clerk-Assistant shall stand in the place of the sitting Member, and the same method of reducing the number shall be followed whenever a party waives his right of striking off names.

XII. The Committee shall, on their meeting, elect by ballot a Chairman from among the Members thereof who shall have been drawn, and in electing a new Chairman, on the death or necessary absence of the Chairman first elected, if the Committee be equally divided, the Member whose name was first drawn in the House shall have the casting vote. No Member of such Committee shall absent himself therefrom without the leave of or excuse allowed by the House, or special cause shewn by affidavit. The Committee shall not sit until the Members not having such leave or excuse are met, and if they shall not all meet within one hour after the time to which the Committee shall have been adjourned, a further adjournment shall be made and reported, with the cause thereof, to the House.

XIII. The Chairman at the next meeting of the House shall report the name of any Member absent therefrom, without such leave or excuse, and such Member shall be directed to attend the House at the next sitting thereof, and shall then be delivered into the custody of the Sergeant-at-Arms for such neglect, and otherwise punished or censured at the discretion of the House, unless he shall make it appear to the House, by affidavit, that he was by accident or necessity prevented from attending. If more than two Members of the Committee be absent, they shall adjourn from time to time until five Members are present.

XIV. The Committee may send for persons, papers and records, and shall examine all witnesses on oath, to be administered by the Chairman, and shall determine by a majority whether the Petitioner or sitting Member, or either of them, be duly elected or returned, or whether the Election be void, which determination shall be final; and the House, on being informed thereof by the Chairman, shall order the same to be entered in the Journals, and give the necessary directions for carrying such determination into execution.

XV. If the number of Members able to attend the said Committee shall, by death or otherwise, be unavoidably reduced to less than Five, and so continue for the space of six consecutive days, the said Committee shall be dissolved, and another chosen in the manner and for the purposes aforesaid, but the evidence already taken shall be considered by the new Committee.

XVI. If the said Committee shall come to any other resolution than a final determination, they shall report the same to the House for their opinion, the Chairman informing the House of such determination, and the House may make such order thereon as they deem proper.

XVII. If any person summoned by the said Committee shall disobey such summons, or if any witness before such Committee shall prevaricate or otherwise misbehave in giving or refusing to give evidence, the Chairman, by the direction of the Committee, may at any time during the course of their proceedings report the same to the House, who may commit the offender for the contempt during pleasure; and all persons who shall be guilty of wilful and corrupt perjury in any evidence which they shall give before the House, or the said Committee, under the oath to be taken by virtue of this Act, shall, on conviction thereof, suffer the penalties incident thereto.

XVIII. Whenever the Committee shall deem it necessary to deliberate among themselves upon any question arising in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the Petition, when they shall have heard the evidence and the parties or their counsel relative thereto, the room shall be cleared during deliberation; all such questions, determinations, and resolutions, shall be decided by a majority.

XIX. The Committee may examine any person as a witness, although he may have subscribed the Petition to try and determine such Election or Return.

XX. The Committee, when they report to the House their final determination on the merits of the Petition, shall also report whether the Petition, in their opinion, be frivolous or vexatious; and they shall also report with respect to every party who shall have appeared before them in opposition to such Petition whether, in their opinion, such opposition was frivolous or vexatious, and if no party shall have appeared before them in opposition, they shall then report to the House whether such Election or Return, as the case may be, was, in their opinion, vexatious or corrupt.

XXI. Whenever the Committee shall report to the House that such Petition, in their opinion, is frivolous or vexatious, the adverse party may recover from the Petitioner full costs, and the expenses which he shall have incurred in opposing the same, which shall be ascertained as hereinafter directed.

XXII. Whenever the Committee shall report to the House that the opposition to the Petition appeared to them to be frivolous or vexatious, the Petitioner may recover all costs and expenses which he shall have incurred in prosecuting such Petition; the same to be ascertained as hereinafter directed.

XXIII. The expenses of prosecuting or opposing a Petition shall include witnesses' fees, as well as other costs and expenses, and shall be ascertained as follows: The Speaker, on application, shall direct them to be taxed by the Clerk of the House and a Master in Chancery, who shall tax the same, and report, the amount to the Speaker, who, on the approval of the House, or such part thereof as the House may allow, shall, on application, deliver to the parties a certificate under his hand expressing the amount of the expenses allowed; and the party entitled to such costs and expenses, or his executor or administrator, may demand the amount so certified from the party liable for the payment thereof, and in case of non-payment, he may recover the same, with costs, in any Court of competent jurisdiction, in which action the Plaintiff may declare that the Defendant is indebted to him in the said amount by virtue of this Act; and the Speaker's certificate of such amount, shall be sufficient evidence in support of such action.

XXIV. When the amount of such costs and expenses shall have been so recovered from any person, he may recover, in like manner, from any other persons liable for the payment of the same, a proportionable share thereof, according to the number of persons so liable.

XXV. If the Petitioner forfeit his recognizance, the Speaker shall certify such recognizance to the Supreme Court, and the default therein, which shall be conclusive evidence thereof, and the recognizance so certified, shall have the same effect as if the same were estreated from a Court of Law; but such recognizance so certified shall be delivered by the Clerk or Clerk-Assistant of the House to a Judge of the Supreme Court, or such officer thereof as the Court shall appoint to receive the same.

XXVI. The Prorogation of the General Assembly, pending the enquiry of the Select Committee, shall not dissolve the said Committee, but they shall be thereby adjourned to twelve of the clock of the day immediately following that on which the Assembly shall again meet for the despatch of business, (Sundays, Good Friday, and Christmas Day, always excepted,) and their former proceedings shall be of the same force as if the House had not been so prorogued.

XXVII. Should there be more than one Petition complaining of undue Election or Return to be considered by the House on the same day, the House may draw and complete in the manner before mentioned another list to form the Committee on the second Petition, according to the Provision of this Act, if not less than Twenty-five Members be present, exclusive of the Speaker.

XXVIII. All monies which may be recovered and received under any recognizance which may become forfeited under this Act shall be paid into the Colonial Treasury.

#### SCHEDULE.

On the \_\_\_\_\_ day of \_\_\_\_\_ A. D., 18\_\_\_\_, before me D. H., Speaker of the House of Assembly of Newfoundland, (or J. K., Justice for the \_\_\_\_\_ ) came C. D., petitioner, of \_\_\_\_\_ E. F., of \_\_\_\_\_ and G. H., of \_\_\_\_\_ and severally acknowledged to our Sovereign Lady the Queen, as follows: the said C. D. Two Hundred Pounds, and the said E. F. and G. H. One Hundred Pounds each, to be levied on their respective goods and chattels, lands and tenements, to Her Majesty's use, if the said C. D. fail in performing the condition hereunder, which condition is, if the said C. D. shall duly appear before the House of Assembly, at such time as shall be determined by the said House, for taking into consideration the Petition signed by the said C. D. complaining of an undue Election or Return for the District of \_\_\_\_\_ and shall appear before any Select Committee, which shall be appointed for the trial of the same, or if the said Petition shall be withdrawn by permission of the House; and shall also well and truly pay all expenses which shall be due and payable from the said Petitioner to any witness who shall be summoned to give evidence in his behalf; and if the said C. D. shall also well and truly pay all costs and expenses of the party opposing such Petition, if the said Petitioner shall fail to appear before the House at the time fixed for taking such Petition into consideration; or if the Select Committee appointed by the House to try the matter of the said Petition, shall report to the House that the said Petition appears to them to be frivolous or vexatious, then this recognizance shall be void, otherwise of force.

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D. H., Speaker, or  
J. K., J. Peace.