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GENERAL RULES

OF THE

ELECTION COURT,

MONTREAL DISTRICT

UNDER

THE CONTROVERTED ELECTIONS ACT, 1873,

FOR THE DOMINION OF CANADA.



Montreal:

PRINTED BY JOHN LOVELL, ST. NICHOLAS STREET

1871.

GENERAL RULES

OF THE

ELECTION COURT,

FOR THE

MONTREAL DIVISION,

UNDER

THE CONTOVERTED ELECTIONS ACT, 1873,

FOR THE DOMINION OF CANADA.



*Montreal:*

PRINTED BY JOHN LOVELL, ST NICHOLAS STREET

1874



GENERAL RULES  
OF THE  
ELECTION COURT,  
FOR THE  
MONTREAL DIVISION,  
IN THE  
PROVINCE OF QUEBEC,

Made under and by virtue of the Act of the Dominion of Canada, passed 23rd May,  
A.D. 1873 being "THE CONTROVERTED ELECTIONS ACT. 1873.

---

I.

The Presentation of an Election Petition shall be made by leaving it at the office of the Clerk of the Election Court, who, or his Deputy, shall (if required) give a receipt, which may be in the following form :

Received, on the                      day of                      at the office of the  
Clerk of the Election Court, a Petition touching the Election of  
A. B., a member for                      purporting to be signed by (*insert the  
names of Petitioners.*)

C. D., CLERK.

With the Petition shall also be left a copy thereof for the said Clerk of the Election Court to send to the Returning Officer, pursuant to section 11 of the Act.

## II.

An Election Petition shall contain the following statements:

1. It shall state the right of the Petitioner to petition within section 10 of the Act.

2. It shall state the holding and result of the Election, and shall briefly state the facts and grounds relied on to sustain the prayer.

## III.

The Petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this Rule, unless otherwise ordered by the Court, or one of the Election Judges.

## IV.

The Petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the Election should be declared void, or that a return may be enforced, (*as the case may be*), and shall be signed by all the Petitioners.

## V.

The following form, or one to the like effect, shall be sufficient.

## IN THE ELECTION COURT.

“The Controverted Elections Act, 1873, “ Election of a Member for the House of Commons for (*state the place*) holden on the day of A.D.

Dominion of Canada. } The Petition of A of (or of A of  
Province of Quebec, } and of B of , as the case  
Montreal Division. } may be,) whose names are subscribed.

1. Your Petitioner A is a person (*or if more than one, say, your Petitioners are persons*) who was (*or were*) duly qualified to vote at

the above Election, (or claims to have had a right to be returned or elected at the above Election, or was a candidate at the above Election).

2. And your Petitioners state that the Election was holden on the day of            A.D.            when A B, C D, and E F were candidates, and the Returning Officer has returned A B as being duly elected.

3. And your Potitioners say that (*here state the facts and grounds on which the Petitioners rely.*)

Wherefore your Petitioners pray that it may be determined that the said A B was not duly elected or returned, and that the Election was void, or that the said E F was duly elected and ought to have been returned, or (*as the case may be.*)

(Signed,)

A.

"

B.

## VI.

Evidence need not be stated in the Petition, but the Court or one of the Election Judges may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial, and upon such terms as to costs and otherwise as may be ordered.

## VII.

When a Petitioner claims the seat for an unsuccessful candidate, alleging that he 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 Clerk of the Election Court, and also at the respective elected domicile of the Petitioners and Respondent, (*as the case may be,*) a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Clerk of the Election Court shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote,

nor upon any head of objection not specified in the list, except by leave of the Court or one of the Election Judges, upon such terms as to amendment of the list, postponement of the enquiry, and payment of costs, or otherwise, as may be ordered.

#### VIII.

When the Respondent in a Petition under the Act, complaining of an undue return and claiming the seat for some person, intends to give evidence to prove that the Election of such person was undue, pursuant to the 54th section of the Act, such Respondent shall, six days before the day appointed for trial, deliver to the Clerk of the Election Court, and also at the address, if any, given by the Petitioner, a list of the objections to the Election upon which he intends to rely. And the Clerk of the Election Court shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a Respondent of any objection to the Election not specified in the list, except by leave of the Court, or one of the Judges, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

#### IX.

With the Election Petition there shall be filed in writing an election of domicile by the Petitioner or by his Attorney, if he has one, at some place within a mile of the Office of the Clerk where the said Petition shall be deposited. In default of his doing so, the Office of the said Clerk shall be deemed to be the domicile of the said Petitioner for all the purposes of his said Petition.

If the Petition appear by Attorney the latter shall, at the same time, file a written appearance.

#### X.

The Respondent shall, within 5 days from the service of the Petition and Recognizance upon him as herein provided, file at the



office of the said Clerk a written appearance signed by him or his Attorney, and a written election of domicile shall be made and filed by the said Respondent or his Attorney, in the same manner as required of the Petitioner, by the last preceding rule: and in default of his so doing the office of the said Clerk shall be deemed to be his domicile for all the purposes of the Petition.

#### XI.

The Clerk of the Election Court shall keep a book or books at his office, in which he shall enter the elections of domicile made under the preceding rules, which book shall be open to inspection by any person during office hours, without payment of any fee.

#### XII.

The Clerk of the Election Court shall, upon the presentation of the Petition, forthwith send a copy of the Petition to the Returning Officer, pursuant to section 11 of the Act, and shall therewith send the name of the Petitioner's Attorney, if any, and of the elected domicile, if any, given as prescribed, and the Returning Officer shall forthwith publish those particulars along with the Petition.

The cost of publication of this and any other matter required to be published by the Returning Officer shall be paid by the Petitioner or person moving in the matter, and shall form part of the general costs of the Petition.

#### XIII.

The time for giving notice of the presentation of a Petition, and of the nature of the proposed security, shall be five days, exclusive of the day of presentation, and the said notice shall consist of the service on the Respondent, or on each of the Respondents, of the Petition and recognizance and of a certificate of the Clerk, of the day when the said Petition and recognizance were filed, at his office, and of the date and amount of the deposit, if any made.

## XIV.

Where the Respondent has named an agent or given an address, the service of an Election Petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such a time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the Respondent, unless one of the Election Judges, on an application made to him not later than five days after the Petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the Respondent, in which case the said Judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

## XV.

In case of evasion of service, the affixing in a conspicuous place, in the office of the Clerk of the Election Court, a notice of the Petition having been presented, stating the Petitioner, the prayer and the nature of the proposed security, shall be deemed equivalent to personal service, if so ordered by one of the Election Judges.

## XVI.

The deposit of money, by way of security for payment of costs, charges and expenses, payable by the Petitioner, shall be made by payment into the hands of the Clerk of the Election Court, subject to the orders of the Court or of an Election Judge.

## XVII.

All claims to money deposited or to be deposited for payment of costs, charges and expenses payable by the Petitioner, shall be disposed of by the Election Court, or one of the Election Judges.

## XVIII.

Money so deposited shall, if and when the same is no longer needed for securing payment of such costs, charges and expenses, be returned or otherwise disposed of as justice may require, by rule of the Election Court, or order of one of the Election Judges.

## XIX.

Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Court or one of the Election Judges may require.

## XX.

The rule or order may direct payment either to the party who deposited the same, or to any person entitled to receive the same.

## XXI.

Upon such rule or order being made, the amount shall be paid by the Clerk of the Election Court.

## XXII.

The Clerk of the Election Court shall keep a book open to inspection of all parties concerned, in which shall be entered, from time to time, the amount and the petition to which it is applicable, which book may be inspected without payment of any fee.

## XXIII.

The recognizance as security for costs may be acknowledged before one of the Election Judges, or the Clerk of the Election Court, or a Justice of the Peace.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more (not exceeding four,) as may be convenient.



## XXV.

The recognizance or recognizances shall be left at the office of the Clerk of the Election Court by or on behalf of the Petitioner, in like manner as before prescribed for the hearing of a Petition forthwith after being acknowledged.

## XXVI.

The time for giving notice of any objection to a recognizance, under the 12th section of the Act, shall be within five days from the date of service of the notice of the Petition and of the nature of the security, exclusive of the day of service.

## XXVII.

An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any, and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

## XXVIII.

An objection made to the security shall be heard and decided by one of the Election Judges, upon summons taken out by either party, to declare the security sufficient or insufficient.

## XXIX.

Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Judge may think fit.

## XXX.

If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 13th section of the said Act, and the Petition shall be at issue.

## XXXI.

If by order made on such summons an objection be allowed, and the security be declared insufficient, the Judge shall, in such order, state what amount he deems requisite to make the security sufficient, and the further proscribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

## XXXII.

The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the petition.

## XXXIII.

The costs of hearing and deciding an objection upon the grounds of insufficiency of a surety or sureties, shall be paid by the Petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Clerk of the Election Court, there be also left with him an affidavit of the sufficiency of the surety or sureties, sworn by each surety before a Justice of the Peace, which affidavit any Justice of the Peace is thereby authorized to take, or before some person authorized to take affidavits, in some one of the Superior Courts, that he is seized or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:—

*In the Election Court.*

“THE CONTROVERTED ELECTIONS ACT, 1873.”

I, A. B., of (as in recognizance) make oath and say, that I am seized or possessed of real (or personal, or real and personal) estate above what will satisfy my debts, of the clear value of \$

Sworn, &c.

## XXXIV.

The Clerk of the Election Court shall make out the Election list. In it he shall insert the names of the Attorneys of the Petitioners and Respondent, and the elected domiciles, if any. The list may be inspected at the office of the Clerk of the Election Court, at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Controverted Elections Act, 1873."

## XXXV.

The time and place of the trial of each Election Petition shall be fixed by the Judges of the Election Court, and notice thereof shall be given in writing, in the English and French Languages, by the Clerk of the Election Court, by affixing the same in some conspicuous place in his office, sending one copy by the post to the address given by the Petitioner, another to the address given by the Respondent, if any, and a copy by the post to the Sheriff, fifteen days before the day appointed for the trial. The Sheriff shall forthwith publish the same in the Electoral Division.

## XXXVI.

The affixing of the notice of trial at the office of the Clerk of the Election Court shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as already directed.

## XXXVII.

The notice of trial may be in the following form:—

IN THE ELECTION COURT.

"THE CONTROVERTED ELECTIONS ACT, 1873."

Election Petition of (*name the Electoral Division*), take notice

that the above Petition (or Petitions), will be tried at            on  
 the            day of            and on such other subsequent days  
 as may be needful.

Dated the            day of

By order,

(Signed,)

A. B.,

*Clerk of the Election Court.*

### XXXVIII.

Notice of the time and place of the trial of each Election Petition shall be transmitted by the Clerk of the Election Court to the Clerk of the Crown in Chancery for the Dominion of Canada, and the Clerk of the Crown in Chancery shall, on or before the day fixed for the trial, deliver or cause to be delivered, to the Registrar of the Judge who is to try the Petition or his Deputy, the Poll Books, for which the Registrar or his Deputy shall give, if required, a receipt; and that the Registrar or his Deputy shall keep in safe custody the said Poll Books until the trial is over, and then return the same to the said Clerk of the Crown in Chancery.

### XXXIX.

Any one of the Election Judges may, from time to time, by order made upon the application of a party to the Petition, or by notice in such form as the Judge may direct to be sent to the Parties, postpone the commencement of the trial to such day as he may name, and such notice, when received, shall be forthwith made public by the Sheriff or a Bailiff, by reading the same and affixing a copy thereof at the place where the nomination took place.

### XL.

In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the com-



mencement of the trial shall, *ipso facto*, stand adjourned to the ensuing day, and so from day to day until the arrival of the Judge.

XXI.

No formal adjournment of the Court for the trial of an Election Petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the enquiry is concluded; and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be continued and concluded by any other of the Election Judges.

XLII.

The application to state a special case may be made by rule in the Election Court when sitting, or by a summons before one of the Election Judges upon hearing the parties.

XLIII.

All affidavits and papers in any matter in the Election Court, or in any Court for the trial of an Election Petition, may be entitled as follows:—

IN THE ELECTION COURT.

THE CONTROVERTED ELECTIONS ACT, 1873.

Election of a Member for the House of Commons for (*name the Electoral Division.*)

Dominion of Canada. }  
 Province of Quebec, }  
 Montreal Division, }  
 To wit: }

XLIV.

An officer shall be appointed by the Judge who presides at the trial, for each trial of an Election Petition, who shall attend at the trial in like manner as the Prothonotary of the Superior Court at Enquete and hearing.



and to pay to our Lady the Queen a fine of \$ \_\_\_\_\_, and to be further imprisoned in the said Gaol until the said fine be paid. And the Court further orders that the Sheriff of the said District, *or, as the case may be*), and all Bailiffs and officers of the Peace of any County or place where the said A B may be found, shall take the said A B into custody, and convey him to the said Gaol, and there deliver him into custody of the Gaoler thereof to undergo his said sentence. And the Court further orders the said Gaoler to receive the said A B into his custody, and him to detain in the said Gaol in pursuance of the said sentence.

Signed the \_\_\_\_\_ day of \_\_\_\_\_ A. D.

*(To be signed by the Judge.)*

#### XLVIII.

Such warrant may be made out and directed to the Sheriff or other person having the execution of process of the Superior Courts, as the case may be, and to all constables and officers of the Peace of the County or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient, without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

#### XLIX.

All Interlocutory questions and matters, shall be heard and disposed of before any one of the Election Judges who shall have the same control over the proceedings under the "Controverted Elections Act, 1873," as a Judge at Enquete and hearing in the ordinary proceedings of the Superior Courts, and such questions and matters may be heard and disposed of by any one of the Election Judges.

## L.

Notice of an application for leave to withdraw a Petition shall be in writing and signed by the Petitioners or their agent. It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

## IN THE ELECTION COURT.

"The Controverted Elections Act, 1873," (name the Electoral Division) Petition of (state Petitioners) presented day of . The Petitioner proposes to apply to withdraw his Petition upon the following ground (*here state the ground*), and prays that a day may be appointed for hearing his application.

Dated this        day of

(Signed,)

## LI.

The notice of application for leave to withdraw shall be left at the office of the Clerk of the Election Court.

## LII.

A copy of such notice of the intention of the Petitioner to apply for leave to withdraw his Petition shall be given by the Petitioner to the Respondent, and to the Returning Officer, who shall make it public in the Electoral Division to which it relates, and shall be forthwith published by the Petitioner in the *Quebec Official Gazette* in the English and French languages.

The following may be the form of such notice:—

## IN THE ELECTION COURT.

"The Controverted Elections Act, 1873." In the Election Petition for        in which        is Petitioner and Respondent, Notice is hereby given that the above Petitioner has on the        day of        lodged at the office of the Clerk of the

Election Court, notice of an application to withdraw the Petition, of which notice the following is a copy (*set it out*). And take notice that, by the rule made by the judges, any person who might have been a Petitioner in respect of the said Election may, within five days after publication by the Returning Officer of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a Petitioner.

(Signed,)

#### LIII.

Any person who might have been a Petitioner in respect of the Election to which the Petition relates, may, within five days after such notice is published by the Returning Officer, give notice in writing, signed by him or on his behalf, to the Clerk of the Election Court, of his intention to apply at the hearing to be substituted for the Petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

#### LIV.

The time and place for hearing the application shall be fixed by one of the Election Judges, and whether before the Election Court or before a Judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Clerk of the Election Court as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Clerk of the Election Court of an intention to apply to be substituted as Petitioners, and otherwise in such manner and at such time as the Judge directs.

#### LV.

The security on behalf of the substituted Petitioner shall be given within two days after the order of substitution, or such other time as the Court or the Judge may order.

## LVI.

Notice of abatement of a Petition, by death or surviving Petitioner, under section 44 of the said Act, shall be given by the party or person interested 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 or one of the Election Judges, by motion or summons of a Judge, to be substituted as a Petitioner, shall be one calendar month, or such further time as, upon consideration of any special circumstances, the Court or Judge may allow.

## LVII.

If the Respondent dies, or is summoned to Parliament as a member of the Senate, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a Petitioner under the Act, in respect of the election to which the Petition relates, may give notice of the fact in the Electoral Division by causing such notice to be published in the *Quebec Official Gazette* in the English and French languages and by leaving a copy of such notice signed by him or on his behalf with the Returning Officer, and a like copy with the Clerk of the Election Court.

## LVIII.

The manner and time of the Respondent giving notice to the Court that he does not intend to oppose the Petition, shall be by leaving notice thereof, in writing, at the office of the Clerk of the Election Court, signed by the Respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice.

## LIX.

Upon such notice being left at the office of the Clerk of the Election Court, he shall forthwith send a copy thereof by the post to the Petitioner or his agent, and to the Returning Officer, who shall cause the same to be published in the Electoral Division.

## LX.

The time for applying to be admitted as a Respondent in either of the events mentioned in the 11st section of the Act, shall be within ten days after such notice is given as hereinbefore directed, or such further time as the Court or one of the Election Judges may allow.

## LXI.

Costs shall be taxed by the Clerk of the Election Court, upon the rule of Court or Judges order by which the costs are payable, and costs, when taxed, may be recovered by execution issued upon the rule of Court ordering them to be paid; or, if payable by order of a Judge, then by making such order a rule of Court in the ordinary way, and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in Court available for the purpose, then to the extent of such money by order of the Election Court, or of one of the Election Judges.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act, and these rules, shall be those fixed in the annexed tariffs. The fees shall be payable in money, and shall be accounted for by the Clerk of the Election Court to the Receiver-General of the Dominion of Canada.

## LXII.

At the time appointed for the trial of any Election Petition, the Petitioner shall leave with the Registrar, for the use of the Judge at the trial, fairly written on one side of the paper only, a copy of the Petition and of all the proceedings thereon, which show the several matters to be tried—including the particulars of objections on either side; the correctness of which copy, in so far as the proceedings are filed with the Clerk of the Election Court, shall be certified by the said Clerk. The Judge may allow amendment of the said copy, or in default of such copy being delivered, the Judge 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 and otherwise, as the Judge shall see fit to impose.

## LXIII.

Writs of *Subpœna ad testificandum* and *duces tecum* under the seal of the Election Court, for the attendance of witnesses before the Election Court or before the Court for the trial of an Election Petition, may be issued at any time by the Clerk of the Election Court, which writs may be in the following form :—

## IN THE ELECTION COURT.

## SUBPŒNA.

Dominion of Canada, } VICTORIA, by the grace of God, of the  
Province of Quebec, } United Kingdom of Great Britain and  
To wit : } Ireland, QUEEN, Defender of the Faith.

To ———

We command you that, all excuses being laid aside, you and every of you be and appear in your proper persons before our Election Judge, assigned to try the Election Petition for (*name the Electoral Division*) at \_\_\_\_\_ in the County of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187, by \_\_\_\_\_ o'clock, in the \_\_\_\_\_ noon of the same day, and so from day to day until the said Election Petition shall be tried, or otherwise disposed of, to testify all and singular you or either of you know in the matter of the said Election Petition, depending in our Election Court at Montreal, wherein \_\_\_\_\_ is (*or are*) Petitioner, and \_\_\_\_\_ is (*or are*) Respondent, on the part of the \_\_\_\_\_ and at the Court for the trial of the said Election Petition for (*name the Electoral Division*) at \_\_\_\_\_ aforesaid, to be tried by our said Election Judge without a jury; and also that you bring with you and produce at the time and place aforesaid (*describing what is to be produced in the ordinary way.*)





## LXIX.

The Election Court will sit every first and third Monday of each month, at 10½ o'clock before noon, in the room usually occupied by the first division of the Superior Court, if required, and adjourn to such other day as may be necessary.

## CONTROVERTED ELECTIONS OF THE DOMINION.

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### *TARIFF OF FEES TO BE PAID TO THE ATTORNIES OF THE ELECTION COURT IN CONTROVERTED ELECTIONS OF THE DOMINION.*

It is hereby ordered that the following fees be paid to the Attornies of the Election Court in connection with contestation of Election.

Taking Instructions from Petitioner or Respondent.....	\$10 00
Drawing Petition.....	10 00
Each copy.....	2 00
Drawing objections to Bail Bond.....	4 00
Copy thereof.....	2 00
Drawing objections to Petition.....	8 00
Copy thereof.....	2 00
Drawing answer to objections if required.....	6 00
Copy thereof.....	2 00
Drawing list of voters objected to under Rule VII. and copy...	6 00
Drawing list of objections under Rule VIII. and copy.....	10 00
Drawing any Petition or Motion and copy.....	4 00
Each necessary attendance at Election Clerk's Office.....	1 00
Each necessary attendance before the Court.....	2 00
Each day's attendance at trial, including travelling expenses, not exceed- ing fifteen days.....	11 00
Drawing any notice required.....	1 00
Each copy.....	0 50
Arguing any reserved objection before the Court.....	4 00
Arguing the cause at trial.....	10 00
Bill of Costs, copy and attendance at taxation.....	4 00