



BERMUDA

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

1968 : 153

TABLE OF CONTENTS

PART I

1 Interpretation

PART II

DISPUTED APPOINTMENTS AND ELECTIONS

2	Method of questioning appointment or election
3	Parties
4	Presentation and service of representation petition
5	Time for presentation of representation petition
6	Amendment of representation petition
7	Security for costs
8	Notice of presentation and security and copy of petition to be served on respondent
9	Objections to security
10	Dismissal of petition on failure to give security
11	Substitution of petitioner on failure to give security
12	Petition at issue
13	Trial of petition
14	Witnesses
15	Power of Supreme Court to summon witnesses at its own instance
16	Elector not to be asked for whom he voted
17	Expenses of witnesses
18	Production of election documents
19	Votes to be struck off on a scrutiny
20	Withdrawal of petition
21	Evidence required for withdrawal of petition
22	Punishment for corrupt withdrawal
23	Substitution of new petitioner on withdrawal of petition

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

- 24 Report on withdrawal
- 25 Abatement of petition
- 26 Withdrawal and substitution of respondents before trial
- 27 Avoidance of election
- 28 Conclusion of trial of representation petition
- 29 Determination of stated case
- 30 Costs of petition
- 31 Further provision as to costs of petition
- 32 Observance of Parliamentary principles, practice and rules

PART III
DISPUTED VACANCIES

- 33 Vacancy petition as to vacancy in Senate or House of Assembly
- 34 Contents, delivery and service of vacancy petition
- 35 Security for costs
- 36 Service of notice of delivery of vacancy petition
- 37 Parties to vacancy petition
- 38 Application of certain sections in Part II
- 39 Determination of vacancy petition

PART IV
MISCELLANEOUS

- 40 Service of notices
- 41 Costs
- 42 Power of Supreme Court
- 43 Rules of Supreme Court
- 44 Rules of Court of Appeal
- 45 Amendment of 1963:10 *[omitted]*
- 46 Commencement *[omitted]*

[preamble and words of enactment omitted]

PART I

Interpretation

- 1 (1) In this Act, unless the context otherwise requires—
 - “the Act” means the Parliamentary Election Act 1978 [*title 2 item 11*], read, as necessary, with the Constitution [*title 2 item 1*] and with the Legislature (Qualification and Disqualification) Act 1968 [*title 2 item 2*];
 - “appointment” means appointment to the Senate and cognate expressions shall be construed accordingly;
 - “candidate” means a person who is elected to the House of Assembly at an election, or is nominated as a candidate at an election, or is declared by himself or by

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

others to be a candidate on or after the date of the issue of the writ for an election, or after the dissolution or vacancy in consequence of which the writ was issued;

“corrupt practices” means bribery, undue influence and personation as defined in sections 64, 65 and 68 of the Act and any offence under the Bribery Act 2016;

“costs” includes charges and expenses;

“election” means an election of a member to the House of Assembly and cognate expressions shall be construed accordingly;

“election offence” means an offence against the Act;

“judge” means a judge of the Supreme Court;

“prescribed” means prescribed by rules made under the Supreme Court Act 1905 [title 8 item 1], read with section 43;

“President” means the President of the Senate;

“return” means return of the writ of election by a Returning Officer pursuant to section 58 of the Act;

“Speaker” means the Speaker of the House of Assembly.

(2) Subject to subsection (1), this Act shall be read and construed as one with the Act.

[Section 1 subsection (1) definition "corrupt practices" amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

PART II

DISPUTED APPOINTMENTS AND ELECTIONS

Method of questioning appointment or election

2 (1) Any question whether any person has been validly appointed as a member of the Senate or validly elected as a member of the House of Assembly shall be referred to and determined by the Supreme Court in accordance with this Part and not otherwise.

(2) Every such reference shall be by a petition (hereinafter referred to as a representation petition) presented to the Supreme Court in accordance with this Part.

(3) A petition complaining of no return shall be deemed to be a representation petition and the Supreme Court may make such order thereon as it thinks expedient for compelling a return to be made or may allow the petition to be heard as provided with respect to ordinary representation petitions.

Parties

3 (1) A representation petition may be presented by any person qualified under section 33 of the Constitution [title 2 item 1] to make application to the Supreme Court.

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

(2) The person whose appointment, election or return is complained of shall be the respondent to the representation petition; and, if the representation petition complains of the conduct of a Returning Officer or other officer connected with an election, that Returning Officer or other officer as the case may be, shall be made a party to the representation petition.

Presentation and service of representation petition

4 (1) A representation petition shall be in the prescribed form, shall state the prescribed matters and shall be signed by the petitioner or all the petitioners, if more than one, and shall be presented by delivering it, together with the prescribed number of copies thereof at the Registry, and the Registrar or the officer of the Registry to whom the representation petition is delivered shall, if required, give a receipt therefor.

(2) The Registrar shall cause a copy of the representation petition to be transmitted to—

- (a) the Attorney-General; and
- (b) such other persons as may be prescribed,

and shall cause the representation petition to be published in the prescribed manner.

(3) A representation petition shall be served in such manner as may be prescribed.

Time for presentation of representation petition

5 (1) A representation petition questioning the appointment of a person to the Senate shall not be presented later than twenty-eight days after the date of publication in the Gazette of notice of the appointment.

(2) Subject to this section, a representation petition questioning an election shall be presented within twenty-eight days after the date upon which the writ of election has been returned in accordance with section 58 of the Act.

(3) If the representation petition questions the election or return upon an allegation of a corrupt practice and specifically alleges a payment of money or other reward to have been made by the member who is the respondent, or on his account, or with his privity, or by his agent, or with his agent's privity, since the date referred to in subsection (2), in pursuance of or in furtherance of the alleged corrupt practice, it may be presented within twenty-eight days after the date of the payment.

Amendment of representation petition

6 The Supreme Court may, at any stage before conclusion of the trial of a representation petition, allow the petitioner to alter or amend his representation petition in such manner and on such terms as may seem just:

Provided that no amendment for the purpose of inserting an allegation of a corrupt practice or an election offence in a representation petition questioning an election or return shall be allowed unless made within the time within which a representation petition questioning the election or the return upon such allegation might have been presented under section 5.

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

Security for costs

7 (1) At the time of presenting a representation petition, or within three days afterwards, the petitioner shall give security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent:

Provided that the Attorney-General shall not be required to give security for costs under this section.

(2) Security shall be an amount of two thousand four hundred dollars and shall be given in the prescribed manner by a recognizance in the prescribed form entered into by any number of sureties not exceeding four or by a deposit of money, or partly in one way and partly in the other.

Notice of presentation and security and copy of petition to be served on respondent

8 Within the prescribed time, not exceeding five days after the presentation of a representation petition, the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the representation petition, and of the nature of the proposed security, and a copy of the representation petition.

Objections to security

9 (1) Within a further prescribed time, not exceeding ten days after service of the notice of the presentation of the representation petition, the respondent may object in writing to any recognizance on the ground that any surety is insufficient or is dead or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the recognizance.

(2) An objection to the security shall be heard and decided by a judge, whose decision shall be final, and if the objection be allowed the petitioner may, within such time as may be ordered, remove the objection by giving further security either in the form of an additional recognizance with a surety or sureties approved by the judge, or by deposit in the prescribed manner of such sum of money as the judge may deem sufficient.

(3) The costs of hearing and deciding objections made to the security shall be paid as ordered by the judge or, in the absence of such order, shall form part of the general costs of the representation petition.

Dismissal of petition on failure to give security

10 (1) If security as in section 7 provided is not given by the petitioner, or if any objection is allowed and not removed as in section 9 provided, no further proceedings shall, subject to section 11, be allowed on the representation petition and the respondent or any other party may apply to a judge for an order directing the dismissal of the representation petition and for the payment of the respondent's costs and the costs of any other party.

(2) The costs of hearing and deciding any such application shall be paid as ordered by the judge or, in the absence of such order, shall form part of the general costs of the representation petition.

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

Substitution of petitioner on failure to give security

11 (1) On the hearing of an application under section 10 any person who might have been a petitioner in respect of the matter to which the representation petition relates may apply to the judge to be substituted as a petitioner for the original petitioner and the judge may, if he thinks fit, dismiss the original petitioner from the representation petition and substitute as the petitioner such applicant, who shall provide security in the sum of two thousand four hundred dollars and subject to the like conditions and to the same right of objection as in the case of the original petitioner.

(2) Such security shall be given within three days after the making of the order of substitution and on the failure of the applicant to comply with this subsection the representation petition shall stand dismissed.

Petition at issue

12 On the expiration of the time limited for objections or, after objection made, on the objection being disallowed or withdrawn, whichever last happens, the representation petition shall be at issue.

Trial of petition

13 (1) A representation petition shall be tried by the Supreme Court in open court, without a jury, and notice of the time and place of trial shall be given in the prescribed manner not less than fourteen days before the day of trial.

(2) The Supreme Court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day, not being a public holiday, until conclusion.

(3) A representation petition may be presented and heard and all other necessary proceedings thereunder may be taken during any period appointed as a vacation to be observed by the Supreme Court.

(4) The trial of a representation petition shall be proceeded with notwithstanding the prorogation of the Legislature, and, in the case of a representation petition questioning an election or return, notwithstanding the resignation by the respondent as a member of the House of Assembly.

(5) On the trial of the representation petition, unless the Supreme Court otherwise directs, any charge of a corrupt practice or election offence may be gone into, and evidence in relation thereto received, before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or election offence.

(6) On the trial of a representation petition questioning an election or return and which claims the seat for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a representation petition against the election of that person.

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

Witnesses

14 Witnesses shall be summoned and sworn in the same manner as in an ordinary action within the jurisdiction of the Supreme Court and shall be subject to the same penalties for perjury.

Power of Supreme Court to summon witnesses at its own instance

15 (1) On the trial of a representation petition in respect of an election or return the Supreme Court may, by order under the hand of the judge, require any person who appears to him to have been concerned in the election to attend as a witness and any person refusing to obey the order shall be guilty of contempt of court.

(2) The Supreme Court may examine any person so required to attend or who is in court, although he is not called and examined by any party to the representation petition.

(3) A witness may, after his examination by the Supreme Court under subsection (2), be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Elector not to be asked for whom he voted

16 No person who has voted at any election shall, in any proceeding on a representation petition, be required to state for whom he voted.

Expenses of witnesses

17 (1) The reasonable expenses incurred by any person in appearing to give evidence at the trial of a representation petition, according to the scale allowed to witnesses on the trial of civil actions before the Supreme Court may be allowed to such person under the hand of a judge or the Registrar and the amount to be paid to any such witness shall be ascertained and certified by the Registrar.

(2) The expenses of a witness called by a party shall be deemed to be costs of the representation petition but the expenses of a witness called by the Supreme Court shall be deemed part of the expenses of the Supreme Court and paid out of moneys provided for such expenses.

Production of election documents

18 (1) Any document or paper relating to an election and required to be kept thereafter in safe custody may be inspected or produced under an order of the Supreme Court for the purpose of a representation petition in respect of the election; and the order may be made by a judge on his being satisfied by evidence on oath that such inspection or production is required for the purpose aforesaid.

(2) Where a writ of election has been returned to the office of the Deputy Governor and the Supreme Court is satisfied by evidence on oath that the inspection or production of the writ is required for the purpose of a representation petition in respect of the election or return the Supreme Court may make an order accordingly for such production or inspection.

(3) Where the Supreme Court has made an order under the preceding subsection the Registrar shall inform the Deputy Governor who shall—

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

- (a) in the case of an order for inspection, cause the writ to be made available for inspection within such time as is specified in the order;
- (b) in the case of an order for production, cause the writ to be produced as is specified in the order.

Votes to be struck off on a scrutiny

19 On a scrutiny at the trial of a representation petition questioning an election, any vote or votes given on a ballot paper which is, by virtue of section 54(1) of the Act void, but which has, in contravention of that subsection, been counted, shall be struck off and, conversely, the Supreme Court may reverse any decision of the Returning Officer to treat a ballot paper as void under the subsection.

Withdrawal of petition

20 (1) A petitioner shall not withdraw a representation petition without the leave of the Supreme Court on special application, made in the prescribed manner and at the prescribed time and place.

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the prescribed manner.

(3) Where there are more petitioners than one, the application shall not be made except with the consent of all the petitioners.

(4) If a representation petition is withdrawn the petitioners shall be liable to pay the costs of the respondent.

Evidence required for withdrawal of petition

21 (1) Before leave for the withdrawal of a representation petition is granted, there shall be produced affidavits by all the parties to the representation petition and their barristers and attorneys, but the Supreme Court may on cause shown dispense with the affidavit of any particular person if it seems to the Supreme Court on special grounds to be just so to do.

(2) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into in relation to the withdrawal of the representation petition; but if any lawful agreement has been made with respect to the withdrawal of the representation petition the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3) The affidavits of the applicant and his barrister and attorney shall further state the ground on which the representation petition is sought to be withdrawn.

(4) Copies of the said affidavit shall be delivered to the Attorney-General a reasonable time before the application for the withdrawal is heard, and the Supreme Court may hear the Attorney-General or his duly appointed representative in opposition to the allowance of the withdrawal of the representation petition, and shall have the power to receive the evidence on oath of any person or persons whose evidence the Attorney-General or his representative may consider material.

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

(5) Where more than one barrister and attorney is concerned for the petitioner or respondent, whether as agent for another barrister and attorney or otherwise, the affidavit shall be made by all such barristers and attorneys.

Punishment for corrupt withdrawal

22 (1) If any person makes any agreement or terms or enters in to any undertaking, in relation to the withdrawal of a representation petition, and such agreement, terms or undertaking is or are for the withdrawal of the representation petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other such representation petition, he commits an offence and that offence is a misdemeanour:

Punishment on conviction on indictment: imprisonment for 12 months or a fine of \$7,200 or both such imprisonment and fine.

(2) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 22 amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Substitution of new petitioner on withdrawal of petition

23 (1) On the hearing of the application for leave to withdraw a representation petition any person who might have been a petitioner in respect of the matter to which the representation petition relates may apply to the Supreme Court to be substituted as the petitioner and the Supreme Court may, if it thinks fit, substitute him accordingly.

(2) If the proposed withdrawal is in the opinion of the Supreme Court the result of any agreement, terms or undertaking prohibited by section 22 or induced by any corrupt bargain or consideration, the Supreme Court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that, to the extent of the sum named in the security, the original petitioner and his surety shall be liable to pay the costs of the substituted petitioner.

(3) If no such order is made with respect to the security given by or on behalf of the original petitioner, security to the same amount as would be required in the case of a new representation petition and subject to the like conditions and to the same right of objection shall be given by or on behalf of the substituted petitioner within three days after the making of the order of substitution and before he proceeds with the representation petition.

(4) If the substituted petitioner fails to comply with subsection (3) the representation petition shall stand dismissed.

(5) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

Report on withdrawal

24 (1) Where a representation petition is withdrawn, the Supreme Court shall make a report—

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

- (a) to the Governor and the President, in the case of a representation petition questioning the appointment of a person to the Senate; or
- (b) to the Speaker, in the case of a representation petition in respect of an election or return.

(2) The report shall state whether in the opinion of the Supreme Court the withdrawal of the representation petition was the result of any agreement, terms or undertaking or was in consideration of any payment, or in consideration that the seat should be at any time vacated or in consideration of the withdrawal of any other such representation petition or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

Abatement of petition

25 (1) A representation petition shall abate on the death of a sole petitioner or of the survivor of several petitioners.

(2) A representation petition questioning the appointment of any person to the Senate shall abate on the death of the respondent.

(3) The abatement of the representation petition shall not affect the liability of the petitioner or any other person to the payment of costs incurred in respect of any proceeding taken prior to the abatement.

(4) On the abatement of a representation petition under subsection (1) the prescribed notice thereof shall be given in the prescribed manner, and any person who might have been a petitioner in respect of the appointment or election, as the case may be, may, within the prescribed time after the notice is given apply to the Supreme Court in the prescribed manner to be substituted as a petitioner; and the Supreme Court may, if it thinks fit, substitute him accordingly.

(5) Security shall be given on behalf of a petitioner so substituted, as in the case of a new representation petition.

Withdrawal and substitution of respondents before trial

26 (1) If before the trial of a representation petition questioning an election or return—

- (a) a respondent gives the prescribed notice that he does not intend to oppose the representation petition or dies, the Registrar shall give notice thereof in the prescribed manner and any person who might have been a petitioner in respect of the election may, within the prescribed time after the notice is given, apply to the Supreme Court to be admitted as a respondent to oppose the representation petition, and shall be admitted accordingly;
- (b) any person who might have been a petitioner in respect of the election gives notice in the prescribed manner that he intends at the trial to apply to be admitted as a respondent, then at the trial of the representation petition, upon the Supreme Court being satisfied that there are reasonable grounds for believing that circumstances have arisen that, if the original respondent

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

were a member of the House of Assembly, would cause him to vacate his seat under section 31 of the Constitution [*title 2 item 1*], the Supreme Court may admit such person as a respondent to oppose the representation petition:

Provided that the number of persons admitted as respondents under this subsection shall not exceed three.

(2) A respondent who has given the prescribed notice that he does not intend to oppose the representation petition shall not be allowed to appear or act as a party against the representation petition in any proceedings thereon.

Avoidance of election

27 (1) Where on a representation petition questioning the election of a candidate it is shown that—

- (a) corrupt practices or election offences committed in reference to the election for the purpose of promoting or procuring the election of the candidate have so extensively prevailed that they may be reasonably supposed to have affected the result; or
- (b) the election was not conducted in accordance with the principles laid down in the Act, and that such noncompliance affected, or may be reasonably supposed to have affected, the result; or
- (c) that a corrupt practice or election offence was committed in connection with the election by the candidate, or with his knowledge and consent, or by any agent of the candidate; or
- (d) that the candidate was at the time of his election a person not qualified, or a person disqualified, for election,

the Supreme Court shall declare his election to be void, but not otherwise.

(2) For the purposes of subsection (1)(c) an agent of a candidate means a person acting under the general or special authority of the candidate with reference to the election.

(3) No election shall be declared void by reason of any act or omission by the Returning Officer or any other person in breach of his official duty in connection with the election or otherwise, if it appears to the Supreme Court that the election was so conducted as to be substantially in accordance with the law relating to the election and that the act or omission did not affect its result.

Conclusion of trial of representation petition

28 (1) At the conclusion of the trial of a representation petition the Supreme Court—

- (a) in respect of an appointment to the Senate, shall determine whether the person whose appointment was questioned was validly appointed or not, and shall forthwith certify in writing the determination to the Governor and to the President;

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

- (b) in respect of an election or return shall determine whether the person whose election or return is questioned, or any and what other person, was duly returned or elected or whether the election was void, and shall forthwith certify in writing the determination to the Governor and the Speaker;
 - (c) notwithstanding that it has determined and certified that the person to whom the representation petition relates was validly appointed or elected or duly returned, as the case may be, may, if satisfied that since the date of the appointment or election circumstances have arisen by reason of which such person has vacated his seat or is required by virtue of section 31(2) of the Constitution [*title 2 item 1*] to cease to perform his functions as a member, proceed under subsection (1) of section 39 as if the question referred to the Supreme Court by the representation petition were as to such requirement or vacation of his seat, as the case may be.
- (2) In the case of an appeal to the Court of Appeal against a determination of the Supreme Court contained in any certificate given by the Supreme Court under subsection (1) or section 29, the Court of Appeal shall certify in writing its determination thereon—
- (a) in the case of a representation petition to which subsection (1)(a) applies, to the Governor and the President; and
 - (b) in the case of a representation petition to which subsection (1)(b) applies, to the Governor and the Speaker.
- (3) If after a certificate has been given under subsection (1) or section 29, no notice of appeal to the Court of Appeal is lodged within the time prescribed for an appeal against the determination of the Supreme Court contained therein, then such determination of the Supreme Court shall be final.
- (4) Where a certificate has been given under subsection (2) by the Court of Appeal, the determination contained therein shall be final.
- (5) Where a certificate given under this section becomes final or where a certificate given under section 29 then, in the case of a petition which questioned an election or return, the return shall be confirmed or altered, or a writ for a new election shall be issued, as the case may require, in accordance with the determination contained in such certificate.
- (6) The Supreme Court may, in addition to giving the certificate and at the same time, make a special report to the Speaker as to matters arising in the course of the trial an account of which in the judgment of the Supreme Court ought to be submitted to the House of Assembly.

Determination of stated case

29 If, on the application of any party to a representation petition made in the prescribed manner to the Supreme Court, it appears to the Supreme Court that the case raised by the representation petition can be conveniently stated as a special case, the Supreme Court may direct it to be stated accordingly and the special case shall be heard before the Supreme Court, and the Supreme Court shall certify in writing to the Governor

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

and to the President or Speaker, as the case may be, its determination in reference to the special case.

Costs of petition

30 (1) All costs of and incidental to the presentation of a representation petition and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the representation petition in such manner and in such proportion as the Supreme Court may determine; and in particular any costs which in the opinion of the Supreme Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of the petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused whether or not they are on the whole successful.

(2) If a petitioner neglects or refuses for six months after demand to pay to any person summoned as a witness on his behalf or to the respondent any costs certified or adjudged to be due to him and such neglect or refusal is, within one year after the demand, proved to the satisfaction of the Supreme Court, every person who, in accordance with section 7 or section 9(2), entered into a recognizance relating to the representation petition shall be held to have made default in the recognizance and the recognizance shall be enforceable accordingly.

Further provision as to costs of petition

31 (1) Where upon the trial of a representation petition questioning an election or return it appears to the Supreme Court that any person is proved, whether by providing money or otherwise, to have been concerned in corrupt practices or election offences, or to have encouraged or promoted corrupt practices or election offences in reference to the election to which the representation petition relates, the Supreme Court may, after giving that person an opportunity of being heard by a barrister and attorney and examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person and may order that if the costs cannot be recovered from that person they shall be paid by either of the parties to the petition.

(2) Where any person appears to the Supreme Court to have been guilty of a corrupt practice or election offence, the Supreme Court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceedings before the Supreme Court in relation to the said offence or to the said person to be paid by that person.

Observance of Parliamentary principles, practice and rules

32 Subject to the provisions of this Act and rules made by virtue of any such provisions, the principles, practice and rules on which committees of the House of Commons of the Parliament of the United Kingdom used to act in dealing with election petitions shall be observed so far as may be, by the Supreme Court in the case of representation petitions in respect of elections or returns.

PART III
DISPUTED VACANCIES

Vacancy petition as to vacancy in Senate or House of Assembly

33 (1) Any question whether a member of the Senate or of the House of Assembly has vacated his seat therein or is required by virtue of section 31(2) of the Constitution [*title 2 item 1*] to cease to perform his functions as a member shall be referred to and determined by the Supreme Court in accordance with this Part and not otherwise.

(2) Every such reference shall be by a petition (hereinafter referred to as a vacancy petition) presented to the Supreme Court in accordance with this Part by a person qualified under section 33(2)(a) or (b), as the case may be, of the Constitution to make application to the Supreme Court.

Contents, delivery and service of vacancy petition

34 (1) A vacancy petition presented to the Supreme Court under this Part of this Act shall be in the prescribed form, state the prescribed matters and be signed by the petitioner or all the petitioners if more than one.

(2) The vacancy petition shall be presented by delivering it, together with the prescribed number of copies thereof, at the Registry and the Registrar or officer of the Registry to whom the vacancy petition is delivered shall if required give a receipt therefor.

(3) The Registrar shall cause a copy of the petition to be transmitted to such persons as may be prescribed, and shall cause the vacancy petition to be published in the prescribed manner.

(4) The vacancy petition shall be served in such manner as may be prescribed.

Security for costs

35 (1) Where a vacancy petition has been presented to the Supreme Court under this Part the petitioner shall at the time of delivering the vacancy petition to the Registrar or within three days afterwards give security for all costs which may become payable by him to any witness summoned on his behalf or to any party to the vacancy petition.

(2) Security shall be an amount of two thousand four hundred dollars and shall be given in the prescribed manner by recognizance entered into by any number of sureties not exceeding four or by a deposit of money, or partly in one way and partly in the other.

Service of notice of delivery of vacancy petition

36 Within the prescribed time, not exceeding five days after delivery of a vacancy petition, the petitioner shall cause notice of the presentation of the vacancy petition, and of the nature of any proposed security, and a copy of the vacancy petition to be served upon—

- (a) the member whose seat is the subject-matter of the vacancy petition;
- (b) the Attorney-General; and

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

- (c) such other person as may be prescribed.

Parties to vacancy petition

37 The parties to a vacancy petition shall be—

- (a) the petitioner;
- (b) the member whose seat is the subject-matter of the petition;
- (c) the Attorney-General, if he intervenes; and
- (d) such other person as, in the opinion of the Supreme Court, is interested in the determination of the question referred and whom the Supreme Court directs may be heard upon the hearing of the petition.

Application of certain sections in Part II

38 Subject to such modifications and adaptations as may be necessary for the purpose, the following provisions of Part II shall so far as they are applicable, have effect in relation to proceedings on a vacancy petition presented to the Supreme Court under this Part—

Section 9

Section 10 (provided that in subsection (1) thereof the reference to section 7 shall be deemed to be a reference to section 35)

Section 12

Subsections (1) to (4) (inclusive) of section 13

Section 14

Section 17

Subsections (2) , (3) and (6) of section 28

Section 29

Section 30 (provided that in subsection (2) thereof the reference to section 7 shall be deemed to be a reference to section 35).

Determination of vacancy petition

39 (1) The Supreme Court shall, at the conclusion of the hearing of a vacancy petition, determine the question thereby referred to it and shall forthwith certify in writing such determination to the Governor and either the President (if the petition relates to the Senate) or the Speaker (if the petition relates to the House of Assembly).

(2) If upon the hearing of a vacancy petition as to whether a member is required under section 31(2) of the Constitution [*title 2 item 1*] to cease to perform his functions as such a member, the Supreme Court is satisfied that he has vacated his seat by reason of any circumstances alleged in the vacancy petition, the Supreme Court shall proceed under subsection (1) as if the question which is the subject of the vacancy petition were as to his vacation of his seat.

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

PART IV
MISCELLANEOUS

Service of notices

40 Any summons, notice or document required to be served on any person with reference to any proceeding under this Act for the purpose of causing him to appear before the Supreme Court or otherwise, or of giving him an opportunity of making a statement, or showing cause or being heard for any of the purposes of this Act, may be served—

- (a) by delivering it to that person; or
- (b) by leaving it at, or sending it by post by a registered letter to, his last known place of abode; or
- (c) in such manner as may be—
 - (i) prescribed, or
 - (ii) directed by any judge before whom the proceeding is taken.

Costs

41 Subject to this Act and rules made by virtue of this Act, the rules of court with respect to costs in actions, causes and matters in the Supreme Court shall, so far as practicable, apply in relation to costs of representation petitions and vacancy petitions and other proceedings under this Act.

Power of Supreme Court

42 The Supreme Court shall, subject to this Act and rules made by virtue of this Act, have the same powers, jurisdiction and authority with respect to any proceedings brought under or by virtue of this Act as if the proceedings were an ordinary action within the jurisdiction of the Supreme Court.

Rules of Supreme Court

43 The power conferred by the Supreme Court Act 1905 [*title 8 item 1*], to make rules shall be deemed to include the power to make rules for any of the purposes of this Act and, without prejudice to the generality of such power, for prescribing anything which this Act authorizes or requires to be prescribed.

Rules of Court of Appeal

44 The power conferred by the Court of Appeal Act 1964 [*title 8 item 4*], to make rules shall be deemed to include the power to make rules for any of the purposes of this Act and, without prejudice to the generality of such power, for prescribing all matters relating to appeals.

Amendment of 1963:10

45 [*omitted*]

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP
CONTROVERSIES) ACT 1968

Commencement

46 *[omitted]*

[Assent Date: 9 April 1968]

[this Act was brought into operation on 8 June 1968]

[Amended by:

1978 : 23

2016 : 47]