

Appendix D

Election Offences (*The Municipal Councils and School Boards Elections Act*)

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**PART 8
OFFENCES**

BRIBERY AND INTIMIDATION OFFENCES

Offering a bribe

127(1)A person who, directly or indirectly, offers a bribe to induce or influence another person to do any of the following is guilty of an offence:

- (a) to vote or refrain from voting;
- (b) to vote or refrain from voting for or against a particular candidate or a particular answer to a question;

- (c) to nominate or refrain from nominating a person as a candidate;
- (d) to become nominated or refrain from becoming nominated as a candidate or to withdraw as a candidate.

Accepting a bribe

127(2) A person who, directly or indirectly, accepts or agrees to accept a bribe offered in circumstances described in subsection (1) is guilty of an offence.

Soliciting a bribe

127(3) A person who, directly or indirectly, solicits a bribe in circumstances described in subsection (1) is guilty of an offence.

Additional penalty

127(4) In addition to the penalty provided for in subsection 139(1), a person convicted of an offence under this section is liable to a further fine in the amount that is double the value of the bribe involved.

Force and intimidation

- 128** A person is guilty of an offence who
- (a) directly or indirectly
 - (i) uses or threatens to use force, violence or restraint, or
 - (ii) inflicts or threatens to inflict an injury, damage, harm or loss, upon or against a person in order to induce or compel the person to vote or refrain from voting, or on account of that person having voted or refrained from voting at an election or for a vote on a question; or
 - (b) impedes or prevents the free exercise of the right to vote by an eligible voter.

VOTING OFFENCES

Corrupt voting

129 A person who does any of the following is guilty of an offence:

- (a) knowingly votes or applies to vote in an election or for a vote on a question when not eligible to do so;
- (b) having already voted in an election or on a question, either votes or applies for a ballot to vote in the same election or on the same question;
- (c) induces or causes another person to vote knowing that the person is not eligible to vote;

- (d) obtains a ballot in the name of another person, whether the other person is alive, dead or fictitious;
- (e) knowingly violates or attempts to violate the secrecy of voting.

Interfering with voting places

130 A person who interferes or disrupts, or attempts to interfere or disrupt, the proceeding at a voting place or station is guilty of an offence.

Other voting related offences

131 A person who does any of the following without being authorized to do so under this Act is guilty of an offence:

- (a) supplies a ballot to another person;
- (b) takes a ballot out of the voting station;
- (c) places anything other than a ballot in the ballot box;
- (d) gives to the voting official, to be placed in the ballot box, anything other than the ballot given to him or her by the voting official;
- (e) as a voting official, puts his or her initials on the back of a paper that is not a ballot but is capable of being used as one;
- (f) alters, defaces, destroys, takes, opens or otherwise interferes with a ballot, voting record, ballot box, vote-counting machine or a document or package used at or prepared for an election or vote on a question;
- (g) prints or reproduces a ballot or a paper that is capable of being used as a ballot.

OFFENCES RELATING TO ELECTION OFFICIALS AND OTHERS

Offences relating to election and other officials

132(1) An election official or other person who does any of the following is guilty of an offence:

- (a) accepts appointments or acts as an election official when not eligible;
- (b) knowingly omits or deletes from a voters list the name of a person entitled to have his or her name on the list, unless acting under the authority of section 34 (personal security protection);
- (c) having given a person a personal security certificate, knowingly fails to obscure the person's name and address on the voters list;
- (d) knowingly adds to or keeps on a voters list the name of a fictitious person or the name of a

- person not eligible to have his or her name added or kept on the list;
- (e) knowingly falsifies a voters list or voting record, whether by making a false addition or deletion, or otherwise;
 - (f) as a voting official, fails without lawful excuse to deliver the ballot box to the senior election official under section 108;
 - (g) knowingly miscounts ballots during a count or a recount under Part 7.

Bribery, etc. of official

132(2) A person who pays, gives or lends inducement for the purpose of procuring a contravention of subsection (1) is guilty of an offence.

Obstructing an official

132(3) A person who impedes or obstructs an election official in performing a duty or exercising a power under this Act is guilty of an offence.

OFFENCES RELATING TO FALSE INFORMATION AND STATEMENTS

Offence re use of information

133 A person is guilty of an offence who uses information obtained from a voters list, or provided to or obtained by an election official under Part 3, for a purpose other than a purpose

- (a) referred to in section 30; or
- (b) authorized by another Act.

Offence re false or misleading information

134 A person who knowingly does either of the following is guilty of an offence:

- (a) provides false or misleading information when required or authorized by this Act to provide information;
- (b) makes a false or misleading statement or declaration when required by this Act to make a statement or declaration.

False statements respecting voters lists

135 A person is guilty of an offence who knowingly makes a false statement for the purpose of

- (a) having the name of an eligible voter omitted or deleted from the voters list; or
- (b) having the name of a dead or fictitious person – or of a person, including himself or herself, who is not an eligible voter – added to or kept on a voters list.

Use of false pretenses

136(1) A person who by false pretenses induces a voter to vote or refrain from voting, or to vote or refrain from voting for or against a particular candidate or for a particular answer, is guilty of an offence.

Secrecy of the vote

136(2) In subsection (1), false pretenses includes representing that the ballot or the manner of voting is not secret.

False statement of candidate's withdrawal

137(1) A person who knowingly publishes a false statement that a candidate has withdrawn is guilty of an offence.

False statement of candidate's character

137(2) A person who, during an election, knowingly makes, distributes or publishes a false statement of fact about a candidate's character or conduct for the purpose of influencing the election is guilty of an offence.

GENERAL

Other offences

138 A person who contravenes a provision of this Act is guilty of an offence.

PENALTIES

Penalty for serious offences

139(1) A person who is guilty of an offence under sections 127 to 137 is liable on summary conviction to one or more of the following penalties:

- (a) a fine of not more than \$10,000.;
- (b) imprisonment for a term of not more than one year.

Penalty for other offences

139(2) A person who is guilty of an offence under this Act not mentioned in subsection (1) is liable on summary conviction to one or more of the following penalties:

- (a) a fine of not more than \$2,000.;
- (b) imprisonment for a term of not more than two months.

Prohibition against election or appointment

139(3) In addition to imposing any other penalty under this section, the convicting judge may prohibit the person from one or both of the following for a period of not longer than eight years:

- (a) being elected to an office on a local authority;
- (b) being appointed as an election official.

PART 9 CHALLENGING RESULTS OF ELECTION OR VOTE

Application

140(1)The right of an elected candidate to take office or the validity of an election or vote on a question may be challenged only by an application to the court under this Part.

Grounds for application

140(2)An application may be made to the court on the following grounds:

- (a) that an elected candidate was not eligible to hold office at the time he or she was elected;
- (b) that there were irregularities in the election or acts constituting offences under sections 127 to 138 (offences) that affected the result of the election;
- (c) that there were irregularities in the vote on a question or acts constituting offences under sections 127 to 138 (offences) that affected the result of the vote.

Exception

140(3)An application may not be made under this Part on the grounds for which an application for a judicial recount may be made under Part 7.

Deadline for application

140(4)An application may not be made more than 60 days after the result of an election or vote on a question is officially declared.

Who can apply

141(1)For an election or question, an application may be made only by

- (a) a candidate;
- (b) an eligible voter; or
- (c) the senior election official.

Respondent

141(2)If an application seeks a declaration that

- (a) an elected candidate was not eligible to hold office at the time he or she was elected, that candidate must be named as the respondent;
- (b) an election was invalid because of irregularities or acts constituting offences under sections 127 to 137, the senior election official and any

candidate declared elected must be named as the respondents; or

- (c) a vote on a question was invalid, the senior election official must be named the respondent, but where the senior election official is the applicant, the judge may name any other interested person as the respondent.

Service

141(3)For an election, the applicant must serve the notice of application on the senior election official and every candidate. For a vote on a question, the applicant must serve the notice of application on the senior election official.

Addition of parties

141(4)Any of the persons required to be served under subsection (3) are entitled to be parties to the application, and the court may by order add any other person as a party.

Court procedure

142(1)An application must be heard on an urgent basis and in a summary manner.

Frivolous applications

142(2)The court may at any time dismiss an application that it considers to be frivolous, vexatious or made in bad faith.

Decision of the court

143(1)After hearing an application

- (a) in respect of a candidate's election, the court may do any of the following:
 - (i) declare that the elected candidate is qualified to take and hold office,
 - (ii) declare that the elected candidate is not qualified to hold office and that the office is vacant, or another candidate is duly elected,
 - (iii) declare the election was valid,
 - (iv) declare the election is invalid and that the office is vacant or that another candidate is duly elected; or
- (b) in respect of a vote on a question, the court may declare that the vote was valid or invalid.

Where election or vote valid despite contravention

143(2)The court must not declare an election or vote on a question invalid by reason only of an irregularity or contravention of this Act if it is satisfied that

- (a) the election or vote was conducted in good faith and in accordance with the principles of this Act; and
- (b) the irregularity or contravention did not materially affect the results of the election or vote.

Appeal to Court of Appeal

144(1) An appeal from the court's decision on an application under this Part must be filed with The Court of Appeal no later than seven days after the decision is made.

Appeal to be heard on an urgent basis

144(2) The Court of Appeal must hear the appeal on an urgent basis.

No stay

144(3) A person who is declared not to be qualified to hold office under section 143 remains disqualified until the appeal is finally determined.

Reinstatement

144(4) If, on the final determination of the appeal, the disqualification is set aside, The Court of Appeal may reinstate the person as a member of the elected authority for any unexpired portion of the term of office for which he or she was elected and require any person who has been elected to fill the balance of that term to vacate the office.

No reinstatement if term has expired

144(5) If, on the final determination of the appeal, the disqualification is set aside but the term of office for which the person was elected has expired, the person must not be reinstated but is eligible to be elected at the next election in the local authority if otherwise qualified.

COMPENSATION AND COSTS

Costs of application

145(1) If the court declares that a candidate was not qualified to hold office or that an election is invalid, the affected local authority must, in accordance with the *Queen's Bench Rules* and the *Court of Appeal Rules*, pay the costs of the applicant.

Recovery of costs

145(2) A court may order that the costs paid under subsection (1) may be recovered by the local authority

from any other person in the same manner as a judgment of the court.

Compensation

146 If a court orders that an office is vacant or that a vote on a question was invalid, it may make such other orders as it considers just against a person whose act or omission unlawfully affected the results of the election or vote for compensation of the candidates, the local authority or both.

DISCLAIMER

Disclaimer after application

147(1) A candidate whose election is challenged in an application under this Part may disclaim all right to the office.

Manner of making disclaimer

- 147(2)** A disclaimer must be
- (a) made in writing;
 - (b) signed by the candidate making it, and the candidate's signature on the disclaimer must be witnessed by another person, who must sign as witness;
 - (c) delivered to the senior election official who was responsible for the conduct of the election; and
 - (d) delivered to the court and the applicant or his or her counsel.

S.E.O. to inform C.A.O. or secretary-treasurer

147(3) When a senior election official receives a disclaimer, he or she must immediately communicate it to the chief administrative officer or secretary-treasurer of the local authority.

Resignation

147(4) The disclaimer operates as a resignation and takes effect when the chief administrative officer or secretary-treasurer receives notice of it.

Effect on liability for costs

147(5) The disclaimer relieves the candidate making it from any liability for costs in an application that are incurred after the court receives the disclaimer.

CHANGE IN APPLICANT

Applicant's death

148(1) If the applicant dies before the court hears the application, the court may, on any person's motion, order that another person who is qualified be substituted as an applicant, on any conditions the court

considers proper. Otherwise, the application is deemed to have been dismissed.

Costs if application deemed dismissed

148(2)The court may make an award of costs in respect of an application even if it is dismissed under subsection (1).