

# BILL

No. 4 of 1911.

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

(Assented to 1911.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

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

2. In this Act unless the context otherwise requires— Interpre-

1. The expression "clerk of the municipality" means and includes the clerk of any city to which this Act applies or town or the secretary of any village or rural municipality, as the case may be; tation  
Clerk of the  
municipi-  
pality.

2. The expression "court" means the District Court of the judicial district within which the municipality is wholly or mainly situated, and the expression "judge" means the judge of said court; Court.  
judge

3. The expression "council" means the municipal council of any city to which this Act applies, town, village or rural municipality; Council

4. The expression "municipality" means and includes cities to which this Act applies, towns, villages and rural municipalities; Municipi-  
pality

5. The expression "voter" means any person entitled to vote at any election or upon any by-law, as the case may be, in any municipality or any person actually voting at any such election or upon any such by-law. Voter

3. Nothing in this Act contained shall apply to cities incorporated by Ordinance or Act at the date of the coming into force of this Act. Application  
of Act

## CORRUPT PRACTICES.

4. The following persons shall be deemed guilty of bribery and shall be punishable accordingly: Bribery

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

2. Every person who directly or indirectly by himself or by any other person on his behalf makes any gift, loan, offer, promise or agreement as aforesaid to or for any person in order

to induce such person to procure or defeat or endeavour to procure or defeat the return of any person to serve in the council or to procure or defeat the passing of any by-law as aforesaid or the vote of any voter at an election or at the voting upon any by-law;

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

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

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

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

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

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

Threats,  
etc.

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

Personal  
expenses

7. When upon a motion in the nature of a *quo warranto* a question is raised as to whether the candidate or any voter or other person has been guilty of any violation of section 4 or section 5 hereof affidavit evidence shall not be used to prove the offence but it shall be proved by *viva voce* evidence.

Evidence  
on quo  
warranto

8. Any candidate elected at an election who is found guilty by a judge upon the hearing of a motion in the nature of a *quo warranto* of any act of bribery or of using undue influence as aforesaid shall forfeit his seat and shall be ineligible as a candidate at any election for four years thereafter.

Forfeiture  
and  
disqual-  
ification

9. Any person who is adjudged guilty of any offence within the meaning of section 4 or section 5 hereof shall incur a penalty of \$100 and shall be disqualified from voting at any election or upon any by-law for the next succeeding two years.

Disqual-  
ification

10. The money penalty imposed by the next preceding section shall be recoverable with full costs of suit by any person who sues for the same in the District Court and any person against whom judgment is rendered shall be ineligible either as a candidate or an elector until the amount so recovered against him has been fully paid and satisfied.

Recovery  
of penalty

11. The judge shall direct that in default of payment of the said penalty and costs within the time fixed by the judge the offender shall be imprisoned for such period not exceeding thirty days as is directed by the said judgment and in case of such default of payment the judge shall issue a warrant for the arrest and imprisonment of the offender in accordance with the said judgment until the penalty and costs are fully paid or for such other period not exceeding thirty days as the order may direct.

Imprison-  
ment

12. The judge who finds any candidate guilty of a contravention of section 4 or section 5 hereof or who adjudges any person to pay any penalty imposed under section 9 shall report the same forthwith to the clerk of the municipality.

Report of  
liability to  
penalty

13. The clerk of the municipality shall enter in a book to be kept for that purpose the names of all persons who have been so adjudged guilty of any offence within the meaning of section 4 or section 5 hereof and whose names have been reported to him by the judge aforesaid.

Record of  
disqualified  
persons

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

Witnesses

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

Privilege of  
witnesses

**16.** All proceedings under this Act other than an application in the nature of a *quo warranto* against any person for any violation of section 4 or section 5 hereof shall be commenced within four weeks after the election at which the offence is alleged to have been committed or within four weeks after the day of the voting upon a by-law as aforesaid. Limitation

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

#### TRIAL OF CONTESTED ELECTIONS.

**18.** In case the validity of an election of a member of any municipal council or his right to hold the seat is contested the same may be tried by a judge; any candidate at the election or any voter who gave or tendered his vote thereat or (in case of an election by acclamation or in case the right to sit is contested on the grounds that a member of the council has become disqualified or has forfeited his seat since his election) any voter may be the relator for the purpose. Trial of contested elections

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

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

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

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

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

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

**22.** The notice shall be served in such manner as the judge shall direct.

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

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

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

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

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

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

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

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

Affidavits,  
etc.

Service

Time of  
service

Claim of  
seat

Combina-  
tion of  
motions

Grounds of  
decision

Production  
of papers

Returning  
officer, etc.,  
may be  
added

Interven-  
tion of  
other  
parties

Hearing

**31.** In case the election complained of is adjudged invalid the judge shall by the judgment order the respondent to be removed and his seat shall *ipso facto* be vacated; and in case the judge determine that any other person was duly elected the judge shall forthwith order such other person to be admitted to the office.

Judgment

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

Liability of returning officer, etc.

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

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

Form and effect of order

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

Return

**35.** Any person whose election is complained of unless such election is complained of on the ground of corrupt practices on the part of such person or any person whose seat is attacked on the ground that he has become disqualified or has forfeited his seat may within one week after service on him of a notice of motion as aforesaid transmit postpaid through the post office directed to the clerk of the court and also to the relator or his solicitor, or he may cause to be delivered to the said clerk and to the relator or his solicitor a disclaimer signed by him in the form or to the effect following:

Disclaimer after motion

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

Dated this . . . . . day of . . . . ., 19.

(Signed) *A.B.*

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

Trans- mission

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

Disclaimer  
before  
motion

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

Dated this . . . . . day of . . . . ., 19. . . . .

(Signed) *A.B.*

**38.** A disclaimer filed under section 37 hereof shall relieve the person making it from all liability to costs and where disclaimer has been made in accordance with section 35 or 37 hereof it shall operate as a resignation and the vacancy so created shall be filled in the manner provided by the provisions of the law governing the municipality respecting the filling of vacancies in the council.

Effect of  
disclaimer

**39.** Every person disclaiming under section 35 hereof shall deliver a duplicate of his disclaimer to the clerk of the municipality and the said clerk shall forthwith communicate the same to the council.

Trans-  
mission

**40.** The Lieutenant Governor in Council shall by proclamation published in *The Alberta Gazette* declare the day on and after which this Act shall become and be in force and the said Act shall on and after such day so declared become and be in force.

Commence-  
ment of Act

No. 4

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THIRD SESSION

**SECOND LEGISLATURE**

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2 GEORGE V

1911

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**BILL**

An Act respecting the Punishment of  
Corrupt Practices at Municipal Elect-  
ions and the Trial of Controverted  
Municipal Elections.

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Received and read the

First time . . . . .

Second time . . . . .

Third time . . . . .

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HON. C. R. MITCHELL

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EDMONTON:  
JAMES E. RICHARDS, Government Printer  
A.D. 1911