Bill No. 27 of 1961

PUBLISHED 27TH JUNE, 1961.

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LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP CONTROVERSIES) BILL, 1961.

ARRANGEMENT OF SECTIONS

PART III — SPEAKERS ELECTION AND VACATION OF OFFICE

PART IV — MISCELLANEOUS

A BILL

Intituled

AN ORDINANCE TO MAKE PROVISION WITH RESPECT TO THE REFERENCE TO AND DETERMINATION BY THE SUPREME COURT OF QUESTIONS CONCERNING THE VALIDITY OF THE APPOINTMENT OR ELECTION, OR AFFECTING THE TENURE OF OFFICE, OF MEMBERS OF THE SENATE OR LEGISLATIVE ASSEMBLY OR A SPEAKER OF THE ASSEMBLY WHO IS NOT ELECTED FROM THE MEMBERS THEREOF.

Enacted by the Legislature of British Guiana:—

Short title and commencement.

1. (1) This Ordinance may be cited as the Legislature (Appointment, Election and Membership Controversies) Ordinance, 1961.

(2) This Ordinance shall come into operation on such day as the Governor may appoint under subsection (1) of section 2 of the Representation of the People (Amendment) Ordinance, 1961.

No. 21 of 1961.

Interpretation.

2. (1) In this Ordinance, unless the context otherwise requires—

"candidate" means a person who is elected to the Legislative Assembly at an election, or is nominated as a candidate at an election, or is declared by himself or by 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 :

Provided that where a person has been declared by others to be a candidate at an election without his consent, nothing in this Ordinance shall be construed to impose any liability on that person, unless he has afterwards given his assent to the declaration or has been nominated;

"the Constitution" means the Constitution of British Guiana annexed to the British Guiana (Constitution) Order in Council, 1961;

S.I. 1961/1188

"costs" includes charges and expenses;

"the Court" means the Supreme Court;

"election" means an election of a member to the Legislative Assembly;

"judge" means a judge of the Court;

"Legislative Assembly" means such Legislative Assembly as is established by the Constitution;

"the Ordinance" means the Representation of the People Ordinance, 1957, as amended at the commencement of this Ordinance;

No. 3 of 1957.

"President" means the President of the Senate;

"Registrar" means the Registrar of the Court;

"return" means a return of a member to the Legislative Assembly under the Ordinance;

"Senate" means such Senate as is established by the Constitution;

"Speaker" means the Speaker of the Legislative Assembly.

(2) In this Ordinance any reference to a corrupt or illegal practice, or to illegal payments, employments or hirings, or to an election agent, shall be construed according to the Ordinance.

PART I — DISPUTED APPOINTMENTS AND ELECTIONS

Method of questioning appointment or election.

3. (1) Any question whether any person has been validly appointed as a member of the Senate or validly elected as a member of the Legislative Assembly shall be referred to and determined by the Court in accordance with the provisions of this Part of this Ordinance.

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

(3) A petition complaining of no return shall be deemed to be a representation petition and the 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.

Presentation and service of representation petition.

4. (1) A representation petition may be presented by any one or more of the following persons —

(a) in respect of an appointment to the Senate, by any person who on the date of the appointment of the person to whom the petition relates, was entitled to vote as an elector at an election for any electoral district;

(b) in respect of an election or return, by —

(i) a person who voted as an elector at the election or who had a right so to vote; or

(ii) a person claiming to have had a right to be elected or returned at the election; or

(iii) a person alleging himself to have been a candidate at the election.

(2) The person whose appointment, election or return is complained of is hereinafter referred to as the respondent, but if the petition complains of the conduct of a returning officer, or a deputy returning officer, or an election clerk in circumstances rendering any provisions of subsection (3) of section 6 of the Ordinance applicable to him, the returning officer or deputy returning officer or election clerk shall for the purposes of this Ordinance be deemed to be a respondent.

(3) A representation petition shall be in the prescribed form, state the prescribed matters and be signed by the petitioner or all the petitioners if more than one, and shall be presented by delivering it at the office of the Registrar; and the Registrar or the officer of the registry of the Court to whom the petition is delivered shall, if required, give a receipt therefor.

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

(a) in the case of a petition questioning the appointment of a person to the Senate, to the Attorney General, and

(b) to such other persons as may be prescribed, and shall cause the petition to be published in the prescribed manner.

(5) 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 the provisions of this section, a representation petition questioning an election or return shall be presented within twenty-eight days after the date of publication in the Gazette of the notice required by subsection (3) of section 44 of the Ordinance.

(3) If the 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 the preceding subsection in pursuance or in furtherance of the alleged corrupt practice, it may be presented within twenty-eight days after the date of the payment.

(4) A representation petition questioning the election or return upon an allegation of an illegal practice may, so far as respects that illegal practice, be presented —

(a) within fourteen days after the provisions of subsection (1) of section 56 of the Ordinance have been complied with in relation to the election expenses of the member who is the respondent;

(b) if specifically alleging a payment of money or some other act to have been made or done since such compliance by the member aforesaid, or on his account, or with his privity, or by his agent, or with his agent's privity, in pursuance or in furtherance of the alleged illegal practice, within twenty-eight days after the date of the payment or other act:

Provided that where there is an authorised excuse for failing to make the return and declarations required by the Ordinance in respect of such election expenses, the provisions of subsection (1) of section 56 of the Ordinance shall, for the purposes of this subsection, be deemed to have been complied with on the date of the allowance of the excuse, or, if there was such a failure in two or more respects and the excuse was allowed at different times, on the date of the allowance of the last excuse, as defined in subsection (5) of section 57 of the Ordinance.

(5) The preceding subsection shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.

(6) For the purpose of this section, the allegation that an election is avoided on the grounds that corrupt or illegal practices or illegal payments, employments or hirings were committed in reference to the election for the purpose of promoting or procuring the election of any person thereat and had so extensively prevailed that they may be reasonably supposed to have affected the result of the election shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.

Amendment of representation petition.

6. The Court may, at any stage before conclusion of the trial of a representation petition, allow the petitioner to alter or amend his 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 or illegal practice in a petition questioning an election or return shall be allowed, unless made within the time within which a petition questioning the election or the return upon such allegation might have been presented under the last preceding section.

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.

(2) Security shall be an amount of one thousand dollars and shall be given in the prescribed manner by recognisance 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 petition, and of the nature of the proposed security, and a copy of the 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 petition, the respondent may object in writing to any recognisance 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 recognisance, or that a person named in the recognisance has not duly acknowledged the recognisance.

(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 recognisance 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 petition.

Dismissal of petition on failure to give security.

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

(2) The costs of hearing and deciding 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 petition.

Substitution of petitioner on failure to give security.

11. (1) On the hearing of an application under the preceding section 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 petition and substitute as the petitioner such applicant, who shall provide security in the sum of one thousand 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 of the making of the order of substitution and on the failure of the applicant to comply with the provisions of this sub-section the 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 removed whichever last happens, the representation petition shall be at issue.

Trial of petition.

13. (1) A representation petition shall be tried by the 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 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 holiday observed by the Court, until conclusion:

Provided that 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 Court.

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

(4) On the trial of the petition, unless the Court otherwise directs, any charge of a corrupt or illegal practice 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 or illegal practice.

(5) 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.

Witnesses.

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

Power of 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 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 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 petition.

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

(4) The Director of Public Prosecutions shall obey any direction given him by the Court with respect to the summoning and examination of any witness to give evidence at the trial :

Provided that the examination of a witness may be conducted by such counsel as the Director of Public Prosecutions may appoint as his representative for that purpose and it shall not be necessary for a person appointed as the representative of the Director of Public Prosecutions under any provisions of this Ordinance to produce any commission or other proof of his having been so appointed.

(5) The Director of Public Prosecutions shall without any direction from the Court cause any person appearing to him to be able to give material evidence as to the subject of the trial to attend the trial and either himself or his representative shall, with the leave of the Court, examine him as a witness.

Obligation of witness to answer.

16.(1) A person called before the Court as a witness respecting an election shall not be excused from answering any question relating to any offence at or connected with the election, on the ground that the answer thereto may criminate or tend to criminate himself or on the ground of privilege:

Provided that —

(a) a witness who answers truly all questions which he is required by the Court to answer shall be entitled to receive a certificate of indemnity under the hand of the judge stating that the witness has so answered; and

(b) an answer by a person to a question put by or before the Court when trying a representation petition shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be in any proceeding, civil or criminal, admissible in evidence against him.

(2) Where a person has received a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any corrupt or illegal practice, or any illegal payment, employment or hiring, or any offence under section 73 of the Ordinance or section 25 of this Ordinance, committed by him previously to the date of the certificate at or in relation to the election, any court having cognisance of the case shall, on production of the certificate, stay the proceeding and may, in its discretion, award to the said person such costs as he may have been put to in the proceeding.

(3) Nothing in this section shall be deemed to relieve a person receiving a certificate of indemnity from any incapacity under any law relating to elections or from any proceedings (other than a criminal prosecution) to enforce such incapacity.

Elector not to be asked for whom he voted.

17. 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.

18.(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 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 petition but the expenses of a witness called by the Court shall be deemed part of the expenses of the Court and paid out of moneys provided for such expenses.

Production of election documenst.

19.(1) Any document or paper relating to an election and required to be kept thereafter in safe custody by the Commissioner of Elections under subsection (1) of section 46 of the Ordinance, may be inspected or produced under an order of the Court for the purpose of a representation petition in respect of the election or return; 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:

Provided that the Commissioner of Elections shall, after the expiration of twelve months from the date of an election, burn all such documents and papers relating thereto.

(2) Where under section 44 of the Ordinance a writ of election has been returned to the Governor and the 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 Court may make an order accordingly for such production or inspection.

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

(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.

20. On a scrutiny at the trial of a representation petition questioning an election or return, any vote given on a ballot paper in contravention of the provisions of subsection (2) of section 42 of the Ordinance shall be struck off.

Reversal of returning officer's decision.

21. Any decision referred to in subsection (4) of section 42 of the Ordinance shall be subject to reversal by the Court on a representation petition in respect of the election with which such decision is connected or the return arising out of such election.

Equality of votes.

22. Where, on a representation petition in respect of an election or return, it appears that there is an equality of votes between any candidates at the election, and that the addition of a vote would entitle any of those candidates to be declared elected, then —

(a) any decision under subsection (2) of section 43 of the Ordinance shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and

(b) in so far as that question is not determined by such a decision, the Court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

Withdrawal of petition.

23.(1) A petitioner shall not withdraw a representation petition without the leave of the 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 petition is withdrawn the petitioners shall be liable to pay the costs of the respondent.

Evidence required for withdrawal of petition.

24.(1) Before leave for the withdrawal of a representation petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors and, if the petition is in respect of an election or return, by the election agents of all the said parties who were candidates at the election, but the Court may on cause shown dispense with the affidavit of any particular person if it seems to the 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 petition; but if any lawful agreement has been made with respect to the withdrawal of the 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 solicitor shall further state the ground on which the petition is sought to be withdrawn.

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

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

Punishment for corrupt withdrawal.

25. If any person makes any agreement or terms or enters into any undertaking, in relation to the withdrawal of a representation petition, and such agreement, terms or undertaking is or are for the withwrawal of the 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, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine.

Substitution of new petitioner on withdrawal of petition.

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

(2) If the proposed withdrawal is in the opinion of the Court the result of any agreement, terms or undertaking prohibited by the last foregoing section or induced by any corrupt bargain or consideration, the 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 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 petition. If the substituted petitioner fails to comply with the provisions of this subsection the petition shall stand dismissed.

(4) 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.

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

(a) to the President, in the case of a petition questioning the appointment of a person to the Senate; or

(b) to the Speaker, in the case of a petition in respect of an election or return.

(2) The report shall state whether in the opinion of the 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 cirstances attending the withdrawal.

Abatement of petition.

28.(1) A representation petition shall be abated by 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 be abated if the respondent dies.

(3) The abatement of the 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 petition under subsection (1) of this section, 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 Court in the prescribed manner to be substituted as a petitioner; and the 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 petition.

Withdrawal and substitution of respondents before trial.

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

(i) a respondent other than a returning officer, deputy returning officer or election clerk gives the prescribed notice that he does not intend to oppose the 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 Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly;

(ii) 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 petition, upon the Court being satisfied that there are reasonable grounds for believing that circumstances have arisen that, if the original respondent (not being a returning officer, deputy returning officer or election clerk) were a member of the Legislative Assembly, would cause him to vacate his seat under article 59 of the Constitution, the Court may admit such person as a respondent to oppose the 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 petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

Avoidance of election.

30.(1) Where on a representation petition questioning the election or return of a candidate it is shown that —

(a) corrupt or illegal practices or illegal payments, employments or hirings 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 Ordinance and that such non-compliance affected, or may be reasonably supposed to have affected, the result; or

(c) that a corrupt or illegal practice 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 Court shall declare his election to be void.

(2) An election shall not be liable, by reason of general corruption, bribery, treating or intimidation, to be avoided otherwise than by virtue of paragraph (a) of the preceding subsection.

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

(4) No election shall be declared invalid 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 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 ommission did not effect its result.

Conclusion of trial of representation petition.

31.(1) At the conclusion of the trial of a representation petition the 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;

(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 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 paragraph (3) of article 50 or paragraph (3) of article 59 of the Constitution to cease to exercise his functions as a member, proceed under subsection (1) of section 45 of this Ordinance as if the question referred to the Court by the petition were as to such requirement or vacation of his seat, as the case may be.

(2) Upon any certificate being given under the preceding subsection or section 32 of this Ordinance, the determination of the Court shall be final; and, 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 such determination.

(3) The 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 Court ought to be submitted to the Legislative Assembly.

Determination of stated case.

32.(1) If, on the application of any party to a representation petition made in the prescribed manner to the Court, it appears to the Court that the case raised by the petition can be conveniently stated as a special case, the Court may direct it to be stated accordingly and the special case shall be heard before the Court, and the Court shall certify in writing to the Governor and to the President or Speaker, as the case may be, its determination in reference to the special case.

(2) If it appears to the Court on the trial of a representation petition that any question of law requires further consideration by the Full Court, the Court may adjourn the further hearing of the petition or postpone its determination thereon, and reserve such question by stating a case for the decision of the Full Court, and the Full Court shall have power to hear and decide any question so reserved. The Court shall determine the petition in accordance with the decision of the Full Court on the question so reserved.

Costs of petition.

33.(1) All costs of and incidental to the presentation of a representation petition and the proceedings consequent thereon, except such

as are by this Ordinance otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportion as the Court may determine; and in particular any costs which in the opinion of the 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 the neglect or refusal is, within one year after the demand, proved to the satisfaction of the Court, every person who in accordance with 7 or subsection (2) of section 9 of this Ordinance entered into a recognisance relating to the petition shall be held to have made default in the recognisance and such default shall be dealt with under subsections (1) and (2) of section 208 of the Criminal Law (Procedure) Ordinance as though committed at the then current sitting of the Court in the exercise of its criminal jurisdiction in the county where the petition was tried, or, if the Court is not then so sitting, such default shall be deemed to have been dealt with under those subsections as though committed at the last preceding sitting of the court as aforesaid, and the recognisance shall be enforceable accordingly. Cap. 11.

Further provision as to costs of petition.

34.(1) Where upon the trial of a representation petition questioning an election or return it appears to the Court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to the election to which the petition relates, the Court may, after giving that person or those persons an opportunity of being heard by counsel or solicitor 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 or those persons or any of them and may order that if the costs cannot be recovered from one or more of those persons they shall be paid by some other of those persons or by either of the parties to the petition.

(2) Where any person appears to the Court to have been guilty of a corrupt or illegal practice, the 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 proceeding before the Court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the Court may direct.

Report of the Court to the Speaker.

35.(1) Where, in a representation petition questioning an election or return, a charge is made of a corrupt practice or an illegal practice having been committed at the election to which the petition relates, the Court shall, when certifying its determination as hereinbefore provided, report in writing to the Speaker, who shall submit such report to the Legislative Assembly,—

(a) whether any corrupt practice or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or illegal practice;

(b) whether any candidate at the election has been guilty by his agent of any corrupt or illegal practice in reference to the election;

(c) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice or illegal practice;

(d) whether corrupt practices or illegal practices have, or whether there is reason to believe that corrupt practices or illegal practices have, extensively prevailed at the election to which the petition relates; and

(e) if any person is reported to have been guilty of any corrupt practice or of any illegal practice, whether he has or has not been furnished with a certificate of indemnity.

(2) Before a person, not being a party to the petition or a candidate on behalf of whom the seat is claimed by the petition, is reported by the Court to have been guilty, at the election, of any corrupt or illegal practice, the Court shall cause notice to be given to such person.

(3) If the person appears in pursuance of the notice, the Court shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

(4) Every person who is reported by the Court to have been personally guilty of any corrupt or illegal practice at the election shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacities as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty.

(5) If the Court reports that any corrupt practice has been proved to have been committed in reference to the election by or with the knowledge and consent of a candidate at the election, the candidate shall be incapable of ever being elected a member of the Legislative Assembly for the electoral district in which he was a candidate at the election; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of such corrupt practice.

(6) If the Court reports that a candidate at the election has been guilty by his agent of any corrupt practice in reference to the election, the candidate shall be incapable, during a period of seven years next after the date of the report, of being elected a member of the Legislative Assembly for the electoral district in which he was a candidate at the election.

(7) If the Court reports that any illegal practice has been proved to have been committed in reference to the election by or with the knowledge and consent of a candidate at the election, the candidate shall be incapable, during a period of five years next after the date of the report, of being elected a member of the Legislative Assembly for the electoral district in which he was a candidate at the election and he shall further be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

(8) If the Court reports that a candidate at the election has been guilty by his agent of any illegal practice in reference to the election, the candidate shall be incapable, during the life of the Legislative Assembly then in existence, of being elected as a member of the Legislative Assembly for the electoral district in which he was a candidate at the election.

Exemption from liability.

36. (1) Notwithstanding anything hereinbefore provided to the contrary, a candidate shall not be subject to any incapacity, nor shall his election be avoided, under this Ordinance for any illegal practice committed—

(a) by his election agent contrary to section 58 of the Ordinance where the Court reports to the Speaker that it has been proved at the trial of a representation petition relating to the election that the illegal practice was committed without the sanction or connivance of the candidate;

(b) by his agent, other than his election agent, contrary to section 72 of the Ordinance unless the Court reports to the Speaker that it has been proved at the trial that the candidate or his election agent has authorised or consented to the committing of such illegal practice by such other agent, or has paid for the circulation of the false statement constituting the illegal practice, or that the election of the candidate was procured or materially assisted in consequence of the making or publishing of such false statement; or

(c) by his agent, other than his election agent, contrary to section 74 of the Ordinance.

(2) Where a person who is subject to incapacity by reason of his conviction of a corrupt or illegal practice is reported under the preceding section to be guilty of such corrupt or illegal practice, no further incapacty shall be imposed on him under the provisions of subsection (4) of that section.

(3) Where a person who is subject to incapacity under subsection (4) of the preceding section for any corrupt or illegal practice is convicted of such corrupt or illegal practice, no further incapacity shall be deemed to be mposed on him by reason of the conviction.

(4) Every reference to consequences under the Ordinance in sections 57 and 59 thereof shall be construed to include a reference to consequences under this Ordinance and nothing provided in this Ordinance shall abridge any powers of the Court under those sections.

Removal of incapacity.

37. (1) Where any person is subject to any incapacity by virtue of the report of the Court under section 35 of this Ordinance and he or some other person in respect of whose act the incapacity was imposed, is on a prosecution acquitted of any of the matters in respect of which the incapacity was imposed, the acquittal shall, thereafter or, if an appeal may be made, after the expiration of the ordinary period allowed for making an appeal or, if an appeal is made and the acquittal is affirmed, after the appeal is finally disposed of or, if an appeal is made and is abandoned or fails by reason of non-prosecution thereof, after the appeal is abandoned or so fails, be reported to the Court which may, if it thinks fit, order that the incapacity shall henceforth cease so far as it is imposed in respect of those matters.

(2) Reference to the Ordinance in section 111 thereof shall be deemed to include reference to this Ordinance.

Observance of Parliamentary principles, practice and rules.

38. Subject to the provisions of this Ordinance 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 Court in the case of representation petitions in respect of elections or returns.

PART II—DISPUTED VACANCIES

Reference of questions as to vacancy in Senate or Legislative Assembly.

39. (1) Any question whether a member of the Senate or of the Legislative Assembly has vacated the seat therein, or is required by virtue of paragraph (3) of article 50 or paragraph (3) of article 59 of the Constitution to cease to exercise his functions as a member, shall be referred to and determined by the Court in accordance with the provisions of this Part of this Ordinance.

(2) Every such reference shall be by a petition (hereinafter referred to as a vacancy petition) presented to the Court—

(a) in the case of the Senate, by —

(i) authority of a resolution of the Senate; or

(ii) a person authorised to present a representation petition under paragraph (a) of subsection (1) of section 4 of this Ordinance:

Provided that the reference in the said paragraph to the "date of the appointment of the person to whom the petition relates" shall, for the purposes of this paragraph, be construed as a reference to the date upon which the petition is presented to the Court;

(b) in the case of the Legislative Assembly, by—

(i) authority of a resolution of the Legislative Assembly; or

(ii) any person who on the date of the presentation of the petition would be entitled to vote at an election held for the electoral district for which the person to whom the petition relates was elected.

(3) For the purposes of this Part of this Ordinance, in the case of a petition presented under sub-paragraph (i) of paragraph (a), or under sub-paragraph (i) of paragraph (b), of the preceding subsection, the nominal petitioner shall be the Clerk of the Senate or the Clerk of the Legislative Assembly, as the case may be.

Contents, delivery and service of vacancy petition.

40. (1) A vacancy petition presented to the Court under this Part of this Ordinance shall be in the prescribed form, state the prescribed matters and be signed by such persons as may be prescribed.

(2) The petition shall be delivered at the office of the Registrar and the Registrar or officer of the registry of the Court to whom the petition is delivered shall if required give a receipt therefor. The Registrar shall cause a copy of the petition to be transmitted to such

persons as may be prescribed, and shall cause the petition to be published in the prescribed manner.

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

Security for costs.

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

(2) Security shall be an amount of one thousand dollars and shall be given in the prescribed manner by recognisance 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 reference.

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

(a) the member whose seat is the subject-matter of the petition;

(b) in the case of a petition relating to the Senate, the Attorney General; and

(c) such other person as may be prescribed.

Parties to vacancy petition.

43. The parties to a vacancy petition shall be—

(i) the petitioner;

(ii) the member whose seat is the subject-matter of the petition; and

(iii) such other person as, in the opinion of the Court, is interested in the determination of the question referred and whom the Court directs may be heard upon the hearing of the reference:

Provided that the Court shall hear the Director of Public Prosecutions or other representative appointed by him whether or not he is a party to the petition, and shall have the power to receive the evidence on oath of any person whose evidence the Director of Public Prosecutions or his representative may consider material.

Application of provisions of Part I.

44. Subject to such modifications and adaptations as may be necessary for the purpose, the following provisions of Part 1 of this Ordinance shall so far as they are applicable, have effect in relation to proceedings on a vacancy petition presented to the Court under this Part of this Ordinance—

Section 9

Section 10 (provided that in subsection (1) thereof the reference to section 7 shall be deemed to be a reference to section 41)

Section 12

Subsections (1) to (3) (inclusive) of section 13

Section 14

Section 18

Section 32

Section 33 (provided that in subsection (2) thereof the reference to section 7 shall be deemed to be a reference to section 41).

Determination of vacancy petition.

45.(1) The 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 Legislative Assembly).

(2) If, upon the hearing of a vacancy petition as to whether a member is required as hereinbefore mentioned to cease to exercise his functions as such, the Court is satisfied that he has vacated his seat by reason of any circumstances alleged in the petition, the Court shall proceed under subsection (1) of this section as if the question referred to it by the petition were as to his vacation of the seat as aforesaid.

(3) The certified determination of a vacancy petition by the Court shall be final.

PART III—SPEAKERS ELECTION AND VACATION OF OFFICE

Reference of questions as to election of Speaker or vacation of his office.

46.(1) Any question whether any person has been validly elected as Speaker of the Legislative Assembly from among persons who are not members of that Assembly, or, having been so elected, has vacated the office of Speaker, shall be determined by the Court upon a reference thereto in accordance with the provisions of this Part of this Ordinance.

(2) No such question shall be referred to the Court except—

(a) by the Clerk of the Legislative Assembly when so authorised by a resolution of the Assembly; or

(b) by a member of the Assembly.

Delivery of reference.

47.(1) A reference to the Court under this Part of this Ordinance questioning whether a person was duly qualified to be elected to be Speaker shall be delivered to the Registrar within twenty-one days of the election.

(2) The reference shall be in the prescribed form, state the prescribed matters and be signed by such person as may be prescribed.

(3) The Registrar shall send a copy of the reference to the Clerk of the Legislative Assembly, who shall cause it to be laid before the Assembly.

Security for costs.

48.(1) When a question has been referred to the Court under this Part of this Ordinance by a member of the Legislative Assembly the member so referring the question shall at the time of delivering the reference 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 reference.

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

Parties to a reference.

49. The parties to a reference to the Court under this Part of this Ordinance shall be—

(i) the Clerk of the Legislative Assembly or the member referring the question, as the case may be;

(ii) the person whose election or tenure of office as Speaker is questioned;

(iii) such other person as the Court may direct.

Determination of reference

50.(1) At the conclusion of the hearing of a reference under this Part of this Ordinance, the Court shall determine whether the person has been validly elected as Speaker or whether he has vacated the office of Speaker, as the case may be, and shall forthwith certify in writing the determination to the Clerk of the Legislative Assembly, who shall cause it to be laid before the Assembly.

(2) The certified determination of a reference under this Part of this Ordinance by the Court shall be final.

PART IV—MISCELLANEOUS

Powers under Ordinance exercisable by single judge.

51. Any of the powers of the Court conferred by or under any of the povisions of this Ordinance may be exercised by a single judge:

Provided that any power, jurisdiction or authority vested in the Court under section 54 of this Ordinance with respect to proceedings brought under or by virtue of this Ordinance shall only be exercisable by such number of judges as could exercise that power, jurisdiction or authority if the proceedings were an ordinary action within the jurisdiction of the Court.

Service of notices.

52. Any summons, notice or document required to be served on any person with reference to any proceeding under this Ordinance for the purpose of causing him to appear before the Court or otherwise, or of giving him an opportunity of making a statement, or showing cause, or being heard by himself before any court for any purpose of this Ordinance, 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 in such electoral

district as may be represented by any member of the Legislative Assembly in respect of whom the said proceeding arises; or

(c) in such manner as may be—

(i) prescribed, or

(ii) directed by any judge before whom the proceeding is taken.

Costs.

53. Subject to the provisions of this Ordinance and rules made by virtue of any such provisions, the rules of court with respect to costs in actions, causes and matters in the Court shall, so far as practicable, apply in relation to costs of petitions and other proceedings under this Ordinance.

Powers of Court.

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

Rules of court. Cap. 7.

55. The power conferred by the Supreme Court Ordinance to make rules of court shall be deemed to include the power to make rules of court for any of the purposes of this Ordinance and, without prejudice to the generality of such power, for prescribing anything which this Ordinance authorises or requires to be prescribed.

OBJECTS AND REASONS

Under the British Guiana (Constitution) Order in Council, 1961, the present Legislature may enact laws in accordance with which questions concerning the validity of the appointment of a member of the Senate or the election of a member or Speaker of the Legislative Assembly, or affecting his tenure of office, may be referred to the Supreme Court under the new Constitution.

2. This Bill seeks to prescribe the procedure for the reference, trial and determination of such questions. The Bill also seeks to prescribe the circumstances in which the election of a member of the Legislative Assembly should be declared void by the Court.

3. Clause 1(2) of the Bill seeks to provide for its coming into operation simultaneously with the Representation of the People (Amendment) Ordinance, 1961, which will be brought into force by order of the Governor at the appropriate time in the course of the transition from the present to the new Constitution. That Ordinance will, when it comes into force, repeal those provisions of the Representation of the People Ordinance, 1957, which provide for the reference to, and determination by, the Supreme Court of questions as to whether members of the Legislature have been validly elected; they are replaced by this Ordinance.

4. Parts I and II of the Bill seek to provide that where the election of a member of the Senate or Legislative Assembly or his right to retain his seat or exercise the functions of his office is questioned, the question shall be referred to the Court by petition. Parts I and II of the Bill seek to prescribe the interest which a person must have in order to be entitled to present a petition. Upon presentation of the petition security for costs must be given. Parts I and II also seek to provide that the Court shall certify its decision upon the petition to the Governor and the President of the Senate or Speaker of the Legislative Assembly, depending upon whether the petition relates to the Senate or the Assembly.

5. Part I of the Bill seeks to provide that where the petition questions an election to the Legislative Assembly on the ground of an election offence, the Court shall, when certifying its decision, report to the Speaker the names of persons concerned in such an offence. If the Court reports that a person is concerned in any such offence, that person would be subject to certain incapacities of a similar nature to those resulting from a conviction of the offence.

6. Part I of the Bill also seeks to prescribe the time within which a petition questioning an election to the Legislative Assembly should be presented; to prohibit the withdrawal of such a petition without leave of the Court, and to make a corrupt withdrawal an offence.

7. Part III of the Bill seeks to make provision with respect to the reference to, and determination by, the Supreme Court of any question whether a Speaker of the Legislative Assembly has been validly elected from among persons who are not members of the Assembly or, having been so elected, has vacated his seat. Under such provision, the reference should be made by a member of the Legislative Assembly or the Clerk thereof when duly authorised by a resolution of the Assembly. The provisions sought to be made by Part III of the Bill otherwise correspond in principle to the more important provisions sought to be made by the Bill with respect to the reference and determination of questions dealt with in Parts I and II of the Bill.

8. Part IV of the Bill seeks to confer upon the Supreme Court the same powers, jurisdiction and authority in any of the above proceedings as in ordinary civil actions. Part IV of the Bill also seeks to empower the rule making authority of the Court to make rules for the purposes of such proceedings.

9. The Bill is modelled upon the Legislature (Appointment, Election and Membership Controversies) Regulations, 1958, of the West Indies and certain provisions of the Representation of the People Act, 1949, of the United Kingdom.

A. M. I. AUSTIN,
Attorney General.

(M.P. L. 47/5 II).
(Leg. Bill No. 27/1961).