

LAWS OF THE WEST INDIES

**CHAPTER 322**

**LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)**

CHAPTER 322

THE LEGISLATURE (APPOINTMENT, ELECTION  
AND MEMBERSHIP CONTROVERSIES)  
REGULATIONS, 1958.

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Short title.
2. Interpretation.

*PART I — DISPUTED APPOINTMENTS AND ELECTIONS*

3. Method of questioning appointment or election.
4. Presentation and service of representation petition.
5. Time for presentation or amendment of representation petition.
6. Security for costs.
7. Notice of presentation and security and copy of petition to be served on respondent.
8. Objections to security.
9. Petition at issue.
10. Trial of petition.
11. Witnesses.
12. Power of court to summon witnesses at its own instance.
13. Witnesses' expenses.
14. Production of election documents.
15. Conclusion of trial of representation petition.
16. Special case for determination of Supreme Court.
17. Withdrawal of petition.
18. Evidence required for withdrawal of petition.
19. Punishment for corrupt withdrawal.
20. Substitution of new petitioner.
21. Report on withdrawal.
22. Abatement of petition.
23. Withdrawal and substitution of respondents before trial.
24. Costs of petition.
25. Further provision as to costs of petition.
26. Jurisdiction.

*PART II — DISPUTED VACANCIES.*

27. Reference of questions as to vacancy in Senate or House.
28. Contents, delivery and service of vacancy petition.
29. Security for costs.
30. Service of reference.
31. Parties to the petition.
32. Application of provisions of Part I.
33. Determination of vacancy petition.

PART III — SPEAKER'S ELECTION AND VACATION OF OFFICE

- 34. Reference of questions as to election of Speaker or vacation of his office.
- 35. Delivery of reference.
- 36. Security for costs.
- 37. Parties to a reference.
- 38. Determination of reference.

PART IV — MISCELLANEOUS

- 39. Powers under Regulations exercisable by single judge.
- 40. Service of notices.
- 41. Costs.
- 42. Rules of procedure.
- 43. Powers of court.
- 44. Other courts to refer all questions under article 42.

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5/1958.

**REGULATIONS** made by the Governor-General under section 2 of the West Indies (Federation) Order in Council, 1957.

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Short title.

1. These Regulations may be cited as the Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires—

“appropriate law” means the law governing the election to which the petition relates;

“candidate” means a person who is elected to serve in the House of Representatives at an election, or is declared by himself or by others to be a candidate on or after the day 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 these Regulations shall be construed to impose any liability on that person,

unless he has afterwards given his assent to the declaration or has been nominated;

“costs” includes charges and expenses;

“election” means an election of a member or members to serve in the House of Representatives for an electoral area;

“insufficient return” means a return of less persons than the number of—

(a) seats to be filled at the election for which the writ was issued, and

(b) persons nominated at the said election.

(2) In these Regulations any reference to—

(a) a corrupt practice shall—

(i) in relation to the Territory of Barbados, be construed according to the appropriate law of that Territory;

(ii) in relation to any other Territory, be construed as meaning the offences of bribery, undue influence, treating, personation and the aiding, abetting, counselling or procuring the commission of the offence of personation, and any such reference to any of the offences aforesaid shall be construed in accordance with the appropriate law;

(b) an illegal practice shall be construed according to the appropriate law.

(3) In these Regulations any reference to—

(a) illegal payments, employments or hirings shall have effect only when the appropriate law makes provision for payments, employments or hiring to be illegal,

(b) election agent shall have effect only when the appropriate law makes provision for the appointment of election agents,

and in such cases the references shall be construed according to the appropriate law.

## 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 House of Representatives shall be referred to and determined by the Supreme Court in accordance with the provisions of these Regulations.

(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 these Regulations.

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

Presenta-  
tion and  
service of  
representa-  
tion 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 area in the Territory for which such last-mentioned person was appointed;
- (b) in respect of an election or return to the House of Representatives, by—
  - (i) a person who voted as an elector at the election or who had a right so to vote;
  - (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, deputy returning officer or assistant returning officer the returning officer, deputy returning officer or assistant returning officer shall for the purposes of these Regulations be deemed to be a respondent.

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322

5

(3) The 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 to the Supreme Court.

(4) The petition shall be presented by delivering it to the deputy registrar of the Federal Supreme Court in the Territory for which the person to whom the petition relates was appointed, or in the Territory in which the election to which the petition relates took place, as the case may be.

(5) The deputy registrar shall transmit the petition to the Registrar of the Federal Supreme Court and shall send a copy of the petition—

(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.

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

5. (1) A petition questioning the appointment of a person to the Senate shall be presented within twenty-eight days of the date of the notification in the Gazette of the appointment.

Time for presentation or amendment of representation petition.

(2) Subject to the provisions of this regulation, a petition questioning an election or return shall be presented within twenty-eight days after the day fixed for the return to the writ for the election to which the petition relates.

(3) If the petition questions the election or return upon an allegation of corrupt practices and specifically alleges a payment of money or other reward to have been made by the member or on his account or with his privity since the time of the said return 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 petition questioning the election or return upon an allegation of an illegal practice may, so far as respects that illegal practice, be presented—

(a) if specifically alleging a payment of money or some other act to have been made or done since the day specified in paragraph (5) of this regulation, by the member to whose

election the petition relates or by an agent of his, or with the privity of that member or his election agent, in pursuance or in furtherance of the alleged illegal practice, within twenty-eight days after the date of the payment or other act;

- (b) where the appropriate law makes no provision for a return and declaration as to election expenses from a candidate or his agent, within twenty-eight days after the date of the alleged illegal practice, or before the expiration of the period referred to in paragraph (2) of this regulation, whichever is the later;
- (c) where the appropriate law makes provision for a return and declaration as to election expenses from a candidate or his agent, not later than the expiration of fourteen days after the day specified in paragraph (5) of this regulation.

(5) The said day is—

- (a) that on which the returning officer receives the return and declarations as to election expenses by the said member and his election agent; or
- (b) where the return and declarations are received on different days, the last of those days; or
- (c) where there is an authorised excuse for failing to make the return and declarations, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse.

(6) A petition presented within the time limited by paragraphs (2) or (3) of this regulation, may, for the purpose of questioning the election or return upon an allegation of an illegal practice, be amended with the leave of the Supreme Court within the time within which a petition questioning the election upon the allegation of that illegal practice could be presented under paragraph (4) of this regulation.

(7) Paragraphs (4), (5) and (6) of this regulation shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.

(8) For the purpose of this regulation, the allegation that an election is, under the appropriate law, 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.

6. (1) At the time of presenting a representation <sup>Security</sup> petition or within three days afterwards the petitioner shall <sup>for costs.</sup> 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 two 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.

7. Within the prescribed time, not exceeding five days after the presentation of the 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. <sup>Notice of presentation and security and copy of petition to be served on respondent.</sup>

8. (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. <sup>Objections to security.</sup>

(2) If the objection is allowed, the petitioner may within a further prescribed time not exceeding five days remove it by a deposit in the prescribed manner of such sum of money as will in accordance with paragraph (3) of this regulation make the security sufficient.

(3) Any objection to a recognisance may be heard and determined by the deputy registrar in the Territory for which the person to whom the petition relates was appointed or in which the election to which the petition relates took place, as the case may be, and such deputy registrar may, if he allows the objection, direct what sum should be deposited so as to make the security sufficient:



Provided that any determination or direction by a deputy registrar under this paragraph may be reviewed by the Supreme Court, and upon such review the Court may make any determination or give any direction which the deputy registrar may have made or given.

(4) If no security is given as required by regulation 6 or any objection is allowed and not removed as aforesaid, no further proceeding shall be had on the petition.

Petition at  
issue.

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

Trial of  
petition

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

(2) The jurisdiction of the Supreme Court to try representation petitions may be exercised by a single judge.

(3) 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 until its conclusion.

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

(5) On the trial of the petition, unless the court otherwise directs, any charge of a corrupt 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 practice.

(6) On the trial of a petition questioning an election or return and which, pursuant to the appropriate law, 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 petition against the election of that person.

Witnesses.

11. Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in an action tried before the Supreme Court.

12. (1) On the trial of a representation petition question-  
ing 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.

Power of  
court to  
summon  
witnesses  
at its own  
instance.

(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,  
be cross-examined by or on behalf of the petitioner and  
respondent, or either of them.

(4) The Attorney General 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 con-  
ducted by such counsel as the Attorney General may appoint  
as his representative for that purpose.

(5) The Attorney General 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.

(6) 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 in-  
demnity 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 a court 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.

(7) 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 committed by him previously to the date of the certificate at or in relation to the election, the court having cognisance of the case shall on production of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.

(8) Nothing in this regulation shall be deemed to relieve a person receiving a certificate of indemnity from any incapacity under any law relating to elections (whether to the House of Representatives or to the Legislature of any Territory or to any local government body) or from any proceedings to enforce that incapacity (other than a criminal prosecution).

Witnesses' expenses.

13. (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 at the trial of civil actions before the Supreme Court, may be allowed to him by a certificate of the prescribed officer, and if the witness was called and examined by virtue of paragraph (1) of regulation 12, shall be deemed part of the expenses of the court, but otherwise shall be deemed costs of the petition.

(2) The expenses of the court shall be paid out of such sums as shall be appropriated for the purpose by the Federal Legislature.

Production of election documents.

14. (1) (a) Any election document which, subsequent to the election to which the petition relates, is required under the appropriate law to be kept in the custody of the Supervisor of Elections of the Territory to which the petition relates may be inspected or produced for the purpose of a representation petition questioning an election or return under the order of the Court, and an order under this regulation may be made by a judge on his being satisfied by evidence on oath that the inspection or production of such document is required for the purpose aforesaid.

(b) For the purpose of this regulation the expression "Supervisor of Elections" in relation

to the Territory of Jamaica shall mean "Chief Electoral Officer."

(2) Where under the appropriate law the writ of election has been returned to the Governor-General 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 questioning an election or return the court may make an order accordingly for the production or inspection.

(3) Where the court has made an order under paragraph (2) of this regulation the Registrar shall inform the Secretary to the Governor-General who shall—

- (a) in the case of an order for inspection, make the writ available for inspection within such time as the Registrar directs;
- (b) in the case of an order for production, produce the writ at such time and place as the Registrar directs.

15. (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-General and to the President of the Senate;
- (b) in respect of an election or return, shall—
  - (i) 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 Speaker of the House of Representatives; and
  - (ii) where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, the court may in addition to giving a 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

Conclusion of trial of representation petition.

which in the judgment of the court ought to be submitted to the House of Representatives;

- (c) notwithstanding that it has determined and certified that the person to whom the petition relates was validly appointed or elected, 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 under paragraph (2) of article 12 or paragraph (2) of article 23 of the Constitution, proceed under paragraph (1) of regulation 33 of these Regulations as if the petition were a vacancy petition.

(2) The certified determination of a representation petition by the Supreme Court shall be final to all intents and purposes.

Special case for determination of Supreme Court.

16. (1) If, on the application of any party to a representation petition made in the prescribed manner to the Supreme Court, it appears to the court that the case raised by the petition can be conveniently stated as a special case, the Supreme Court may direct it to be stated accordingly and the special case shall be heard before the court, and the court shall certify to the Governor-General and the President or to the Speaker, as the case may be, its decision 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 as to the admissibility of evidence or otherwise requires further consideration by the Full Court, the court may postpone the granting of a certificate until the question has been determined by the Full Court, and for this purpose may reserve the question by stating a case for the decision of the Full Court.

(3) The decision of the court upon any case stated for its decision under this regulation shall be final to all intents and purposes.

Withdrawal of petition.

17. (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 Territory for which the person to whom the petition relates was appointed or in the electoral area to which the petition relates, as the case may be.

(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.

18. (1) Before leave for the withdrawal of a petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors and, if the election was an election at which candidates are required to have election agents, by the election agents of all the said parties who were candidates at the election, but the Supreme 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. Evidence required for withdrawal of petition.

(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 Attorney General a reasonable time before the application for the withdrawal is heard, and the court may hear the Attorney General or other representative appointed by him 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 Attorney General 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.

19. 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 Punishment for corrupt withdrawal.

undertaking is or are for the withdrawal 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 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.

20. (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 petition may apply to the court to be substituted as the petitioner, and the court may, if they think 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 regulation 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 the court does not so direct then the security to the same amount as would be required in the case of a new petition, and subject to the like condition, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(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.

21. (1) In every case of the withdrawal of a representation petition the court giving leave for the withdrawal shall make a report to the President or the Speaker, as the case may be, as required by paragraph (2) of this regulation.

(2) The report shall state whether in the opinion of the court the withdrawal of the 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 consi-

deration, and if so, shall state the circumstances attending the withdrawal.

22. (1) A representation petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners. <sup>Abatement of petition.</sup>

(2) A petition questioning the appointment of any person to the Senate shall be abated if the respondent dies.

(3) The abatement of a 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 paragraph (1) of this regulation the prescribed notice thereof shall be given in the Territory for which the person to whom the petition relates was appointed or in the electoral area in which the election to which the petition relates was held, as the case may be; and any person who might have been a petitioner in respect of the appointment or election, as the case may be, may, within the prescribed time after the notice is given, apply to the Supreme Court in the prescribed manner and at the prescribed time and place 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.

23. (1) If before the trial of a representation petition questioning an election or return— <sup>Withdrawal and substitution of respondents before trial.</sup>

- (i) a respondent other than a returning officer, deputy returning officer or assistant returning officer gives the prescribed notice that he does not intend to oppose the petition or dies, the Registrar shall give notice thereof in the electoral area to which the petition relates and any person who might have been a petitioner in respect of the election may, within the prescribed time after the notice is given, apply to the Supreme Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly;
- (ii) any person who might have been a petitioner in respect of the petition 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 were a member of the House, would cause him to vacate his seat under paragraph (2) of article 23 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 regulation 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.

Costs of  
petition.

24. (1) All costs of and incidental to the presentation of a representation petition and the proceedings consequent thereon, except such as are by these Regulations otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportion as the Supreme Court may determine; and in particular any costs which in the opinion of the 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 sums certified to be due to him for his costs, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the Supreme Court, every person who under regulation 6 of these Regulations entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and the prescribed officer shall thereupon certify the recognisance to be forfeited and it may thereupon be enforced in each of the Territories as if it were a recognisance entered into before the Supreme Court of that Territory under any law in force in that Territory and declared by that Supreme Court to have been forfeited.

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25. (1) Where upon the trial of a representation petition questioning an election or return it appears to the court that any person is 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 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, and, where such an order is made against more than one person 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. Further provision as to costs of 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.

26. Subject to article 107 of the Constitution and to the provisions of these Regulations and of the rules made under them, the principles, practice and rules on which committees of the House of Commons of the Parliament of the United Kingdom used to act in dealing with election petitions shall be observed, so far as may be, by the Supreme Court in the case of representation petitions questioning elections or returns. Jurisdiction.

PART II—DISPUTED VACANCIES

27. (1) Any question whether a member of the Senate or of the House of Representatives has vacated his seat therein shall be referred to and determined by the Supreme Court in accordance with the provisions of this Part of these Regulations. Reference of questions as to vacancy in Senate or House.

(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 sub-paragraph (a) of paragraph (1) of regulation 4:

Provided that the reference in the said sub-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 Supreme Court;

- (b) in the case of the House of Representatives, by—
- (i) authority of a resolution of the House; 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 area for which the person to whom the petition relates was elected.

(3) For the purposes of this Part of these Regulations, in the case of a petition presented under sub-paragraph (i) of paragraph 2 (a) or under sub-paragraph (i) of paragraph 2 (b) of this regulation, the nominal petitioner shall be the clerk of the Senate or the clerk of the House of Representatives, as the case may be.

Contents,  
delivery and  
service of  
vacancy  
petition.

28. (1) A vacancy petition presented to the Supreme Court under this Part of these Regulations 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 to the deputy registrar of the Supreme Court in the Territory for which the person to whom the petition relates was appointed, or in the Territory in which the person to whom the petition relates was elected, as the case may be, and such deputy registrar shall transmit the petition to the Registrar of the Supreme Court and shall send a copy of the petition to such persons as may be prescribed, and shall cause it to be published in the prescribed manner.

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

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322 19

29. (1) Where a vacancy petition has been presented to the Supreme Court under this Part of these Regulations 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 security for all costs which may become payable by him to any witness summoned on his behalf or to any party to the petition. Security for costs.

(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.

30. 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 the proposed security and a copy of the petition to be served upon— Service of reference.

- (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 persons as may be prescribed.

31. 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: Parties to the petition.

Provided that the court shall hear the Attorney-General 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 or persons whose evidence the Attorney-General or his representative may consider material.

32. Subject to such modifications and adaptations as may be necessary for the purpose, the following provisions of Part I of these Regulations shall so far as they are applicable, Application of provisions of Part I.

have effect in relation to proceedings on a vacancy petition presented to the Supreme Court under this Part of these Regulations:—

Regulation 8 (provided that in paragraph (4) thereof the reference to regulation 6 shall be deemed to be a reference to regulation 29).

Regulation 9

Paragraphs (1)—(4) inclusive of regulation 10

Regulation 11

Regulation 13

Regulation 16

Regulation 24 (provided that in paragraph (2) thereof the reference to regulation 6 shall be deemed to be a reference to regulation 29).

Determina-  
tion of  
vacancy  
petition.

33. (1) At the conclusion of the hearing of a vacancy petition under this Part of these Regulations the Supreme Court shall determine whether or not the member whose seat is the subject-matter of the petition has vacated his seat, and shall forthwith certify in writing the determination to the Governor-General and the President or to the Speaker, as the case may be.

(2) The certified determination of a vacancy petition by the Supreme Court shall be final to all intents and purposes.

#### PART III—SPEAKER'S ELECTION AND VACATION OF OFFICE

Reference  
of questions  
as to elec-  
tion of  
Speaker or  
vacation of  
his office.

34. (1) Any question whether any person—

(a) has been validly elected as Speaker of the House of Representatives from among persons who are not members of that House, or, having been so elected, has vacated the office of Speaker; or

(b) who has been elected as Speaker of the House of Representatives from among members of that House has vacated the office of Speaker by virtue of paragraph (3) of article 24 of the Constitution,

shall be determined by the Supreme Court upon a reference thereto in accordance with the provisions of this Part of these Regulations.

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322

21

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

(a) by the clerk of the House of Representatives when so authorised by a resolution of the House or,

(b) by a member of the House.

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

(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 House of Representatives, who shall cause it to be laid on the table of the House.

36. (1) When a question has been referred to the Supreme Court under this Part of these Regulations by a member of the House 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. Security for costs.

(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.

37. The parties to a reference to the Supreme Court under this Part of these Regulations shall be— Parties to a reference.

(i) the clerk of the House of Representatives 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.

38. (1) At the conclusion of the hearing of a reference under this Part of these Regulations, the Supreme Court shall determine whether the person had been validly elected as Determination of reference.

Speaker or whether he had vacated the office of Speaker, as the case may be, and shall forthwith certify in writing the determination to the clerk of the House of Representatives, who shall cause it to be laid on the table of the House.

(2) The certified determination of a reference under this Part of these Regulations by the Supreme Court shall be final to all intents and purposes.

## PART IV—MISCELLANEOUS

Powers  
under Reg-  
ulations ex-  
ercisable by  
single judge.

39. Any of the powers of the Supreme Court conferred by or under any of the provisions of these Regulations may be exercised by a single judge:

Provided that any power, jurisdiction or authority vested in the Supreme Court under regulation 43 with respect to proceedings brought under or by virtue of these Regulations 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.

40. (1) Any summons, notice or document required to be served on any person with reference to any proceeding under these Regulations for the purpose of causing him to appear before the Supreme Court, or otherwise or of giving him an opportunity of making a statement, or showing cause, or being heard by himself before any court for any purpose of these Regulations may be served—

(a) by delivering it to that person, or by leaving it at, or by sending it by post by a registered letter to, his last known place of abode in the Territory in respect of which the appointment was made or in which the election was held, or

(b) if the proceeding is before any court in such manner as the court may direct.

(2) In proving service by post under this regulation it shall be sufficient to prove that the letter was pre-paid, properly addressed and registered with the post office.

Costs.

41. (1) The rules and regulations of the Supreme Court with respect to costs to be allowed in actions, causes and matters in the Supreme Court shall in principle and so far

as practicable apply to costs of petitions and other proceedings under these Regulations, and the taxing officer shall not allow any costs on a higher scale than would be allowed in any action, cause or matter in the Supreme Court on the higher scale as between solicitor and client.

(2) Where any costs or other sums are, under the order of the Supreme Court or otherwise under these Regulations, to be paid by any person, those costs or sums shall be a simple contract debt due from that person to the person or persons to whom they are to be paid, and if payable to the Federation or to a Territory shall be a debt due to the Crown and in either case may be recovered accordingly.

42. The authority having for the time being power to make rules of court for the Supreme Court may make rules for the purposes of these Regulations. Rules of procedure.

43. The Supreme Court shall, subject to the provisions of these Regulations, have the same powers, jurisdiction and authority with respect to any proceedings brought under or by virtue of these Regulations as if the proceedings were an ordinary action within its jurisdiction. Powers of Court.

44. If any question to which article 42 of the Constitution applies arises in any proceedings in any other court, that court shall, in the prescribed manner, refer such question to the Supreme Court for its determination. Other Courts to refer all questions under article 42.

[The next page is 43]



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LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322

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STATUTORY INSTRUMENTS

THE FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES, 1958

THE FEDERAL LEGISLATURE (MEMBERSHIP  
CONTROVERSIES) RULES, 1958.

TABLE OF CONTENTS

ORDER I

*Preliminary*

*Rule*

1. Short title and application.
2. Interpretation.
3. Fees of Court.
4. Legal practitioners' fees.
5. Taxation of costs.
6. Right of audience.
7. Place of trial or hearing.

ORDER II

*Representation Petitions*

1. Form of representation petitions.
2. Presentation and publication of representation petitions.
3. Solicitor's address for service.
4. Petitioner's address for service.
5. Deputy registrar's right to refuse petition.
6. Filing and record of proceedings.
7. Inspection of record.
8. Person to whom copy of petition must be sent and publication of petition.
9. Notice of presentation of petition and of proposed security.
10. Address for service of member of Legislature.
11. Service of petition.
12. Recognizances for security for costs.
13. Security for costs by deposit.
14. Time prescribed for notice of objection to security.
15. Summons to determine objection to recognizance.
16. Time within which to make the security sufficient.
17. Costs of proceedings to determine objection.
18. Costs where no justification of sureties.
19. Enforcing Registrar's order as to costs.
20. Particulars of objections to votes by petitioner.
21. Particulars of objections to votes by respondent.
22. Application for particulars.
23. Procedure on applications made under the Regulations and these Rules.
24. Varying or discharging order of Judge.
25. Cause list of petitions.
26. Title of proceedings.

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. I.

27. Notice of time and place of trial.
28. Adjournments.
29. Officer prescribed for the purposes of regulation 13(1) of the Regulations.
30. Powers and duties of deputy registrar.
31. Notice of intention to withdraw petition.
32. Substitution of another petitioner.
33. Time and place for hearing application.
34. Notice of abatement of petition.
35. Notice of intention not to oppose petition.
36. Time within which to apply for admission as respondent.

ORDER III

*Vacancy Petitions*

1. Forms of vacancy petitions and prescribed matters.
2. Persons to whom copies of petitions must be sent.
3. Application of certain rules to proceedings on vacancy petition.

ORDER IV

*Speaker's Election and Vacation of Office*

1. Form of reference and prescribed matters.
2. Security for costs.
3. Notice of hearing.
4. Procedure on reference.

S.I. 8/1958. **RULES** made by the Chief Justice under articles 85 and 110 of the Constitution of The West Indies and under regulation 42 of the Legislature (Appointment, Election and Membership Controversies) Regulations, 1958, and of all other powers him thereunto enabling.

*Date of making* .. .. . 28th February, 1958  
*Commencement* .. .. . 1st March, 1958

ORDER I

*Preliminary*

Short title and application.

1. These Rules may be cited as the Federal Legislature (Membership Controversies) Rules, 1958. They shall apply to all proceedings to determine any of the questions referred to in article 42 of the Constitution taken on or after the commencement of these Rules.

Interpretation.

2. (1) The provisions of the Interpretation Regulations, 1958, shall, unless inconsistent with the context or with any definition contained in paragraph (2) of this rule, apply to the interpretation of these Rules.

(2) Unless inconsistent with the context, the expressions used in the Legislature (Appointment, Election and Membership Controversies) Regulations, 1958, (in these Rules referred to as the Regulations) shall have the same meaning when used in these Rules.

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322 45

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. I.

(3) In these Rules—

“Central Registry” means the registry of the Federal Supreme Court under the direct supervision and control of the Registrar;

“Court” means the Federal Supreme Court;

“deputy registrar” means the deputy-registrar of the Court in the Territory for which the person to whom the petition relates was appointed, or for an electoral area for which the election to which the petition relates was held, as the case may be, and

“sub-registry” means the registry of a deputy registrar;

“election petition” means a representation petition in respect of an election to the House of Representatives;

“Judge” means a Judge of the Court;

“petition” means a petition presented under the Regulations;

“Registrar” means the Registrar of the Federal Supreme Court;

“returning officer” means the returning officer of the electoral area where the election was held to which the petition relates.

3. (1) Subject to the provisions of paragraph (2) of this rule, the fees prescribed in Appendix B shall be charged in respect of the matters to which they are respectively assigned. Fees of Court.

(2) Where a vacancy petition is presented to the Court under the authority of a resolution of the Senate or of the House of Representatives, and where a reference of a question as to the election of a Speaker or the vacation of his office is referred to the Court by the authority of the House of Representatives, no fees shall be chargeable under this rule; and no fees of Court under this rule shall be payable by the Attorney General.

(3) Where the costs of any proceedings brought under the Regulations are ordered to be paid by a party to the proceedings other than the persons referred to in the preceding paragraph, such costs shall, unless the Court otherwise orders, include the amount of any fees which would have been payable by the persons referred to in the preceding paragraph but for the provisions of that paragraph.

4. The Taxing Officer when taxing the fees for professional legal services in proceedings under the Regulations shall, so far as the same are applicable, adhere to the provisions of Order II, rules 30 and 31 of the Federal Supreme Court (Appeal) Rules, 1958. Legal practitioners' fees. cap. 2

5. So far as the same are applicable, the provisions of Order II, rule 32 of the Federal Supreme Court (Appeal) Rules, 1958, shall apply to the taxation of costs upon proceedings brought under the Regulations provided that an appeal from the decision of the Taxing Officer shall be to a single Judge only. Taxation of costs.

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

- Right of audience. 6. In all proceedings under the Regulations, the parties may appear in person or be represented by any person—
- (a) (in the case of a representation petition or of a vacancy petition) who has a right of audience in any proceedings before the superior court of the Territory for which the member whose seat is in question was appointed or elected, or
  - (b) is a member of one of the Inns of Court and has the right of audience before a superior court of a Territory.
- Place of trial or hearing. 7. In any proceedings under the Regulations the Registrar when giving notice of the place of trial or hearing shall do so in accordance with directions special to the proceedings or general received from the Chief Justice.

ORDER II

*Representation Petitions*

- Form of representation petitions. 1. A petition in respect of an appointment to the Senate shall be in Form 1 and a petition in respect of an election or return to the House of Representatives shall be in Form 2 in Appendix A to these Rules, shall contain the particulars required therein and shall be signed by the petitioner.
- Presentation and publication of representation petitions. 2. When complying with paragraph (4) of regulation 4 of the Regulations, the petitioner shall leave four copies of the petition with the deputy registrar.
- Solicitor's address for service. 3. The solicitor of a petitioner who presents a petition through a solicitor shall indorse upon the petition before the same is presented the address of his place of business and also a proper place to be called his address for service where all notices, summonses, orders and other documents may be left for him which address shall be within five miles of the sub-registry where the petition is presented.
- Petitioner's address for service. 4. A petitioner presenting a petition in person shall indorse upon the petition before presenting the same some proper place to be called his address for service where all notices, summonses, orders and other documents may be left for him which address shall be within five miles of the sub-registry where the petition is presented.
- Deputy registrar's right to refuse petition. 5. A deputy registrar shall refuse to accept any petition presented to him which does not comply with rules 1 and 2 and either with rule 3 or rule 4 of this Order.
- Filing and record of proceedings. 6. (1) All petitions, notices, summonses, orders or other documents filed in or issued from a sub-registry pursuant to proceedings instituted under the Regulations shall be stamped with the seal of that registry and shall bear the date of the filing or issuing thereof.

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322 47

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

(2) Subject to the provisions of any other rule, all such documents shall be brought into the registry together with a copy thereof. The original and the copy shall be sealed with an official seal, whereupon the original shall be filed and the copy handed out to the party filing the same. Such a sealed copy shall be evidence of the contents of the original filed and such sealed copy shall be produced at all times when required by the Court or a Judge or by the Registrar.

(3) The deputy registrar shall keep a record book of all proceedings brought under article 42 of the Constitution and under the Regulations. The record book shall contain—

- (a) the number of the petition and the subject matter;
- (b) the names of the parties and their address for service;
- (c) interlocutory applications, the nature, date of filing, determination and date thereof;
- (d) the date and place of trial;
- (e) the names of counsel;
- (f) the decision of the Court.

7. The file of proceedings and the record book kept by a deputy registrar pursuant to rule 6 shall be open to inspection by any person of record during office hours.

8. The deputy registrar shall upon presentation of the petition forthwith—

- (a) send a copy of the petition where the petition relates to an appointment to the Senate, to the Attorney General; and where the petition relates to an election to the House of Representatives, to the returning officer concerned; and
- (b) exhibit the petition on a notice board outside his registry and cause the petition to be published in a newspaper circulated in the Territory or electoral area in respect of which the member of the Legislature whose appointment or election is in question sits.

The cost of publication of this and any other matter required to be published by the returning officer shall be paid by the petitioner or person moving in the matter and shall form part of the general costs of the petition.

9. (1) The time for giving notice of the presentation of a petition and of the nature of the proposed security shall be five days, exclusive of the day of presentation.

(2) The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the deputy registrar an affidavit of the time and manner of service thereof.

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

## [Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

Address for service of member of Legislature. 10. (1) Any person appointed to the Senate or returned as a member of the House of Representatives may at any time after his appointment or return leave at the sub-registry of the Territory in respect of which he is appointed or returned—

- (a) an address for service at any place within five miles of the sub-registry;
- (b) the name and address of a solicitor who will act for such person in case there should be a representation petition against him.

(2) When a petition or a copy thereof is served upon a respondent other than the holder of a public office made respondent as such, he shall, unless he has already complied with paragraph (1) of this rule, within five days of such service deliver or leave at or send to the deputy registrar and to the petitioner an address for service at a place referred to in paragraph (a) or (b) of the preceding paragraph. All notices, summonses, orders or other documents in the proceedings consequent on the petition shall, if the respondent fails to comply with the provisions of this paragraph, be deemed well served upon him if filed in the office of the deputy registrar.

Service of petition.

11. (1) Where the respondent has named a solicitor or given an address, the service of an election petition may be by delivery of it to the solicitor, or by posting it in a registered letter to the address given at such time, that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent unless a Judge, on an application made to him not later than five days after the petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, including when practicable, service upon a solicitor, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

(2) In case of evasion of service the posting of a notice in the office of the deputy registrar of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a Judge.

Recognizances for security for costs.

12. (1) The recognizances giving security for costs as provided in regulation 6 of the Regulations shall with such variations as circumstances may require, be in Form 3 of Appendix A of these Rules and may be acknowledged before the Registrar, a deputy registrar or before a magistrate or justice of the peace in the Territory where the petition is presented. There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more as may be convenient.

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

(2) The recognizance or recognizances shall forthwith after being acknowledged be left at the deputy registrar's office by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition.

13. (1) The deposit of money by way of security under regulation 6 Security for being acknowledged be left at the deputy registrar's office by or on costs by the sum deposited with the Accountant General of the Territory in the deposit. special account of the Federal Financial Secretary specifying the petition to which such deposit relates and shall give to the petitioner a receipt for the same.

(2) The deputy registrar shall keep a book open to inspection by all parties concerned in which shall be entered from time to time the amount of each deposit and the petition to which it is applicable.

(3) All claims to money deposited shall be disposed of by a Judge upon application by summons.

(4) Money so deposited shall, if and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, or order of a Judge.

(5) Such order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Judge may require.

(6) The order may direct payment either to the party in whose name the same is deposited or to any person entitled to receive the same.

14. (1) The time for giving notice to the petitioner of any objection Time to any recognizance under regulation 8 of the Regulations shall be prescribed within ten days from the service of the notice of the presentation of the for notice of objection to security. petition and of the nature of the proposed security.

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

15. (1) Any objection made to the security shall be heard and decided Summons to by the deputy registrar upon summons taken out by either party to determine objection to recognize. declare the security sufficient or insufficient.

(2) Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as a deputy registrar may think fit.

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



## [Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

Costs of proceedings to determine objection. 17. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by such deputy registrar or judge, and in default of such order shall form part of the general costs of the petition.

Costs where no justification of sureties. 18. (1) The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the deputy registrar there be also left with the deputy registrar an affidavit of the sufficiency of the surety or sureties sworn by each surety.

(2) With such variations as circumstances may require, the affidavit shall be in Form 4 of Appendix A.

Enforcing Registrar's order as to costs. 19. The order of the deputy registrar for payment of costs shall have the same force as an order made by a Judge, and may be made a rule of the Court and enforced in like manner as a Judge's order.

Particulars of objections to votes by petitioner. 20. When upon an election petition a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the deputy registrar, and also at the address, if any given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the deputy registrar shall allow inspection and office copies of such copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Court or Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

Particulars of objections to votes by respondent. 21. (1) On the trial of a petition complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.

(2) Where a respondent intends to give the evidence as stated in paragraph (1) of this rule, he shall, six days before the day appointed for trial, deliver to the deputy registrar, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the deputy registrar shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Court or Judge, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

Application for particulars. 22. (1) Evidence need not be stated in the petition, but the Court or a Judge may upon application order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial and upon such terms as to costs and otherwise as may be ordered.

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322 51

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

(2) Before applying for particulars the party desiring the same shall by letter request the petitioner to furnish the required particulars within five days, and a summons for particulars shall not issue until the expiration of that time.

23. (1) Every summons or other application in proceedings under the Regulations or these Rules shall be taken out or made in the sub-registry where the petition was presented. Procedure on applications made under the Regulations and these Rules.

(2) Subject to the provisions of paragraph (3) of this rule all applications, including applications for a special case under regulation 16 of the Regulations, shall be determined summarily by a Judge who may, if he thinks fit, hear the parties to the application.

(3) Objections to the security for costs shall be heard and determined by the deputy registrar and also all other applications if there is no judge in the Territory when the application is made and the Chief Justice directs that the application be heard and determined by the deputy registrar: provided that such a direction shall only be given if the Chief Justice is satisfied that there would be undue delay and inconvenience if the application were not dealt with by the deputy registrar.

(4) Any person aggrieved by a decision of the deputy registrar may within five days apply by notice in writing to the deputy registrar to have the decision reviewed by a Judge and the deputy registrar shall transmit to a Judge copies of any petition, notices, summonses, affidavit or other document before him on the application together with the reasons for his decision.

(5) Such Judge may discharge or vary the order of the deputy registrar and before doing so may, if he thinks fit, hear the parties on the application.

24. No appeal shall lie from the order of a Judge upon any application but every such order may be discharged or varied by the Judge who tries the petition to which the order relates. Varying or discharging order of Judge.

25. (1) Each deputy registrar shall forthwith inform the Registrar by telegram— Cause list of petitions.

- (a) of the presentation of a representation petition stating the name of the petitioner and the prayer and the nature of the security for costs; and
- (b) when the time for notice of objection to a recognizance has expired, or when such objection (if any) has been determined, and (if allowed) when a deposit to make the security sufficient has been made; or when the time for making such deposit has expired; and
- (c) of any notice or application made to the deputy registrar or a Judge and the nature of the application; and
- (d) when such application is determined and the order then made.

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

(2) The Registrar shall keep a cause list of petitions which shall contain all information furnished by the deputy registrar under paragraph (1) of this rule, and shall be open to inspection at the Registrar's office at any time during office hours.

Title of proceedings. 26. It shall be sufficient to entitle all proceedings in respect of a representation petition as is prescribed in Form 5 of Appendix A.

Notice of time and place of trial. 27. (1) The time and place of the trial of a petition shall be fixed by the Registrar after consultation with the Chief Justice and notice thereof shall be given in writing by posting the notice outside the Central Registry and by sending to the deputy registrar concerned a telegram stating the place and time of trial.

(2) On receiving the telegram mentioned in the preceding paragraph of this rule, the deputy registrar shall give notice in writing of the time and place of trial by posting a notice of trial outside his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the returning officer fifteen days before the day appointed for the trial.

(3) The posting of the notice of trial at the office of the deputy registrar shall be deemed and taken to be notice in the prescribed manner within the meaning of the Regulations, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as already directed.

(4) The notice of trial may be in Form 6 of Appendix A.

Adjournments. 28. (1) A Judge may from time to time, by order upon the application of a party to the petition, or by notice in such form as the Judge may direct postpone the commencement of the trial to such day as he may name. In the case of an election petition, such notice or order shall be sent to the returning officer and when received shall be forthwith made public by the returning officer.

(2) In the event of the Judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall ipso facto stand adjourned to the ensuing day, and so from day to day.

(3) No formal adjournment of the Court for the trial of an election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded; and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another Judge.

Officer prescribed for the purposes of regulation 13(1) of the Regulations. 29. The officer who by a certificate may allow witnesses' expenses under paragraph (1) of regulation 13 of the Regulations shall be the deputy registrar to whom the petition was presented.

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322 53

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. II.

30. The deputy registrar to whom the representation petition was presented shall attend the trial of such petition and shall by himself, or in case of need, his sufficient deputy, perform all functions incident to the officer of a court of record and also such duties as may be prescribed to him. Powers and duties of deputy registrar.

31. (1) Notice of application for leave to withdraw a representation petition shall be in writing and signed by the petitioner or his solicitor and shall be sufficient if given in Form 7 of Appendix A and left at the office of the deputy registrar and a copy of such notice shall be served on the respondent and sent (in the case of an election petition) to the returning officer. Notice of intention to withdraw petition.

(2) The petitioner shall forthwith also publish in a newspaper circulating in the Territory or electoral area (as the case may be) a notice of his intention to apply for leave to withdraw his petition; and in the case of an election petition the returning officer shall make it public in the Territory or electoral area to which it relates.

(3) Publication by the returning officer and by the petitioner shall be sufficient if given in Form 8 in Appendix A.

32. Any person who might have been a petitioner in respect of the election to which the petition relates, may within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the deputy registrar, of his intention to apply at the hearing to be substituted for the petitioner but the want of such notice shall not defeat such application, if in fact made at the hearing. Substitution of another petitioner.

33. The time and place for hearing the application shall be fixed by the deputy registrar as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the deputy registrar of an intention to apply to be substituted as petitioners. Time and place for hearing application.

34. Notice of abatement of petition, by death of the petitioner or surviving petitioner, shall be given by the party or person interested in the same manner as notice of an application to withdraw a petition, and the time within which application may be made to a Judge, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances a Judge may allow. Notice of abatement of petition.

35. (1) The manner and time of the respondent's giving notice to the Court that he does not intend to oppose an election petition, shall be by leaving notice thereof in writing at the office of the deputy registrar, signed by the respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice. Notice of intention not to oppose petition.

(2) Upon such notice being left at the deputy registrar's office, the deputy registrar shall forthwith send a copy thereof by the post to the petitioner or his solicitor, and to the returning officer, as the case may be, who shall cause the same to be published in the Territory or electoral area (as the case may be).

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. III, O. IV.

Time within which to apply for admission as respondent. 36. The time for applying to be admitted as a respondent in either of the events mentioned in paragraph (1) of regulation 23 of the Regulations shall be within ten days after such notice is given as hereinbefore directed, or such further time as a Judge may allow.

ORDER III

*Vacancy Petitions*

Forms of vacancy petitions and prescribed matters.

1. A petition in respect of a vacancy in the Senate or in the House of Representatives shall be in Form 9 or in Form 10 of Appendix A as the case may be and shall contain the particulars required therein and be signed by the petitioner.

Persons to whom copies of petitions must be sent.

2. The deputy registrar shall upon presentation of a vacancy petition—

- (a) send a copy of the petition to the Registrar and
  - (i) where the petition relates to a seat in the Senate, to the President of the Senate and to the Attorney General; and
  - (ii) where the petition relates to a seat in the House of Representatives, to the Speaker;
- (b) cause the same to be published in the Gazette and a newspaper circulating in the Territory or electoral area in respect of which the member of the Legislature whose election is in question sits; and shall exhibit the same on a notice board outside his registry.

Application of certain rules to proceedings on vacancy petition.

3. Subject to such modifications and adaptations as may be necessary for the purpose, the following provisions of these Rules shall so far as they are applicable have effect in relation to proceedings on a vacancy petition:—

Order II, rules 2 to 6 inclusive, 9 to 19 inclusive and 22 to 30 inclusive.

ORDER IV

*Speaker's Election and Vacation of Office*

Forms of reference and prescribed matters.

1. A reference in respect of any question as to the election of any person as Speaker to the House of Representatives or his vacation of office shall be in Form 11 of Appendix A, shall contain the particulars required therein and shall be signed by the person making the same.

Security for costs.

2. Subject to such modifications and adaptations as may be necessary for the purpose, the provisions of Order II, rules 12 and 13, relating to security for costs shall apply when a member of the House of Representatives is required to give security for costs under regulation 36 of the Regulations provided that—

- (a) the amount of the security shall be one thousand dollars only;

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND  
MEMBERSHIP CONTROVERSIES)

Cap. 322 55

[Statutory Instrument]

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES)  
RULES—O. IV.

(b) the Registrar may require any surety to a recognizance to swear an affidavit as to his sufficiency before any person authorised to take a recognizance under these Rules.

3. The time and place of trial of a reference to which this Order Notice of relates shall be fixed by the Registrar after consultation with the Chief hearing. Justice and notice thereof shall be given in writing by posting the notice outside the Central Registry and by sending a copy thereof to the person making the reference, to the Clerk of the House of Representatives and to the Attorney General.

4. On the hearing of a reference the Court shall proceed as if such Proce-  
reference were a motion before the Court in the exercise of its original dure on  
jurisdiction and shall follow the procedure of the Court on the hearing reference.  
of a motion so far as the same is applicable.

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

APPENDIX A

O. II, r. 1.

FORM 1

PETITION IN RESPECT OF AN APPOINTMENT TO THE SENATE

IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

Appointment to the Senate for (state Territory)

†The Petition of A of ..... whose name is subscribed.

1. Your petitioner A is a person who on (date of appointment of Respondent to Senate) was entitled to vote as an elector for the constituency of .....in the Territory of .....
2. Your petitioner states that X was appointed a Senator for the Territory of ..... by the Governor-General by instrument under the public seal dated .....
3. And your petitioner says that (here state facts and grounds on which the petitioner relies)

Wherefore your petitioner prays it may be determined that X was not duly appointed and that such appointment is invalid.

(Sgd.)  
(Petitioner)

\*The address for service of the petitioner is .....

\*The solicitor for the petitioner is .....  
whose address for service is .....

†If there is more than one petitioner, the petition should be the petition of all, and their names entered as for A. All references to the petition should be in the plural, as the petition should be subscribed by all.

\*Omit whichever is inapplicable

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

FORM 2

O. II, r. 1.

PETITION IN RESPECT OF AN ELECTION TO THE HOUSE OF REPRESENTATIVES

IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

Election for the electoral area (state place and Territory) holden on the ..... day of ....., 19.....

†The Petition of A of ..... whose name is subscribed.

- 1. Your petitioner A is a person who voted (or had a right to vote, as the case may be) at the above election (or claims to have had a right to be elected or returned at the above election, or was a candidate at the above election).
2. And your petitioner states that the election was holden on the ..... day of ..... 19.... when ..... (names of candidates) were candidates and the Returning Officer has returned X as duly elected.
3. And your petitioner says that (here state facts and grounds on which the petitioner relies)

Wherefore your petitioner prays that it might be determined that the said (name of candidate whose election is in controversy) was not duly elected or returned and that the election was void (or that the said..... was duly elected and ought to have been returned).

(Sgd.)
(Petitioner)

\*The address for service of the petitioner is .....

\*The solicitor for the petitioner is .....

whose address for service is .....

†If there is more than one petitioner, the petition should be the petition of all, and their names entered as for A. All references to the petition should be in the plural, as the petition should be subscribed by all.

\*Omit whichever is inapplicable.



FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

FORM 3

O. II, r. 12(1).

RECOGNIZANCES AS SECURITY FOR COSTS

Be it remembered that on the ..... day of ....., in the year of Our Lord 19...., before me (name and description) came A.B. of (name and description) and acknowledged himself (or severally acknowledged themselves) to owe to our Sovereign Lady the Queen the sum of \*two thousand dollars (or the following sums) (that is to say) the said C.D., the sum of \$....., the said E.F., the sum of \$....., the said G.H., the sum of \$ ..... and the said J.K., the sum of \$..... to be levied on his (or their respective) goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if (here insert the names of all the petitioners, and if more than one, add, or any of them) shall well and truly pay all costs, charges and expenses in respect of the representation petition signed by him (or them), in relation to the (here insert the name of the Territory or electoral area in a Territory, as the case may be) which shall become payable by the said petitioner (or petitioners, or any of them) under the Legislature (Appointment, Election and Membership Controversies) Regulations, 1958, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

(Sgd.) (Signatures of Sureties).

Taken and acknowledged by the above-named (names of sureties) on the ..... day of ..... at ..... before me.

Registrar (or other authorised person)

\*Where this form is used in respect of a vacancy petition under Part II of the Regulations or a reference under Part III of the Regulations the amount should be one thousand dollars.

LAWS OF THE WEST INDIES

LEGISLATURE (APPOINTMENT, ELECTION AND MEMBERSHIP CONTROVERSIES)

Cap. 322 59

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) - RULES

FORM 4 O. II, r. 18(2).

AFFIDAVIT FOR JUSTIFICATION OF SURETIES  
IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

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

Sworn, etc.

FORM 5 O. II, r. 26.

TITLE FOR PROCEEDINGS  
IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

\*(Appointment to the Senate for (*state Territory*) )  
(Election for (*state electoral area including a reference to the Territory*) holden on the ..... day of ..... 19.... )

\*(Vacancy in Senate/House of Representatives for (*Territory*) or (*electoral area including a reference to the Territory*) )

Between Petitioner (*name and address*)  
and Respondent (*name and address*).

\*Use heading appropriate to proceedings.

FORM 6 O. II, r. 27(4).

NOTICE OF TRIAL  
IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

Take notice that the above petition (or petitions) will be tried at ..... on the ..... day of ..... and on such other subsequent days as may be needful.

Dated this ..... day of .....

Signed, By order,  
A.B.,  
Registrar/Deputy Registrar.

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

FORM 7

O. II, r. 31(1).

APPLICATION FOR LEAVE TO WITHDRAW IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

The petitioner proposes to apply to withdraw his petition upon the following ground (here state the ground) and prays that a day may be appointed for hearing his application.

Dated this ..... day of .....

(Signed)

FORM 8

O. II, r. 31(2).

NOTICE IN PUBLICATION OF FORM 7 IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

Notice is hereby given, that the above petitioner has on the ..... day of ..... lodged at the office of the deputy registrar, notice of an application to withdraw the petition, of which notice the following is a copy — (set it out).

And take notice that by a rule of court made pursuant to the above Regulations any person who might have been a petitioner in respect of the said election/appointment\* may, within five days after the publication by the Returning Officer of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed).

\*Omit whichever is inapplicable.

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

FORM 9

O. III, r. 1.

PETITION IN RESPECT OF A VACANCY IN THE SENATE

IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

Vacancy in the Senate for (state territory)

- 1. Your petitioner is a person \*authorised to present this petition by a resolution of the Senate passed on ... or \*who at the time this petition is presented, is entitled to vote as an elector for the electoral area of ... (in the Territory of ...)
2. Your petitioner states that X (name of Senator whose seat is the subject of the petition) was appointed a Senator for the Territory of ... by the Governor-General by instrument under the public seal dated ...
3. And your petitioner says (here state grounds on which the petitioner relies)

Wherefore your petitioner prays that it might be determined that the said X has vacated his seat in the Senate and that the honourable Court will so certify to the Governor-General.

(Sgd.) (Petitioner).

\*The address for service of the petitioner is ...

\*The solicitor for the petitioner is ...

whose address for service is ...

\*Omit whichever is inapplicable.

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

FORM 10

O. III, r. 1.

PETITION IN RESPECT OF A VACANCY IN THE HOUSE OF REPRESENTATIVES

IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.

Vacancy of seat in the House of Representatives for (state the place)

- 1. Your petitioner is a person \*authorised to present this petition by a resolution of the House of Representatives passed on ... or \*who at the time this petition is presented is entitled to vote at an election held for the electoral area of ... (state the electoral area for which the person to whom the petition relates was elected as a member);
2. Your petitioner states that X (the member whose seat is the subject of the petition) was returned as duly elected to the House of Representatives;
3. And your petitioner states (here state grounds on which the petitioner relies)

Wherefore your petitioner prays that it may be determined that the said X has vacated his seat in the House of Representatives and that the honourable Court will so certify to the Speaker.

\*The address for service of the petitioner is .....

\*The solicitor for the petitioner is .....

whose address for service is .....

\*Omit whichever is inapplicable.

FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

FORM 11

O. IV, r. 1.

REFERENCE OF QUESTION AS TO ELECTION OF SPEAKER  
OR VACATION OF HIS OFFICE

IN THE FEDERAL SUPREME COURT

The Legislature (Appointment, Election and Membership Controversies)  
Regulations, 1958.

\*(Election of Speaker  
(Vacation of office by Speaker.

Whereas I, the undersigned A.B., being the Clerk of the House of  
Representatives was duly authorised by resolution of the Honourable House

on ..... (date) to refer (or being  
a member of the House of Representatives am desirous of referring) a  
question to the Federal Supreme Court under the provisions of Part III of  
the above Regulations as to the election of X.Y. to the office of Speaker of  
that House (or the vacation of the office of Speaker by X.Y.)

And Whereas (here state the facts and grounds on which the reference  
is based)

Wherefore I hereby refer the question so that the honourable Court  
may determine whether the said X.Y. has been validly elected as Speaker (or  
whether the said X.Y. has vacated his office of Speaker).

\*Strike out words inapplicable.

## FEDERAL LEGISLATURE (MEMBERSHIP CONTROVERSIES) RULES

## APPENDIX B

*Fees of Court in Proceedings brought under the Legislature (Appointment, Election and Membership Controversies) Regulations, 1958.*

	£	s.	d.	or \$	¢
1. On presenting a petition and for hearing and judgment thereon, an inclusive fee of ..	2.	10.	0.		12.00
2. On filing a recognizance to secure costs ..		10.	0.		2.40
3. On filing objection to recognizance and for the hearing and decision thereon, an inclusive fee of .. .. .	1.	10.	0.		7.20
4. Application for a special case and for hearing and decision thereon, an inclusive fee of ..	1.	10.	0.		7.20
5. On making any application not otherwise specifically provided for, including the hearing and order thereon, an inclusive fee of .. .. .	1.	0.	0.		4.80
6. On filing every document and exhibit for which no special fee is provided .. ..		2.	6.		.60
7. On taxation of bill of costs, including certificate .. .. .	10.	0.			2.40
8. On certifying any document as an office copy .. .. .		5.	0.		1.20
9. On sealing a writ of subpoena not exceeding three persons .. .. .		5.	0.		1.20
10 For a certificate of a Registrar for which no special fee is provided .. .. .		5.	0.		1.20
11. For an office copy of any document filed in the Registry, per folio of 100 words, for the first folio .. .. .		1.	0.		.24
For every other folio or part thereof ..			6.		.12
12 For making every search .. .. .		2.	6.		.60