

BY AUTHORITY.

GENERAL RULES AND ORDERS

MADE BY

THE COURT OF APPEAL

FOR ONTARIO,

RESPECTING

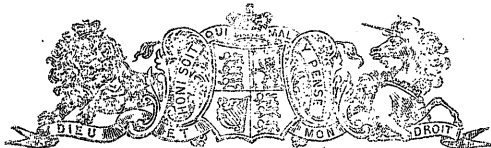
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PURSUANT TO

THE ONTARIO CONTROVERTED ELECTIONS ACT,
R. S. O. CHAP. 10.

PROMULGATED 24TH SEPTEMBER, 1894.

PRINTED BY ORDER OF THE LEGISLATIVE ASSEMBLY.



TORONTO:

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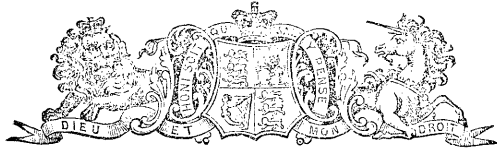
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THE COURT OF APPEAL FOR ONTARIO,

RESPECTING THE TRIAL OF ELECTION PETITIONS, PURSUANT TO THE ONTARIO
CONTROVERTED ELECTIONS ACT, R. S. O. (1887), CHAPTER 10.

I.

1. The Presentation of an Election Petition complaining of the undue election or return of a Member of the Legislative Assembly, or complaining of any unlawful and corrupt act of any candidate at such Election who was not returned, shall be made by leaving it, together with the affidavit prescribed by *The Ontario Controverted Elections Act*, at the office of the Registrar of the Court of Appeal, who, or his clerk, shall (if required) give a receipt which may be in the following form :

Received on the day A.D., at the office of the Registrar of the Court of Appeal, a petition (*here state the purport of the said petition*) for the Electoral District of the (*state the place*) purporting to be signed by (*insert the name of Petitioner*) and the affidavit of the said Petitioner annexed thereto.

A. G., Registrar.

2. With the Petition shall also be left a copy thereof for the said Registrar of the Court of Appeal to send to the Returning Officer, pursuant to section 12 of the said Act, as amended by 54 Victoria, chapter 6.

II.

1. An Election Petition shall contain the following statements :—

(a) The right of the Petitioner to petition as defined by the said Act.

(b) The holding and result of the Election, and a brief statement of the facts and grounds relied on; and shall conclude with a prayer, stating the relief claimed.

2. Evidence is not to be stated in the Petition.

III.

The Petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any Petition not substantially in compliance with this Rule, unless otherwise ordered by the Court or a Judge.

IV.

The following form of a Petition, or one to the like effect, shall be sufficient:

IN THE COURT OF APPEAL.

The Ontario Controverted Elections Act. Election for the Electoral District of the *(state the place)* holden on the day of A.D. *
 The Petition of A. of , or of A. of and of B. of , *(as the case may be)*, whose name, or names is, or are, 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 returned at the above Election, or was a candidate at the above Election; or, *(in the case of a cross petition)*, is the Respondent in the Petition presented by A., or is a person who voted, or had the right to vote *(as the case may be)*, at the above Election.

2. And your Petitioner states that the Election was holden on the day of A.D. , when A.B., C.D. and E.F. were candidates, and the Returning Officer has returned A.B. as being duly elected.

3. And your Petitioner says that *(here state the facts and grounds on which the Petitioner relies)*.

Wherefore your Petitioner prays that it may be determined that the said A.B. was not duly elected or returned, and that the Election was void, or that the said E.F. was duly elected and ought to have been returned *(or as the case may be)*; or *(in the case of a cross petition)*, that the said C.D. or E.F. *(or as the case may be)* may be declared guilty of the unlawful and corrupt practices and acts alleged.

(Signature of petitioner or petitioners.)

V.

With the Petition, the Petitioner shall leave at the office of the Registrar of the Court of Appeal a writing, signed by him or on his behalf, giving the name of some person entitled to practise as a Solicitor, or whom he authorizes to act as his Agent, or stating that he acts for himself, as the case may be; and in either case giving an address, within the City of Toronto, at which notices addressed to him may be left; and if no such writing be left or address given, then all notices and proceedings may be given to and served on the petitioner by the respondent by sticking up the same at the office of the Registrar of the Court of Appeal.

VI.

Any person returned as a Member, and any person who may be a respondent under sections 5 and 7 of the said Act, may at any time after the election, send to or leave at the office of the Registrar of the Court of Appeal, a writing signed by him or on his behalf, appointing a person entitled to practise as a Solicitor, to act as his Agent in case there should be a petition against him, or stating that he intends to act for himself; and in either case giving an address within the City of Toronto, at which notices may be left, and in default of such writing being left within a week after service of the petition, notices and proceedings may be given and served respectively on any such respondent by sticking up the same at the office of the Registrar of the Court Appeal.

VII.

An Agent employed for the Petitioner or Respondent shall forthwith leave written notice at the office of the Registrar of the Court of Appeal, of his

appointment to act as such Agent, and service of notices and proceedings upon such Agent shall be sufficient service thereof on his principal for all purposes.

VIII.

The Registrar of the Court of Appeal shall keep a book or books at his office in which he shall enter the names of such agents, and of all addresses given under either of the preceding Rules, which book shall be open to inspection by any person during office hours, without payment of any fee.

IX.

The Registrar of the Court of Appeal shall, upon the presentation of the Petition, and notice of the deposit of money, forthwith send a copy of the Petition to the Returning Officer, pursuant to the said Act, as amended by 54 Victoria, chapter 6, and shall therewith send the name of the Petitioner's Agent, if any, and of the Respondent's Agent, if any, and the Returning Officer shall forthwith publish those particulars along with the notice prescribed by the said amending Act.

The cost of the publication of this, and of 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.

X.

Where the Respondent has named an Agent or given an address, at which notices addressed to him may be left, the service of an Election Petition may be made by delivery of it to the Agent, or by posting it in a registered letter to the address given, at such a 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 the Court or a Judge on an application made not later than five days after security is given, on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service, and to cause the matter to come to the knowledge of the Respondent, including, when practicable, service upon his agent for Election expenses, in which case the Court or a Judge may order that what has been done shall be considered sufficient service, subject to such conditions as may be reasonable.

XI.

In case of evasion of service, the sticking up in the office of the Registrar of the Court of Appeal a notice of the Petition having been presented, stating the name of the Petitioner, and the relief prayed, shall be deemed equivalent to personal service, if so ordered by the Court or a Judge.

XII.

The deposit of money by way of security for payment of costs, charges and expenses payable by the Petitioner, shall be made by payment into the Canadian Bank of Commerce in Toronto, to an account to be opened there as directed by the said Act; and the Bank on receiving the said deposit of money shall give a receipt or certificate for the same in duplicate, one copy to be given to the party making the deposit, and the other to be forthwith left at the office of, or posted to, the Accountant of the Supreme Court of Judicature for Ontario.

XIII.

All claims to the money deposited in the Bank for payment of costs, charges and expenses payable by the Petitioner, pursuant to the said Act, shall be disposed of by order of the Court or a Judge.

XIV.

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, by order of the Court or a Judge.

XV.

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 Court or a Judge may require.

XVI.

The order may direct payment either to the party by whom the same was deposited, or to any person entitled to receive the same.

XVII.

The Accountant shall file the Bank receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time a memorandum of all such Bank receipts or certificates and the amounts thereof, and the Petitions to which they are respectively applicable, which book may be inspected without payment of any fee.

XVIII.

Ten days after the service of the said Petition, on the Respondent, or his agent, or in the manner prescribed by the said Act or these Rules, the Petition shall be at issue, unless otherwise ordered by the Court or a Judge.

XIX.

At any time after the Election Petition is at issue, either party, by order of the Court or a Judge, may have production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents and returns whatsoever, relating to the Election, returned to, or in possession of the Clerk of the Crown in Chancery, at such place and in such manner, and upon such terms as the Court or a Judge shall direct. And for the purpose of such production and inspection, and for the purposes of the trial of the Election Petition, the Clerk of the Crown in Chancery shall deliver or transmit the said books, lists, commissions, ballots, certificates, statements, documents, papers and returns in such manner and to such officer as by order of the Court or a Judge shall be directed.

The said books, lists, commissions, ballots, certificates, statements, documents, papers and returns shall be returned to the custody of the Clerk of the Crown in Chancery after the trial of the Petition, or after the purpose has been served for which their delivery or transmission was required.

XX.

When a Petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of, and the party defending, the Election or return, shall, fourteen days before the day appointed for the trial, leave with the Registrar of the Court of Appeal and also give to the respective agents, or at the respective addresses, if any, given by the Petitioner and Respondent (*as the case may be*), particulars of the votes intended to be objected to, and of the heads of objection to each vote, verified by affidavit as prescribed by the said Act.

XXI.

When a Petition alleges corrupt practices against a Respondent or his agents, the Petitioner shall fourteen days before the day appointed for the trial, leave with the Registrar of the Court of Appeal, and also give to the Respondent, or his agent, particulars in writing of the specific corrupt practices charged, specifying the persons alleged to have been guilty of the same, together with their addresses, as far as known, and also specifying the times and places when the specific corrupt practices were committed by or between the persons charged, and also of any illegal practices intended to be relied upon, as may, in connection with the said alleged corrupt practices, affect the result of the election, verified by affidavit as prescribed by the said Act.

XXII.

When at the trial of a Petition, complaining of an undue election or return, and claiming the seat for some person, the Respondent intends to give evidence to prove that the election of such person was undue, such Respondent shall, fourteen days before the day appointed for the trial, leave with the Registrar of the Court of Appeal and also give to the Petitioner, or his agent, particulars of the objections to the election or return of such person upon which he intends to rely, verified by affidavit, as prescribed by the said Act.

XXIII.

When a Petitioner, in a cross Petition under section 7 of the Act alleges that unlawful and corrupt acts were committed by any candidate at the same election, who was not returned, he shall fourteen days before the day appointed for trial, leave with the Registrar of the Court of Appeal, and also give to the Respondent, or his agent, particulars in writing of the alleged unlawful and corrupt acts of the said candidate, verified by affidavit as prescribed by the said Act.

XXIV.

The Court or a Judge may at any time order such further particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial, in the same manner as in ordinary proceedings in the High Court of Justice, and as prescribed by the said Act, and upon such terms as may be ordered.

XXV.

The Registrar of the Court of Appeal shall allow inspection and, on request, shall furnish office copies of the particulars specified in the five preceding rules.

to all parties concerned ; and no evidence shall be given against the validity of any vote, nor upon any head of objection, or corrupt or illegal practice, not specified in the particulars, except by leave of the Court or a Judge upon such terms as may be ordered.

XXVI.

The Registrar of the Court of Appeal shall make out a list of the Petitions and cross Petitions filed in his office, and the dates of filing the same respectively. In it he shall insert the names of the Agents of the Petitioner and Respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the office of the Registrar of the Court of Appeal at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "The Ontario Controverted Elections Act."

XXVII.

The time and place of the trial of each Election Petition shall be fixed by the Judges on the rota, and notice thereof shall be given in writing by the Registrar of the Court of Appeal, by sticking notice up in his office, sending by post one copy to the address given by the Petitioner, another to the address given by the Respondent, if any, another to the Clerk of the Crown in Chancery, and another to the Sheriff, fifteen days before the day appointed for the trial. The Sheriff shall forthwith publish the same in the Electoral District.

XXVIII.

The sticking up of the notice of trial at the office of the Registrar of the Court of Appeal shall be deemed and taken to be notice in the prescribed manner within the meaning of the said Act, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as hereinbefore directed.

XXIX.

The notice of trial may be in the following form :

THE ONTARIO CONTROVERTED ELECTIONS ACT.

Election Petition for the Electoral District of the (*state the place*). Take notice that the above Petition (*or* Petitions), will be tried at on the day of A.D., and on such other subsequent days as may be needful.

Dated the day of A.D.

By order.

A. G.

Registrar of the Court of Appeal.

XXX.

The title of the Court of Record for the trial of an Election Petition may be as follows :

Court for the trial of the Election Petition for the Electoral District of the (*state the place*) between , Petitioner, and , Respondent. And it shall be sufficient so to entitle all the proceedings in that Court.

XXXI.

An officer shall be appointed for each Court to be holden for the trial of an Election Petition, by the Judge or Judges assigned to hold the same, who shall attend at the trial in like manner as the Clerks of Assize attend at the Sittings of the High Court.

Such officer may be called the Registrar of that Election Court. He, or in case of need his sufficient Deputy, shall perform all the functions incident to an officer of a Court of Record, and also such duties as may be prescribed to him, or directed by the said Judge or Judges.

XXXII.

The Clerk of the Crown in Chancery shall, on or before the day fixed for the trial, deliver, or cause to be delivered, to the Registrar of the Election Court for the trial of the Petition, or his Deputy, the Poll Books, and other documents relating to the said Election, for which the said Registrar, or his Deputy, shall give, if required, a receipt; and the said Registrar, or his Deputy, shall keep in safe custody the said Poll Books and other documents until the trial is over, and then return the same to the proper officer.

XXXIII.

At the time appointed for the trial of the Election Petition, the Petitioner shall leave with the Registrar, for the use of the Judge or Judges at the trial, fairly written on one side of the paper only, a copy or copies of the Petition and of all the proceedings thereon, which show the several matters to be tried, including the particulars of objections or corrupt practices or illegal acts, on either side; the correctness of which copy or copies, in so far as the proceedings are filed with the Registrar of the Court of Appeal, shall be certified by the said Registrar. The Judge or Judges may allow amendment of the said copy or copies. In default of such copy or copies being delivered, the Judge or Judges may refuse to try the Petition or may allow a further time for delivery, or may adjourn the trial, in every case upon such terms, as to costs and otherwise, as the Judge or Judges shall see fit to impose.

XXXIV.

The Judge or Judges assigned to try the Election Petition may from time to time, by order made upon the application of a party to the Petition, or by notice to be sent to the Sheriff, in such form as may be directed, postpone the beginning of the trial to such day as may be named, and such notice, when received, shall be forthwith made public by the Sheriff.

XXXV.

In the event of the Judge or Judges 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.

XXXVI.

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 enquiry is concluded; and in the event of the Judge or Judges who begin the trial being disabled by illness or otherwise, it may be re-commenced and concluded by another Judge or Judges.

XXXVII.

The application to state a special case may be made to the Court of Appeal when sitting, or by motion before a Judge at Chambers.

XXXVIII.

The reasonable costs of any witness shall be ascertained by the Registrar of the Election Court, and the certificate allowing them shall be under his hand, subject to an appeal to the trial Judge or Judges.

XXXIX.

The Order of the Election Court or a Judge to compel the attendance of a person as a witness may be in the following form:

Court for trial of the Election Petition for the Electoral District of the (state the place). The day of A. D.

To A. B., (*describe the person*). You are hereby required to attend before the above Court at (place), on the day of , at the hour of or forthwith, (*as the case may be*), to be examined as a witness in the matter of the said Petition, and to attend the said Court until your examination shall have been completed.

As witness my hand,

A. B.,

Judge of the said Court.

XL.

In the event of its being necessary to commit any person for contempt, the warrant may be as follows:

At a Court holden on at for the trial of the Election Petition for the Electoral District of the (state the place) before the Honorable one of the Judges (or before the Honorable and the Honorable the Judges) on the rota for the trial of Election Petitions, pursuant to "The Ontario Controverted Elections Act."

Whereas, A. B. has this day been guilty, and is by the said Court adjudged to be guilty, of a contempt thereof; the said Court does, therefore, sentence the said A. B. for his said contempt to be imprisoned in the common gaol of the County or City, (*as the case may be*) of , for the space of calendar months, and to pay to our Lady the Queen a fine of \$, and to be further imprisoned in the said gaol until the said fine be paid. And the Court further orders that the Sheriff of the said County (or *as the case may be*) and all constables and officers of the Peace of any County or place where the said A. B. may be found, shall take the said A. B. into custody, and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof to undergo his said sentence. And the Court further orders the said gaoler to receive the said A. B. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Dated the day of A. D.

(To be signed by the Judge or Judges.)

XLI.

Such warrant may be made out and directed to the Sheriff or other person having the execution of process of the High Court, as the case may be, and to all constables and officers of the Peace of the County or place where the person adjudged guilty of contempt may be found; and such warrant shall be sufficient without any further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

XLII.

After the trial of any Election Petition, the Judge or Judges shall return to the Registrar of the Court of Appeal the evidence and proceedings before the Election Court and the finding on the said Petition.

XLIII.

Notice of an application for leave to withdraw a Petition shall be in writing and signed by the Petitioner or his agent. It shall state the ground on which the application is intended to be supported. The following form shall be sufficient:

The Ontario Controverted Elections Act. The Electoral District of the (*state the place*). Petition of (*state petitioner*), against (*state respondent*), presented day of A.D.

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 A.D.

(*Signature of Applicant*).

XLIV.

The notice of application for leave to withdraw shall be delivered to the Registrar of the Court of Appeal.

XLV.

A copy of such notice of the intention of the Petitioner to apply for leave to withdraw his Petition shall be given by the Petitioner to the Respondent, and to the Returning Officer, who shall make it public in the Electoral District to which it relates, and it shall also be forthwith published by the Petitioner in at least one newspaper published or circulating in the Electoral District, if any.

The following may be the form of such notice:

The Ontario Controverted Elections Act. Election Petition for the Electoral District of the (*state the place*) in which is Petitioner, and Respondent. Notice is hereby given that the above Petitioner has on the day of lodged at the office of the Registrar of the Court of Appeal, notice of an application to withdraw the Petition, on the following ground (*set it out*). And take notice that any person who might have been a Petitioner in respect of the said Election may, within ten days after the publication of this notice, give notice to the Registrar of the Court of Appeal, in writing, of his intention on the hearing to apply for leave to be substituted as a Petitioner.

A. B.,
Returning Officer.

XLVI.

Any person who might have been a Petitioner in respect of the Election to which the Petition relates, may, within ten days after such notice is published by the Returning Officer, give notice, in writing, signed by him or on his behalf, to the Registrar of the Court of Appeal of his intention to apply at the hearing of the application to withdraw, to be substituted for the Petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing of the application to withdraw the said Petition.

XLVII.

The time and place for hearing the application shall be fixed by a Judge of the Court of Appeal, and either before the Court of Appeal or before a Judge, as he may deem advisable, but such time shall not be less than a week after the notice of the intention to apply to be substituted for the Petitioner has been given to the Registrar of the Court of Appeal as hereinbefore provided; and notice of the time and place appointed for the hearing of such application shall be given to such person, if any, as shall have given notice to the Registrar of the Court of Appeal of such intention to apply to be substituted as the Petitioner, and otherwise in such manner and at such time as the Court or a Judge may direct.

XLVIII.

Notice of the abatement of a Petition, by death of the Petitioner or surviving Petitioner, under the said Act, shall be given by the party or person interested, and shall be published in the same manner as notice of an application to withdraw a Petition; and the time within which application may be made thereafter by any other person to the Court or a Judge, to be substituted as a Petitioner, shall be fourteen days after the notice of such abatement is published by the Returning Officer, or such other time as, upon consideration of any special circumstances, the Court or a Judge may allow.

XLIX.

If the Respondent dies or if the Legislative Assembly have resolved that his seat is vacant, or if he gives notice that he does not intend to oppose the Petition, any person entitled to be a Petitioner under the said Act in respect of the Election to which the Petition relates, may give notice of the fact in the Electoral District by causing such notice to be published in at least one newspaper published or circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the Returning Officer, and a like copy with the Registrar of the Court of Appeal.

L.

The manner and time of the Respondent giving notice to the Court that he does not intend to oppose the Petition, shall be by leaving notice thereof, in writing, at the office of the Registrar of the Court of Appeal, signed by the Respondent, or his agent, at any time, before the Judges on the rota, fix the day for the trial of the Election Petition. Such notice shall be in triplicate.

LI.

Upon such notice being left at the office of the Registrar of the Court of Appeal, he shall forthwith send one of the copies thereof by the post to the Petitioner or his Agent, and another to the Returning Officer who shall cause the same to be published in the Electoral District.

LII.

The time for applying to be admitted as a Respondent in either of the events provided for in the 97th section of the said Act and Rule 49, shall be within ten days after such notice is given as hereinbefore directed, or such other time as the Court or a Judge may allow.

LIII.

If notice of the Petitioner's intention to apply for leave to withdraw, or of the abatement of the said Petition by the death of the Petitioner or survivor of several Petitioners, or of the happening of any of the events mentioned in the 97th section of the said Act, be received after notice of trial shall have been given, and before the trial has commenced, the Court or a Judge may order a countermand of the notice of trial and a postponement of the case as prescribed by section 46 of the said Act.

LIV.

The order of the Court or a Judge for the payment of costs shall have the same force as an order made by the High Court of Justice or a Judge thereof, and shall be enforced in like manner.

LV.

Costs shall be taxed by one of the Taxing Officers upon the order of the Court or a Judge by which the costs are directed to be paid, and, when taxed, may be recovered by execution in the ordinary way, or in case there be money in the Bank available for such purpose, it may be applied *pro tanto* by order of the Court or a Judge, and execution shall only issue for the deficiency.

LVI.

The fees payable in stamps for proceedings under the Act, and these Rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the Court of Appeal or of the High Court of Justice.

LVII.

All interlocutory questions and matters shall be heard and disposed of before a Judge of the Court of Appeal at Chambers, or before one of the Judges on the rota, who shall have the same jurisdiction over the proceedings under the Ontario Controverted Elections Act, as a Judge at Chambers in the ordinary proceedings of the Court of Appeal or the High Court.

LVIII.

The Court or a Judge shall have power to increase, enlarge, or abridge the time appointed by these Rules, or any Rules relating to time, or fixed by any order enlarging time, for doing any act, or taking any proceedings, upon such

terms, if any, as the justice of the case may require; and such enlargement may be ordered or relief given, although the application for the same is not made until after the expiration of the time appointed or allowed, or until the same has begun to run.

LIX.

In these Rules words importing the singular number only shall include more persons or parties than one.

LX.

No proceeding under the Ontario Controverted Elections Act shall be defeated by any formal objection.

LXI.

Any Rule made or to be made in pursuance of the said Act shall be published by being put up in the office of the Registrar of the Court of Appeal.

LXII.

All Rules heretofore in force respecting the trial of Controverted Elections in the Province of Ontario are rescinded.

Dated the twenty-fourth day of September, A. D. 1894.

JOHN H. HAGARTY, C. J. O.

GEO. W. BURTON, J. A.

F. OSLER, J. A.

JAMES MACLENNAN, J. A.
