

*The Provincial Statutes of Lower-Canada, Being the fourth session of the fourteenth Provincial Parliament of Lower-Canada.* Quebec: John Carleton Fisher & William Kemble, Law Printer to the King's Most Excellent Majesty, 1834.

4 William IV – Chapter 28

**An Act to regulate the manner of proceeding upon contested Elections of Members to serve in the House of Assembly, and to repeal certain Acts therein mentioned. (18<sup>th</sup> March, 1834.)**

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted and assembled by virtue and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America,' and to make further provision for the Government of the said Province;" And it is hereby enacted by the authority of the same, that after the end of the present Provincial Parliament, no Petition against the Election or the return of any Member to serve in the House of Assembly, shall be received after the expiration of the fourteen days next after that appointed for the opening of the Provincial Parliament for the Despatch of business, or after the expiration of the fourteen days next after that on which the return of the Election of such Member, shall have been notified to the House, (if such Election be made to fill any vacancy,) nor unless it be signed by at least ten Electors, being freeholders (duly qualified according to Law) of the County, City, Borough, or Ward of any City, for which the contested Election or return shall have been held or made nor, (if such Petition be made by one of the Candidates at such Election) unless it be supported by at least ten Electors, qualified as aforesaid, who may nevertheless make and sign a Petition and complaint distinct from that of the Candidate: and the legal qualification of such ten Electors shall be certified by them on oath before any Justice of the Peace, who is hereby authorized to administer such oath, in the form, and (in case of perjury) under the penalties prescribed by the law regulating Elections in this Province: and a certificate of the taking of such oath, under the hand and seal of such Justice of the Peace shall be annexed to the Petition, which shall not be received if this form be not observed: and every such Petition shall set forth the allegations and reasons by which such Petition is to be supported; and if the House of Assembly shall resolve that the said allegations and reasons if well founded, are sufficient to render such Election or return, void, it shall appoint a day for taking such Petition into consideration, but such day shall be such as to afford sufficient delay to the parties according to the distance of the place whence the parties and witnesses are to come, and shall be notified by the Clerk of the House, as well to the sitting Member whose Election or return shall be contested as to the agent or attorney of the Petitioners, who are hereby required to notify his name to the said Clerk at the time such Petition is presented; and the said House of Assembly shall proceed to hear, try and determine such contestation, during the Session in which it shall be commenced, or during any subsequent Session of the same Parliament, if it cannot be determined during that in which it is so commenced.

II. And be it further enacted by the authority aforesaid, that no such Petition shall be received unless it be also accompanied by a bond in due form, entered into before the Speaker of the House of Assembly, or before one of the Judges of the Court of King's Bench, or of one of the Provincial Courts; by which bond the Petitioner or Petitioners or any of them shall bind himself under a penalty of one hundred pounds currency, with two good and sufficient sureties, under a penalty of fifty pounds currency, each, to appear and prosecute their complaint and contestation, and to pay such sum of money as the House of Assembly, shall adjudge to the person or persons against whom such complaint shall have been made, if the Petitioner or Petitioners shad fail, and the said sureties shall, at the time of their signing the said bond (which shall be in the form of the Schedule A. hereunto annexed) justify their sufficiency on oath before the said Speaker (who is hereby authorized to administer such oath) or before the said Judge, who shall receive such bond, and shall certify the whole under his hand and seal.

III. And be it further enacted by the authority aforesaid, that any surety who shall have paid any sum of money by reason of the forfeiture of any such bond, shall be entitled to have such sum reimbursed to him, as well by his co-surety for his portion, as by the Petitioner or Petitioners; excepting always the portion due by such surety, when he shall be one of the Petitioners.

IV. And be it further enacted by the authority aforesaid, that the Petitioners shall, within a time to be fixed by the House, place in the hands of the Clerk thereof, a list of the witnesses, whom they intend to call, and the opposite party shall do the same within the same time; and it shall be the duty of the Speaker to issue an order under his hand and the seal of the House, addressed to such person or persons as shall be therein named, enjoining him or them to summon the witnesses named in the said list, to appear on the day and at the hour fixed for the trial of the contestation; and if such witnesses after being duly summoned, do not appear, or give some sufficient excuse (of which the said House shall be the judge) such of them as make default shall each incur a penalty which shall not-exceed the sum of twenty pounds currency: Provided always, that if any such witness; shall have his residence outside: of the limits of the City of Quebec, he shall not incur such penalty, if the party summoning him shall (being thereunto required) have refused to advance him the amount of his expenses for a reasonable number of days, at the rate-of two shillings and six pence currency a day, and the ordinary expenses of the journey he has to make; Provided also, that each party shall deposit in the hands of the Clerk of the. House, the sum necessary to defray the expenses of summoning the witnesses of such party, which shall be taxed by the Speaker of the House, saving to the House itself the right of deciding finally which of the parties shall pay the whole amount of such expenses.

V. And be it further enacted by the authority aforesaid-, that within fourteen days after the reception of any such Petition, it shall be lawful for any Elector or Electors; qualified to vote at the Election to which such Petition shall refer, to apply to the House of Assembly and demand to be admitted as a party; or as parties either to defend the validity of such return

or to oppose such Petition, and in such case, such. Elector or Electors shall become a party or parties to the contestation jointly' with the sitting Member and shall be considered as being so to all intents and purposes whatever.

VI. And be it further enacted by the authority aforesaid, that if at any time before that appointed for taking such Petition into consideration, the Speaker of the House of Assembly shall be informed, by a certificate in writing signed by two Members of the Assembly, of the death of the Member whose Election or return is contested, or that such Member has been summoned to the Legislative Council; or if such Member is absent from the Province, so that he could not have been aware of such contestation; or if such Member shall within fourteen days after the reception of the Petition against his Election or return certify the House of Assembly by a notice in writing signed by him and laid upon the Table thereof, that he does not intend to contest; then and in every such case it shall be the duty of the Speaker forthwith to cause notice thereof to be given to the Returning Officer by whom the return shall have been made, who shall forthwith post a copy of such notice on the door of the Church of the place, or in any other public place nearest to the place or places at which the Election was held, and the Speaker shall in like manner cause the said notice to be published in two of the Newspapers having the greatest circulation the place; and the Petition shall not be taken into consideration until thirty days; after such notice shall have been so posted, and published in such Newspaper as aforesaid.

VII. And be it further enacted by the authority aforesaid, that any time during the thirty days next after the insertion of such notice in such Newspapers, it shall be lawful for any Elector or Electors qualified to vote at the Election so-contested, to apply to the House of Assembly and demand to be received as a party or parties in the place and stead of the sitting Member, and such Elector or Electors shall be admitted to be and considered as such party or parties to all intents and purposes whatsoever.

VIII. And be it further enacted by the authority aforesaid, that when any Member shall have signified in the manner above mentioned that he does not intend to contest the Petition presented against his return, he shall not be admitted as a party against such Petition at any time or during the course of any subsequent proceedings, and shall not sit or vote in the House of Assembly at any time before the final decision of the contestation.

IX. And be it further enacted by the authority aforesaid, that no Member of the House of Assembly who shall have voted at the Election contested, or who shall be a Petitioner against any Election or return, or whose Election shall be then contested, or whose return shall not have been notified to the House fourteen days, shall vote on any such contested Election.

X. And be it further enacted by the authority aforesaid, that the parties shall within the delay mentioned in the fourth Section, exchange Lists of all the voters to whom either of them intend to object before the said House, with the reasons of such objection, and a

statement of ail other matters, things and incidents on which either of them intends to insist, or to contest before the said House.

XI. And be it further enacted by the authority aforesaid, that whenever a scrutiny shall be demanded, and shall be granted by the House of Assembly, it shall be con-ducted (either before the said House or before a Special Committee or Commissioners appointed by it, as the case may require and according to the provisions of this Act) in the following manner: that is to say, the voters on each side whose votes shall be disputed, shall be alternately the objects of such scrutiny, first one of the voters for the sitting Member or Members, and then one of those of the Petitioners, and so on alternately until the Lists shall have been gone through.

XII. And be it further enacted by the authority aforesaid, that if by the result of such scrutiny it shall appear to the satisfaction of the House that the Member or Members whose Election is contested had not a majority of legal votes, the said House after having ordered that he or they be expelled, may declare the Candidate or Candidates petitioning who shall appear to it to have the majority of legal votes, duly elected, and may order the Clerk of the Crown in Chancery to amend the return.

XIII. And be it further enacted by the authority aforesaid, that if the contestation be not determined in the manner aforesaid, then on the day appointed for taking the Petition into consideration, as soon as the order of the day to that effect shall have been read all strangers shall withdraw, the Speaker and the Members shall be sworn by the Clerk or his Assistant (who are hereby authorized to administer the necessary oath) "well and impartially to try the contestation in question and a true Judgment to give according to the evidence," the Speaker shall resume the Chair, the doors may be opened and the parties as well as their Advocates or Agents shall come to the Bar.

XIV. And be it further enacted by the authority aforesaid, that the witnesses shall remain outside the Mouse, and that when they shall be called in, they shall before they are examined be sworn at the Bar by the Clerk, or Clerk Assistant of the House: Provided always, that when any Member of the House shall be a witness, he may remain in his place and be sworn as a witness there; and any person who being so sworn, shall in his evidence knowingly assert what is untrue, shall be guilty of wilful and corrupt perjury, and liable to the penalties attendant on that crime.

XV. And be it further enacted by the authority aforesaid, that after the House of Assembly shall have decided the contestation, it shall establish the amount of the costs incurred in consequence of the same, and shall certify the said amount in such manner that the said costs maybe recovered by the person or persons in whose favor they shall have been adjudged, in any Court of competent jurisdiction: Provided always, that if the Election of one or of two Members shall be declared void by the said House, only by reason of facts which shall have happened without the knowledge, participation-or consent of such Member or Members, lie or they shall not be condemned to pay any part of the costs.

XVI. And be it further enacted-by the authority aforesaidy that in alt contestations brought before the said House of Assembly relative to Elections, it shall be lawful for the said House to refer the-taking of the inquest to a Special Committee of not less than nine Members, and of which the Chairman shall be appointed by the House, and after having been sworn by the Clerk or Clerk Assistant of the House, is hereby authorised to swear the other Members of the Committee, and the witnesses who: shall be produced before them and the oath of the said Chairman and of the Members of the said; Committee shall be, "to enquire diligently and without favor or partiality, into the facts relative to the Order of reference, and to make a true and faithful report of the Inquest by them taken and of their opinion thereon," and the said House, before proceeding definitively on the report of the said Special Committee, may, if it shall think proper, hear the parties, or their Advocates at the Bar, after the oath prescribed by the thirteenth. Section, shall have been administered to the Speaker and Members of the said House.

XVII. And be it further enacted by the authority aforesaid, that the said Committee shall be formed and proceed in the manner hereinafter directed, that is to say: the Clerk of the House shall notify in writing all the Members of the House of Assembly, then in town, to attend in their places on the day appointed for taking into consideration the Petition against the Election or Return, as well as the Petitioners, their Agents or Counsel to attend at the Bar, and after the consideration of the said order, if it is determined to refer the matter to a Committee, the names of the Members so notified shall be called over, and the sitting Member and the Petitioners or their Agents or Counsel respectively, shall nominate each one Member to be of the said Committee, and the names of all the other Members present shall be written on slips of papers rolled up and deposited in a box by the Clerk, from which after shaking the same he shall draw out one name and deliver it to the Speaker to be read, and so continue to draw and deliver names to be read in succession till they amount to twenty-five, when the excuses and disqualifications which may be urged shall be decided upon by the House, and new names drawn in the same manner to replace any Member who may be excused or adjudged disqualified, and the Clerk shall then deliver lists of the twenty-five to the Petitioners and the sitting Members or their Agents or Counsel, and the Chairman and Members so named shall then withdraw with the Petitioners, the sitting Member and their Agents or Counsel, and the names shall be reduced to nine, including the two nominees of the Petitioner and of the sitting Member, by their striking out by themselves or their Agents or Counsel one name alternately, commencing on the part of the Petitioner, and the said Committee being first duly sworn as hereinbefore provided, shall sit and proceed on the Petition and matter referred every day, (Sundays and Holidays excepted,) until the facts thereof are determined and the report made, and no proceeding. shall be had in the said Committee without the presence of the whole of the Members, unless with leave of the House, and all absences of Members shall be reported to the House without delay, which shall fill up by lot from the Members present any unavoidable vacancies occurring in the said Committee in the manner hereinbefore directed: Provided always that no report shall be agreed upon hut in the presence of all the Members of the Committee, and by the votes of a majority of them.

XVIII. And be it further enacted by the authority aforesaid, that each and every such Committee may be authorised by order of the House to sit after the prorogation of the then Provincial Parliament and to report at the ensuing Session thereof, and that the Members of the said Committee may be allowed their expenses for themselves and Clerk at the same rate as provided in this Act for the expenses of Commissioners and their Clerks to be recovered in the same manner.

XIX. And be it further enacted by the authority aforesaid, that in all contestations of the nature aforesaid it shall be lawful for the House of Assembly to appoint three Commissioners (of whom it shall name one to be the Chairman) who shall examine the witnesses of the parties, and fix the day and place on and at which the said Commissioners shall commence the Inquest: and the said Chairman after having taken the following oath, before any one Justice of the Peace, (who is hereby authorized to administer the same) may administer it to the two other Commissioners; "I swear, that without favor, affection, partiality or ill will, and to the best of my skill and capacity, I will truly and faithfully perform the duty of Commissioner of the House of Assembly, with regard to the reference made to me and my fellow Commissioners, on the Petition of and according to the provisions of the Act passed in the fourth year of the Reign of His Majesty, William the Fourth, intituled, 'An Act to regulate the proceedings upon contested Elections of Members to serve in the House of Assembly, and to repeal certain Acts therein mentioned' and the said three Commissioners shall sit at least six hours a day, and every day (Sundays and Holidays excepted, and except in case of the death, sickness or unavoidable absence of any one of them, or when for the advantage of and with the consent of the parties, they shall adjourn to another place than that at first fixed upon) and shall proceed, as well during the Session of the Parliament in which they shall have been appointed, as during the recess, until they shall have completed the Inquest, and made their report; and they may appoint a Clerk to record their proceedings in writing, in due form (and such Clerk shall be sworn before them, to perform his duties faithfully and impartially); and shall proceed to examine on oath (which oath they are empowered to administer) each and every witness mentioned in the lists aforesaid, which shall be transmitted to them for that purpose by the Clerk of the House with the order of reference and other necessary papers; and the Clerk of the said Commissioners shall make faithful copies of the record of all their proceedings, to be delivered to the parties, if they shall demand the same, at the rate of sixpence currency, for every hundred words: and within ten days after the inquest shall have been closed, the said Commissioners or two of them, shall cause a true and examined copy of the record of all their proceedings to be made, and shall certify the same under their hands and seals, and shall transmit it to the Speaker of the House of Assembly, who shall lay it before the House.

XX. And be it further enacted by the authority aforesaid, that the House of Assembly shall appoint a day for taking the whole in to consideration, and after having heard the parties or their Advocates at the Bar (if the parties require it) shall proceed to hear and finally determine the contestation in the manner prescribed in the thirteenth and fifteenth Sections of this Act.

XXI. And be it further enacted by the authority aforesaid, that it shall be the duty of the Chairman or two of the Commissioners to issue an order, addressed to such person or persons as shall be therein named, to summon the witnesses mentioned in the said lists, to attend at a place, and hour and on a day named in such order; and each witness who shall refuse or neglect to appear, after the party summoning him shall have offered him (if he requires it) the amount of his expenses for a reasonable number of days, at the rate of two shillings and sixpence currency, a day, and sixpence currency, for every league he must travel in going, and a like sum for every league he must travel in returning, or who after appearing shall refuse to be sworn, or to give evidence (except he can show lawful cause for such refusal, to the satisfaction of the Commissioners) as well as every person who shall be guilty of contempt of, or unbecoming conduct towards the said Commissioners while engaged in the performance of their duties, shall incur a penalty not exceeding twenty pounds currency, to be recovered in any Court of competent jurisdiction; and one moiety of such penalty, with costs of suit, shall belong to the person who shall sue for the same, and the other moiety shall be paid into the hands of His Majesty's Receiver General, for the public uses of the Province.

XXII. And be it further enacted by the authority aforesaid, that each of the said Commissioners shall be entitled to demand and receive from the persons who shall have entered into the bond required by this Act, or from any one of them, the sum of fifteen shillings currency, and their Clerk the sum of ten shillings currency, for each day they shall be employed in executing the said Commission (Sundays and Holidays included when they shall sit at a place other than that in which they have their respective domiciles) and the sum of ten shillings currency, for each of them for every day employed in travelling from one place to another, for the purpose of executing the said Commission, which said sums shall be paid to them on a certificate under the hand and seal of the Speaker shewing the sum due to each of them, saving to the House the right of finally deciding by whom the said expenses shall be paid.

XXIII. And be it further enacted by the authority aforesaid, that every person who shall be guilty of wilful perjury in giving any evidence after being sworn under the authority of this Act, shall be liable to the pains and penalties attached by the laws in force in this country to the crime of wilful and corrupt perjury.

XXIV. And be it further enacted by the authority aforesaid, that no question concerning any Election shall be agitated, discussed or decided, unless the number of Members required by the Rules of the House to form a Quorum be then present, and that no Member who shall not have been present at the hearing of the witnesses and of the parties at the Bar, or at the reading of the Record of the Inquest, shall vote on the decision of the question.

XXV. And be it further enacted by the authority aforesaid, that the certificate of the Speaker, shewing the amount of the costs to be paid, in any contestation relative to any Election, and a like certificate shewing the sums due to the Commissioners and to the Clerk,

shall be sufficient evidence of the debt to support any action which may be brought for the recovery thereof, in any competent Court.

XXVI. And be it further enacted by the authority aforesaid, that each Commissioner who shall have accepted the office, shall be bound to perform the duties thereof, under a penalty of twenty-five pounds currency; and if he shall wilfully fail to do his duty, or shall act with partiality towards any one of the parties, he shall thereby become liable to a penalty not exceeding one hundred pounds currency, and one moiety of the said fines, with the costs of suit, shall belong to the person who shall sue for the same, before any competent Court, without prejudice to any damages which the party injured may demand and obtain, and without prejudice to any other punishment to which the House of Assembly shall condemn him for contempt, and for abusing the powers delegated to him.

XXVII. And whereas doubts have arisen as to the manner in which certain parts of an Act passed in the fifth year of the Reign of His late Majesty, Chapter thirty-three, intituled, "An Act to repeal certain Acts therein mentioned, and to consolidate the Laws relating to the Election of Members to serve in the Assembly of this Province, and to the duty of Returning Officers and for other purposes," are to be interpreted as regards the right of certain classes of persons to vote as Electors, for remedy thereof: Be it declared and further enacted by the authority aforesaid, that from and after the passing of this Act, no female shall vote at any Election for any County, City or Borough of this Province, nor shall any one of any number of persons being proprietors in common (par indivis) of any immoveable property, vote at any such Election as being qualified by his undivided share of such property unless such persons hold such property as Co-heirs, nor unless the share or portion belonging to each of such Co-heirs, out of the annual value arising from such property shall amount to at least forty shillings sterling, if such property be in the country parts, or five pounds sterling, if the same be within any City, Town or Borough in this Province, over and above all rents and dues payable out of or affecting such property as provided by the Act hereinbefore mentioned.

XXVIII. And be it further enacted by the authority aforesaid, that all fines and forfeitures levied under the authority of this Act, except the portion thereof assigned to the prosecutor, shall be paid into the hands of His Majesty's Receiver General for this Province, for the public uses thereof, and shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury, for the time being, in such manner and form as His Majesty, His Heirs and Successors shall direct.

XXIX. And be it further enacted by the authority aforesaid, that from and after the end of the present Parliament, the Act passed in the forty-eighth year of the Reign of George the Third, chapter twenty-one, intituled, "An Act to regulate the Trial of controverted Elections or returns of Members to serve in the House of Assembly of Lower Canada," and another Act passed in the fifty-eighth year of the Reign of George the Third, Chapter five, intituled, "An Act to facilitate the Trial of controverted Elections or returns of Members to serve in the House of Assembly," and another Act passed in the first year of the Reign of George the Fourth, Chapter twenty-one, intituled, "An Act to revive and continue for a limited time two



certain Acts therein mentioned, for regulating and facilitating the Trial of controverted Elections or returns of Members to serve in the House of Assembly,” and another Act passed in the fifth year of the Reign of George the Fourth, Chapter thirty-two, intituled “An Act to continue for a limited time and to amend certain Acts therein mentioned, relating to the Trial of controverted Elections of Members to serve in the Assembly of this Province,” and another Act passed in the ninth year of the Reign of George the Fourth, Chapter sixty-one, intituled, “An Act to amend and further to continue for a limited time, an Act passed in the fifth year of His Majesty’s Reign, intituled, ‘An Act to continue for a limited time, and amend certain Acts therein mentioned, relating to the Trial of controverted Elections of Members to serve in the Assembly of this Province,’” and all and each of the clauses and provisions therein contained shall cease to be in force as if the said Acts had never been passed.

XXX. And be it further enacted by the authority aforesaid, that this Act shall be in force until the first day of May, one thousand eight hundred and forty, and thence until the end of the next Session of the Provincial Parliament and no longer.

SCHEDULE.  
Form of Bond.

Be it known, that on the    day of  
in the year of our Lord one thousand eight hundred and personally appeared before me who separately acknowledged themselves to owe as follows, that is to say, A. B. the sum: of one hundred pounds currency, and C. D. and E. F. each the sum of fifty pounds currency, to be levied of their goods and chattels, moveable, and of their lands and possessions respectively, for the use of our Lord the King, or of the person to whom the same shall appertain, in consequence of a Petition to be presented to the House of Assembly against the legality of a certain Election of a (or of two) 'Member (or Members) to serve in the Assembly, held for and in the (or against the Return, as the case may be) if the conditions hereinafter mentioned be not performed: Now the condition of this Bond is such, that if the persons so petitioning shall duly appear before the said House of Assembly, at such time as shall be appointed by it for taking their Petition into consideration, and shall prosecute the contestation to the final decision thereof, or until it shall be otherwise determined; with the permission of the said House, and shall pay such costs as shall be adjudged by the said House, to the person or persons sustaining damage by reason of such Petition, then this Bond shall be void, otherwise it shall remain in full force and virtue.  
(Signatures.)