

The Provincial Statutes of Lower-Canada, Being the first session of the of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, the eighteenth day of April, 1838. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1838.

1 Victoria – Chapter 22 (Session 1)

An Ordinance to provide for the better defence of this Province, and to regulate the Militia thereof.

Whereas it is expedient to provide by Law, for the co-operation of the effective male population of this Province for its defence in case of War, Invasion, Insurrection, or of the imminent danger thereof, and for the greater security of public order and tranquillity in time of Peace:—Be it therefore Ordained and Enacted by His Excellency the Administrator of the Government of the said Province, authorized to execute the Commission of the Governor thereof, by and with the advice and consent of the Special Council for the affairs of the said Province, constituted and assembled, by virtue of and under the authority of an Act of the Parliament of the United Kingdom of Great Britain and Ireland passed in the first year of the Reign of Her present Majesty, intituled, “An Act to make temporary provision for the Government of Lower Canada;”—And it is hereby Ordained and Enacted by the authority aforesaid, that every able-bodied male inhabitant of this Province, above eighteen years and under sixty years of age, being a British subject, and having resided in the Province more than six months, and not being in Her Majesty's Naval or Military service, or actually serving or enrolled for service in the Volunteer force of this Province, shall be liable to serve as a Militiaman for the defence of the Province, and of the public order and tranquillity thereof, unless he be specially exempt from such service by Law.

II. And it is further Ordained and Enacted by the authority aforesaid, that all Clergymen and Religious Teachers, the Members and Officers of the Legislative Council, of the Assembly, of the Special Council, of the Executive Council of this Province, the Judges, Advocates, Sheriffs, Coroners, Constables, and Officers of the Courts of Justice, the Secretary of the Governor, or person administering the Government, and his assistants, the Secretary of the Province, the Receiver General, the Inspector General of Accounts, the Surveyor General, the Inspector of the Queen's Domain, the Grand Voyers of the several Districts of the Province and their Deputies, the Collectors, Comptrollers, and officers of the Customs, the Post Master General and his Deputies, Officers of Her Majesty's Navy and Army on half-pay, persons actually being in the Volunteer force of this Province, and persons having served as Officers in the Militia, or Volunteer force before the passing of this Act, Physicians and Surgeons, Notaries, Land Surveyors, Ferrymen, duly licensed as such, Millers, Schoolmasters, having above twenty scholars in regular attendance, Stewards of Religious Communities, and all students attending in Seminaries, Colleges, Schools and Academies, and having attended as such students at least six months previous to the time at which they might otherwise be called upon to do Militia duty, shall be exempt from serving as Militiamen.

III. And be it further Ordained and Enacted, by the authority aforesaid, that the Militia of this Province shall be commanded by such officers as the Governor, Lieutenant Governor, or person administering the Government shall appoint; and the persons enrolled therein shall be formed into Companies and Battalions, in the several Cities, Towns, Parishes, Townships, and extra-parochial places, and Counties in which they shall be respectively resident. Provided always, that the said Counties be Counties described in the Act of the Provincial Legislature of this Province, passed in the ninth year of the reign of His late Majesty King George the Fourth, intituled, "An Act to make a new and more convenient subdivision of the Province into Counties, for the purpose of effecting a more equal Representation thereof in the Assembly than heretofore."

IV. And be it further Ordained and Enacted by the authority aforesaid, that the proportion of the number of officers to the number of privates, shall not be greater in the said Militia than in Her Majesty's Army, and every officer in the said Militia shall be resident within the limits of his command.

V. And be it further ordained and Enacted by the authority aforesaid, that every Captain or Officer, commanding a company of Militia, shall, as soon as conveniently may be, fix a time or times and place for enrolling all the Militiamen, who reside within the limits which shall be assigned for his company by the Colonel or Field Officer commanding the Militia of the District or Battalion, of which time or times and place, each captain or officer commanding a company, shall give, or cause to be given, public notice at the door of the Parish Church, or other public places of Divine worship within the Parish, Township, or extra parochial place, on a Sunday immediately after Divine Service in the morning, which time of meeting shall be, if in the County, either on a Sunday or holiday, or if in the Cities or Towns, on a day or days which, in all cases, shall not be less than seven days after that on which the public notice shall be given; and every Militiaman, who, after public notice so given, shall not either present himself in person, and give in his name, age, and place of residence, or cause his name, age, and place of residence to be made known in some certain way to the captain, or other officer of the company, attending at the time and place so fixed, so as that such Militiaman may be enrolled, shall, for such neglect, incur the penalty hereinafter mentioned and provided; and every Militiaman who shall remove out of the limits assigned for the company in which he is or ought to be enrolled, and shall not, within ten days after his arrival at the place of his new residence, or where he shall hire himself, either present himself for enrolment, or cause his name, age, and place of residence, with that from whence he last removed, to be made known, as aforesaid, to the Captain, or in his absence, to the senior officer commanding the company of Militia of such place, so as that he may be enrolled, shall, for such neglect, incur the penalty hereinafter mentioned and provided; and every person in this Province, who shall not, within one month after he shall have attained the age of eighteen years, either present himself for enrolment, or cause his name, age, and place of residence to be made known as aforesaid, so that he may be enrolled in the company of Militia of the limits wherein his place of residence may be, shall, for such neglect incur the penalty hereinafter mentioned and provided; and every man within the age above

described, who shall come to reside in this Province, and shall not, within three months after his arrival therein, either present himself for enrolment, or cause his name, age, or place of residence to be made known as aforesaid, so that he may be enrolled in the company of Militia of the limits wherein his place of residence may be, shall, for such neglect, incur the penalty hereinafter mentioned and provided. Provided always, and it is further Ordained and Enacted by the authority aforesaid, that the neglect of the person, in either of the cases hereinbefore specified, so to present himself for enrolment, or to cause himself to be made known in some certain way, so as to be enrolled, shall not be construed to prevent the captain of the company of Militia of the limits wherein the place of residence of any such person may be, from entering the name, and such captain is hereby required to enter the name of every such person as shall come to his knowledge, upon the roll of his company, and when so entered, every such person shall be subject to perform all and every the like Militia duties, and under the same penalties, as if he had personally presented himself for enrolment; Provided also, that if any difference shall arise betwixt a captain and a militiaman, touching the age of such militiaman, it shall be incumbent on the said militiaman to prove his age.

VI. And be it further Ordained and enacted by the authority aforesaid, that the officers by whom such enrolment shall be made, shall, at the time of making the first enrolment, give sufficient notice to each Militiaman of the time and place appointed by Law for the ensuing muster.

VII. And be it further Ordained and Enacted by the authority aforesaid, that the several companies of the said Militia shall muster annually, on the twenty-ninth day of June, between the hours of eleven o'clock in the forenoon and noon, at or near the church in their respective Parishes, or Townships, or extra parochial places, or, if there is no church, then at some other place within their respective Parishes, Townships, or extra parochial places, of which sufficient notice shall be given; and in the cities of Quebec and Montreal and town of Three Rivers [Trois-Rivières], the said muster shall be held at seven o'clock in the morning, and a true return of the militiamen present at every such muster, shall be made without delay to the Governor or person administering the Government, by the commanding officer of the battalion to which such companies shall respectively belong. Provided always, that whenever the twenty-ninth day of June shall happen on a Sunday, the commanding officer may, if he shall deem it expedient, appoint any day and hour in the ensuing week for such muster, giving sufficient notice thereof to each militiaman before the said twenty-ninth day of June, by the captains or officers commanding companies, in the manner prescribed by the fifth section of this Ordinance.

VIII. And be it further Ordained and Enacted by the authority aforesaid, that a sufficient number of blank forms of returns shall be forwarded by order of the Governor, Lieutenant Governor, or person administering the Government, to the commanding officers of battalions, to enable them to make their returns, for the several Parishes, Townships, or extra parochial places, included within the limits in which the militiamen composing their respective battalions are resident.

IX. And be it further Ordained and Enacted by the authority aforesaid, that in case of war with the United States of America, or of invasion, insurrection, or imminent danger thereof, it shall be lawful for the Governor, or person administering the Government, to order out from amongst the officers of the several companies of the said militia throughout the Province, and from amongst the unmarried militiamen under thirty years of age a number not exceeding one-fifth of the whole, who shall be drawn by ballot, or commanded at the discretion of the officer commanding the battalion, for the purpose of being trained, and shall serve during a time not exceeding six calendar months, for the defence of the Province, and for the maintenance of good order and security thereof.

X. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that every man so called out or commanded to be trained, and to serve as aforesaid, may in his stead provide a good and sufficient substitute, being a militiaman in the same battalion with himself, and subject to the approbation of the commanding officer of the detachment, in which he shall have been called out to serve; and if such substitute shall be approved, and shall agree to perform the duty to which the militiaman presenting him, would otherwise be subject, the said militiaman shall be discharged therefrom, and the said substitute shall serve in his stead, in the same manner, and under the same penalties as if he had himself been balloted for, or commanded for such service.

XI. And be it further Ordained and Enacted by the authority aforesaid, that the militia so ordered out, shall be under the same rules and regulations as at present in force, and shall be paid and provided for, in every respect as Her Majesty's Army, but shall not be liable to corporal punishment; and all Courts Martial held for the trial of any person serving in the militia so ordered out, shall be composed exclusively of militia officers, and shall be subject to the same rules and forms of proceeding as Courts Martial in Her Majesty's Army.

XII. And be it further Ordained and Enacted by the authority aforesaid, that all the officers of Her Majesty's Navy or Army, serving with the militia so ordered out, shall be held to be senior in rank to the officers of militia of their respective grades.

XIII. And be it further Ordained and Enacted by the authority aforesaid, that all or any part of the militia in any Parish, Township, extra parochial place or county, may be ordered out by the civil authority in execution of the laws, on an order in writing addressed to the officer in command in such Parish, Township, extra parochial place or county, and that the militia in any Parish, Township, extra parochial place or county may be ordered out by the Governor or person administering the Government, in case the county in which the militia so ordered out, are resident, or an adjoining county, being actually invaded, or in a state of insurrection, and the militia so ordered out, shall serve until such invasion shall be repelled, or such insurrection suppressed, and the militia so ordered out by the civil authority, or by the Governor or person administering the Government, in case of invasion or insurrection, shall be subject to the same rules and regulations as if ordered out under the ninth section of this Ordinance.

XIV. And be it further Ordained and Enacted by the authority aforesaid, that all persons holding Ferries or Bridges that may be on the public high roads, shall be held to carry all militiamen or officers of militia, as also their baggage, effects, munitions and implements of war, in the execution of their duty as such, and also on their immediate return from the execution thereof, with any person or persons under their charge or in their custody, and also the necessary conveyance over every such Ferry, and to permit them to pass over every such bridge, free of all charges of ferriage or toll whatsoever.

XV. And be it further Ordained and Enacted by the authority aforesaid, that every militiaman not being at the time ordered out, or embodied for actual service, shall for each and every act of disobedience to the provisions ordained in the fifth section of this Ordinance, or to other the provisions of this Ordinance, or to the lawful commands of his officer or officers, acting in the execution of their duty under the same, on conviction thereof, before any two Justices of the Peace in Special Sessions convened, and publicly held for that purpose, incur such penalty not exceeding twenty shillings, nor less than five shillings currency, as in the discretion of the said Justices shall be proportioned to the nature of the offence, with costs against such militiaman, and if such fine be not paid in eight days after conviction, the said militiaman shall be, by such Justices, committed to the common Gaol, until such fine shall have been paid, and such Justices shall without delay transmit the amount of the penalty when paid, to the officer commanding the battalion to which such militiaman shall belong, and such officer shall enter the same on his return to the Governor or person administering the Government.

XVI. And be it further Ordained and Enacted by the authority aforesaid, that all penalties so received by any officer commanding a battalion, shall be by him applied to such militia purposes, and shall be accounted for in such manner, as the Governor, or person administering the Government, shall direct, and an account of all sums so received, and of the manner in which the same shall have been applied, shall, when required, be submitted to the Governor, Lieutenant Governor, or person administering the Government of the Province.

XVII. And be it further Ordained and Enacted by the authority aforesaid, that an Ordinance of the Governor and Legislative Council of the Province of Quebec, made and passed in the twenty-seventh year of the Reign of His late Majesty King George the Third, intituled, "An Ordinance for regulating the Militia of the Province of Quebec, and rendering it of more general utility towards the preservation and security thereof and another Ordinance of the said Governor and Legislative Council, made and passed in the twenty-ninth year of the Reign of the said late King George the Third, intituled, 'An Act or Ordinance for better regulating the Militia of this Province, and rendering it of more general utility towards the preservation and security thereof,'" be repealed, and the same are hereby repealed for and during the continuance of this Ordinance.

XVIII. And be it further Ordained and Enacted by the authority aforesaid, that the due application of all moneys received under the authority of this Ordinance, shall be accounted for to Her Majesty, her heirs and successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, her heirs and successors, shall please to direct.

XIX. And be it further Ordained and Enacted by the authority aforesaid, that this Ordinance shall remain in force until the first day of May, one thousand eight hundred and forty, and no longer.

J. COLBORNE.

Ordained and Enacted by the authority aforesaid, and Passed in Special Council, under the Great Seal of the Province, at the Government House, in the City of Montreal, the fifth day of May, in the first year of the Reign of Our Sovereign Lady Victoria, by the Grace of God, Queen, Defender of the Faith, and so forth, in the year of our Lord, one thousand eight hundred and thirty-eight.

By His Excellency's Command,
W. B. LINDSAY,
Clerk Special Council.