

The Provincial Statutes of Lower-Canada, Being the fourth session of the of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, fourteenth day of February, 1839. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1839.

2 Victoria – Chapter 14 (Session 4)

An Ordinance to amend a certain Act therein mentioned, and to provide for the better regulation of Taverns and Tavern-Keepers.

Whereas it is necessary to amend a certain Act passed in the thirty-fifth year of the Reign of King George the Third, chapter eight, in so far as the said Act relates to persons obtaining Licences to keep Houses of Public Entertainment in this Province, and to the mode of obtaining such Licences:—Be it therefore Ordained and Enacted by His Excellency the Governor of the Province of Lower Canada, 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 of the same, that from and after the passing of this Ordinance, no licence shall be granted to any person or persons, for keeping any House or Place of Public Entertainment within any country Parish or Township, unless the person or persons applying for the same, shall produce a Certificate to the effect hereinafter required, from the senior Justice of the Peace, the Officer of Militia highest in grade, and the Church Warden in office in such Parish or Township; or where there is not a Justice of the Peace residing or present within such Parish or Township, from the two Officers of Militia the highest in grade, and the Church Warden in office; or where there is no Church Warden residing or present in such Parish or Township, from the senior Justice of the Peace and the two officers of Militia the highest in grade, or where there is no Church Warden, nor Justice of the Peace, from the three Officers of Militia highest in grade, residing within the Parish or Township for which such licence is applied for; or if there be not, in such parish or township, three persons, who can, under the foregoing provisions of this Ordinance, sign such certificate, then from such person or persons resident therein, as shall hold any of the offices or grades as aforesaid; nor shall any person receive such licence, unless the certificate of his being a fit and proper person to obtain the same, shall also state that he has a house, stable and accommodation for travellers, according to the requirements of this Ordinance, and that he has entered into a Bond to Her Majesty, before one or more Justices of the Peace, jointly and severally, with two sureties to the satisfaction of the persons granting such certificate, for the payment of all penalties, which he may be condemned to pay for any offence against the provisions of this Ordinance, or of the Act hereinbefore cited, during the time for which such licence shall be obtained: Provided always, that the person or persons demanding such certificate, shall not be at the same time traders in, or retailers of spirits, brandy, wine, or any other kind of spirituous liquors.

II. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that nothing in the foregoing provisions of this Ordinance, shall extend to prevent the Justices of the Peace residing in the Cities of Quebec or Montreal, or the Town of Three-Rivers [Trois-Rivières], or the Suburbs or Banlieue thereof, respectively, from granting certificates to any person or persons, for keeping any house or other place of Public Entertainment within the said Cities, Town, Suburbs, or Banlieue, respectively, in the manner and form which were in use and practised before the passing of this Ordinance: Provided also, that the said certificate shall be granted only in a Special Session of the Peace, to be held on some day between the twentieth and the thirtieth days of January, inclusive, in each and every year, of which public notice shall be given by the Clerks of the Peace, fifteen days at least before such Session, and which said Special Session may be adjourned by order of a majority of the Magistrates then and there present, from day to day, during the said period, or any part thereof, and that the Magistrates in said Special Session assembled, shall determine upon the number of certificates to be granted, and the persons in whose favour the said certificates shall be issued: Provided also, that the said Justices of the Peace shall, and are hereby authorised to hold a Special Session of the Peace, for the said Cities, Town, Suburb, and Banlieue, respectively, on some day between the first and the tenth days of April, inclusive, now next ensuing, and which said Session may be adjourned from day to day, during the said period, or any part thereof, as hereinbefore provided, and to grant certificates at the said Session, which said certificates shall be and continue in force until the twentieth day of May, in the year one thousand eight hundred and forty; and it is hereby expressly Ordained and Enacted, that no certificates shall be granted to any person or persons, for keeping any House or other Place of Public Entertainment, within the said Cities, Town, Suburbs, or Banlieues, other than at the periods, and in the manner hereinbefore provided: Provided also, that nothing herein contained shall extend to render invalid any certificate or licence to keep a House of Public Entertainment, granted before the passing of this Ordinance, during the time for which such certificate or licence shall have been granted: Provided also, that nothing herein contained shall prevent the Governor, Lieutenant Governor, or person, administering the Government of the Province, from granting any such licence, if it shall appear to his satisfaction that there is, or are, no person or persons empowered to grant certificates for licences in the Parish, Township, or place of the applicant: Provided further, that if any certificate of qualification to keep a House of Public Entertainment, beyond the limits of the said Cities, Town, Suburbs and Banlieues, respectively, shall have been delivered to any person by any Clerk of the Peace, and any fee paid, no fee shall be paid by such person for a certificate under the provisions of this Ordinance, (if such person shall become entitled to receive one,) in place of the certificate which shall have become invalid, but if such person shall not become so entitled, the Clerk of the Peace shall not be bound to return the fee so paid to him, nor shall be in any case be bound to return the fee paid on any certificate, because no licence shall have been granted in consequence thereof.

III. And be it further Ordained and Enacted by the authority aforesaid, that every person holding a Licence to keep a House of Public Entertainment, who shall, at any hour, refuse to receive any traveller, not residing within the Parish or Town, ship in which such house is

situate, or who, at any time, shall not have in such house two good beds, at least, for the accommodation of travellers, in addition to those used by the family, or shall not have, in a stable attached to such house, convenient stalls for at least four horses, with a sufficient quantity of hay and oats, may be prosecuted in the same manner and under the same provisions, and shall, on conviction, be subject to the same penalties and punishment as are by law provided with respect to persons who retail Spirituous Liquors without a Licence for that purpose, and such penalties shall be levied, applied and accounted for, and such punishment awarded in the manner by law provided, with respect to those annexed to the offence last named; and if sufficient goods and chattels, belonging to the person offending, shall not be found, the said penalties shall be levied of the goods and chattels of the persons who shall have become sureties for the payment thereof.

IV. And be it further Ordained and Enacted by the authority aforesaid, that from and after the passing of this Ordinance, no person shall receive a Licence to keep a House of Public Entertainment, and to retail Spirituous Liquors therein unless the certificate of his or her being a fit and proper person to obtain such Licence, there shall be annexed an affidavit, in the form of the Schedule A., duly made and sworn to by .him or her, before some one of Her Majesty's Justices of the Peace (who is hereby authorised and empowered to administer the necessary oath;) and any person who shall, in making such affidavit, wilfully swear falsely, shall, on being convicted thereof, in due form of law, be liable to the pains and penalties of wilful and corrupt perjury.

V. And be it further Ordained and Enacted by the authority aforesaid, that the senior Justice of the Peace, or (where there shall be no Justice of the Peace) the Officer of Militia highest in grade in each Parish, or Township, shall, on or before the fifteenth day of May in each and every year after the passing of this Ordinance, transmit to the Clerks of the Peace, within their respective Districts, a list of the persons to whom certificates for licences have been granted, in their respective Parishes or Townships, and such certificate shall be in the form of the Schedule B., and shall not be granted after the fifteenth day of May, for the current year.

VI. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that no certificate granted either under the provisions of this Ordinance, or those of the Act hereinbefore cited and amended, shall give the person or persons obtaining it, any right to obtain a licence to keep a House of Public Entertainment, or to retail Spirituous Liquors, but that such licences shall be granted to such persons only, among those who shall have obtained such certificates, to whom it shall be deemed meet, by the Governor, Lieutenant Governor, or person administering the Government of the said Province, to grant the same; and any such licence may, at any time be annulled and cancelled by a letter from any officer, duly authorised to that effect by the Governor, Lieutenant Governor, or person administering the Government, and delivered before two witnesses to the person holding such licence, who shall thereafter be held, in all respects, and to all purposes of law, to have no licence to keep a House of Public Entertainment, or to retail Spirituous Liquors.

VII. And be it further Ordained and Enacted by the authority aforesaid, that no licence shall be granted for keeping any such House or other place of Public Entertainment, until the person or persons applying for the same shall have entered into a Bond to Her Majesty, before one or more Justices of the Peace, in the sum of forty pounds currency, with two sureties in the sum of twenty pounds currency, each, to do, perform and observe the conditions and requirements of this Ordinance and of the Act hereinbefore cited and amended; which Bond shall, within one month from the time of the taking of the same, be transmitted by the said Justice, or Justices, to the Clerks of the Peace, for their respective Districts.

VIII. And be it further Ordained and Enacted by the authority aforesaid, that for every Certificate, Bail Bond, or other entry whatsoever, or for executing any of the duties prescribed by this Ordinance, the Clerks of the Peace shall only be entitled to the sum allowed them for similar services, by a certain Act passed in the sixth year of the Reign of His late Majesty William the Fourth, chapter fourteen, which Act expired on the first day of May, one thousand eight hundred and thirty-eight, that is to say, to the sum of one shilling and three pence currency, any usage, tariff, or law to the contrary notwithstanding.

IX. And be it further Ordained and Enacted by the authority aforesaid, that all Licences to be granted under the authority of the Act herein first above cited and amended, and of this Ordinance, by the Governor, Lieutenant Governor, or person administering the Government of this Province, shall be so granted as to expire between the first and twentieth days of the month of May next, after the date thereof and for no longer time, any law, usage, or custom to the contrary notwithstanding.

X. And be it further Ordained and Enacted by the authority aforesaid, that it shall not be lawful for any person or persons, who shall have obtained a licence or licences in the manner hereinbefore mentioned, to proceed to sell or retail Spirituous Liquors, or to keep a House or Houses of Public Entertainment, until he, she, or they shall have exhibited such Licence or Licences to the person or to one of the persons hereby authorised to grant Certificates for Licences, and such person shall, on the first Sunday thereafter, cause such Licence to be publicly read at the Church door of the Parish, Seigniory, or Township, for which the same shall have been granted, immediately after Divine Service in the forenoon, or where there shall be no Church, then at the place of most public resort in the Seigniory or Township, for which such Licence shall be granted, and shall affix or cause to be affixed on the door of such Church, or where there is no Church, at the place of most public resort; a notification that the person to whom such Licence hath been granted, hath been, and is duly qualified and authorised to sell Spirituous Liquors, or to keep a House of Public Entertainment in such Parish or place, and every such person holding such Licence, who shall sell Spirituous Liquors, or keep a House of Public Entertainment, before he, or she, shall have exhibited such Licence in the manner hereinbefore provided, shall be liable to the penalty or penalties imposed by law on persons selling Spirituous Liquors without Licence.

XI. And be it further Ordained and Enacted by the authority aforesaid, that every person who shall obtain a Licence to keep a House of Public Entertainment, and to retail Spirituous Liquors therein, shall place upon his house, in an exposed situation, a notice, in legible characters, showing that such person is so licenced as a Tavern-Keeper, and every person who shall refuse or neglect so to do, shall incur the penalty imposed for similar offences by the Act passed in the sixth year of the Reign of His late Majesty William the Fourth, hereinbefore cited, that is to say, of not less than twenty shillings, nor more than forty shillings currency, and shall be liable for a second offence to the forfeiture of his Licence, which he may in such case be condemned to forfeit, on conviction of such offence before any two Justices of the Peace.

XII. And be it further Ordained and Enacted by the authority aforesaid, that whenever any person holding a Licence to keep a House of Public Entertainment, and to retail Spirituous Liquors, shall be convicted of having kept a disorderly house, or convicted before two Justices of the Peace, of knowingly vending Spirituous Liquors during Divine Service on Sundays or Holidays (except for the use of travellers, not being persons usually resident in that, or any adjoining Parish, Township or extra Parochial place) or of suffering any seamen, soldier, apprentice, servant, or minor, to remain tippling in his, or her house after seven o'clock in the evening in winter, or after nine o'clock in the evening in summer, or of having committed any felony; the Court, or such Justice of the Court of King's Bench, or the Provincial Judge, or the Justices of the Peace, before whom such person shall have been convicted, shall, if he or they shall see fit, adjudge and order that the Licence thus held by any such person so convicted, shall be forfeited, and that he or she shall no longer keep a House of Public Entertainment, or retail Spirituous Liquors in virtue thereof, and that he or she shall be incapable of having or holding any Licence for such purpose thereafter.

XIII. And be it further Ordained and Enacted by the authority aforesaid, that all and every the provisions contained in this Ordinance, shall extend to and have force and effect in all and every Township and Seignior, and all and every extra parochial part or parts of Townships and Seigniories in this Province.

XIV. And be it further Ordained and Enacted by the authority aforesaid, that any person or persons (except any persons who may have obtained Licences, to keep Houses or other Places of Public Entertainment) who shall sell or retail ale or other malt liquors, or cider, or spruce beer, ginger beer or other fermented liquors, to be drunk in their house, out-house, yard, garden, orchard or other place, shall be considered and deemed to be liable to the penalty or penalties which are by law imposed on persons keeping houses or other places of Public Entertainment without a Licence; and such penalty or penalties may be sued for and recovered, and shall be distributed, applied and accounted for, in the manner and form provided by law with regard to penalties imposed on persons selling Spirituous Liquors without a Licence, as in and by the said Act, passed in the sixth year of His late Majesty's Reign, it was provided and enacted.

XV. And be it further Ordained and Enacted by the authority aforesaid, that no person shall in the country Parishes of this Province, open any house or put any sign for the sale of beer, or any sort of fermented liquor, or cakes, or shall otherwise publicly sell or dispose of any such articles, at any stand or place in any such Parish without first obtaining a Licence signed by the Church Warden in office, or by the nearest Justice of the Peace (which Licence must be renewed every year) and every person obtaining such Licence shall exhibit the same, whenever he shall be thereunto required by any Peace Officer, or Officer of Militia, and every person who shall in any way offend against the provisions of this section or any of them, shall for every such offence, and being duly convicted thereof, on the oath of one credible witness other than the informer, before any Justice of the Peace, incur the penalty imposed for such offence by the said Act, passed in the sixth year His late Majesty's Reign, that is to say, not exceeding ten pounds currency, whereof one moiety shall belong to Her Majesty, and shall be paid into the hands of the Receiver General, and the other moiety shall belong to the informer, and the Justice of the Peace before whom such conviction shall take place, shall, (and he is hereby authorised) if such penalty be not forthwith paid, to commit the offender to the Common Gaol of the District, for a period not exceeding thirty days, or until such penalty is paid.

XVI. And be it further Ordained and Enacted by the authority aforesaid, that it shall be the duty of each and every Serjeant of Militia, in the country parts of this Province, to prosecute each and every person whom he shall have reasonable cause to believe to have committed any offence whatever for which a penalty is imposed by this Ordinance, within the Parish, Seigniorship or Township, in which such Serjeant shall reside, and for each case in which it shall be proved by the oath of any one credible witness, that any such Serjeant has neglected so to prosecute for any such offence within fifteen days after sufficient information had been laid before him, to give him reasonable cause to believe that such offence had been committed, or after he had himself such personal knowledge as would amount to such reasonable cause, he shall, for such neglect incur a penalty not exceeding forty shillings currency; to be sued for, recovered, and levied in the manner provided, with regard to the penalties imposed by this Ordinance; Provided always that any Serjeant of Militia who shall under the requirements of this Ordinance, prosecute any offender, shall, if the offender be convicted, recover his necessary costs and disbursements actually incurred about such prosecution, but shall have no part of the penalty imposed on the offender, which penalty shall in such case, belong exclusively to Her Majesty, for public uses of this Province.

XVII. And be it further Ordained and Enacted by the authority aforesaid, that upon complaint before any two Justices of the Peace, residing within the Parish, Seigniorship, or Township, of any offence against this Ordinance, such Justices may issue their summons under their hand and seal enjoining the party complained of to appear before them, and answer such complaint, and upon due proof of such offence, by the oath of any credible witness other than the informer, such Justices shall adjudge that the offender has forfeited a penalty equal in amount to that imposed on such offenders by the Act passed in the sixth year of his late Majesty's Reign, and hereinbefore cited, that is to say, a penalty not exceeding ten pounds, currency, one moiety thereof to Her Majesty, and the other to the

informer, with costs, and may levy such penalty and costs by warrant of distress to seize and sell the offender's goods and chattels, in satisfaction of the said judgment, and for want of sufficient distress, may issue their warrant to cause the offender to be apprehended and conveyed to the Common Gaol of the District, there to remain in safe custody until the said penalty and costs shall have been paid; Provided always, that no person shall be detained in such custody longer than three months by virtue of any such warrant.

XVIII. And be it further Ordained and Enacted by the authority aforesaid, that no brewer of ale, beer, or other malt liquor, nor any distiller or vendor of spirits, brandy, or other spirituous liquors, shall act as a Justice of the Peace, or Officer of Militia, or Church Warden, under this Ordinance, and any order, judgment, or other thing whatsoever, given or made by such person, as a Justice of the Peace, or Officer of Militia or Church Warden, in or concerning any matter relative to this Ordinance, shall be void and of no effect; and any person acting as a Justice of the Peace, or Officer of Militia, or Church Warden in contravention of this Ordinance, shall, for each such offence incur the penalty imposed for similar offences by the Act herein last above cited, that is to say, a penalty of ten pounds, currency, recoverable with costs, by Civil action in any Court of competent jurisdiction, and and one moiety of such penalty shall belong to the Queen, and the other moiety to the person suing for the same.

XIX. And be it further Ordained and Enacted by the authority aforesaid, that every person keeping a House of Public Entertainment, who shall be convicted of any offence against this Ordinance, shall be thereby deprived of his Licence, which shall by such conviction alone, be cancelled and annulled, and such person shall be incapable of holding any Licence for a like purpose, during the continuance of this Ordinance.

XX. And be it further Ordained and Enacted by the authority aforesaid, that every person to whom shall be entrusted the expenditure of any portion of the public monies, under the authority of this Ordinance, shall make up detailed accounts of such expenditure, shewing the sum advanced to the accountant, the sum actually expended, the balance, if any, remaining in his hands, and that every such account shall be supported by vouchers, therein distinctly referred to by by numbers corresponding to the items of such account, which shall be made up and closed on the tenth day of April, and the tenth day of October, in each year, during which such expenditure shall be made, and shall be attested before a Justice of the Court of King's Bench, or a Justice of the Peace, and shall be transmitted to the officer whose duty it shall be to receive such accounts, within fifteen days next after the expiration of the said periods respectively.

XXI. And be it further Ordained and Enacted by the authority aforesaid, that the due application of the monies expended under the authority of this Ordinance, and of the fines and penalties received under the authority thereof, 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 direct.

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

XXII. And be it further Ordained and Enacted by the authority aforesaid, that an Ordinance of this Province, made and passed in the first year of the Reign of Her Majesty, intituled, "An Ordinance to declare and ascertain the period when the Laws and Ordinances made and passed by the Governor, or person authorised to execute the Commission of Governor, and Special Council of this Province, shall take effect," be and the same is hereby repealed as to this Ordinance only, and that this present Ordinance shall commence and have effect within the said Province, so soon as the Governor or person authorised to execute the Commission of Governor of the said Province, shall have assented to and signed this present Ordinance.

Schedule A.

Province of Lower Canada, }
District of }

I, _____, of the Parish (or place) of _____ in the County of _____ in the District of _____, being duly sworn, do depose and say, that I am duly qualified, according to the Laws of this Province, to obtain a Licence to keep a House of Public Entertainment, and to retail Spiritous Liquors therein.
So help me God.

Sworn before me at _____, in the District of _____, this day of _____, one thousand eight hundred and _____

J.P.

Province of Lower-Canada, }
District of }

We, (or I,) the undersigned, (state the quality) of (place) in the County of _____, in the District of _____, do hereby certify that _____, of the same place, is a fit and proper person to obtain a Licence to keep a House of Public Entertainment, and to retail Spiritous Liquors in the place aforesaid, and has given the Bond required by Law from persons applying for such Licence, and further that we have visited and know the House and premises of the said _____ and that he has in and on the same the bedding stabling and accommodation for travellers required by Law.

Dated at aforesaid, this day of thousand eight
hundred and

(Signature or Signatures.)

J. COLBORNE.

Ordained and Enacted by the authority aforesaid, and duly passed in Special Council, at the Government House in the City of Montreal, the Eighth day of March, in the second year of the Reign of Our Sovereign Lady Victoria, by the Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the year of Our Lord, one thousand eight hundred and thirty-nine.

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