

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 29 (Session 4)

An Ordinance concerning the erection of Parishes, and the building of Churches, Parsonage Houses and Church Yards.

Whereas the provisions of the Act passed in the first year of the Reign of His late Majesty William the Fourth, chapter fifty-one, intituled, "An Act for ascertaining, establishing and confirming in a legal and regular manner, and for civil purposes, the Parochial subdivisions of various parts of this Province;" and those of the Act or Ordinance passed in the thirty-first year of the Reign of His late Majesty, George the Third, chapter six, intituled, "An Act or Ordinance concerning the building and repairing of Churches, Parsonage Houses and Church Yards," are insufficient, and that for the quiet and happiness of Her Majesty's Roman Catholic subjects in this Province, it has become necessary to make permanent and more efficient provision in this behalf:—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 it shall be lawful for the Governor, Lieutenant Governor, or person administering the Government, by a Commission under the Great Seal of the Province, in Her Majesty's name, to commission, name and appoint in each of the Districts of this Province, five persons duly qualified and resident therein, to be Commissioners for the purposes of this Ordinance, and to remove them and appoint others in their stead; and the Commissioners so appointed in each District, may together, or any three, at least, of them, may exercise the authority jurisdiction and powers which are vested in them by this Ordinance, until the revocation of their commission, which shall remain in force until such revocation, although it may not have been renewed by any successor of the Governor, Lieutenant Governor, or person administering the Government, who shall have issued it.

II. And be it further Ordained and Enacted by the authority aforesaid, that whenever it shall be required to erect any new Parish, to dismember or subdivide any Parish, or unite two or more Parishes, or to alter or modify the bounds, limits or division lines of any Parish already established and erected according to law; or when in any Parish or Mission, it shall be required to construct and erect a Parish Church or Chapel, or Chapel of Ease, or a Sacristy, or other appurtenance of any such Church or Chapel, or a Parsonage House and the appurtenances thereof, or a Church Yard, or to alter or repair the same, or any of them; in any of the said cases, on the petition of a majority of the inhabitants, (being freeholders,)

interested in any creation, subdivision, dismemberment or union of any Parishes, or in any alteration or modification of the bounds, limits or division lines of any Parish as aforesaid, or interested in the construction or erection, or in any alteration or repairs of any Church, Parsonage House or Church Yard as aforesaid, such petition being presented to the Roman Catholic Bishop of the respective Dioceses of Quebec or Montreal, wherein such creation, dismemberment, subdivision or union of Parishes is to be made, or such Church, Sacristy, Parsonage House, or Church Yard and appurtenances; are to be erected or repaired; or in case of the absence of the Bishop or the vacancy, of the Episcopal See, then such petition being presented to the administrator of the said Diocese; the said ecclesiastical authorities, or such other person or persons as they may appoint and authorize for the purposes aforesaid, shall proceed according to the ecclesiastical law, and the practice of the said Diocese, to the final decree, for the canonical erection of any Parish, or the division or union of any Parishes, or to the order and decree which shall finally determine the location and construction of any new Parish Church or Chapel, or Chapel of Ease, or Sacristy, or of any Parsonage House or Church Yard, and the principal dimensions thereof, or any alteration or repairs to be made in and to the same, as the case may be.

III. And be it further Ordained and Enacted by the authority aforesaid, that in all the proceedings which may take place on the part of the Ecclesiastical authorities, in any of the cases hereinbefore mentioned in the foregoing section, sufficient notice shall be given to the persons interested, at least ten days before, of the day and place when and where the Bishop or his delegate will proceed to the spot for the purposes mentioned in the petition presented as aforesaid; and such notice shall be publicly read and posted up during two consecutive Sundays, immediately after Divine Service in the forenoon, at the door of the Church or Chapel of each of the Parishes or Missions in which the persons interested reside, or if there be no Church or Chapel, then at the most public spot in the place where the persons interested reside, and also at the door of the Church or Chapel of the Parish or Mission whence they are ministered to; but the publications of notices required by this Ordinance may legally be made in that of the two Parishes ministered to by the same Rector, where divine service shall be performed.

IV. And be it further Ordained and Enacted by the authority aforesaid, that whenever there shall have been rendered, as aforesaid, according to the canonical laws and forms followed and in use in the said Diocese, any decree for the erection of a new Parish, or for the subdivision, dismemberment or union of any Parishes, or with regard to any alteration or modification of the bounds, limits and division lines of the Parishes already erected and established according to law, it shall then be lawful for the majority of the inhabitants (being freeholders) of the said Parishes or subdivisions of Parishes, interested in the erection, division lines, boundaries or limits established by such canonical decree, to apply to the said Commissioners for the civil recognition of such canonical decree; and the said Commissioners may then proceed to ascertain the extent, limits, boundaries and division lines of such Parish, subdivision, dismemberment or union of Parishes, and may generally enquire into all things which may have been done or ordered by the Ecclesiastical authorities alone; or with regard to any alterations and modifications made by the said authorities in

the limits, boundaries and division lines of the Parishes or subdivisions of Parishes already established and erected according to Law; of all which the said Commissioners shall make a Report to the Governor, Lieutenant Governor, or person administering the Government for the time being, in which Report they shall set forth the bounds, limits, and division lines of each Parish or subdivision of Parishes, and of the alterations and modifications to be made in Parishes already established and erected according to law, and shall further declare the limits, bounds and division lines which they may think it would be most for the convenience of the inhabitants to assign: Provided always, that in case it should become necessary to make any changes or modifications in the matters regulated and ordered by the canonical decree, it shall be the duty of the said Commissioners to consult the Ecclesiastical authorities hereinabove mentioned, or such persons as shall or may be named by them for that purpose, and to obtain their opinion on the subject, and communicate the same in their Report, together with all remonstrances and representations which any number of inhabitants may have thought it necessary to make to them, in support of their demands or claims.

V. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that nothing contained in this Ordinance, having relation to the dismemberment, division, or subdivision of Parishes already established and erected according to Law, or to the union of two or more Parishes, or to the changing or altering the limits, boundaries, or lines of demarcation of the said Parishes, shall extend to any of the said Parishes which may have contracted debts for the erection of Churches or Parsonage Houses in the said Parishes respectively, until the said debts be paid and satisfied.

VI. And be it further Ordained and Enacted by the authority aforesaid, that on the Proces Verbal of the said Commissioners containing their Report, as aforesaid, it shall be lawful for the Governor, Lieutenant Governor, or person then administering, the Government, to issue a Proclamation under the Great Seal of the Province, erecting such Parish for civil purposes, and for confirming, establishing, and recognizing the limits and boundaries thereof; and such Proclamation shall avail as a legal erection and confirmation for all civil purposes, of the Parish or Parishes, or subdivision of Parishes therein designated, and of those which may have been formed by the dismemberment, union, or subdivision of Parishes erected and recognized by the Arret of His Most Christian Majesty, dated third March, seventeen hundred and twenty-two, or by any other subsequent Letters Patent or Proclamations, any law, custom or usage to the contrary notwithstanding.

VII. And be it further Ordained and Enacted by the authority aforesaid, that whenever the said Commissioners shall be so called upon to proceed to ascertain and determine the limits, bounds, and division lines, for the civil erection of any Parish, or the subdivision, union, or dismemberment of any Parish, the said Commissioners, at the instance of the persons interested (or when there shall arise any difficulties, objections, or oppositions, or when they shall deem it advisable either for the sake of avoiding the necessity of putting two great a number of the inhabitants to the trouble and expense of travelling, or in order that they may themselves better judge of the validity of the pretensions of the parties,) may proceed

in person to the spot after sufficient notice given in the manner hereinabove prescribed by the third section, or it shall be lawful for them to depute one of themselves to visit the spot, with reference to the matters aforesaid, and to report thereon to them.

VIII. And be it further Ordained and Enacted by the authority aforesaid, that the said Commissioners shall in all cases have power and authority to send for and examine, and if necessary, to take copies of all papers, plans, and documents relative to all limits, bounds, and division, lines of Parishes, or subdivisions of Parishes, which may be in the possession of any person or officer whomsoever, civil or ecclesiastical; and if any person having such documents in his possession, shall refuse or neglect to exhibit them to the said Commissioners, he shall be liable to a fine of ten pounds, currency, to be recovered by civil action in any Court of competent jurisdiction.

IX. And be it further Ordained and Enacted by the authority aforesaid, that whenever there shall have been made by the Ecclesiastical authorities, any order or decree for the location, erection, and construction, alteration, removing, or repairing of any Parish Church or Chapel, or Chapel of Ease, or Sacristy, Parsonage House, or Church Yard, as hereinabove mentioned, it shall be lawful for the majority of the inhabitants, (being freeholders,) interested in such construction or repairs, to apply by petition to the said Commissioners, praying that a meeting of the inhabitants of such Parish or Mission may be called for the purpose of proceeding to the election of three or more Trustees to carry the said decree into effect: and the said Commissioners may thereupon authorize such meeting and election, by an order to that effect.

X. And be it further Ordained and Enacted by the authority aforesaid, that in virtue of the said order of the said Commissioners, the Rector or Priest having the spiritual care of, and performing the duties of Rector in the Parish or Mission, shall call by the sound of the bell, and after notice given from the pulpit during two consecutive Sundays, such general meeting of all the inhabitants, (being Freeholders) of the Parish or Mission, and shall preside thereat, and at such meeting Trustees shall be elected by a majority of votes; of all which a record shall be made in due form.

XI. And be it further Ordained and Enacted by the authority aforesaid, that the Trustees so elected, shall be Freeholders resident in the Parish or Mission for which they shall be elected, and shall be bound to accept the said office and to perform the duties thereof, unless they shall be exempted by the Commissioners for reasons and excuses sufficient in law to exempt any person from being appointed to the office of Tutor; and all such excuses shall be offered within eight days from the day of the election; but the fact of his having five or more children, shall not be a valid excuse to exempt any person so elected from serving as Trustee.

XII. And be it further Ordained and Enacted by the authority aforesaid, that in case of the death of any one of the said Trustees, or in case of his serious illness, madness or lunacy, or if any Trustee should cease to reside in the Parish or Mission for which he shall have been

elected, or finally, in case of sufficient excuse and legal exemption, as set forth in the preceding section, such Trustee shall be replaced by another, to be elected in the manner and form hereinabove prescribed for the election and appointment of Trustees.

XIII. And be it further Ordained and Enacted by the authority aforesaid, that the Trustees, or a majority of the Trustees, so elected, shall, before they enter on the duties of their office, present a petition to the said Commissioners, praying that their election may be confirmed, and that they may be permitted and authorized to assess the proprietors of lands and other immoveable property, situate within the Parish or Mission for which they shall have been elected, and to levy the amount of the sum assessed on each individual for his portion of the contribution, as well for the purpose of effecting the construction and repairs which may be in question, as of meeting the expenses which they may occasion, and which shall be deemed necessary by the said Commissioners. And the said Commissioners may hear, examine, and decide upon the allegations and prayer of such petition, and may grant or refuse the said prayer altogether or in part, after having caused the Act of Election to be published in the said Parish or Mission, and given public notice to the inhabitants interested, of the day on which the said Commissioners will take the Act of Election and the petition of the said Trustees into consideration, in order that the opposants, if any there be, may be heard.

XIV. And be it further Ordained and Enacted by the authority aforesaid, that so soon as the said Commissioners shall have made an order approving the election of the said Trustees, and authorizing them to make an assessment, and to levy the sums assessed as aforesaid, the said Trustees shall proceed to draw up an Act of Assessment, which shall comprise a specification of the work to be done, and a detailed estimate of the expenses, known and unforeseen, which shall be deemed necessary by the said Trustees, for the construction or repairs in question, also a correct statement of all the lands and other immoveable property situate in the said Parish or Mission, excepting Church property, which is not liable to such assessment, shewing the extent and value of each lot, and the name of the real or supposed owner, and the proportionate sum of money (and the quantity of materials, if any,) which they shall have assessed on each lot towards the necessary expenses of such construction or repairs. And such Act of Assessment, after it shall have been made and completed, as aforesaid, by the said Trustees, or a majority of them, shall be deposited during fifteen days in the Parsonage House of the Parish, or if there be none, in the house of some Notary, or well known inhabitant of the place, in order that all persons interested may take cognizance thereof during the term aforesaid, at any time between eight o'clock in the morning and five in the afternoon. And the said Trustees shall cause public notice to be given, by a notice in writing, read publicly, and posted at the door of the Church or Chapel of the Parish, (or in default of such Parish Church or Chapel, at the most public place, and at the door of the Church of the Parish whence the inhabitants of the Parish or Mission in question are ministered to) on three consecutive Sundays, immediately after Divine Service in the forenoon; the said notice setting forth the place in which the Act of Assessment is deposited, and also the day and hour, and the place, when and where the Trustees will move for its

homologation before the Commissioners, in such manner as the whole shall have been regulated and prescribed in the order made by the said Commissioners.

XV. And be it further Ordained and Enacted by the authority aforesaid, that on the day appointed for proceeding to the consideration of the said Act of Assessment, the said Trustees, or the majority of them, shall present the said Act to the said Commissioners for homologation, and shall accompany it by sufficient written proof of its having been duly deposited, and a sufficient certificate of the publication of the notice hereinabove mentioned. And the said Commissioners shall have full jurisdiction, power, and authority to hear, judge and determine between the Trustees and the parties interested, by rejecting, modifying, or confirming the said Act of Assessment altogether or in part, as they may find it just and reasonable to do.

XVI. And be it further Ordained and Enacted by the authority aforesaid, that no individual shall, be admitted to oppose the homologation or confirmation either of the Act of Election of the said Trustees, or of the Act of Assessment which they shall have made, nor shall be reckoned among the signers of the Petition which shall be presented to the Commissioners before Trustees can be elected, nor shall be competent to vote at the election of the said Trustees, unless he shall have attained the full age of twenty-one years, and shall hold separately, as proprietor, and shall have held for at least six months, a lot of land or other immoveable property situate in the Parish in question. Provided always, that nothing herein contained shall be construed so as to prevent co-heirs, being of lawful age, from making such oppositions, or from voting at the election of Trustees, or from signing any petition as hereinabove mentioned.

XVII. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that nothing in this Ordinance contained shall be construed to render any one of Her Majesty's subjects of any class of Protestants whatsoever, or any persons whomsoever, other than Her Majesty's subjects professing the Roman Catholic Religion, liable to be assessed or taxed in any manner whatsoever for the purposes of this Ordinance, or to extend in any manner or way whatsoever to the erection, creation, subdivision, dismemberment or union or to the alteration of the bounds of any Parish already formed, or to be formed, according to the establishment of the Church of England.

XVIII. And be it further Ordained and Enacted by the authority aforesaid, that the said Commissioners shall appoint a fit person to be their Secretary, and may remove him and appoint another in his stead; and such Secretary shall keep a Register of all the judgments, orders and proceedings of the said Commissioners, and shall have the legal custody of the said Register and of the said proceedings.

XIX. And be it further Ordained and Enacted by the authority aforesaid, that when the Act of Assessment shall have been homologated by the said Commissioners, the Trustees shall have a right to exact from the assessed, the payment of their rates or assessments; and in

case of the refusal of such payment, the same may be recovered before any civil Court of the District, of competent jurisdiction, according to the amount thereof.

XX. And be it further Ordained and Enacted by the authority aforesaid, that whenever, in any of the said Districts, more than two of the said Commissioners shall be interested in the civil erection of any Parish, or in the construction or repairing of any building for divine worship, then and in that case, on a representation to that effect made by any one of the said Commissioners, it shall be lawful for the Governor, Lieutenant Governor, or Person administering the Government of the Province, to appoint, by a special commission, one or more persons not interested to be Commissioners to act in such case as aforesaid, jointly with those of the Commissioners who shall not be interested in the matters aforesaid.

XXI. And whereas the Commissioners appointed in the several Districts of this Province, under the Act or Ordinance hereinabove cited, concerning the construction and repairing of Churches, Parsonage Houses, and Church Yards, have from time to time rendered certain judgments and sentences, and adopted divers proceedings with regard to assessments for the building, constructing, or repairing of Churches, Parsonage Houses, and Church Yards existing and established merely de facto, or recognized by the Ecclesiastical Authorities alone, without the express co-operation and assent of the Civil Authorities; and whereas it is proper to prevent and avoid the questions and difficulties which might arise as to the validity of such judgments, sentences, and other proceedings on this subject: Be it therefore Ordained and Enacted by the authority aforesaid, that the said judgments, sentences, and proceedings shall be held to be valid, and shall be followed and executed as if the said Parishes had been legally established.

XXII. And be it further Ordained and Enacted by the authority aforesaid, that from and after the passing of this Ordinance, the Act or Ordinance herein before cited, passed in the thirty-first year of the Reign of His late Majesty George the Third, and intituled, "An Act or Ordinance concerning the building and repairing of Churches, Parsonage Houses, and Church Yards," shall be and is hereby suspended during the continuance of this Ordinance, in so far only as the same may be repugnant thereto: Provided always, that the Commissioners at present appointed under the said Act or Ordinance, may continue the proceedings commenced before them until final judgment, and in as valid a manner as if this Ordinance had never been passed.

XXIII. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that until it shall have pleased the Governor, Lieutenant Governor, or person administering the Government, to appoint Commissioners for the purposes of this Ordinance, the Commissioners now appointed under the Act mentioned in the preamble to this Ordinance, and passed in the first year of the Reign of His late Majesty William the Fourth, chapter fifty-one, may continue to proceed, either together or by a majority of them, in each of the Districts of this Province; respectively, with regard to the civil erection of all Parishes, or subdivisions of Parishes, with regard to which they had power to proceed by virtue of the said Act, but which have not hitherto been so erected, and to make their report hereon to

the person administering the Government of this Province, until a proclamation shall issue; the whole in as valid a manner as if this Ordinance had never been passed.

XXIV. And be it further Ordained and Enacted by the authority aforesaid; that nothing herein contained shall affect, or be construed to affect, in any manner, the rights of Her Majesty, her heirs and successors, or of any other person, body politic or corporate, those only excepted who are mentioned in this Ordinance.

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 Twenty-third, 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.