

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 64 (Session 4)

An Ordinance to establish a Board of Works in this Province.

Whereas it is expedient to establish a system of Control and Management under which the public money appropriated for the performance and construction of Public Works and Buildings, or for other purposes connected with the internal improvement of the Province, shall be expended and applied, proposed plans for the said purposes examined and reported upon, and information and documents thereunto relating obtained, kept and arranged, and under which the internal improvement of the Province, and the developement of its resources shall be gradually and regularly advanced and conducted:—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 there shall be in this Province a Board of Works, which shall consist of five Members, of whom one shall be appointed to be Chairman; and any two of whom and the Chairman shall be a quorum; and that a fit and proper person shall be appointed to be Secretary to the said Board.

II. And be it further Ordained and Enacted by the authority aforesaid, that the Members, Chairman, and Secretary of the said Board shall be appointed by the Governor, Lieutenant Governor, or person administering the Government, who may remove them, or any of them, and appoint others in their stead, or reinstate those so removed, when and as often as he may deem it expedient.

III. And be it further Ordained and Enacted by the authority aforesaid, that the Chairman of the said Board shall receive such remuneration for his attendance at the meetings of the Board, and for his other services, as may be sufficient to compensate him for his loss of time; that he, as well as all the Members of the Board, and the Secretary, shall receive their actual disbursements and travelling expenses, when away from their several places of residence, on the business of the Board; and that the Secretary shall receive a yearly salary, and shall devote his whole time to the business of his office, and shall not hold any other place under Government, or exercise any other profession or calling, while he shall be such Secretary.

IV. And be it further Ordained and Enacted by the authority aforesaid, that the Chairman and Members of the said Board, for the time being, shall be a body politic and corporate, by

the name of "The Board of Works," and may by that name sue and be sued, and may have a common seal and alter it at pleasure, and may hold real property, and shall, generally, have all the powers and capacities which bodies politic and corporate have by law.

V. And be it further Ordained and Enacted by the authority aforesaid, that the Office of the said Board shall bear such place as the Governor, Lieutenant Governor, or person administering the Government, shall appoint for that purpose, and shall be the legal Office of the Corporation; and the Board shall meet thereat, or at such other place as the Governor, Lieutenant Governor, or person administering the Government, shall appoint, at such times as he may direct, and at any time to which it may have adjourned at any previous meeting.

VI. And be it further Ordained and Enacted by the authority aforesaid, that the Chairman for the time being, shall be the legal organ of the Corporation, and all writings and documents signed by him, countersigned by its Secretary, and sealed with its seal, and no others, shall be held to be acts of the Corporation.

VII. And be it further Ordained and Enacted by the authority aforesaid, that it shall be the duty of the said Board to examine and report upon all matters which may be referred to it by the Governor, Lieutenant Governor, or person administering the Government, connected with the objects for the promotion of which it is constituted, as aforesaid, and to obtain all such evidence and information, plans, estimates, drawings, or specifications, and to cause such surveys, visits, examinations to be made, and generally to do all such things as may be necessary to enable it to make such report in the manner best adapted to advance the public good: Provided always, that no expense shall be incurred or authorized by the Board, with regard to any matter so referred, unless with the sanction and approval of the Governor, Lieutenant Governor, or person administering the Government.

VIII. And be it further Ordained and Enacted by the authority aforesaid, that the said Board may suggest to the Governor, Lieutenant Governor, or person administering the Government, any public works or improvements therein, which it may appear to the Board could be undertaken with advantage to the Province; but shall incur no expense relative to the object of such suggestion, unless with the sanction and approval of the Governor, Lieutenant Governor, or person administering the Government, as aforesaid.

IX. And be it further Ordained and Enacted by the authority aforesaid, that all applications for any grant of public money, for any of the objects for the superintendence of which the said Board is constituted, as aforesaid, which the Governor, Lieutenant Governor, or person administering the Government, may think it probable might be undertaken with advantage to the public, or any matter connected with such objects which he may himself suggest, shall be referred to the said Board, which shall report thereon, in the manner and under the provisions aforesaid.

X. And be it further Ordained and Enacted by the authority aforesaid, that the said Board shall, in like manner report on any reference which may be made to it, with regard to the tolls and duties to be collected on or for the use of any public works; and may make such regulations for the use of any public work of any kind, vested in the Board, or under its control, as shall not be inconsistent with the law, or with the purposes of such work; but such regulations shall impose no fine, unless the power of imposing such fine shall be given to the Board by some law relating to such work.

XI. And be it further Ordained and Enacted by the authority aforesaid, that the said Board may, in like manner, suggest to the competent authority, any regulations for the use of any public work, not immediately under its control or vested in it, which it shall deem likely to promote the public good.

XII. And be it further Ordained and Enacted by the authority aforesaid, that no sum of public money, now appropriated, or to be hereafter appropriated for any public work, of the nature of those for the superintendence of which the said Board is constituted, as aforesaid, and the expenditure of which is not by law directed to be made, under the control of, or by any certain person or persons, or officer, or body corporate, shall be expended, except under the control and superintendence of the said Board.

XIII. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that no part of any sum so appropriated shall be expended or advanced, until the said Board shall have reported to the Governor, Lieutenant Governor, or person administering the Government, in detail, the mode in which it is proposed to expend the same, nor until such report shall have been approved by him; nor shall any contract be entered into by the said Board for the performance of any work, except good and sufficient security, to the satisfaction of the Board, and of the Governor, Lieutenant Governor, or person administering the Government, be given for the performance of the contract, within a time to be specified in the contract.

XIV. And be it further Ordained and Enacted by the authority aforesaid, that no contract shall be entered into, or any money expended on any work for which any public money shall have been or shall be appropriated, unless it shall appear that the work can be completed, according to the intention of the Legislature, for the sum appropriated for it; excepting always such preliminary expenses as shall be necessary to ascertain whether it can or cannot be so completed.

XV. And be it further Ordained and Enacted by the authority aforesaid, that the said Board may (with the approval of the Governor, Lieutenant Governor, or person administering the Government, as aforesaid,) employ for the accomplishment of the objects for which it is constituted, such and so many engineers, surveyors, architects, clerks, draughtsmen, superintendents, and other persons as may be necessary, and allow and pay them a fair and adequate compensation, not exceeding the usual allowances, salary, or pay allowed to such persons respectively, by other persons.

XVI. And be it further Ordained and Enacted by the authority aforesaid, that all public works, which are not or shall not hereafter be specially vested in other persons, bodies or officers, shall be and are hereby vested in the said Board of Works, and placed under its control and superintendence; excepting always, that the tolls, revenue or income derived from any public work, shall be, or continue to be, received and accounted for by the persons appointed or to be appointed for that purpose, but the amount of such tolls and the expenses of collecting them, and such other information as the Board may require from time to time, shall be reported and furnished to it by such persons on the requisition of the Secretary.

XVII. And be it further Ordained and Enacted by the authority aforesaid, that the said Board shall have power to take and hold all such land and real property of any description, as may be necessary for the performance of any work directed by the Legislature; and if the Board and the party to whom such property may belong, shall not agree as to the value thereof, it shall be lawful for the Board to appoint one Arbitrator, and the said party, (or the Court of King's Bench for the said District, or any two Judges thereof, in vacation, if such party shall not appoint an Arbitrator within fifteen days after being thereunto required by the Board,) shall appoint another, and such Court of King's Bench, or two Judges, shall, on the application of the Board, appoint a third Arbitrator; and the decision of the said Arbitrators, or of a majority of them, shall be final, as to the value of the property in question.

XVIII. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that if such party, or one of the parties, jointly proprietors of such property, or the legal representative of such party or joint proprietor, (on any of whom service of the notice to appoint an Arbitrator shall be sufficient,) cannot be found in this Province, or if the proprietor or all the proprietors be unknown, the said Court or Judges may order such proprietor or proprietors to be summoned by name, or by their quality as such, (setting forth the description of the property in the latter case) by advertisement in at least two of the public newspapers published in each of the Cities of Quebec and Montreal, during two months; and if the party so summoned, or one of them, do not appear before the expiration of such term, the Court or Judges may proceed, as if such party had neglected to appoint an Arbitrator, after service of notice to that effect as aforesaid.

XIX. And be it further Ordained and Enacted by the authority aforesaid, that the sum awarded by the Arbitrators, as aforesaid, or agreed upon by the parties, shall be paid by the said Board into the Court of King's Bench for the District in which the property in question is situate, and the Court shall, upon the petition of any party interested, make such order with regard to the distribution thereof, or with regard to the manner in which the same, or any part thereof, shall be invested for the benefit of any minor, absentee, or other party who may have a right to the same or any part thereof, at any future time, as to law and justice may appertain; and from the time when the sum awarded or agreed upon shall be so paid into Court, the property shall be vested in the said Board for the public uses of the Province, quit and clear of all claims, charges and incumbrances whatsoever, excepting such

Seigniorial dues as may thereafter accrue thereon: Provided always, that the Arbitrators so appointed as aforesaid, shall have power to examine any person upon oath touching the value of the property in question, and they or any one of them may administer such oath; and that the Arbitrators shall themselves be sworn to the due performance of their duties before some Judge of the Court of King's Bench, before they shall proceed to perform such duties; and the expenses attending the arbitration shall be taxed by some Judge of the said Court, and borne equally by the Board and the other party interested.

XX. And be it further Ordained and Enacted by the authority aforesaid, that it shall be the duty of the Secretary of the said Board (with such assistance as may be found necessary) to keep a separate account of the monies appropriated for and expended on each public work; to have charge of and keep all plans, contracts, estimates, and documents, models or other things relative to any such work; to keep regular accounts with each contractor, or other person employed by the Board; to see that all contracts made with the Board are properly drawn and prepared; to draw out all certificates upon which any warrant is to issue, as hereinafter mentioned; to prepare all reports to be submitted to the Board for its adoption, and to receive and answer, according to the instructions he may receive from the Board, all letters to or from the members of the Board, or other persons on the business thereof; to notify the members of all meetings of the Board, which may be called at any time other than that to which the Board shall have adjourned at its then last meeting; to keep minutes of its proceedings at all meetings; and to proceed to any place at which any public work may be undertaken, if directed to do so by the Board to have the general superintendence of all other matters which he may be instructed to superintend by the Board, and generally to do all ministerial acts connected with the business of the Board which it may direct him to do, or which may devolve upon him, by a fair construction of the meaning and intent of this Ordinance, in all cases not expressly provided for: Provided always, that it shall be lawful for the Governor, Lieutenant Governor, or person administering the Government, to require any person or persons whomsoever, having in their possession any plans, papers, books, drawings, estimates, or documents, relative to any public work and belonging to the Province, to deliver the same to the said Secretary; and also from time to time, to place in his charge and keeping, for the uses of the Board, any books, drawings or documents, relative to the objects for which the Board is constituted, which may be the property of the Province, and required for the better attainment of the objects of the Board.

XXI. And be it further Ordained and Enacted by the authority aforesaid, that the said Board shall have power to send for and examine, on oath, all such persons as it shall deem necessary to examine, touching any matter referred to the Board, as aforesaid, and to cause such persons to bring with them such papers, documents and things, as it may be requisite to examine with reference to such matter; and to pay such persons a reasonable compensation for their time and disbursements; and such persons shall be bound to attend at the summons of the said Board, after due notice, under penalty of such damages as may be awarded in favour of the said Board, as the loss the public may have sustained by the non-attendance of such witness, in an action to be brought by the Board in that behalf.

XXII. And be it further Ordained and Enacted by the authority aforesaid, that the Board may require any account sent in by any contractor or any person in its employ, to be attested on oath, which oath, as well as the oath to be taken by any witness, the Secretary or any Member of the Board may administer; and any false statement made under any such oath, in either case, shall be perjury.

XXIII. And be it further Ordained and Enacted by the authority aforesaid, that no warrant shall be issued, for any sum of the public money appropriated for any public work under the superintendence of the said Board, except on the certificate of the Chairman, countersigned by the Secretary, and sealed with the seal of the Board, that such sum ought to be paid to the person or persons named in the certificate, in whose favour a warrant may be issued accordingly. Provided always, that no such certificate shall be granted, except in compliance with the directions made by the Board, with regard to the work to which the certificate shall relate.

XXIV. Provided always, and be it further Ordained and Enacted by the authority aforesaid, that it shall be lawful for the Board, from time to time, to grant such certificate, in favour of their Secretary, for such sums as may be necessary to meet any disbursements allowed to him, or the Members of the Board when on duty, or which the Board may order to be made immediately by the Secretary, in any report approved by the Governor, Lieutenant Governor, or person administering the Government; but the sum which shall be at any one time in the hands of the said Secretary, shall in no case exceed five hundred pounds currency.

XXV. And be it further Ordained and Enacted by the authority aforesaid, that the said Secretary shall make up detailed accounts of the expenditure of all monies advanced or paid under certificates of the said Board, showing the sum appropriated for each public work, the sum so paid or advanced, and the balance remaining unexpended, and in whose hands, and each such account shall be accompanied by Vouchers, corresponding with the numbering of the items of such account, and shall be made up to, and closed, on the tenth day of April, and the tenth day of October in each year; and shall be attested before some Judge of the Court of King's Bench, and shall be transmitted to the officer whose duty it shall be to receive it within fifteen days after the said periods respectively.

XXVI. And be it further Ordained and Enacted by the authority aforesaid, that the due application of all monies expended by, for, or under the superintendence of the said Board, shall be accounted for to Her Majesty, her heirs and successors, through the Lords Commissioners of the Treasury, in such manner and form as Her Majesty, her heirs and successors, shall direct.

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 Thirteenth

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day of April, 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.