

*The Provincial Statutes of Lower-Canada, Being the sixth session of the of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, fifth day of November, 1840, and ending the ninth day of February, 1841.* Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1841.

4 Victoria – Chapter 20 (Session 6)

**An Ordinance to provide for the erection and establishment of Court Houses and Gaols, in certain Judicial Districts in this Province.**

Whereas in and by a certain Ordinance of the Legislature of this Province, passed in the present session thereof, and intituled, "An Ordinance to amend two certain Ordinances therein mentioned, relative to the administration of Justice in this Province, and to make other and further provision on the same subject," power is given to the Governor of this Province, by his Proclamation or Proclamations to be issued under the Great Seal of this Province and by and with the advice of Her Majesty's Executive Council for the same, to divide this Province into Judicial Districts for the purposes mentioned in the said Ordinance and in other Ordinances therein referred to, and to appoint the place or places within each such Judicial District, at which the sittings of the District Court shall be held; And whereas it may become necessary that Court Houses and Gaols should be erected in those Judicial Districts so constituted in which there may be no Gaol, or in which there shall be no Court House at any place at which the sittings of such District Court as aforesaid, shall be appointed to be held; and whereas the expence of erecting such buildings, in other parts of the Province has been defrayed out of the Public Revenue; and whereas in the present circumstances of the Country, and in consideration of the course which has hitherto been pursued, in such cases, it is reasonable and expedient, that local taxation should not be resorted to, on this occasion, and that these buildings should, if required, be erected at the expence of the Province;—Be it therefore Ordained and Enacted by His Excellency the Governor of this Province of Lower-Canada, by and with the advice and consent of the Special Council for the affairs of this Province, constituted and assembled by virtue 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 also by virtue and under the authority of a certain other Act of the same Parliament, passed in the Session held in the second and third years of the Reign of Her present Majesty, intituled, "An Act to amend an Act of the last Session of Parliament, for making temporary provision for the Government of Lower-Canada;" and also by virtue and under the authority of a certain other Act of the same Parliament, passed in the Session held in the third and fourth years of the Reign of Her present Majesty, intituled, "An Act to Re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada;" and it is hereby Ordained and Enacted by the authority of the same, that a Court House or Court Houses and a Gaol may be erected in and for each of the Judicial Districts hereinafter mentioned, which may be constituted and declared in and by the said Proclamation or Proclamations, in which there may then be no

Gaol, or in which there may be no Court House at any place which may have been so appointed as that at which sittings of the District Court shall be held.

II. And be it further Ordained and Enacted, that it shall be lawful for the Governor of this Province, by warrant or instrument, under his hand and seal at arms, to appoint in each of the said Judicial Districts, respectively, in which Court Houses and Gaols may be erected as aforesaid, three persons to be Commissioners for erecting the requisite Court House or Court-Houses and the Gaol and to remove from time to time, the said Commissioners, or any of them, and to appoint others in the place of such as shall be removed, or shall die, or resign their trust.

III. And be it further Ordained and Enacted, that, in the said Judicial Districts, respectively, in which Court Houses and Gaols are to be erected as aforesaid, the said Commissioners for such Judicial Districts, respectively, or any two of them, as soon as may be after they shall be appointed such Commissioners, shall, with the approbation of the Governor of this Province, in this behalf first had and obtained, select and fix upon some convenient piece or parcel of ground, at each of the places aforesaid, at which Court-Houses and Gaols are to be erected as aforesaid, on which such Court-Houses and Gaols may be erected; and the said Commissioners, or any two of them, shall afterwards in the manner and under the provisions hereinafter mentioned, take or contract for the absolute purchase of the said pieces or parcels of ground selected as aforesaid, for the purpose of erecting thereon Court-Houses and Gaols, in the manner hereinafter directed; which pieces or parcels of ground shall be conveyed to the District Council of the Municipal District in which the same, respectively, shall be situate, for and on behalf of the said District, to be held by each of the said Districts, respectively, in its corporate capacity, for the uses and purposes of this Ordinance.

IV. And be it further Ordained and Enacted, that it shall be lawful for all Corporations, aggregate or sole, husbands, tutors or guardians, curators, and all Trustees whatsoever, who are or shall be seized or possessed of, or interested in, any piece or pieces, parcel or parcels of ground, selected and fixed upon as aforesaid, not only for themselves, their heirs and successors. but for and on the behalf of all persons whom they represent, or for whom or in trust for whom, they are or shall be seized, possessed or interested as aforesaid, whether minors or issue unborn, lunatics, idiots, femmes covert, or other person or persons, to contract for, sell and convey, such piece or pieces, parcel or parcels of ground, to the District Council of the Municipal District in which the same shall be situate, for and on behalf of the said Municipal District, in its corporate capacity; and such contracts, sales and conveyances shall be valid and effectual in law, to all intents and purposes whatsoever; any law or custom to the contrary notwithstanding: And all corporations and persons whatsoever, so contracting, selling or conveying as aforesaid, are hereby indemnified for and in respect of any such sale, which he, she, or they shall respectively make by virtue or in pursuance of this Ordinance.

V. And be it further Ordained and Enacted, that in all cases where the Commissioners to be appointed as aforesaid, and the persons seized or possessed of or interested in the said pieces or parcels of ground, or any of them, or any part thereof, shall not, by voluntary agreement, settle and determine the price and prices, compensation and compensations to be paid for the said premises, or any part thereof, such price and prices, compensation and compensations shall be ascertained, fixed, and determined by the award of arbitrators, in manner following, that is to say; the said Commissioners, or any two of them, shall and may nominate and appoint one arbitrator, being an indifferent and disinterested person, and the said persons seized, possessed or interested as aforesaid, shall and may nominate and appoint one other arbitrator, being also an indifferent and disinterested person: and the said two arbitrators, before proceeding as such arbitrators, shall and may appoint a third arbitrator, being likewise an indifferent and disinterested person, which said three arbitrators, after being previously sworn before one of the Justices of the Court of King's Bench for the district in which such pieces or parcels of ground respectively, shall be situate, or before one of the Justices of the Court of Common Pleas for this Province, well, truly and honestly to execute the trust and duty of Arbitrators as aforesaid, and after notice to the parties respectively, of the time and place of their meeting, shall proceed to ascertain, fix and determine the price or prices, compensation or compensations to be paid by the said Commissioners, for such pieces or parcels of ground, respectively; and the award of any two of the said arbitrators, to be named and appointed as aforesaid, in and respecting the premises aforesaid, shall be final and conclusive.

VI. And be it further Ordained and Enacted, that in case the said persons seized or possessed of, or interested in the said pieces or parcels of ground, or any of them, or any part thereof, after due notice in this behalf, from the said Commissioners, or any two of them, shall refuse or neglect to name and appoint an arbitrator as aforesaid, being an indifferent and disinterested person as aforesaid, or if the said two arbitrators named and appointed as aforesaid, shall refuse or neglect to name and appoint a third arbitrator as aforesaid, it shall be lawful in such cases respectively, for one of the Justices of the Court of King's Bench for the District in which such pieces or parcels of ground respectively shall be situated, or for any one of the Justices of the Court of Common Pleas for this Province, on application in this behalf, by the said Commissioners, or any two of them, to name and appoint instead of such person or persons seized, possessed, or interested as aforesaid, so refusing or neglecting, a fit and proper person to be an arbitrator, on his or their behalf, and also to appoint such third arbitrator, to supply the place of the third arbitrator, which the said two arbitrators shall refuse or neglect to appoint; and in like manner if the arbitrator named by the person or persons seized, possessed or interested as aforesaid, and the arbitrator named by one of the Justices aforesaid, shall refuse or neglect to name a third arbitrator, for the purposes aforesaid, it shall be lawful for any such Justice as aforesaid, to name a third arbitrator to supply the place of such nomination, by and on the part of the said two last mentioned arbitrators; and the arbitrator and third arbitrator so as aforesaid, in the cases aforesaid, to be appointed by such Justice as aforesaid, after having been respectively sworn by such Justice well, truly, and honestly to execute the trust and duty of arbitrator and third arbitrator as aforesaid, shall have the same power and authority in the

premises, and their award shall have the same force and effect, as if such arbitrator and third arbitrator, in any or either of the cases aforesaid, had been named and appointed, in the manner in the next preceding section of this Ordinance prescribed as aforesaid.

VII. And be it further ordained and enacted, that on payment of the price or prices, compensation or compensations to be fixed and determined as aforesaid, or in case of refusal or neglect to accept the same, on the deposit thereof in the hands of the Prothonotary of the Court of King's Bench for the District in which the pieces or parcels of land for which the same shall be payable shall be situate, or in the hands of the Prothonotary of any of the Divisions of the Court of Common Pleas for this Province, for the use of the person or persons entitled to the same, the right of property, title and interest in and to such pieces or parcels of ground respectively, for which such price or prices, compensation or compensations shall be payable, shall be divested out of the person or persons seized and possessed thereof, or entitled to the same, and shall become and be vested in the Municipal District in which the said pieces or parcels of ground shall be situate, in its corporate capacity, for the purposes of this Ordinance; and the Commissioners may, after fifteen days notice in that behalf to the proprietor, possessor or occupant of the piece or parcel of land to which such award shall relate, enter upon, take possession of, and use such piece or parcel of land for the purposes of this Ordinance; any law, statute or usage to the contrary notwithstanding.

VIII. And be it further Ordained and Enacted, that after the said pieces or parcels of ground shall have been conveyed or become vested in the said Municipal Districts respectively, as aforesaid, it shall be lawful for the said Commissioners, or any two of them, for the Judicial Districts respectively, and they are hereby required to cause to be erected on each of the said pieces or parcels of ground, a good and substantial Court-House or a Gaol, (as the case may be) with proper offices and appurtenances.

IX. And be it further Ordained and Enacted, that before the erection of the said Court-Houses and Gaols shall be commenced, the said Commissioners, or any two of them, in the said Judicial Districts respectively, shall and they are hereby required to cause a plan of the said Court Houses and Gaols, with an estimate of the expense of erecting the same to be made, which plan and estimate shall by the said Commissioners, or any two of them, be laid before the Governor of this Province for his approval; and, after his approval, it shall and may be lawful for the said Commissioners, or any two of them, in the said Judicial Districts respectively, from time to time, to agree by contract or contracts in writing, or otherwise, in their discretion, with any person or persons, as well for providing materials, and hiring workmen and labourers, as for the building of the said Court-Houses and Gaols, or for the building of such part or parts thereof, as to the said Commissioners, or any two of them, may appear expedient: Provided always, that before making any contract or contracts in writing for the purposes aforesaid, or any of them, thirty days notice at the least shall be given in one or more of the public newspapers printed or circulated within such Judicial Districts respectively, expressing the object and intention of such contracts, and the time and place of receiving proposals for the same.

X. And be it further Ordained and Enacted, that for defraying the expense of erecting the Court-Houses and Gaols, to be erected as aforesaid, as well as for the purchase of the pieces or parcels of ground on which the same are to be erected, it shall be lawful for the Governor of this Province, from time to time, from and out of any unappropriated monies in the hands of the Receiver General of this Province, to advance to the said Commissioners, in the said Judicial Districts respectively, any sum and sums of money which shall be necessary to defray the expenses to be by them respectively incurred in carrying this Ordinance into effect; Provided always that the sums so advanced shall not in the whole exceed fifty thousand pounds currency, nor shall the sums so advanced during the present year exceed in the whole twenty-five thousand pounds currency.

XI. And be it further Ordained and Enacted, that the Commissioners to be appointed for the erection of the said Court-Houses and Gaols as hereinbefore mentioned, shall from time to time, when thereunto required by the Governor of this Province, well and faithfully account to the said Governor, for the due application and expenditure of all and every the sums of money which shall or may come into the hands of the said Commissioners, or of any of them, in pursuance of the provisions of this Ordinance, in such manner and form as the said Governor shall appoint and direct.

XII. And be it further Ordained and Enacted, that the due application of all public monies expended 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 be pleased to direct.

XIII. And be it further Ordained and Enacted, that when and so soon as the said Court-Houses to be built under the authority of this Ordinance, shall have been erected and completed, in the said Judicial Districts respectively, from thenceforth all Courts of Justice appointed to be held at the places where the same shall be erected, in the said Judicial Districts respectively, shall be held in the said Court-Houses respectively. And when and so soon as the Gaols to be built under the authority of this Ordinance shall respectively have been erected and completed, from thenceforth the said Gaols shall, if the Ordinance cited in the twentieth section of this Ordinance shall be then in force, be, and shall be deemed and taken to be the Common Gaols in and for the said Judicial Districts respectively, and shall be appropriated and made use of as and for such Common Gaols, to all and every the intents and purposes for which Common Gaols may be and are lawfully established and used.

XIV. And be it further Ordained and Enacted, that the said Court Houses, and the buildings thereto belonging, and the furniture thereof, respectively, when the same shall have been erected, and completed and furnished, shall thenceforth be repaired and maintained, by and out of the rates and assessments, to be imposed and levied in the Municipal Districts in which the same shall be erected, respectively, under the authority of the District Councils thereof, and also the expense of maintaining and supporting the Gaols whether erected

under the provisions of this Ordinance, or before the passing thereof; and of maintaining and supporting the prisoners to be confined in such Gaols, as well as all other expenses attending the same, except those hereinafter mentioned, shall be paid out of the rates aforesaid, to be imposed and levied as aforesaid, in the Municipal Districts composing the Judicial District or Districts for which such Gaol shall be the Common Gaol, and shall be borne equally by each such Municipal District; and the said Court-Houses and Gaols, buildings and furniture shall from time to time, be insured in the name of the Treasurer of the Municipal District in which the same shall be situate, for and on behalf of the Municipal District, in its corporate capacity, from loss or damage by fire, in such sum or sums of money as the District Council of such Municipal District shall, from time to time appoint; and the premium and premiums upon and other expenses attending-such insurance, shall be paid and defrayed by and out of the rates aforesaid; and with respect to any Gaol shall be borne equally by the Municipal Districts bound to maintain the same.

XV. And be it further Ordained and Enacted, that the District Council of each and every of the Municipal Districts, in which Gaols shall be erected as aforesaid, shall and they are hereby required, from time to time, to appoint a licenced Surgeon or Physician to be and act as Surgeon or Physician to the said Gaols respectively, and to fix and establish a reasonable salary to be paid to such Surgeon or Physician, from and out of the District Rates.

XVI. And be it further Ordained and Enacted, that it shall be lawful for each of the District Councils, in the said Municipal Districts, respectively, and they are hereby authorized and required to appoint a reasonable yearly salary to be paid to the Gaoler of the Gaol within such Municipal Districts respectively, which salary shall be instead of all fees, perquisites, or emoluments of any sort or kind whatsoever; and it shall not be lawful for any such Gaoler, or any officer belonging to any such Gaol, to demand or receive any fee, perquisite or profit of any kind, from any prisoner, who may be confined within any of the said Gaols, to be built as aforesaid.

XVII. And be it further Ordained and Enacted, that, in each and every of the said, Judicial Districts, the Sheriff of and in the same shall have power and authority, from time to time, to nominate and appoint such person as he shall judge most proper, to the office of Gaoler and Keeper of the Gaol, to be built therein as aforesaid, and to discharge such Gaoler and keeper, and appoint another person in his place, when he may deem it expedient.

XVIII. And be it further Ordained and Enacted, that no spirituous liquors or strong waters, shall be sold, supplied, afforded, or given, to any persons confined in any Gaol to be erected as aforesaid, or in any other Gaol already erected or hereafter to be erected in this Province, unless the same be prescribed or given, by or under the direction of a licensed Physician, Surgeon, or Apothecary: And if any Gaoler, Keeper, or officer of any of the said Gaols, shall sell, lend, supply or give away, or knowingly furnish or suffer any spirituous liquors of strong waters, to be sold, lent, supplied or given away, in any such Gaol, or brought into the same, for the use of any prisoner or prisoners confined in the said Gaols, except such spirituous liquors, or strong waters, as shall be prescribed or given as aforesaid, every such Gaoler,

Keeper, or other officer, shall for every such offence; forfeit and lose the sum often pounds current money of this Province, and for a second like offence, shall over and above such penalty incur the forfeiture of his office; which said penalty shall and may be recovered with full costs in any Court of Record in this Province, and one moiety thereof shall go to Her Majesty, Her Heirs and Successors, for the public uses of this Province, and the other moiety thereof shall go and be paid to such person as shall sue for the same; and if any person shall carry, bring, or attempt or endeavour to carry or bring into any of the said Gaols, any spirituous liquors or strong waters, except such as shall be prescribed as aforesaid, it shall be lawful for the keeper, or officer, of any such Gaol, to apprehend, or cause to be apprehended, such offender, and to bring such offender before a Justice of the Peace for the Judicial District in which such Gaol shall be situated, who is hereby empowered to hear and determine on such offence, in a summary manner, and, on conviction of the offender, to commit him or her, forthwith to the Common Gaol or House of Correction, there to be kept in custody, for any time not exceeding three months.

XIX. And be it further Ordained and Enacted, that whenever any of the Gaols, to be built in the said Judicial Districts, respectively, shall be made fit for the reception and safe keeping of such persons, as may be lawfully confined, and imprisoned therein, and the said Commissioners, for building the said Gaols respectively, or any two of them, shall give notice thereof in writing, to the Sheriff of any such Judicial District, it shall be lawful for the said Sheriff and he is hereby required to remove to such Gaol, all such prisoners as shall then be in custody, who may be lawfully confined and imprisoned therein.

XX. And be it further Ordained and Enacted, that the said Gaols in the said Judicial Districts respectively, to be erected as aforesaid, under the authority of this Ordinance, when and so soon as the same shall be completed; and also the said Gaol already erected and being at the Town of Sherbrooke, shall, from and after the time when the Ordinance hereinafter cited shall come into force, until Houses of Correction shall be erected in the Judicial Districts in which they shall lie, be, and be deemed and taken to be Houses of Correction in and for the said Judicial Districts, respectively, and as such shall be appropriated to all and every the uses and purposes for which Houses of Correction, in and by the statutes and laws of this Province, are established or authorized, and Shall also become and be Houses of Correction within the intent and meaning of a certain Act of the Legislature of this Province, made and passed in the fifty-seventh year of the reign of His late Majesty King George the Third, intituled, "An Act to provide temporary Houses of Correction in the several districts of this Province," which said Act hath been revived and is now in force, in virtue of two certain Ordinances of the Legislature of this Province, in this behalf provided; and all and every the provisions in the said Act passed in the fifty-seventh year aforesaid, shall, when and so soon as the said Gaols, to be built as aforesaid, shall be completed, in what respects the said Gaols, and from and after the commencement of the Ordinance, passed in the fourth year of Her Majesty's reign and intituled, "An Ordinance to provide for the easy and expeditious Administration of Justice in civil causes and matters involving small pecuniary value and interest throughout this Province," in what respects the said Gaol in the said Town of Sherbrooke, become and be applicable to, and receive execution in respect of the said Gaols,

as fully and effectually, to all intents and purposes, as if the same were re-enacted and incorporated in this Ordinance, and in like manner as the same were and are applicable, and might and may receive execution, to and in respect of the temporary Houses of Correction and Gaols in the said last mentioned Act specified.

XXI. And be it further Ordained and Enacted, that the words "Governor of this Province," wherever the same occur in the foregoing enactments, shall be understood as comprehending the Governor or person authorized to execute the Commission of Governor within this Province, for the time being.

XXII. And be it further Ordained and Enacted, that this Ordinance, and the provisions therein contained, shall not cease or expire on the first day of November, which will be in the year of our Lord one thousand eight hundred and forty-two, but shall be and remain a permanent and public law, and in full force in this Province, until the same shall be repealed or altered, by competent Legislative authority; and all Judges, Justices and other persons therein concerned, shall take notice thereof, though the same be not specially pleaded.

SYDENHAM.

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 Thirtieth day of January, in the Fourth 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 forty-one.

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