

The Provincial Statutes of Lower-Canada, Being the fourth session of the fourth Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1808.

48 George III – Chapter 21

An Act to regulate the Trial of controverted Elections or returns of Members to serve in the House of Assembly of Lower-Canada. (14th. April, 1808.)

Whereas it is necessary that provision be made for regulating the trial of controverted Elections or returns of Members, to serve in the House of Assembly of this Province. Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province," and it is hereby enacted by the authority of the same, that after the end of the present Session of the Provincial Parliament, no petition complaining of an undue election or return of any Member to serve in the House of Assembly in this Province, shall be receivable, unless the same be presented to the House within fourteen days after the first meeting of the Legislature, ensuing the election or return complained of, and also, unless such Petition be signed, by at least ten Electors of the County, City, Town or Borough in which the Election shall have been had, or if from an unsuccessful Candidate, shall be supported either in the same, or a distinct Petition, by the signatures, (or marks certified by two witnesses,) of at least ten such Electors; and every such Petition shall state the grounds and reasons of complaint and in case the House of Assembly, shall think such grounds and reasons, (if true) sufficient to make the Election void, a day and hour shall, by the said house, be appointed for taking the same into consideration, so that the space of twenty days at least, shall always intervene between the day of presenting such Petition, and the day appointed by the House, for taking the same into consideration, and notice thereof, in writing, shall be forthwith given by the Speaker, to the Petitioners, (who shall by themselves, or some one of them, their Counsel or Agent, attend at Quebec, for the purpose of being served with such notice,) and also to the sitting Member, with an order to them to attend and be heard at the Bar of the House, at the time appointed, either in person or by their Counsel or Agents, and such notice and order shall also be inserted by order of the Speaker, in the Quebec Gazette. Provided always, that such Petition may be taken into consideration at an earlier day, if the Parties shall consent thereto. Provided also, that the House may alter the day and hour so appointed for taking such Petition into consideration, and appoint some subsequent day and hour for the same, as occasion may require, giving to the respective parties the like notice of such alteration and order to attend on the said subsequent day and hour as aforesaid. Provided further, that whensoever the matters contained in such Petition, as above said, cannot be fully heard, tried and adjudged, at the same Session of Assembly, in which the same were begun, that

the same may be continued and taken up, heard and adjudged upon, at the next meeting of the House of Assembly, in the same manner as if no prorogation had taken place.

II. And in order to prevent frivolous and vexatious Petitions. Be it further enacted by the authority aforesaid, that before any Petition against an election as above said, shall be brought up, or proceeded upon, in the House of Assembly, a Recognizance shall be entered into before the Speaker of the House of Assembly, or before one of the Justices of the Court of King's Bench, or Provincial Judge of the District, according to the form expressed in the Schedule hereunto annexed, to wit; the Petitioning Candidate, in the sum of thirty Pounds, and two other Petitioners in the sum of fifteen Pounds, each, and conditioned, that the Petitioners, will appear and prosecute such Petition, and will pay to such person or persons as may be thereby aggrieved, such sum and sums of money, as the House of Assembly may award for costs and expences, that the parties, or any of them against whom the said Petition shall have been made, may be put to by reason of the said complaint, if the same should be adjudged frivolous and vexatious, or not founded on grounds sufficient to justify the Petitioners in having made the same. Provided always, that such Recognizance, as is herein before required, if taken before any such Justice of the Court of King's Bench, or Provincial Judge as aforesaid, shall, by such Justice or Judge be certified and transmitted to the Speaker of the House of Assembly, so soon after as the same shall be taken as may be, and that no proceedings shall be had upon any such Petition as aforesaid, until such Recognizance shall be so certified and transmitted unto the said Speaker, in manner aforesaid.

III. And be it further enacted by the authority aforesaid, that in the event of the Election or return complained of being declared void, then and in such case the Petitioners shall recover from the Sitting Member whose Election or return shall be so declared void, (Provided such voidance arises from any Act done by or with the knowledge and consent of such sitting Member), the costs and expences awarded as above, that they or any of them shall have been put to in prosecuting their complaint, and in all cases of costs and expences so awarded by the House, the Speaker shall give a certificate thereof, and the same, if refused to be paid, shall be recoverable by action of debt, in the Court of King's Bench or Provincial Court of the District or inferior District, wherein the Parties refusing to pay, may respectively reside.

IV. And be it further enacted by the authority aforesaid, that the Petitioners complaining of any Election or return, shall deliver to the Clerk of the House of Assembly, within a reasonable time, to be established by the House, before the day fixed as above said, for hearing the merits thereof, a list of such witnesses as they mean to produce on the trial; and the sitting Member shall do the like; and it shall be lawful for the Speaker of the House of Assembly, and he is hereby empowered and required, by Warrant under his hand and seal, directed to such person or persons as by him shall be specially appointed, to summon and require the attendance of the witness or witnesses, in such lists named, at the day and hour fixed for trial, to give evidence thereon, such day and hour to be mentioned in the said warrant; and it shall be incumbent upon the person or persons, at whose instance a Witness

is summoned, and before it shall be obligatory upon such Witness to attend, according to such Summons, to advance to the said Witness, if by him required, a reasonable number of day's expences at the rate of two shillings and six Pence per day, and also one Shilling per league, in going from and returning to his place of residence.

V. And be it further enacted by the authority aforesaid, that at the time appointed for taking such Petition into consideration, and after reading the order of the day for that purpose, the House shall be cleared, and the Speaker, with the Members thereof, (excepting the Member or Members whose election shall be contested;) shall be sworn at the table, well and truly to try the matter of the Petition referred to them, and a true Judgement give according to the evidence; the Speaker shall then take the Chair, the doors shall be opened, and the Petitioners, their Counsel or Agent shall attend at the bar.

VI. And be it further enacted by the authority aforesaid, that the Witnesses for the Petitioners and for the Sitting Member shall be ordered by the Speaker to retire without the House; and the Petitioners, their Counsel or Agent, shall call their Witnesses in, one by one, for examination; and each and every Witness as aforesaid, shall be sworn at the bar of the House, before giving his evidence.

VII. And be it further enacted by the authority aforesaid, that after the Witnesses for the Petitioners shall have been examined, and all other evidence offered and allowed on their behalf gone through, the sitting Member or Members shall be required by the Speaker to make a defence, and the Witnesses for the said sitting Member or Members, shall be separately called in for examination, and shall be sworn in manner aforesaid. Provided always, that whenever any Member of the House shall be a Witness, he shall not be obliged to retire as aforesaid, but shall be sworn in his place.

VIII. Provided always, and be it further enacted by the authority aforesaid, that in cases, wherein it shall appear that the expence of bringing Witnesses to the bar, would be considerable, it shall and may be lawful to and for the House of Assembly, to nominate and appoint three Commissioners, (one of whom shall be Chairman) for the purpose of examining the Witnesses of the parties, at such time and at such place or places as in such reference shall be appointed, and the said Commissioners shall, before proceeding on the business of their said Commission, take and subscribe the following oath, (that is to say) "I, A. B. do swear, that I will, without favour, affection or malice, and according to the best of my skill and knowledge, well and truly perform the duty of a Commissioner appointed to hear and examine the evidence which shall be brought before me by virtue of a reference, under the hand and Seal of the Speaker of the House of Assembly, upon a Petition, (here mention the names of the Petitioners or some of them,) according to the Rules, Regulations and Directions contained in an Act passed in the forty eighth year of the Reign of King George the Third, intituled, 'An Act to regulate the trial of controverted Elections or Returns of Members to serve in the House of Assembly of Lower Canada,' which oath the said Chairman of the said Commissioners having first taken and subscribed the same in the presence of the others, is hereby authorised and empowered to administer to the said other

Commissioners; and such Commissioners shall sit every day, (Sundays and Holy days excepted,) from the hour of ten in the morning, till four in the afternoon, and shall not adjourn, for any longer time than twenty four hours, except in case of the death, sickness or unavoidable absence of one or more thereof, or except, in case of removal to another place of meeting; and the said Commissioners shall have authority and are hereby empowered, to appoint a Clerk, to take down in writing, minutes of all their proceedings, in an accurate manner, and of all such evidence as shall be given or produced before them, and the oppositions to such evidence; which said Clerk shall be by them duly sworn so to do, and they shall proceed in examining upon oath, (which oaths they are hereby authorised to administer) all and every witness or witnesses in the above mentioned lists, who shall come before them; and the said Clerk shall make, or cause to be made, true copies of all such proceedings and evidence, and shall give one such copy to each of the parties interested, or his or their Agent, if the same shall be demanded, on being paid for every hundred words contained in the said copy, the sum of six pence; and within ten days after the evidence before the said Commissioners shall be closed, the said Commissioners, or any two of them, shall cause a copy of the minutes of all their proceedings, and of the evidence to be made, and shall compare the same with such minutes, and then sign and seal such copy, and shall transmit the said copy, so certified, to the Speaker of the House of Assembly, who shall, accordingly, communicate the same to the said House.

IX. And be it further enacted by the authority aforesaid, that After a copy of the said proceedings and evidence and objections to the said evidence shall be received by the said Speaker, the said House shall appoint a day, for taking such proceedings, evidence and opinions of the said Commissioners, into consideration, and shall, on such day proceed to try and determine the merits of the said Petition, in such manner, as the House of Assembly are to proceed upon other controverted Elections, save and except, that the said House shall not call for, or receive any other or further evidence written, but the House shall determine on all such matters and things from the written minutes of the proceedings and evidence, before the said Commissioners, signed, sealed, certified, and by them transmitted as aforesaid, being first duly sworn before they shall proceed to take the merits of the same into consideration, on the day that shall have been so fixed. Provided always, that the said House, shall be at liberty to hear Counsel, for each of the parties.

X. And be it further enacted by the authority aforesaid, that the said Commissioners shall be, and hereby are empowered, by warrant under the hand and seal of their chairman, or of any two of them, directed to such person or persons as by him or them shall be specially appointed, to summon and require the attendance of the witness or witnesses, in the lists herein before mentioned, at the day and hour, and place fixed to give evidence thereon; which day and hour and place, shall be mentioned in the said warrant, and every person so summoned to appear and give evidence, who shall refuse or neglect to appear, (a reasonable number of days expences being first advanced to him, if required, at the rate of two shillings and six pence per day, and also one shilling per league, for each and every league, in going from and returning to his place of residence) or appearing, shall refuse to be sworn or give evidence before the said Commissioners, unless in cases of reasonable excuse,

to be allowed of by the said Commissioners, or who shall be guilty of any contempt, or improper behaviour towards the said Commissioners, while sitting in the execution of their Commission, shall, each, forfeit and pay a sum, not exceeding twenty pounds, current money of this Province; and such penalty shall be recoverable before any two of His Majesty's Justices of the Peace who are hereby authorised and required to hear and determine the same, in a summary manner, either by voluntary confession of the Party or Parties accused, or upon the Oath of one or more credible Witness or Witnesses, other than the Prosecutor; and in case of non payment of such penalties, after conviction thereof, the same shall be levied by distress and sale of the offenders goods and chattels, by Warrant, under the hand and Seal of such Justices directed to any Peace Officer, and the overplus of the money so levied, (if any there be,) after deducting the Penalty and reasonable costs, shall be returned to the owner; and the one half of such penalties shall be paid to the Prosecutor, and the other half, into the hands of the Justices before whom the conviction shall have been had, to be by them transmitted to His Majesty's Receiver General, for the use of His Majesty, to be applied towards the support of the Government of this Province, and shall be accounted for to His Majesty, through the Commissioners of His Majesty's Treasury for the time being, in such manner and form as His Majesty shall direct.

XI. And be it further enacted by the authority aforesaid, that the said Commissioners shall, each of them, be entitled to demand and receive, for their services, the sum of fifteen Shillings, and the Clerk of the said Commissioners, ten Shillings for every day which they respectively shall have duly attended, during the execution of the said Commission, and ten shillings only for every day, which they respectively shall have been necessarily engaged in travelling from and to his or their usual place of residence, to or from the place or places of the meeting of the said Commissioners and the said Clerk; which said several sums, shall be paid to them, respectively, by the persons who entered into recognizances as above said, or any of them, upon a Certificate, under the hand of the Speaker of the House of Assembly, stating the sum or sums so payable, being to him or them produced.

XII. And be it further enacted by the authority aforesaid, that the Oaths by this Act directed to be taken, (those of the said Commissioners and of their respective Clerk and of the Witnesses brought before them excepted,) shall be administered by the Clerk of the House of Assembly, or in his absence by the Clerk Assistant, who is, and each of them are hereby authorised to administer the same; and that any person who shall be guilty of wilful and corrupt perjury, in any evidence which he shall give, before the said House, or before the said Commissioners, in consequence of the Oath which he shall have taken by the directions of this Act, shall, on conviction thereof, incur and suffer the like pains and penalties to which any person convicted of wilful and corrupt perjury, is liable by law.

XIII. And be it further enacted by the authority aforesaid, that no sitting Member, whose election shall be contested as aforesaid, shall vote upon any question, which shall arise in the course of the trial or upon the decision thereof. Provided always, that no such decision shall be had, nor any question touching elections be proposed, unless there be a Quorum of the House present, and no Member shall have a vote upon such decision, who shall not have

attended during the examination of the Witnesses, who shall have been heard before the House themselves, and the hearing of the Parties by themselves or their Council.

XIV. And be it further enacted by the authority aforesaid, that the Petitioners against an Election or return, and the sitting Member or Members, shall, in a reasonable time, to be fixed by the House of Assembly, before the trial be proceeded upon, interchange, with each other, lifts of the names of all such votes and voters to which either of the said Parties intend to object before the said House, and the grounds of their objections thereto, and of all such other matters and things as either of the said Parties, mean to insist upon or contend for, or to object to, before the said House.

XV. And be it therefore enacted by the authority aforesaid, that in all cases of non payment of costs and expences, incurred, upon the trial of contested elections, before the House of Assembly, as also, of the allowances to the said Commissioners, and their Clerk, the same shall and may be, respectively, recovered, by the Parties entitled thereto, by action of debt against the persons, respectively, entering into recognizance as aforesaid, or against the sitting Members, respectively, according as the case may be, in the Court of King's Bench, or other Court where debts of like amount are recoverable; in which action, it shall be sufficient for the Plaintiff or Plaintiffs to declare, that the Defendant or Defendants is or are indebted to him or them in the sum mentioned in the Certificate of the Speaker of the House of Assembly, by virtue of this Act; and the said respective Certificates of the said Speaker, shall be deemed full and sufficient evidence and support, of such action of debt; and the Party or Parties, in whose favor Judgment shall be given, in any such action, shall recover his or their costs.

XVI. And be it further enacted by the authority aforesaid, that this Act shall be in force to the first day of January which will be in the year of our Lord one thousand eight hundred and eleven, and from thence to the end of the then next Session, of the Provincial Parliament and no longer.

SCHEDULE:

Form of a Recognizance to be entered into before any Petition against an election or return of a Writ of election, can be proceeded upon.

Be it remembered that on the _____ day of _____ in the year of our Lord _____ before me A. B. (Speaker of the House of Assembly) came C. D. of _____ and E. F. of _____ and G. H. of _____ and severally acknowledged themselves to owe the following sums, that is to say, the said C. D. the sum of _____ and the said E. F. and G. H. _____ the sum of _____ each, to be levied on their respective goods and chattels, lands and tenements, to the use of our Lord the King, his Heirs and Successors, or to the use of the Parties who may appear to be aggrieved by a Petition, about to be presented to the House of Assembly, against the regularity of a certain election, held in the _____ for a representative, to serve in the said Assembly, (or against the return as the

case may be,) in case the said C. D. shall fail in performing the conditions hereunder mentioned.

The condition of this recognizance is, that if the said C. D. shall duly appear before the said House of Assembly, at such time or times, as shall be fixed by the said House of Assembly, for taking into consideration, a Petition, signed by the said C. D. and divers other persons, complaining of, (here specify the complaint, whether for an undue Election or an undue return, or for want of a return, that no return has been made upon an election concluded,) for the County, Town or Borough of _____ and shall appear before the said House, for trial of the said Petition, and if necessary at every subsequent Sessions of this present Assembly, and follow up the same, until a final determination thereupon, or until the same shall have been withdrawn by permission of the said House of Assembly; and shall also pay such costs, as the said House of Assembly shall resolve and adjudge to be paid to any person or persons aggrieved by the said Petition, then this Recognizance to be void, otherwise to be and remain of full force and effect.

Taken and acknowledged, before me, in pursuance of an Act passed in the 48th year of His Majesty, Geo. III, chap. .

C. D. (L. S.)
E. F. (L. S.)
G. H. (L. S.)