

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1851. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1851.

14 Victoria – Chapter 64

An Act for the more effective Auditing of Public Accounts. Passed 26th April 1850.

Whereas it is necessary to afford more full and complete power of examining, auditing, or disallowing the Accounts of all persons intrusted with the receipt or outlay of public moneys, or accountable for the same;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Auditor General shall have full power and authority from time to time to call upon any person or persons who may be intrusted with or accountable for the expenditure of public money, and to require any person who may be intrusted or accountable as aforesaid, to furnish detailed Accounts and Vouchers, and to make oath as to the correctness of such Accounts and Vouchers, and the truth of the facts alleged in such Accounts or Vouchers; and if such Auditor General shall deem the evidence of any witnesses, or the production of any books or papers, necessary to substantiate the correctness of such Accounts, he may refuse to pass such Accounts until such witnesses, books or papers be produced to him; and if such witnesses, books or papers be not produced within six months, he may proceed to disallow the Account to which such evidence is supposed to relate.

II. And be it enacted, That the Auditor General shall have the same power as a Justice of the Peace under the Act made and passed in the twelfth year of Her present Majesty's Reign, intituled *An Act to facilitate the performance of the duties of Justices of the Peace, out of Sessions, within this Province, with respect to Summary Convictions and Orders*, to summon any person before himself to answer such questions touching Public Accounts, as to him may seem meet; and he may, in case of default in obeying such summons, proceed as in the aforesaid Act directed, and may examine such person on oath, who shall be subject to the pains and penalties of perjury in case of false swearing; provided always, that no such summons or proceeding of the Auditor General or his Deputy, shall compel any person to travel more than thirty miles from his usual place of abode, or to attend without payment or tender of his reasonable expenses, which shall be charged to the party whose Accounts are audited, unless the decision of the Auditor should be reversed upon Certiorari.

III. And be it enacted, That the Auditor General shall have full power to examine, audit, allow or disallow Accounts, and items therein, relating to moneys applicable to public purposes, or in the hands of Public Officers for such purposes; and such Auditor may charge, in every Account audited by him, the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which such person is accountable, but not brought by him into account, and shall certify on the face of every Account audited by him any money, goods or chattels found by him to be due from any person; and when such Auditor has so certified any money, goods or chattels to be due from any person, he shall report the same to the Provincial

Secretary; and the person from whom any money is so certified to be due shall, within thirty days, pay or cause to be paid such money to the Provincial Treasurer, or any Deputy Treasurer, and furnish the Auditor General with the evidence of such payment; and if any such money, goods or chattels be not duly paid or delivered over as hereinbefore directed, the said Auditor, or any person duly appointed by the Lieutenant Governor or Administrator of the Government for the time being, may proceed to enforce the payment or delivery over of the same; and all moneys so certified to be due by such Auditor, shall be recoverable as so certified, together with the costs of such recovery, from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such moneys; provided always, that the examination of all witnesses or evidences shall take place in the presence of the party whose Accounts are under audit, or in the presence of his authorized Agent.

IV. And be it enacted, That if any person aggrieved by any allowance, disallowance or surcharge by any such Auditor, require such Auditor to state the reasons for the said allowance, disallowance or surcharge, the Auditor shall state such reasons in writing on the face of the Account in which the allowance, disallowance or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, or for every person aggrieved by such disallowance or surcharge, if such last mentioned person have first paid or delivered over to any person authorized to receive the same, all such moneys, goods and chattels as are admitted by his Account to be due from him, or remaining in his hands, to apply to the Supreme Court for a Writ of Certiorari to remove into the said Court the said allowance, disallowance or surcharge, under a recognizance to prosecute such Certiorari, at the costs and charges of such person, without any wilful or affected delay; and if such allowance, disallowance or surcharge be confirmed, to pay to such Auditor or to the Provincial Treasurer, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course and practice of the said Court; and a notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such Auditor, who shall, in return to such Writ, return a copy under his hand of the entry or entries on such Account to which such notice shall refer, and shall, if directed to do so by the Lieutenant Governor or Administrator of the Government for the time being, acting by and with the advice of the Executive Council, appear before the said Court and defend the allowance, disallowance or surcharge so impeached in the said Court, and on the removal of such allowance, disallowance or surcharge, the said Court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such Court that the decision of the said Auditor was erroneous, they shall by rule of the Court order such sum of money as may have been improperly allowed, disallowed or surcharged, to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the Court, order the costs of the person prosecuting such Certiorari to be paid by the said Auditor, as to such Court may seem fit; which rules of Court respectively shall be enforced in like manner as other rules of the said Court are enforceable.

V. Provided always, and be it enacted, That no such proceeding for recovering of moneys, goods or chattels shall take place, unless the Auditor General shall have first made a report in writing upon the case to the Lieutenant Governor or Administrator of the Government for the time being, nor unless the said Auditor General shall have received from the Lieutenant Governor or

Administrator of the Government for the time being, acting by and with the advice and consent of the Executive Council, directions to proceed to the recovery of such moneys, goods or chattels.

VI. And be it enacted, That if in any case it shall appear expedient to the Lieutenant Governor or Administrator of the Government, that an examination should be made into the facts connected with the receipt or outlay of any public money, it shall and may be lawful for the Lieutenant Governor or Administrator of the Government for the time being, by and with the advice of the Executive Council, to appoint the Auditor General's chief Clerk, or some other person, to proceed to any place within this Province to examine witnesses and take evidence as to the receipt or outlay of such public money; and such chief Clerk or other person so appointed shall be, for this special purpose, the Deputy of the Auditor General, and shall have and exercise, whilst so employed, all the powers to sum-mon witnesses, administer oaths, and call for books or papers, which are in this Act given to the Auditor General; and such person shall report in writing all the evidence and information so taken to the Auditor General, who shall thereupon deal with the Account to which they relate in such manner as the aforesaid evidence and information may seem to him to warrant; provided always, that every person so appointed to examine and inquire shall, before he act, make oath before the Lieutenant Governor or Administrator of the Government, or before one of the Justices of the Supreme Court, that he will truly, faithfully and impartially take, record and report all evidence relating to the matter into which he is sent to examine.

VII. And be it enacted, That in all proceedings under this Act it shall be sufficient to produce a copy of any report of the Auditor General, or any other person acting under this Act, certified and signed by the said Auditor, or by such other person, as well as of any minute, order, allowance or direction of the said Lieutenant Governor or Administrator of the Government, and the Executive Council, certified and signed by the Provincial Secretary or Clerk of the said Council; and such copies, so certified, shall be received as prima facie evidence in all Courts that the said reports, minutes, orders, allowances or directions were duly made and properly delivered to the party to whom they were addressed, or whom they concerned.

VIII. And be it enacted, That all expenses necessarily incurred in carrying out this Act, so as to insure a true, full and sufficient audit, and all costs on Certiorari which may be ordered to be paid by the said Auditor, shall be defrayed from the Civil Cist, or from the Surplus of such Civil List now or hereafter in the hands of Her Majesty's Receiver General.

IX. And be it enacted, That this Act shall not come into operation or be in force until Her Majesty's Royal approbation be first had and declared.

[This Act was specially confirmed, ratified and finally enacted by an Order of Her Majesty in Council, dated the 3rd day of February 1851, and published and declared in the province the 5th day of March 1851.]