

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1863. Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1863.

26 Victoria – Chapter 5

An Act to authorize a Loan, and for the construction and management of an Inter-Colonial Railway. Passed 20th April, 1863.

Section.	Section.
1. What amount may be borrowed, and through whom.	12. When constriction may be commenced, and under what conditions.
2. When loan may be contracted.	13. Prescribes prerequisites before loan may be contracted.
3. How to be applied.	14. Three Commissioners to be a quorum.
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Whereas in reply to an application for Imperial aid to construct a Railroad from Truro in Nova Scotia, through New Brunswick, to Riviere du Loup in Canada, His Grace the Duke of Newcastle, Her Majesty's Principal Secretary of State for the Colonies, transmitted to the Governor General of Canada, and to each of the Lieutenant Governors of Nova Scotia and New Brunswick, a Despatch bearing date the twelfth day of April, A. D. one thousand eight hundred and sixty two, in which, among other things, it is declared, that Her Majesty's Government, anxious to promote as far as they can the important object of completing the great line of railway communication on British ground, between the Atlantic and the westernmost parts of Canada, and to assist the Provinces in a scheme which would materially promote their interest, Her Majesty's Government are willing to offer to the Provincial Governments an Imperial guarantee of Interest towards enabling them to raise by public loan, if they should desire it, at a moderate rate, the requisite funds for constructing the Railway: And whereas at a meeting of Delegates from the Provinces of Nova Scotia and New Brunswick with Members of the Government of Canada, held at Quebec on the tenth day of September, in the year last aforesaid, to consider such proposition, and to adjust the terms upon which the same should be accepted; after deliberation had, two Memoranda in writing were drawn up and signed on behalf of the Governments of Canada, Nova Scotia, and New Brunswick,

relating to the several matters under consideration, copies of which are contained in a Schedule hereunto annexed, marked respectively A and B: And whereas, in pursuance of the provisions in said Memoranda contained, a Delegation from the Provinces of Canada, Nova Scotia, and New Brunswick, proceeded to London, with a view of carrying out the objects therein set forth, and, after consultation with Members of Her Majesty's Government, a Paper, stating the terms and conditions upon which the British Government would afford their guarantee, was submitted by Sir Frederic Rogers on the thirteenth December, in the year aforesaid, as a basis for Colonial Legislation, a copy of which Paper is set forth in said Schedule, and marked C, followed by a further Paper from Sir Frederic Rogers, on behalf of the Duke of Newcastle, dated twenty fourth of January one thousand eight hundred and sixty three, transmitting a copy of a Minute by the Secretary of the Treasury, also hereto annexed, and marked D: And whereas, on the part of the Province of New Brunswick, it has been determined to accept this offer of Imperial aid to construct the said Railway, upon the terms in the said Papers set forth, and to assume the liability of three and one-half twelfths of three millions of pounds sterling, as specified therein;—

Be it therefore enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. The Governor in Council is hereby authorized to borrow, through and upon the guarantee of the British Government, three and one-half twelfths of three millions of pounds sterling, for the purpose of aiding in the construction of an Inter-Colonial Line of Railway between Truro in the Province of Nova Scotia, through the Province of New Brunswick, and Riviere du Loup in the Province of Canada.
2. No such loan shall be contracted on behalf of the Province of New Brunswick, until corresponding powers have been given by the Legislature of Canada to the Government of Canada to borrow, under like guarantee, five twelfths of three millions of pounds sterling, nor until corresponding powers shall have been given by the Legislature of Nova Scotia to the Government of Nova Scotia to borrow, under like guarantee, three and one-half twelfths of three millions of pounds sterling, for the same object.
3. The amount so borrowed shall be applied towards the completion of the said Railway, on a line to be approved by the Imperial Government.
4. The principal and interest on the said loan of three and one-half twelfths of three millions of pounds sterling, shall be a first charge on the Revenue of the Province after the Civil List and the principal and interest of existing debts and liabilities; the interest on the said loan to be payable semi-annually at London on or before the first day of May and November in each year.
5. The loan to be liquidated as follows:—Three and one-half twelfths of two hundred and fifty thousand pounds sterling, to be payable ten years after contracting such loan;— three and one-half twelfths of five hundred thousand pounds sterling, twenty years;—three and one-half twelfths of one million of pounds sterling, thirty years;—and three and one-half twelfths of one million two hundred and fifty thousand pounds sterling, forty years after contracting such loan.

6. The payment of the three last instalments to be provided for as follows :—

2nd Decade, (say 1873 to 1882 inclusive.)

A Sinking Fund of three and one-half twelfths of forty thousand pounds sterling, to be remitted annually to the Imperial Treasury, being an amount adequate, if invested at five per centum compound interest, to provide three and one-half twelfths of five hundred thousand pounds sterling at the end of the decade; the sum to be remitted annually, to be Invested in the names of Trustees, in Colonial securities of any of the three Provinces aforesaid, prior to or forming part of the loan to be raised, or in such other Colonial securities as Her Majesty's Government shall direct, and the Government of New Brunswick shall approve.

3rd Decade, (say 1883 to 1892 inclusive.)

A Sinking Fund of three and one-half twelfths of eighty thousand pounds sterling, to be remitted annually to the Imperial Treasury, compound interest, to provide three and one-half twelfths of one million of pounds sterling at the end of the decade; the amount, when remitted, to be invested as in the case of the Sinking Fund for the preceding decade.

4th Decade, (say 1893 to 1902 inclusive.)

A Sinking Fund of three and one-half twelfths of one hundred thousand pounds sterling, to be remitted annually to the Imperial Treasury, being an amount adequate, if invested at five per centum compound interest, to provide three and one-half twelfths of one million two hundred and fifty thousand pounds sterling, being the balance of the loan, at the end of the decade; this amount, when remitted, to be invested as in the preceding decades.

Should the Sinking Fund of any decade produce a surplus, it will go to the credit of the next decade; and in the last decade, the Sinking Fund will be remitted or reduced accordingly.

7. The construction of said Railway, if by the Governments, shall be conducted by five Commissioners—two to be appointed by Canada, one by Nova Scotia, and one by New Brunswick; these four to choose the remaining Commissioner. The preliminary surveys shall be effected at the expense of the Colonies, by three Engineers and other officers to be nominated—two of such Engineers to be chosen by the Governments of Canada, Nova Scotia, and New Brunswick, and one by the Imperial Government; and of such expense the Province of New Brunswick shall be liable for three and one-half twelfths.

8. The Road to be at the service of the Imperial Government for the carriage of Troops and Munitions of War, on such terms and at such rate of tariff as may from time to time be agreed upon between the Imperial and Colonial Governments.

9. As soon as the Provinces of Canada and Nova Scotia shall have provided the necessary legislation to carry into effect the stipulations contained in the Memoranda A and B, and upon the

terms and conditions set forth in the Paper marked C, in the Schedule annexed, furnished by the British Government, the Governor in Council may appoint a suitable person, to hold office during pleasure, as one of the Commissioners to be selected in conformity with the provisions of Section one of Memorandum B in said Schedule, who shall be clothed with all the powers necessary to carry out the provisions of this Act in conjunction with Commissioners to be appointed by the Governments of Canada and Nova Scotia, as in said Section set forth.

10. If any Company or Body Corporate now or hereafter to be organized, possessing sufficient capital, shall offer to construct the contemplated Railway between Truro in Nova Scotia, and Riviere du Loup in Canada, and shall give such guarantee or assurance that they will complete the same as the several Governments of Canada, Nova Scotia and New Brunswick may deem necessary, the Governor in Council is hereby authorized and empowered, on the part and behalf of New Brunswick, to enter into an agreement, conjointly with Canada and Nova Scotia, with such Company or Body Corporate, for the construction of said Railway, upon the following terms, viz:— That upon completion of such Railway, the Province of New Brunswick shall each and every year for and during the first period of ten years thereafter in which the said Railway shall be effectually worked, pay to the said Company or Body Corporate, a sum which, together with the net earnings of the said Railway, shall be equal to the interest, at the rate of three and a half per centum, on three and one-half twelfths of three millions of pounds sterling: Each and every year for and during the second period of ten years thereafter in which the said Railway shall be effectually worked, a sum which, together with the net earnings of said Railway, shall be equal to the interest, at the rate of three and a half per centum, on three and one-half twelfths being an amount adequate, if invested at five per centum of three millions of pounds sterling, but not exceeding in any one year the sum of twenty thousand pounds sterling: Each and every year for and during the third period of ten years thereafter in which the said Railway shall be effectually worked, a sum which, together with the net earnings of said Railway, shall be equal to the interest, at the rate of three and a half per centum, on three and one-half twelfths of three millions of pounds sterling, but not exceeding in any one year the sum of twelve thousand pounds sterling: Each and every year for and during the fourth period of ten years thereafter in which the said Railway shall be effectually worked, a sum which, together with the net earnings of the said Railway, shall be equal to the interest, at three and a half per centum, on three and one-half twelfths of three millions pounds sterling, but not exceeding in any one year the sum of six thousand pounds sterling; which said payments shall be and are hereby made a first charge upon the Revenues of the Province next after the Civil List and the debts and liabilities existing at the time of the passing of this Act.

11. In case that no suitable Company or Body Corporate shall offer or be found willing to construct and manage the said Railway, upon terms and conditions provided in the preceding Section, then the Commissioner to be appointed on behalf of this Province shall be empowered to act conjointly with the other Commissioners, to construct the said Road by public tender and contract, in the cheapest and most efficient manner the said Commissioners can devise, and upon the site that shall have been surveyed and approved by the Governments of the three Provinces.

12. When the preliminary surveys shall have been completed in the manner above provided, and the British Government shall have approved of a line and surveys, the work shall commence and

be continued simultaneously in each of the Provinces, and such portions, or the whole of the line, shall be immediately put under contract of construction, in sections or otherwise, to be finished at such dates, with such guarantees and securities for completion, as shall be deemed most advisable by such Commissioners.

13. No such loan shall be contracted without the assent of the Legislature, until it shall be satisfactorily made to appear to the Governor in Council, by the estimates and certificates of the Engineers appointed under the authority of this Act, that a first class Railway can be constructed from Truro in Nova Scotia, to Riviere du Loup in Canada, on the line selected, and under the terms of the proffered guarantee.

14. Three of the five Commissioners shall be a quorum for the transaction of business, and in case of disagreement, the decision of a majority shall be binding.

15. No person holding a seat in the Legislature shall become security for the performance of any contract with the Commissioners, or for any work or engagement in relation to the Railway to be constructed, referred to in this Act; and no Member of the Legislature of this Province shall hold the office of Commissioner, or hold or be appointed to any office of emolument under the Commissioners, or be a Contractor or party to any contract arising out of the construction, management or working of the Road, or any part thereof.

16. Where the Road shall pass through Crown Lands, the Governor in Council is hereby authorized to grant, for the purposes of the Road, the necessary Crown Lands for track, sidings, and stations.

17. The Commissioners to be appointed for carrying out the provisions of this Act, when the line shall be constructed, are authorized to make rules and regulations for managing and working the entire line, in conformity with the stipulations in the Memoranda aforesaid mentioned; and so far as the Province of New Brunswick is concerned, such rules and regulations, when approved by the Governor in Council, shall have all the force of law within the boundaries of this Province.

18. If either the Province of Canada or the Province of Nova Scotia shall not legislate within two years after the passing of this Act, providing for the construction of the said Inter-Colonial Railway on the terms of the said Memoranda and Papers in the said Schedule, or some modification of them to be agreed upon by the Legislatures of the three Provinces and the Imperial Government, then this Act, and every matter and things herein contained, shall, at the end of two years from the passing hereof, be and stand repealed.

19. The Legislature will make such further provisions as may be deemed necessary to give effect to this Act, for the purpose of raising the Loan, paying the Interest, liquidating the Debt, and for the construction and management of the Road.

Schedule in the Foregoing Act Referred to.

Memorandum A.

The undersigned, representing the three Governments of Canada, Nova Scotia, and New Brunswick, convened to consider the Despatch of His Grace the Duke of Newcastle of 12th April 1862, with reference to the Inter-Colonial Railway; having given the very important matters contained in that Despatch their attentive consideration, are agreed—

I. That whilst they have learnt with very great regret that Her Majesty's Imperial Government has finally declined to sanction the proposals made in behalf of these Provinces in December 1861, and at previous periods, they at the same time acknowledge the consideration exhibited in substituting the proposal of "an Imperial guarantee of Interest towards enabling them to raise by public loan, if they should desire it, at a moderate rate, the requisite funds for constructing the Railway."

II. That, with an anxious desire to bind the Provinces more closely together, to strengthen their connection with the Mother Country, to promote their common commercial interests, and to provide facilities essential for the public defence of these Provinces as integral parts of the Empire, the undersigned are prepared to assume, under the Imperial guarantee, the liability necessary to construct this great work.

III. That the three Governments are agreed that the proportions of liability for the necessary expenditure shall be appropriated as follows, viz:—five-twelfths for Canada, and seven-twelfths to be equally divided between the Provinces of Nova Scotia and New Brunswick.

IV. But it is understood that the liability for principal and interest shall be borne by each Province to the extent only of the proportion hereby agreed upon.

V. That, in arriving at this conclusion, the undersigned have been greatly influenced by the conviction that the construction of the Road between Halifax and Quebec must supply an essential link in the chain of an unbroken highway extending through British territory from the Atlantic to the Pacific, and in the completion of which every Imperial interest in North America is most deeply involved; and the undersigned are agreed that, to present properly this part of the subject to the Imperial authorities, the three Provinces will unite at an early day in a joint representation on the immense political and commercial importance of the Western extension of the projected line.

12th September, 1862.

(Signed)	J. S. Macdonald,	}	Representing Canada.
	L. V. Sicotte,		
	J. Morris,		
	W. P. Howland,		
	Wm. M'Dougall,		
	U. T. Tessier,		
	T. D'Arcy M'Gee,		
	F. Eventurel,	}	Representing Nova Scotia.
	Adam Wilson,		
	Joseph Howe,		
	William Annand,	}	Representing New Brunswick.
	J. M'Culley,		
	S. L. Tilley,		
	W. H. Steeves,	}	
	P. Mitchell,		

Memorandum B.

- I. If it should be concluded that the work shall be constructed and managed by a joint Commission of the three Provinces, it shall be constituted in the proportion of two appointed by the Government of Canada, and one each by the Governments of Nova Scotia and New Brunswick, the four to select a fifth before entering upon the discharge of their duties.
- II. That a joint Delegation proceed with as little loss of time as possible to England, to arrange with the Imperial Government the terms of the loans, the nature of the securities required, the amount to be paid for the transport of Troops and Mails, and, if possible, to obtain a modification of the terms proposed, to the extent of the interest accruing during the construction of the work.
- III. That no surveys be authorized until the Laws contemplated shall have been passed, and the joint Commissioners appointed.
- IV. That any profit or loss, after paying working expenses, shall be divided in proportion to the contributions of the several Provinces.
- V. That such portions of the Railways now owned by the Governments of Nova Scotia and New Brunswick, which may be required to form part of the Inter-Colonial Road, shall be worked under such joint authority as may be appointed by the three Provinces; that the rates collected shall be uniform over each respective portion of the road; that all net gain or loss resulting from the working or keeping in repair of any portion of the road constructed by Nova Scotia or New Brunswick, and to be used as a part of the Inter-Colonial Railway, shall be received and borne by the said Provinces respectively, and the surplus, if any, after the payment of interest, shall go in abatement of interest on the whole line between Halifax and Riviere du Loup.

Crown Lands required for the Line or for Stations, shall be provided by each Province.

(Signed) Thos. D'Arcy M'Gee, for Canada.
Joseph Howe, for Nova Scotia.
S. L. Tilley, for New Brunswick.

Memorandum C.

Paper furnished by Sir Frederic Rogers.

It is proposed—

1. That Bills shall be immediately submitted to the Legislatures of Canada, Nova Scotia, and New Brunswick, authorizing the respective Governments to borrow £3,000,000, under the Guarantee of the British Government, in the following proportions:—5-12ths, Canada; 3 1/2-12ths, Nova Scotia; 3 1/2-12ths, New Brunswick.
2. But no such Loan to be contracted on behalf of any one Colony, until corresponding powers have been given to the Governments of the other two Colonies concerned, nor unless the Imperial Government shall guarantee payment of Interest on such Loan until repaid.
3. The money to be applied to the completion of a Railway connecting Halifax with Quebec, on a line to be approved by the Imperial Government.
4. The Interest to be a first charge on the consolidated Revenue Funds of the different Provinces, after the Civil List and the Interest of existing Debts; and as regards Canada, after the rest of the six charges enumerated in the 5th & 6th Victoria, Chapter 118, and 3rd & 4th Victoria, Chapter 35, (Acts of Union.)
5. The Debentures to be in Series, as follows, viz:--

£250,000 to be payable 10 years after contracting Loan.

£500,000	"	20	"	"	"
£1,000,000	"	30	"	"	"
£1,250,000	"	40	"	"	"

In the event of these Debentures, or any of them, not being redeemed by the Colonies at the period when they fall due, the amount unpaid shall become a charge on their respective Revenues, next after the Loan, until paid. The principal to be repaid as follows:—

1st Decade, (say 1863 to 1872 inclusive.)—£250,000 in redemption of the 1st Series, at or before the close of the first decade from the contracting of the Loan.

2nd Decade, (say 1873 to 1882 inclusive.)—A Sinking Fund of £40,000, to be remitted annually; being an amount adequate, if invested at five per cent. compound interest, to provide £500,000 at the end of the decade: the sum to be remitted annually, to be invested in the names of Trustees in Colonial securities of any of the three Provinces prior to or forming part of the Loan now to be raised, or in such other Colonial securities as Her Majesty's Government shall direct, and the three Colonial Governments approve.

3rd Decade, (say 1883 to 1892 inclusive.)—A Sinking Fund of £80,000, to be remitted annually; being an amount adequate, if invested at five per cent. compound interest, to provide £1,000,000 at the end of the decade: the amount, when remitted, to be invested as in the case of the Sinking Fund for the preceding decade.

4th Decade, (say 1893 to 1902 inclusive.)—A Sinking Fund of £100,000, to be remitted annually; being an amount adequate, if invested at five per cent. compound interest, to provide £1,250,000, being the balance of the Loan, at the end of the decade: this amount, when remitted, to be invested as in the preceding decade.

Should the Sinking Fund of any decade produce a surplus, it will go to the credit of the next decade. And in the last decade, the Sinking Fund will be remitted or reduced accordingly.

It is, of course, understood, that the assent of the Treasury to these arrangements, presupposes adequate proof of the sufficiency of the Colonial Revenues to meet the charges intended to be imposed upon them.

6. The construction of the Railway to be conducted by five Commissioners; two to be appointed by Canada, one by Nova Scotia, and one by New Brunswick: these four to choose the remaining Commissioner.

7. The preliminary Surveys to be effected at the expense of the Colonies by three Engineers or other officers, nominated, two by the Commissioners and one by the Home Government.

8. Fitting provision to be made for carriage of troops, &c.

9. Parliament not to be asked for the guarantee until the Line and Surveys shall have been submitted to and approved of by Her Majesty's Government, and until it shall have been shewn, to the satisfaction of Her Majesty's Government, that the Line can be constructed without further application for an Imperial guarantee.

Memorandum D.

Downing Street, 24th January, 1868.

Sir,—I have to request that you will acquaint Mr. Tilley that his Letter of the 3rd instant, addressed to Sir Frederic Rogers, on the subject of the Treasury Minute on the proposed Loan for the construction of the Inter-Colonial Railway, has been received in this Department; and I enclose a copy of a Memorandum which I have received from the Secretary to the Treasury, on the points raised by Mr. Tilley respecting the mode of raising the Loan, and the priority of charge on the Colonial Revenues, which I trust will be satisfactory to him.

Mr. Tilley will, doubtless, communicate this information to his colleague, Mr. Howe; I have therefore not sent a copy of this Paper to Lord Mulgrave.

I have, &c.
(Signed) Frederic Rogers,
(In the absence of the Duke of Newcastle.)

Lieut. Gov. Hon. Arthur H. Gordon, &c. &c. &c.

[Enclosure.]

With reference to the two questions raised by Mr. Tilley upon the stipulations embodied in the Memorandum relating to the proposed Loan for the construction of an Inter-Colonial Railway, the Treasury considers that an answer should be sent to the following effect:—

1. Her Majesty's Government never contemplated acquiring a precedence over existing engagements of the Colonial Governments, whether for interest or principal; but the assent of the Treasury to the arrangement, as stated in article V, presupposes adequate proof of the sufficiency of the Colonial Revenues to meet the charges imposed upon them, which charges would comprise not only the Civil List, and the accruing interest of any existing debt standing in priority to the proposed Railway Loan, but also any payment of principal standing in the same priority, which may fall due within the period at the expiration of which the Railway Loan is required to be fully liquidated, as well as the current interest and the decennial accumulation for extinction of principal of the proposed Railway Loan.

No statement of revenue or liabilities which would afford this evidence has as yet been exhibited to Her Majesty's Government.

2. In the event of the proposed arrangement being carried into effect, the Treasury will not object to issue the Debentures, upon the precedent of the Canada Guaranteed Loan of 1843, under the hand of the Lords Commissioners, and to authorize one of their officers to act as Trustee, together with a nominee of the Colony, for the investment in their joint names of the instalments remitted from time to time on account of Sinking Fund, provided such a course shall be deemed advisable by the Colonial Governments.