

*Laws of His Majesty's Province of Upper-Canada; Passed in the Second Session of the Provincial Parliament of Upper Canada, Met at Newark, on the Thirty-First day of May, in the Thirty-Third Year of the Reign of our Sovereign Lord George the Third (1793).* Niagara: Gideon Tiffany, Printer to the King's Most Excellent Majesty, 1795.

33 George III – Chapter 1

**An Act for the better Regulation of the Militia, in this Province.**

Whereas the establishment of a respectable militia, under proper officers is essential for the protection and defence of the 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 Upper-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the parliament of Great Britain, entitled, an Act to repeal certain parts of an Act passed in the fourteenth year of his majesty's reign, entitled "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 by the authority of the same, That from and After the passing of this act, an ordinance of the province of Quebec, passed in the seventeenth year of his majesty's reign, entitled, "An Ordinance for regulating the militia of the province of Quebec, and rendering it of more general utility towards the preservation and security thereof," shall be repealed, and the same is hereby repealed accordingly. And be it enacted by the authority aforesaid, That the governor, lieutenant governor or person administering the government of this province shall and may from time to time, constitute and appoint a lieutenant in each and every county and riding thereof, who shall have full power and authority, and is hereby required to call together, arm and array, and cause to be trained and exercised, such persons, in such manner as herein After directed, once in every year, and the said lieutenants severally, all from time to time, constitute and appoint one such person as they shall think fit, qualified as herein after directed, and living within their respective counties and ridings, to be their deputy lieutenant, (the names of such persons having been first presented to and approved of by the governor, lieutenant governor or person administering the government of the province for the time being) and shall appoint a sufficient number of colonels, lieutenant colonels, majors, and other officers qualified as herein after directed, to train, dicipline, and command the persons so to be armed and arrayed according to the 'rules', orders and directions herein After mentioned, and shall certify to the governor, lieutenant governor or person administering the government of the said province, the names and ranks of all such officers so appointed, and in case the governor, lieutenant governor or person administering the government of the province, shall within two months after such certificate shall have been said before him, signify his disapprobation of any of the persons so appointed, it shall not be lawful for the said lieutenants to grant a commission to the person so disapproved, but commissions shall be granted to all such persons so appointed who shall not be so disapproved of, as aforesaid, and the officers so appointed for the militia, to be armed and arrayed as herein after directed, shall rank with the officers of such of his majesty's forces, as may for the time being serve within this province, as youngest of their respective rank.

II. And be it further enacted, That when the lieutenant of any county or riding shall be out of the province, or when there shall be no lieutenant, it shall be lawful for the governor, lieutenant governor or person administering the government of the province, to authorize the deputy lieutenant of such county or riding, to grant commissions and do all such acts, matters and things as might lawfully have been done by the said lieutenant, and the same shall be good and valid in law as if done by the said lieutenant, and such commissions so granted by such lieutenant or deputy lieutenant, to the officers aforesaid, shall not be revoked or made void by the death of the party granting the same.

III. And be it further enabled, That the lieutenant of every county or riding, shall have the chief command of the militia within such county or riding, and that one deputy lieutenant shall be appointed within each county and riding for the purposes of this act.

IV. And be it further enacted by the authority aforesaid, That every person so to be appointed a deputy lieutenant, shall be possessed of five hundred acres of land, within the district in which the county or riding to which he is appointed a deputy lieutenant is situated, to and for his own rife and benefit, free and clear of and from all mortgages or other incumbrances whatsoever, and every person so to be appointed a colonel, shall in like manner be possessed of four hundred acres of land within the district in which the county or riding where he is so appointed colonel is situated, to and for his own use and benefit, free and clear of and from all mortgages or other incumbrances whatsoever, and every lieutenant colonel so to be appointed in such county or riding as aforesaid, shall be possessed of four hundred acres of land in like manner and form and under the conditions aforesaid. And every major and captain, so to be appointed in such county or riding as aforesaid, shall be possessed of three hundred acres of land in like manner and form and under the conditions aforesaid, and every lieutenant and ensign so to be appointed in such county or riding as aforesaid, shall be possessed of two hundred acres of land, in like manner and form and under the conditions aforesaid, which said deputy lieutenants, colonels, lieutenant colonels, majors, captains and other officers respectively, shall within six months next after their several appointments take the oath of allegiance to his present majesty, his heirs and successors, before the magistrates assembled in quarter sessions, within the limits aforesaid.

V. And be it further enabled by the authority aforesaid, That general meetings of the lieutenancy of each county and riding, shall be holden at the most convenient place within such county or riding, and such general meetings shall consist of the lieutenant together with the deputy lieutenant or one justice of the peace for the said district, or on the death or removal, or in the absence of the lieutenant thereof, the deputy lieutenant aforesaid and justice of the peace of each county and riding respectively. And one such general meeting shall be holden within every county and riding annually on the fourth day of June, or in case that day should happen to be Sunday, on the Monday following, in every year; and the lieutenant together with the deputy lieutenant, or one justice of the peace or (on the death or removal or in the absence of the lieutenant) any deputy lieutenant of any county or riding together with a justice of the peace as aforesaid, when and so often as they shall find it necessary for carrying the purposes of this act into execution, may summons or cause to be summoned other general meetings of the lieutenancy on any days to be fixed by such summons giving at least one month's notice of such intended meeting in the most

public manner that the same can be made and circulated throughout the county or riding, and in case any annual or other general meeting shall not be attended by the lieutenant or deputy lieutenant or justice of the peace, or by the deputy lieutenant and one justice of the peace as herein before required, the said meeting shall and may be adjourned by the lieutenant or deputy lieutenant then present, to some other time and to any other place within such county or riding as shall and may to them seem meet and convenient.

VI. And be it further enacted, That where the extent of the county or riding may be such as to require sub-division meetings, that the meetings of the deputy lieutenant within the respective counties or ridings shall be holden as herein after directed, which sub-division meeting shall consist of the deputy lieutenant of such county or riding respectively, and one justice of the peace, to do all acts, matters and things, which are by this Act directed to be done by the deputy lieutenants at the respective sub-division meetings, and if it shall happen that there shall not appear at such sub-division meeting one deputy lieutenant and one justice of the peace, the clerk at such meeting shall by notice given in writing to the deputy lieutenant of such sub-division, to be left at their respective places of abode, appoint another meeting to be holden within fourteen days at the same place where such meeting was to have been holden, such notice being given five days at lead previous to such meeting.

VII. And be it further enacted, That in those counties or ridings where it may be necessary to hold sub-division meetings, the lieutenant and deputy lieutenant at their general meeting, shall and may apportion the same into divisions as may bed suit the general convenience of the county or riding, and shall and may by public notice, declare the limits of each division respectively, and the parishes, townships or places contained therein, and shall and may at such general meeting where it shall be deemed necessary, appoint two or more meetings in every year, in different parts of the said county or riding, giving three weeks previous notice at lead to the inhabitants of the respective parishes, townships or places within the division, of the time and place where such meeting is to be holden, and shall and may appoint a clerk to attend the same.

VII. And be it further enacted, That every male inhabitant from sixteen years of age to fifty, shall be deemed capable of bearing arms, and shall enrol or cause to be enrolled his name as a militia man at the first meeting for that purpose to be holden for the division in which his place of abode may be, and shall at such meeting give in his name, his age and place of residence, and if he has thereto but lately removed, he shall make known the same together with the place whence he removed. And each and every such inhabitant as aforesaid who shall not at the first meeting for that purpose to be holden for the division in which his place of abode may be, either attend in person and give in his name in writing, or cause himself to be made known in some certain way to the lieutenant, deputy lieutenant or person presiding at such meeting, so that his name may be enrolled as a militia man, shall for such neglect, upon conviction thereof before any one justice of the peace, forfeit and pay the sum of twenty shillings, to be raised and applied in manner herein After mentioned.

VIII. Provided always, That when such inhabitant shall have once enrolled or cause to be enrolled his name in manner aforesaid, he need not attend any other meeting for the said division, to be holden for the purpose of enrolment unless thereunto summoned in writing.

IX. And be it further enacted, That After every sub-division meeting, the clerk of the said meeting, shall within fourteen days transmit to the clerk of the general meeting, a fair and true copy of the rolls, signed at the said meeting, and to the end that it may be better known whether any inhabitant liable to be enrolled and serve as aforesaid, shall have omitted to cause his name to be enrolled, the clerk of the said meeting, shall and is hereby required to transmit to the constable of every parish, township or place within the said division, a list of the persons living within such parish, township, or place, respectively, who shall have delivered in their names as aforesaid, which list or a copy thereof, the said constable shall fix in some public place within such parish, township or place for public inspection.

X. And be it further enacted, That the lieutenant of each county or riding shall once in every year, call out the militia of such county or riding, to be reviewed and exercised, and in his absence from the county, or in case of his removal, or death, the said militia shall be called out by the deputy lieutenant of such county or riding, and every person liable to serve in such militia whether officer or private neglecting or refusing to attend (except in case of sickness or having obtained leave of absence) shall forfeit and pay if an officer, forty shillings, and if a non-commissioned officer or private, ten shillings. But if it shall appear to the lieutenant of any county or riding to be more conducive to the interest and convenience of such county or riding, that the militia of the same be reviewed at different times and in separate bodies, it shall and may be lawful for the lieutenant to call out a part of the militia of his county or riding, at some convenient time and place, and the remaining part at some other convenient time and place, as shall to him seem meet.

XI. And be it further enacted, That the captains of the militia shall draw out their respective companies not less than twice, nor more than four times in every year, giving ten days notice thereof, at the most convenient time and place in the county or riding, and shall inspect their arms and instruct them in their duties, and every person after such notice as aforesaid, who shall neglect to attend or shall disobey whether subaltern officer or private, (except in case of sickness or on leave of absence) shall forfeit and pay, every officer the sum of forty shillings, and every non-commissioned officer or private the sum of ten shillings for every such disobedience.

XII. And be it further enacted, That in time of war, rebellion or any other pressing exigency of the state, it shall and may be lawful for the governor, lieutenant governor or person administering the government, to call forth the different companies of the militia, and to march them from their respective counties or ridings, towns, townships, or parishes and there to serve in conjunction with the other militia, or with his majesty's forces under the guidance and superintendance of the officers whom the governor, lieutenant governor or person administering the government shall appoint, so as the said militia be not marched out of the province, and the said officers and privates upon being regularly dismissed may return to their own homes, and any person refusing to obey such order or command, or absconding from or neglecting to repair to the place he is ordered to, being a commissioned officer shall forfeit and pay the sum of fifty pounds and be held

to be unfit to serve his majesty in any military capacity, and being a non-commissioned officer or private shall forfeit and pay the sum of twenty pounds, and in default of payment for such refusal or neglect, such officer, non-commissioned officer, or private, shall be committed to the common gaol of the district, for any time not less than six, or more than twelve calendar months, except such person shall satisfy the lieutenant of such county or riding of which he is a militia man, that such neglect or refusal arose from sickness or that he was absent upon leave.

XIII. And whereas it may be expedient on certain occasions to call out detachments of the militia, Be it enacted by the authority aforesaid, that it shall and may be lawful for the governor, lieutenant governor or person administering the government so to do, and to limit and six the number of men to be called out on such detachment. And in cases of emergency by actual invasion or otherwise, when it may not be practicable to consult the governor, lieutenant governor or person administering the government of the province, it shall and may be lawful for the lieutenant or deputy lieutenant of the several counties and ridings, to limit and appoint the number of men that he shall judge necessary to be called out, and for that purpose to issue his orders to the several commanding officers and also to direct and authorize any officer, having first obtained a warrant for such purpose from one of his majesty's justices of the peace, to impress such carriages and horses as the service may require, for the use of which the owner or owners thereof, shall be entitled to receive the sum of seven shillings and six pence per day, for every cart or carriage with two horses or oxen, during such time as the same shall be employed or detained on public service, Provided always, that whenever it shall happen that only part of the body of the militia of this province, shall be called out for actual service, it shall and may be lawful for any person being of the militia of the county or riding that may be so called out, to provide and send an able bodied man to serve in the said militia in his dead, and such able bodied man, shall be taken and received as a proper substitute for such person, living in the county or riding that would otherwise be obliged to serve in the said part of the militia called out as aforesaid.

XIV. And be it further enacted, That every person who shall sell or barter any part of the arms, ammunition or equipments, which may be delivered out of his majesty's stores to the militia, or any ammunition which may be furnished by his majesty for training and exercising the said militia, and every person who shall buy, or by barter obtain the same, shall severally and respectively forfeit and pay the sum of five pounds for every offence on conviction thereof, by the oath of any one credible witness before any justice of the peace residing within the county where the same has been committed, and in case the person or persons so selling any part of his or their arms, ammunition or equipments as aforesaid, or the person or persons obtaining the same in manner aforesaid, being thereof convicted as aforesaid, shall neglect or refuse to pay the said sum of five pounds, it shall and may be lawful for the justice by a warrant under his hand, to commit such person or persons to the gaol of the county or district where the offence shall be committed, for any space of time not exceeding two months. Provided always, That it shall and may be lawful for the said justice to discharge the person or persons so offending, any time before the expiration of the said two months, when the person or persons so convicted as aforesaid shall tender to the said justice the penalty inflicted by this Act.

XIV. And be it further enacted, That in the several counties and ridings where the number of men is sufficient, the militia shall be formed into regiments, consisting of not more than ten, nor less than five companies, which companies shall consist of not more than fifty, nor less than twenty private men, and the field officers of such regiments shall be as follows, that is to say, one colonel, one lieutenant colonel and one major, and where the number of militia shall amount to a number under eight, and not less than five companies, such militia shall be formed into a battalion, and the field officers of such battalion, shall be one lieutenant colonel, and one major only, and in each regiment or battalion of militia, there shall be one captain, one lieutenant, and one ensign to each company. Provided always, That it shall and may be lawful for every battalion consisting of five companies or upwards, to have one company of grenadiers or light infantry, to which two lieutenants shall be appointed instead of one lieutenant and one ensign. And it shall be lawful for every regiment consisting of eight companies or upwards to have one company of grenadiers and one of light infantry, to each of which companies two lieutenants shall be appointed instead of one lieutenant and one ensign.

XV. And be it further enacted, That to every regiment or battalion of militia which shall consist of five or more companies, there shall be in addition to the officers already mentioned, one adjutant and one quarter master.

XVI. And be it further enacted, That in the several counties and ridings where the militia men are not in number sufficient to form a regiment or battalion according to the intent and meaning of this Act, the militia of such counties or ridings shall be formed into independant companies, each company to consist of not more than fifty, nor less than twenty private men, with one captain, one lieutenant, and one ensign to each company, and that the governor, lieutenant governor or person administering the government, may when he shall think proper join together any number of such independant companies, and form a battalion or battalions, or may incorporate them with any other regiment or battalion of militia. Provided the number of companies in any such regiment or battalion be not thereby made to exceed the number of companies of which a regiment or battalion of militia is herein before directed to consist.

XVII. And be it further enacted, That it shall and may be lawful for the lieutenant of any county or riding to Act as colonel or commanding officer of any regiment, battalion or independant company of militia for such county or riding for and during such time as there shall not be any colonel or commanding officer appointed to such regiment, battalion or independant company, but no such lieutenant of any county or riding, shall at any one time Act as colonel or commanding officer, to more than one body of militia, whether regiment, battalion or independant company, and when the lieutenant of any county or riding shall take the command of any body of militia not being by this Act deemed a regiment, he shall be entitled to the rank of colonel, except when the said company shall be formed into battalion as aforesaid.

XVIII. And be it further enacted, That at all times when the militia may be called out and embodied for actual service, the officers, non-commissioned officers and private men of the several regiments, battalions and independant companies of militia, shall from the time of their being drawn out and embodied as aforesaid, and until they shall be returned again to their

respective towns, townships, parishes or places of abode remain under the command of his excellency the governor, lieutenant governor or other general officer having the command of them, and shall be liable to the provisions of such Act or Acts of this province as may be in force for the punishment of mutiny, desertion, and other crimes, or may hereafter be made, and be in force for the explanation, amendment or enforcement of this Act, and for want of any Act or Acts of this province, or where the same shall not extend to punish desertion to the enemies of this province, or any treasonable correspondence that may be held with them by any person or persons Acting in the said militia, during the time they shall be called out, that then and in such case, the said militia and every part thereof, shall be and considered to be under the rules and regulations, pains and penalties of any Act or Acts of the British parliament that may be in force for the punishment of mutiny and desertion. Provided always, that no officer serving in any of his majesty's other forces, shall fit in any court martial upon the trial of any officer or private man serving in the militia.

XIX. And be it further enacted, That except in time of actual service, the judges of the supreme court and clergy, the members of the legislative and executive councils and their respective officers, the members of the house of assembly for the time being and the officers thereto belonging, his majesty's attorney-general, the secretary of the province, and all other civil officers who shall have been, or hereafter may be appointed to any civil office in this province, under the great seal of the same, as well as all magistrates, sheriffs, coroners, half-pay officers, militia officers having served under and by virtue of a commission from any of his majesty's governors in the different provinces, now (fates of America, the surveyor general and his deputies duly appointed, sea-fairing men actually employed in the line of their calling, physicians, surgeons, the mailers of public schools, ferry-men, and one miller to every grift mill, shall be and they are hereby excused from serving in the said militia. Provided always, that this Act and the exceptions herein contained shall not prevent, and it is hereby declared, that the same shall not be construed to prevent any, or every above mentioned person or persons from holding commissions as officers in the militia of this province. Provided always, that it shall and maybe lawful for the governor, lieutenant governor or person administering the government of this province, by warrant under his hand and seal, to exempt any of the persons herein before enumerated, to whom such warrant shall be granted from being called out for the service aforesaid.

XX. And be it further enacted, That the persons called quakers, menonists and tunkers; who from certain scruples of conscience, decline bearing arms, shall not be compelled to serve in the said militia, but every person professing that he is one of the people called quakers, menonists or tunkers, and producing a certificate of his being a quaker; menonist or tunker, signed by any three or more of the people (who are or shall be by them authorized to grant certificates for this or any other purpose of which a pastor, minister or preacher shall be one) shall be excused and exempted from serving in the said militia, and instead of such service, all and every such person or persons, that shall or may be of the people called quakers, menonists or tunkers, shall pay to the lieutenant of the county or riding, or in his absence to the deputy lieutenant, the sum of twenty shillings per annum in time of peace, and five pounds per annum in time of Actual invasion or insurrection, upon producing such certificate, and being thereby exempted from such service as aforesaid, and if any such person or persons being of the people called quakers, menonists or tunkers, and producing a certificate as aforesaid, shall omit or refuse to pay the sum of twenty

shillings per annum in time of peace, and five pounds per annum in time of actual invasion or insurrection, instead of such service, it shall and may be lawful upon the oath of any one credible witness of such omission or refusal before any justice of the peace, for such justice to issue his warrant to levy the same by distress and sale of the offender or offenders goods and chattels, returning so much of the said distress as shall exceed the sum of twenty shillings per annum in time of peace, and five pounds per annum in time of Actual invasion or insurrection, After deducting the expences of levying the same, to the person or persons upon whom such distress shall be made. And if any measures shall be used in making such distress which may by such person or persons be thought oppressive, be or they may complain to the lieutenant or deputy lieutenant at the next meeting, who shall hear and finally determine the same.

XXI. And be it further enacted, That it shall and may be lawful for the governor, lieutenant governor or person administering the government, to appoint a proper person to be the adjutant general of the said militia, who shall do all matters and things appertaining to the said office of adjutant general, and be paid for and during the time of his serving in the said militia, as such adjutant general as aforesaid, the sum of one dollar per day, per annum, free and clear of and from all deduction whatsoever.

XXII. And be it further enacted by the authority aforesaid, That the fines, penalties and forfeitures by this Act imposed, shall be sued for and recovered by and upon the oath of any one credible witness before any one of his majesty's justices of the peace, and within two months after such conviction and recovery shall be transmitted by the justice before whom such information shall be laid to the lieutenant, in case there be no lieutenant or that he be absent, to the deputy lieutenant of the county where the offence has been committed. And the said lieutenants shall and are hereby required, yearly and every year, to transmit to his majesty's receiver general the several sums of money by them received by way of composition from the persons permitted by virtue of this act to make such composition, and the said receiver general shall out of the monies aforesaid, pay to the said adjutant general upon his producing a warrant for such purpose, to be signed by the governor, lieutenant governor or person administering the government, the sum herein before directed to be paid. And in case any surplus of such monies shall remain in the hands of the said receiver general after making such payment as aforesaid, such surplus shall be disposed of as the governor, lieutenant governor, or person administering the government shall direct, to purposes only that shall respect the said militia, and the other fines, forfeitures and penalties, shall be appropriated to the purchase of such necessaries as may be requisite towards the establishing of and better providing for the militia aforesaid.

XXIII. And be it further entitled by the authority aforesaid, That if any action shall be brought against any lieutenant or deputy lieutenant, or against any deputy lieutenant and justice of any county or riding, or against any justice or justices of the peace, for any thing done by virtue of this Act, that such action or suit shall be commenced within six months next after the fact has been committed, and not afterwards, and shall be said in the district, county or place where the cause of complaint did arise, and not elsewhere, and the defendant or defendants in such Action or suit shall and may plead the general issue, and give the special matters and this Act in evidence, and where the plaintiff or plaintiffs shall be non-suited or discontinue his or their Action, after the



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defendant or defendants shall have appeared, and if upon any demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and have the like remedy for the same as the defendant hath in other cases to recover costs by law.