

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1822. York: R. C. Horne, 1822.

2 George IV – Chapter 3

**An Act to repeal part of and amend the Laws now in force for the raising and training the Militia of this Province. Passed 17th January, 1822.**

Whereas it is expedient to repeal part of and to amend the Laws now in force in this Province for the regulation of the Militia: 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 American, and to make further provision for the Government of the Province"*" and by the authority of the same. That from and after the passing of this Act so much of the fifth Clause of an Act passed in the forty-eighth year of His late Majesty's Reign, entitled "*An Act to explain amend and reduce to one Act of Parliament the several Laws now in being for the raising and training the Militia of this Province"*" as requires the Militia to be called out annually on the fourth day of June, and also the thirteenth clause of the said Act, and so much of the fourteenth Clause of the said Act, as directs that every person who shall be enrolled, of any Regiment, Battalion or Independent Company shall within six months thereafter provide himself with at least six rounds of powder and ball, be and the same are hereby repealed.

II. And be it further enacted by the authority aforesaid, That the Militia shall from and after the passing of this Act be called out annually on the twenty-third day of April for review or in case it should happen on a Sunday, then on the next day, and that any person neglecting or refusing to attend except in case of sickness, or having obtained leave of absence shall be liable to be punished for such neglect or refusal in the manner pointed out by the said recited Act.

III. And be it further enacted by the authority aforesaid, That if any Non-Commissioned Officer or Private be guilty of drunkenness or shall neglect or refuse to obey the lawful orders of his superior Officer or Officers when on Militia duty, or shall quarrel with or insult by abusive words or otherwise any Officer or Non-Commissioned Officer at any Muster or Training, whether in Regiment, Battalion or Company, it shall and may be lawful for the commanding Officer then present to direct such Non-Commissioned Officer or Private to be forthwith taken into Custody and committed to the common Gaol of the District for a time not exceeding two days, there to remain without bail or mainprize, and it shall be the duty of the Sheriff or his Gaoler to receive such Non-Commissioned Officer or Private into the said Gaol, and there to detain him during such period as shall be specified in a warrant from the said commanding Officer, not exceeding the said term of two days, or if the said

commanding Officer of the Regiment or Battalion shall deem it more expedient to punish such offender or offenders by fine it shall and may be lawful for the said commanding Officer to direct a Board of Officers consisting of one Captain and three Subalterns, to assemble to try such offender or offenders, and if such offender or offenders shall be convicted of the offence or offences alledged against him or them, it shall and may be lawful for the said Board to impose a fine upon such offenders or any of them of any sum not exceeding five pounds nor less than ten shillings, to be levied by warrant under the hand and seal of the Officer presiding at the said Board, of the Goods and Chattels of the offender or offenders, and in default of such Goods and Chattels the person or persons convicted shall be committed by the Officer presiding at the said Board to the common Gaol of the District for a term not exceeding one calendar month nor less than five days unless such fine and all reasonable costs are sooner paid.

IV. And be it further enacted by the authority aforesaid, That if any Non-Commissioned Officer or Private who may be ordered to apprehend or escort to Gaol any offender who may be ordered to be committed under this Act, shall neglect or refuse so to do without a good and sufficient excuse to be allowed by the commanding Officer of the Regiment, he shall, if a Non-Commissioned Officer be reduced to the ranks, and shall be subject to a fine of one pound, and if a private he shall forfeit and pay the sum of ten shillings, on conviction before any two of His Majesty's Justices of the Peace to be levied in the same manner as all other Militia fines may now be levied by such Justices of the Peace and in default of Goods and Chattels sufficient to satisfy such fine the person or persons convicted before such Justices of the Peace, shall and may by warrant under the hands and seals of such Justices, be committed to the common Gaol of the District for a term not exceeding eight days nor less than one day, or until the fine and reasonable costs are paid, not exceeding the said period of eight days.

V. And be it further enacted by the authority aforesaid, That all Officers who may be appointed to compose any Board for the trial of any offender or offenders under this Act shall before proceeding to the trial of such offender or offenders take the following oath: "I do sincerely promise and swear that in all such matters as shall be brought before me for trial under the Militia Laws of this Province, I will faithfully act according to the best of my judgment agreeably to the said Laws without favor or partiality to any person so help me God" which oath may be administered by any one member to the other members of the said Board.

VI. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, it shall be the duty of every Officer commanding the several Regiments, Battalions or Independent Companies of Militia in this Province to appoint a Clerk to each Company of such Regiment Battalion or Independent Company, whose duty it shall be to keep registers of their respective Companies, to furnish the Non-Commissioned Officers with lists of the men whom they are directed to warn for Training or other Militia duty and to take lists of the Companies as often as required by the Officers commanding them, to attend Commissioned Officers making inspection of arms, to attend all musters, to keep an account

of all fines which may be levied in their respective Companies, and to make out all returns which may be necessary in their respective Companies, and it shall be lawful for the commanding Officer of any Regiment Battalion or Independent Company to allow and pay to the Clerk of each Company a proportion not exceeding one fifth of the fines which may be collected in the Company to which he may belong, until such proportion shall amount to the sum of five pounds as a reward for his services and trouble in doing the duty enjoined hereby.

VII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Colonel or Officer commanding any Regiment or Battalion of Militia to appoint a Serjeant Major and Clerk for such Regiment or Battalion and to displace such Serjeant Major or Clerk and appoint others in their room as he shall see occasion, and the Serjeant Major and Clerk for the time being shall be exempted from all balloting for actual service, and it shall be the duty of such Serjeant Major and Clerk to attend all Musters or Trainings of the Regiment or Battalion to which they may belong, and to execute the orders of their commanding Officers in all matters touching or belonging to the duties of their respective situations.

VIII. And be it further enacted by the authority aforesaid, That the Colonels or Officers commanding Regiments or Battalions shall within one month after any General Training make out and transmit to the Adjutant General of the Militia for the information of the Governor, Lieutenant Governor or Person Administering the Government, returns of the strength of their Regiments or Battalions, and also returns of Arms, and an account of all fines collected or paid to them and on the expenditure thereof, with certified copies of the vouchers for such expenditure, and all Captains or Officers commanding Companies are hereby required to make out and transmit to the Officer commanding the Regiment or Battalion to which such Companies belong, twice in every year, viz. on or before the fifteenth day of March and the fifteenth day of September, and as often further as required by the Commanding Officer of the Regiment or Battalion, returns of the strength of their respective companies, with fair roles thereof, and also returns of arms and accoutrements, and all forms of returns prescribed by the Adjutant General of Militia, shall be uniformly adopted.

IX. And be it further enacted by the authority aforesaid, That it shall be the duty of the Officers Commanding the Regiments or Battalions of Militia, to cause the Captains or Officers, Commanding Companies in their respective Regiments or Battalions, annually to divide their Companies into two classes, the first of which shall consist of all the able men from the age of sixteen to the age of forty years inclusive, and the other class to consist of all the men above the age of forty, and the Commanding Officers of Regiments or Battalions shall and may select from the first class such men as they may conceive, most fit for flank companies, and may appoint the Officers to be attached to such flank companies, but in the event of a War such flank companies shall be formed by ballot from the first class, provided a sufficient number shall not volunteer for that purpose, and the said flank companies shall be considered as the first for service and shall be supplied with any arms or accoutrements which may be issued for the use of Militia in preference to any other companies or portion

thereof, and the persons who may be selected or balloted for such flank companies shall attend on being duly warned by the Serjeant or persons authorised to warn the men of the Company in the limits of which they may respectively be resident, or the Sergeant of the flank company to which they belong, and when assembled, shall join and fall in with the flank company to which they may be attached.

X. And be it further enacted by the authority aforesaid, That the flank Companies to be formed in manner pointed out in this Act, shall and may be called out for muster or training at least ten times and not oftener in every year, and the men composing such Companies, shall be exempted from Statute Labor, and from the discharge of the duties of Constables or any Parish or Town Office while they continue in such flank Companies, Provided however, that this Act shall not interfere with any appointment which any of such men may hold at the time of their being attached to such companies.

XI. And be it further enacted by the authority aforesaid, That as soon as the classes and flank Companies shall be formed as aforesaid, the Commanding Officers of the respective Companies shall cause a draft or ballot to be made of the remainder of the first and second class as hereinafter mentioned for the purpose of framing a list or roster, by which the men of such classes may be called into actual service when required, that is to say beginning with the first Class, the names of each and every person in such class liable to serve, shall be written on separate pieces of paper as near as may be of equal size, which shall be folded up in the same manner and put into a hat, and therein be well mixed and shaken together, and in like manner numbers from one to the extent of the number of men contained in such class shall be written on distinct pieces of paper of equal size as near as may be, and separately rolled or folded up as near as may be in the same manner and put into another hat, and well mixed or shaken together, and two indifferent persons shall be nominated by the Commanding Officer of the Company publicly to draw the same, and the said persons shall respectively begin by drawing out of each hat one of the said papers, and the Clerk of the Company if present, or otherwise a person appointed to officiate as Clerk shall form a list on a paper to lie provided for that purpose, and shall first set down thereon the name of the person first drawn out of the hat, and opposite to such name the number first drawn out of the other hat, and then the persons appointed to conduct the drawing as aforesaid shall draw out another name and another number respectively, which shall be set down in like manner, and the drawing shall so proceed until the whole of the names and numbers of such first class shall be drawn and set down in writing as aforesaid, and from such list the Clerk of the Company shall form a new list or roster, and proceeding in numerical order to the name of the person who drew the last or highest number, and after the drawing of the first class shall be completed, the second class shall be allotted in like manner and shall be considered as next for service, according to their respective numbers on the list of such ballot, after the first class shall have completed its period of service which shall not exceed six months at any one time.

XII. And be it further enacted by the authority aforesaid, That when any arms or accoutrements may be issued from His Majesty's Stores, for the use of the Militia of this

Province the Officer commanding the Regiment or Battalion for whose use the same may be issued shall, after the same have been received, deliver the same into the care and custody of the Officers commanding Companies, who shall be considered responsible for their safe keeping, and for their being kept in good order and repair, and if any of the said arms or accoutrements shall be lost or rendered unserviceable the officer responsible for the same shall be answerable to the commanding Officer for the value thereof which may be recovered by the said commanding Officer in any action to be brought for that purpose. Provided nevertheless, that if such responsible Officer shall furnish arms and accoutrements of the like description and value as those which may have been lost or rendered unserviceable, the same shall be taken and accepted in lieu thereof, and the Officers commanding Regiments or Battalions shall in like manner be accountable and may be called to account by the Adjutant General of Militia for any arms or accoutrements received by them for the use of their respective Regiments. Provided nevertheless, that no person shall be liable for any arms or accoutrements under this Act, who shall make it satisfactorily appear that the sum have

XIII. And be it further enacted by the authority aforesaid, That the Captain or other Officer commanding a flank Company shall lodge the arms and accoutrements so received by him in some suitable and convenient place or places within the limits of his Company where they may be delivered out to persons for whom they are intended upon all days of Training or Muster or such other time as the Captain or Officer commanding the Company shall direct, and the men to whom the same may be issued shall severally be responsible to the Officers commanding Companies for them, and shall return the same, and every part thereof in as good order and condition as when received by them to the place of deposit, within twenty-four hours after such Training, Muster or other service shall be over, under the penalty of two shillings and six pence for every days neglect to be recovered before any one of His Majesty's Justices of the Peace, and in default of Goods sufficient to satisfy such penalty and reasonable costs by such Justice to the common Gaol of the District for a term of not less than two days nor more than twenty days, or until such penalty and costs are paid not exceeding the said term of twenty days. Provided nevertheless that it shall be in the power of the commanding Officer to remit the said Penalty, if it shall appear to him expedient and proper so to do.

XIV. And be it further enacted by the authority aforesaid, That the Colonel or Officer commanding any Regiment or Battalion shall once in every year, or as often as he may think necessary besides the usual days of Training order an inspection to be made by the Adjutant of the Regiment or Battalion of such arms and accoutrements as may be in the possession of the Regiment and report the state thereof for his information.

XV. And be it further enacted by the authority aforesaid, That the necessary and unavoidable expence of keeping the arms and accoutrements of each Company in proper order and repair, shall be borne by each Company respectively and may be charged and recovered against the men of such Company respectively, by the Officer Commanding the

Company, before the Court of Requests; but no Militia man shall be liable to keep more than one stand of arms and one set of accoutrements in order and repair.

XVI. And be it further enacted by the authority aforesaid, That it shall be lawful for the Commanding Officer of each Regiment or Battalion to allow to the Adjutant thereof, the sum of ten pounds per annum out of any fines which may be collected in the regiment, or in case such fines shall not amount to that sum. The Adjutant of each Regiment or Battalion shall be entitled to receive the same from and out of the District Treasury on producing to the Treasurer annually a certificate from the Field Officers, and at least four Captains of the Regiment or Battalion that such Adjutant is duly qualified and has punctually attended and discharged the duties of his situation.

XVII. And be it further enacted by the authority aforesaid, That the Adjutant of any Regiment or Battalion may hold the situation and rank of Captain in the same.

XVIII. And be it further enacted by the authority aforesaid, That if any person or persons shall willfully interrupt or molest any Regiment, Battalion, Company or Detachment of Militia when mustered or at exercise, or on any duty prescribed by the Laws of this Province, it shall be lawful for the Commanding Officer of such Regiment, Battalion, Company or Detachment, to confine such person or persons during the continuance of such exercise or muster, if necessary to prevent the continuance of such insult or interruption, and the person or persons so confined shall be liable to be punished in the same manner as heretofore provided for, in cases of persons insulting an Officer in the execution of his duty.

XIX. And be it further enacted by the authority aforesaid, That no Officer who has been or who may be hereafter cashiered by the sentence of a General Court Martial, or who may be dismissed His Majesty's regular service, shall be entitled to any rank or privilege from having held such Commission, or exempted from enrolment or the performance of the duties of a private militia man, unless the Governor, Lieutenant Governor or Person Administering the Government shall direct otherwise.

XX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant Governor or Person Administering the Government of this Province, from time to time to commission and appoint a Surgeon to each Regiment or Battalion of Militia, and to appoint proper Officers to command and inspect the Regiments or Battalions of Militia throughout the Province or to limit the command and inspection of such Officers to a particular number of Regiments or Battalions, or to the inspection or command of all the Regiments or Battalions in particular divisions of the Province as may be most convenient fit and proper, and all such Officers when so commissioned and published in General Orders to the Militia shall be obeyed in all things lawful by all persons who shall be so placed under their respective command.

XXI. And whereas, for the more effectual co-operation of the Militia with His Majesty's regular forces, it has been found necessary, in time of actual service, that Lieutenant

Colonels in His Majesty's Regular Army, should rank above all Militia Officers, and it may also be expedient in case of the appointment of Inspecting Field Officers to train and discipline the said Militia, that the same regulation should prevail in time of peace: Be it further enacted by the authority aforesaid, That the first clause of the above recited Act of the Parliament of this Province parsed in the forty- eighth year of His late Majesty's Reign, entitled "*An Act to explain, amend and reduce to one Act of Parliament, the several Laws now in being for the raising and training the Militia of this Province,*" be and the same is hereby repealed, and that from and after the passing of this Act, the Governor, Lieutenant Governor or Person Administering the Government of this Province, shall and may from time to time constitute and appoint under his hand and seal a sufficient number of Colonels, Lieutenant Colonels, Majors, Staff and other Officers, to train discipline and command the Militia of this Province, according to the rules, orders and directions contained in the Militia Laws of this Province, and the Officers so appointed, and also those already appointed to the Militia, shall rank with the Officers of such of His Majesty's Forces as may for the time being serve within this Province, as follows, namely, The Colonels and Lieutenant Colonels of the Militia to take rank after the Lieutenant Colonels of His Majesty's regular Forces, and all other Officers of the Militia, as youngest of their respective ranks, which said Officers respectively shall within six months after their several appointments take the oath of allegiance prescribed by Law, before the Magistrates assembled in Quarter Sessions within the District to which such Officers respectively belong, Provided always nevertheless, That nothing herein contained shall extend to annul or make void any existing Commission or Appointment in the Militia of this Province.

XXII. And be it further enacted by the authority aforesaid, That no Officer, Non-Commissioned Officer, Private Militia Man or other Person shall directly or indirectly give to or treat with Rum or other Spirituous Liquors any Militia men assembled under the authority of this or any other Militia Law of this Province.

XXIII. And be it further enacted by the authority aforesaid, That this Act shall be and continue in force for the space of four years, and from thence to the end of the then next ensuing Session of Parliament and no longer.