

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1835. Toronto: Robert Stanton, 1835.

5 William IV – Chapter 16

**An Act to Incorporate certain persons therein mentioned under the style and title of the President, Directors and Company, of the Grimsby Breakwater, Pier and Harbour Company. Passed 16th April, 1835.**

Whereas, the construction of a safe and commodious Harbour by means of a Breakwater and Piers on the West side of the mouth of the Forty Mile Creek, in the District of Niagara, would manifestly tend to the improvement of that part of this Province, as well as be of great advantage to all persons in any way concerned in the navigation of Lake Ontario; And whereas Henry W. Nelles, William Nelles, John Adolphus Nelles, Amos Merritt, Peter B. Nelles, John S. Merritt, William Hixon, Henry F. Hixon, Asa Howard, Jacob Kitchen, Samuel Kitchen, John Terriberry, senior, and others, have petitioned to be by Law Incorporated for the construction of such Harbour, by means of a Joint Stock Company: 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 the said Henry W. Nelles, William Nelles, John Adolphus Nelles, Amos Merritt, Peter B. Nelles, John S. Merritt, William Hixon, Henry F. Hixon, Asa Howard, Jacob Kitchen, Samuel Kitchen, and John Terriberry, senior, together with all such persons as shall become Stockholders in such Joint Stock or Capital as is hereinafter mentioned, shall be, and they are hereby ordained, constituted and declared to be a Body Corporate and Politic, in fact and in Law, by and under the name and style of the President, Directors and Company, of the Grimsby Breakwater, Pier and Harbour Company, and by this name they and their Successors shall and may have continued succession, and by such name shall be capable of contracting and being contracted with, of suing and being sued, pleading and being impleaded, answering and being answered unto, in all Courts or places whatsoever, and that they and their successors may and shall have a Common Seal, and change and alter the same at their will and pleasure; and also, that they and their successors, by the name of the President, Directors, and Company of the Grimsby Breakwater Pier and Harbour Company, shall be in Law capable of purchasing, having and holding, to them and their successors, any Estate, real, personal or mixed, to and for the use of the said Company, and of letting, conveying or otherwise departing therewith, for the benefit and on account of the said Company, from time to time, as they shall deem necessary and expedient: Provided always, that nothing herein contained shall extend, or be construed to extend, to allow the said Company to carry on the business of Banking.

II. And be it further enacted by the authority aforesaid, That the said Company be, and they are hereby authorised and empowered, at their own costs and charge, to construct a Breakwater Pier and Harbour on the west side of the mouth of the Forty Mile Creek, in the Township of Grimsby, in the Niagara District aforesaid, which shall be accessible to, and fit, safe and commodious, for the reception of such description and number of Vessels as commonly navigate the said Lake; and also to erect and build all such needful Moles, Piers, Wharves, Buildings and Erections whatsoever, as shall be useful and proper for the protection of the said Harbour, and for the accommodation and convenience of vessels entering, lying, loading and unloading within the same, and to alter and amend, repair and enlarge the same, as may be found expedient and necessary.

III. And be it further enacted by the authority aforesaid, That the Directors of the Company shall be, and they are hereby empowered to contract, compound, compromise and agree, with the Owners or Occupiers of any Lands for the use of the said Company to build thereon, any Store-houses or Dwelling-houses for the use of the said Company, with all the necessary and convenient Roads, Streets and approaches thereto, to be constructed and made, either for the absolute purchase of so much of the said Land as they shall require for the purposes of the said Company, or for the damages which he, she or they, shall or may be entitled to recover from the said Company, in consequence of the said Harbour, Roads and Streets, and approaches thereto being cut and made, and constructed in and upon his, her or their respective Lands; and in case of any disagreement between the said Directors and the Owners and Occupiers aforesaid, it shall and may be lawful for the Directors, from time to time, as often as the Directors may think fit, for each Owner or Occupier so disagreeing with the said Directors, either upon the value of the Lands and Tenements proposed to be purchased, or upon the amount of damages to be paid to them as aforesaid, to nominate and appoint one or more indifferent person or persons, and for the said Directors to nominate an equal number of indifferent persons, who, together with one other person to be elected by ballot, by the persons so named, shall be the Arbitrators to award, determine, adjudge and order, the respective sums of money which the said Company shall pay to the respective persons entitled to receive the same, the award of the majority of whom shall be final; and the said Arbitrators shall and are hereby required to attend at some convenient place in the vicinity of the said intended Harbour, to be appointed by the said Directors, after eight days previous notice given them for that purpose by the said Directors, then and there to arbitrate, award, adjudge and determine, such matters and things as shall be submitted to their consideration by the parties interested; and that each Arbitrator shall be sworn before some one of His Majesty's Justices of the Peace in and for the said District, any one of whom may be required to attend the said Meeting for that purpose, well and truly to Assess the damages between the parties, according to the best of his judgment: Provided always, that any award made under this Act shall be subject to be set aside, on application to the Court of King's Bench, in the same manner and on the same grounds as in ordinary cases of submission by the parties, in which case reference may be again made to Arbitrators as hereinbefore provided; and that the said Company shall in no case take possession of any Land, the value of which shall be so awarded, unless payment be made

according to the said award, or a tender thereof made to the party or parties therein interested.

IV. And be it further enacted by the authority aforesaid, That as soon as the said Harbour shall be so far completed as to be capable of receiving and sheltering vessels, the said Company shall have full power and authority to ask for, demand and receive, recover and take as toll, to and for their own proper use and benefit and behoof, on all Goods and Merchandise shipped on board, or landed out of any Vessel or Boat or other Craft, from or upon a part of the Lake Shore, between one-half mile East and one-half mile West of the Harbor in the Township of Grimsby, in the said Niagara District, and upon all Vessels and Boats entering the said Harbour, according to rates following, that is to say:

Pot and Peal Ashes, per barrel,.....	Six Pence.
Pork, Whiskey, Salt, Beef and Lard, per barrel,.....	Four Pence Halfpenny.
Flour, per barrel,.....	Two Pence.
Lard and Butter, in barrels,.....	Three Pence.
Lard and Butter, in kegs,.....	One Penny.
Wheat, per sixty pounds, and all other Grain for Exportation,.....	One Penny.
Merchandise, per barrel bulk,.....	Six Pence.
Merchandise, per hundred weight,.....	Two Pence.
Boards and Lumber, per thousand feet, board measure,.....	One Shilling and Three Pence.
Pipe Staves, per M.....	Seven Shillings and Six Pence.
West India Staves, per M.....	Two Shillings and Six Pence
Boats under twelve tons,.....	One Shilling and Three Pence.
Boats and Vessels over twelve stons, and under fifty tons,.....	Five Shillings.
Boats and Vessels, from fifty tons and upwards,.....	Seven Shillings and Six Pence.

And all articles not enumerated, to pay in proportion to the above rates, subject to the direction of the Directors appointed by virtue of this Act: Provided nevertheless, that the said Directors shall have power to reduce the said Tolls, should they see fit.

V. And be it further enacted by the authority aforesaid, That the said Harbour, Moles, Piers, Wharves, Buildings, Erections, and all materials which shall be from time to time got or provided for constructing, building, maintaining or repairing the same, and the said Tolls on Goods, Wares and Merchandise, as hereinbefore mentioned, shall be, and the same are hereby vested in the said Company and their successors, for ever.

VI. And be it further enacted by the authority aforesaid, That if any person or persons shall neglect or refuse to pay the Tolls or Dues to be collected under this Act, it shall and may be lawful for the said Company, or their Officer, Clerk or Servant duly appointed, to seize and detain the Goods, Vessels, Boats or other Craft, on which the same were due and payable,

until such Tolls are paid; and if the same shall be unpaid for the space of thirty days next after such seizure, the said Company, or their Officer, Clerk or Servant aforesaid, may sell or dispose of the said Goods, Vessels, Boats or other Craft, or such parts thereof as may be necessary to pay the said Tolls, by Public Auction, giving ten days notice thereof, and to return the overplus, if any, to the Owner or Owners thereof.

VII. And be it further enacted by the authority aforesaid, That the property, affairs, and concerns of the said Company, shall be managed and conducted by Seven Directors, one of whom shall be chosen President, who shall hold their offices for one year, which said Directors shall be Stockholders, to the amount of at least four Shares, as well as inhabitants of this Province; and be elected on the second Monday in May in every year, at or near the said Harbour, at such time of the day as a majority of the Directors for the time being shall appoint, and public notice thereof shall be given in any Newspaper or Newspapers that may be published in the said Niagara District, and in not less than three conspicuous places in the neighbourhood of the said Harbour, at least thirty days previous to the time of holding the said Election, and the said Election shall be held and made by such of the Stockholders of the said Company as shall attend for that purpose, in their own proper persons or by proxy; and all Elections for such Directors shall be by ballot, and the seven persons who shall have the greatest number of Votes at any Election shall be Directors; and if it shall happen at any such Election that two or more have an equal number of Votes, in such manner that a greater number of persons than seven shall, by plurality of Votes, appear to be chosen Directors, then the said Stockholders hereinbefore authorised to hold such Election, shall proceed to elect by ballot, until it is determined which of the said persons so having an equal number of Votes shall be a Director or Directors, so as to complete the whole number of seven; and the said Directors so chosen, so soon as may be after the said Election, shall proceed in like manner to elect by ballot one of their own number to be President; and if any vacancy or vacancies shall at any time happen among the Directors, by death, resignation, or removal from the Province, such vacancy or vacancies shall be filled for the remainder of the year in which they may happen, by a person or persons to be nominated by a majority of the Directors.

VIII. And be it further enacted by the authority aforesaid, That each Stockholder shall be entitled to a number of Votes, proportioned to the number of Shares which he, she or they as aforesaid, shall have held in his, her or their own name, at least one month prior to the time of voting, according to the following rate, viz: One vote for every Share not exceeding Four; Five votes for Six Shares; Six votes for Eight Shares; Seven votes for Ten Shares; and One vote for every Five Shares above Ten.

IX. And be it further enacted by the authority aforesaid, That in case it should at any time happen that an Election of Directors should not be made on any day when pursuant to this Act it ought to have been made, the said Corporation shall not for that cause be deemed to be dissolved, but it shall and may be lawful on any day thereafter to make and hold an Election of Directors, in such manner as shall have been regulated by the By-Laws and Ordinances of the said Corporation.

X. And be it further enacted by the authority aforesaid, That the Directors for the time being, or the major part of them, shall have power to make and prescribe such Rules and Regulations as to them shall appear needful and proper, touching the management and disposition of the Stock, Property, Estate and Effects of the said Corporation, and touching the duties of the Officers, Clerks and Servants, and all such other matters as appertain to the business of the said Company, and shall also have power to appoint as many Officers, Clerks and Servants, for carrying on the said business, and with such salaries and allowances, as to them shall seem fit.

XI. And be it further enacted by the authority aforesaid, That on the second Monday in May, after the passing of this Act, a meeting of the Stockholders shall be held at or near the said Harbour, who, in the same manner as hereinbefore provided, shall proceed to elect Seven persons to be Directors, who shall continue in such office until the first Monday in May next after their election, and who during such continuance shall discharge the duties of Directors in the same manner as if they had been elected at the annual election; Provided always, that if Shares to the amount of One Thousand Pounds of the Capital Stock of the said Company shall not be taken, then the said meeting shall not be held until that amount of Stock shall have been taken up, and at least thirty days notice given in any Newspaper or Newspapers that may be published in the said Niagara District, and notices posted up in three conspicuous places in the neighbourhood of the said Harbour as before directed by this Act.

XII. And be it further enacted by the authority aforesaid, That the whole Capital Stock of the said Company, inclusive of any Real Estate which the said Company may have or hold by virtue of this Act, shall not exceed in value Three Thousand Pounds, to be held in four hundred and eighty Shares, of Six Pounds Five Shillings each; and that the Shares of the said Capital Stock may, after the first instalment thereon shall have been paid, be transferred by the respective persons holding the same to other person or persons, and such transfer shall be entered and registered in a book or books to be kept for that purpose by the said Company.

XIII. And be it further enacted by the authority aforesaid, That as soon as the Directors have been appointed as aforesaid, it shall and may be lawful for them to call upon the Stockholders of the said Company, by giving thirty days notice thereof, in the manner before mentioned, for an instalment of ten per centum upon each Share which they or any of them may subscribe, and that the residue of the Sum or Shares of the Stockholders shall be payable by Instalments, at such time and in such proportion as a majority of the Stockholders, at a Meeting to be expressly convened for that purpose, shall agree upon, so as that no such Instalment shall exceed ten per centum, or become payable in less than thirty days after public notice as aforesaid: Provided always, that the said Directors shall not commence the construction of the said Harbour until the first Instalment shall be paid in.

XIV. And be it further enacted by the authority aforesaid, That if any Stockholder or Stockholders as aforesaid, shall refuse or neglect to pay at the time required, any such Instalment or Instalments as shall be lawfully required by the Directors, as due upon any Share or Shares, such Stockholder or Stockholders so refusing or neglecting, shall forfeit such Share or Shares as aforesaid, with any amount which shall have been previously paid thereon; and that the said Share or Shares shall be sold by the Directors, and the sum arising therefrom, together with the amount previously paid in, shall be accounted for and applied in like manner as other monies of the said Company: Provided always, that the Purchaser or Purchasers shall pay the said Company the amount of the Instalment required, over and above the Purchase Money of the Share or Shares so purchased by him, her or them as aforesaid, immediately after the Sale and before they shall be entitled to the Certificate of the transfer of such Share or Shares, so purchased as aforesaid: Provided also, that thirty days notice of the Sale of such forfeited Share or Shares shall be given in the manner hereinbefore directed, and that the Instalment due may be received in redemption of any such forfeited Share or Shares, at any time before the day appointed for the Sale thereof.

XV. And be it further enacted by the authority aforesaid, That it shall be the duty of the Directors to make Annual Dividends of so much of the profits of the said Company, as to them or a majority of them shall seem advisable; and that once in each year an exact and particular statement, in detail, shall be rendered of the state of their affairs, debts, credits, profits and losses, such statement to appear on the Books, and to be open to the perusal of any Stockholder or Stockholders, at his, her or their reasonable request.

XVI. And be it further enacted by the authority aforesaid, That at any time after fifty years after making and completing the said Harbour, His Majesty, His Heirs and Successors, may assume the possession and property of the same, and all and every the works and dependencies thereto belonging, upon paying to the said Company for the use of the Stockholders thereof, the full amount of their respective Share or Shares, or of the sums furnished and advanced by each Subscriber towards the making and completing the said Harbour, together with such further sum as will amount to Twenty-five per centum upon the monies so advanced and paid, as a full indemnification to such Company; and the said Harbour shall from the time of such assumption in manner aforesaid, appertain and belong to His Majesty, his heirs and successors, who shall from thenceforth be substituted in the place and stead of the said Company, upon the conditions and subject to any Act of the Legislature of this Province, that may be passed for or respecting the same: Provided always, that it shall not be lawful for His Majesty, His Heirs or Successors, At any time after the expiration of the said Fifty years, to assume the possession and property of the said Harbour, with its appurtenances as aforesaid, unless it shall appear from the Accounts of the said Company, to be for that intent laid before the Legislature, that the Stockholders of the said Company have received every year, upon an average, the Sum of Twelve Pounds Ten Shillings for every One Hundred Pounds they shall be possessed of in the said Company.

XVII. And be it further enacted by the authority aforesaid, That from and after the period when the possession of the right, interest and property in and to the said Harbour shall have

been assumed by His Majesty, His Heirs and Successors, as hereinbefore authorised, all Tolls and Profits arising therefrom shall be paid into the hands of His Majesty's Receiver General, to and for the public uses of this Province, at the disposition of the Legislature thereof, and shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury, in such manner and form as His Majesty, His Heirs and Successors shall be graciously pleased to direct; Provided always, that the said Harbour shall be commenced within three years, and completed within seven years after the passing of this Act, otherwise this Act and every matter and thing herein contained shall cease and be utterly null and void.

XVIII. And be it further enacted by the authority aforesaid, That nothing herein contained shall give the said Company, or be construed to give to the said Company, the exclusive right of Fishing within the said Harbour or Lake Shore, within the limits hereinbefore mentioned; and that it shall not be lawful for any person or persons to take, catch or kill, or attempt to take, catch or kill, any fish by torch or fire-light within one hundred yards of any work erected by the said Company.

XIX. And be it further enacted by the authority aforesaid, That if any person or persons shall be duly convicted by the oath of one or more credible witness or witnesses, before any two of His Majesty's Justices for the said District, of having so caught or killed, or so attempted to catch or kill, any fish in manner aforesaid, such person or persons respectively, on conviction as aforesaid, shall forfeit and pay a sum not exceeding five Pounds nor less than five Shillings for every offence so committed, with all reasonable costs both before and after conviction, or in default of payment to be committed to the common Gaol of such District as aforesaid for a term not more than thirty days nor less than two days, unless the fine and costs are sooner paid.

XX. And be it further enacted by the authority aforesaid, That notwithstanding the privileges hereby conferred upon the said Company, the Legislature may at any time hereafter make such addition to this Act, or such alteration in any of its provisions, as they may think proper for affording just protection to the public or to any person or persons in respect to their estate or property, or any interest therein, or advantage or privilege or convenience connected therewith, or in respect of any way or right of way along the said Lake, or elsewhere, or any right or privilege of Fishing that may be affected by any of the powers given by this Act.