

*Laws of His Majesty's Province of Upper Canada*, passed in the year 1857. Toronto: Stewart Derbyshire & George Desbarats, 1857.

20 Victoria – Chapter 21

**The Fishery Act. Assented to 10th June, 1857.**

Whereas it is expedient to make better provision for the preservation and regulation of the fisheries of this Province: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts, as follows:

- I. — 1. The Act Ninth George the Fourth, Chapter Fifty-one, —
2. The Act Fourth and Fifth Victoria, Chapter Thirty-six, —
3. The Act Seventh Victoria, Chapter Thirteen, —
4. The Act Sixteenth Victoria, Chapter Ninety-two, —
5. The Seventh paragraph of the Nineteenth Section of the Act Eighteenth Victoria, Chapter One hundred, —
6. The Act Eighteenth Victoria, Chapter One hundred and Fourteen, —
7. The Act of Sixth William the Fourth, Chapter Fifty-Seven, —
8. The Act Eighth Victoria, Chapter Forty-seven,—
9. The Eighteenth sub-section of the Sixtieth Section of the Act Twelfth Victoria, Chapter eighty-one, —

Are hereby repealed.

II. No provision of law repealed by any Act cited in the next preceding Section shall revive by the repeal of the said Laws.

III. Notwithstanding the repeal of the Acts enumerated in Section one, every act done, and every right acquired by virtue of the said Acts shall remain valid; every penalty incurred shall remain recoverable; and every legal proceeding commenced may be continued as if the said Acts were not repealed.

IV. The Governor may, as occasion shall require, appoint two Superintendents of Fisheries, one for Upper and one for Lower Canada, whose powers and duties shall be defined by this Act and the regulations to be made under it.

- V. All subjects of Her Majesty, but none other, may —
1. Take bait and fish in any of the harbours, roadsteads, bays, creeks or rivers of the Province, except the Rivers lying within the limits of the territory known as the King's Posts;
  2. Land any where on public property for the purpose of salting, curing and drying fish;
  3. Cut wood there for the purpose of repairing stages, drying places, flakes, hurdles, cook-rooms and other purposes necessary or useful for preparing or dealing with fish;
  4. Take possession of any unoccupied portion of the beach which may be necessary for curing fish, and hold the same so long as the same shall not have been abandoned during twelve consecutive months;
  5. Any such subject having so occupied any such portion of the beach may, during the year next after he shall have been twelve months without occupying it, demand personally or by his Attorney, the value of his flakes and stages, of which a new occupant shall have taken possession; and
  6. Carry away his buildings and improvements, after the close of the fishing season, after having so demanded the value thereof, if he shall not have received the same from the new occupant.
- VI. But nothing contained in the fifth section, shall affect private property or prevent the Crown from disposing or taking possession of any public land or beach so occupied for fishing purposes.
- VII. The Governor in Council may grant permission to fish in the Rivers within the King's Posts.
- VIII. Whoever shall throw overboard ballast in any River, Harbour or Roadstead where sea fishing is carried on, or the remains of offal of fish in the said river or within three miles of the coast of the mainland or of any Island, or on any fishing bank, shall incur a fine not exceeding Twenty Pounds.
- IX. No one shall anchor near the shore in such manner as to impede the throwing and hauling of seines or the setting of standing nets.
- X. No one shall set standing nets in such manner as to impede the throwing and hauling of seines.
- XI. No one shall set nets or seines in such manner as to impede the navigation or anchorage in any Harbour, Roadstead, Bay or other place required for navigation.
- XII. Any person contravening any provision of the three preceding sections, shall for each offence, incur a fine not exceeding Five Pounds, and shall nevertheless remain liable for any damages which any party injured by such contravention may recover against him, at Law.

XIII. Every person who shall, for fishing purposes, have placed in any River, or in the sea, near the shore, any stake or other timber whatever, shall, on pain of a fine not exceeding Five Pounds, remove the same within eight days from that on which he shall have last used the same.

XIV. No one shall between the First of May and the First of November in any year, seize or attach any boat, tackle, net, seine, rigging or other fishing utensils, or any provisions, belonging to any Fisherman and necessary for his subsistence or his fishing operations, except for the recovery of penalties or fines imposed under this Act.

XV. Any person who, having been engaged by any written agreement to fish on any conditions or assist in any fishery, shall abandon his Employer's service during the term of his engagement, shall thereby incur a fine not exceeding Ten Pounds, or imprisonment for not more than one month in the nearest Gaol within the Province.

XVI. Whoever shall engage or endeavour to engage any person then engaged as aforesaid in any way to fish or assist in any fishery, shall thereby incur a fine not exceeding Ten Pounds or imprisonment for not more than one month.

XVII. Any person engaged to fish or assist in any fishery, shall, for securing his wages, salary or share, have a first lien preferable to that of any other Creditor, on the produce of his Employer's fishery, and may recover the sum or share due, to him, before the nearest competent tribunal.

XVIII. Whoever shall obstruct the main channel or course of any river, either by placing therein nets or fishing apparatus of any kind, or any obstacle of any kind whatever, for the purpose of taking salmon or any other species of fish, shall thereby incur for each offence, a fine not exceeding Five Pounds, and the forfeiture of his fishing apparatus; and in no case shall the said channel or course so left open be less than one third of the whole breadth of such river.

XIX. Every penalty or forfeiture imposed by this Act or the regulations to be made under it, may be recovered on complaint before the Superintendent of fisheries, or any Stipendiary or other Magistrate, in a summary manner, and the costs to be recovered shall be the same as is provided by law in either Section of the Province in other cases where summary jurisdiction is given to Magistrates.

XX. Any offender who shall not forthwith pay the fine and costs he may have been condemned to pay, shall be committed to Gaol for any term not exceeding one month.

XXI. Complaints under this Act may be in the form A; — Summonses in the form B; — Supoenas in the form C; — Convictions in the form D, — and Warrants in the form E, of the Schedule hereunto annexed; in other respects the Acts relative to summary convictions by Justices of the Peace shall apply to cases under this Act, and the Superintendent of Fisheries shall, as regards such cases, be deemed a Justice of the Peace for that section of the Province for which he is appointed, whether otherwise qualified or not and in any proceeding under this Act, an offence against any regulation made under this Act may be stated as an offence against this Act.

XXII. One moiety of the pecuniary fines and of the forfeitures under this Act or the regulations to be made by virtue thereof, shall belong to Her Majesty, and the other moiety to the complainant.

XXIII. There shall not be less than three days between the service and the return of the summons, to any Defendant, for the first five leagues, and one day more for each additional five leagues, of the instance between the place at which the Summons is dated, and the place where it is served.

XXIV. When the Defendant shall not be resident, in this Province, and it shall be expedient to proceed against him without delay, the Superintendent of Fisheries, or any Stipendiary or other Magistrate, may, upon complaint, issue a Summons, returnable before him immediately after the service thereof, or within a reasonable time mentioned in the Summons.

XXV. All penalties incurred under this Act must be sued for within twelve months from the commission of the offence.

XXVI. From the first of June to the twentieth of October in each year, the owner of any dam or slide on any river which salmon may ascend, shall, for the purpose of affording a passage to the fish, attach to each dam or slide a fish-way of such form and dimensions as shall be determined by the Governor in Council, under a penalty of One Pound for each day on which he shall fail so to do.

XXVII. It shall not be lawful to catch salmon in any way whatever except with a rod and line or line, between the first of August and the first of March in Lower Canada, and the first of September and the tenth of March in Upper Canada.

XXVIII. It shall not be lawful to kill Salmon at any time by aid of torch light or other artificial light in Lower Canada.

XXIX. It shall not be lawful to kill Salmon, Maskinongé, Speckled Trout, nor Bass at any time by the aid of spears, torch-light or other artificial light in Upper Canada.

XXX. It shall not be lawful to catch in any way whatever, maskinongé, speckled trout, or black bass, between the first of October and the first of April in Upper Canada.

XXXI. It shall not be lawful to catch speckled trout in any way whatever, between the first of October and the fourteenth of February in any year in Lower Canada.

XXXII. It shall not be lawful for any person to buy or sell salmon, Maskinongé, speckled trout, or black bass, taken in contravention of the preceding sections; and any fish so taken in contravention of the Law, may be declared forfeited to the complainant by any Magistrate whomsoever.

XXXIII. In every case of contravention of this Act or of the regulations to be made under it, for which no other penalty is provided, the offender shall incur a fine of not less than Two Pounds nor more than Five Pounds.

XXXIV. It shall not be lawful to construct any fish pound in any river or brook.

XXXV. Every subject of Her Majesty who shall be in peaceable possession of any fishing Station for Salmon or Seals, at the time of the passing of this Act, shall be deemed the owner thereof for the purposes of this Act; he shall be deemed so to be when he shall not have abandoned it during twelve consecutive months, and it shall riot be lawful for any other person to set therein any apparatus for catching Salmon or Seals, so as to injure his fishery.

XXXVI. The powers heretofore vested in the Municipalities by the Seventh sub-section of the Nineteenth Section of, the Act Eighteenth Victoria, Chapter One hundred, and by the Eighteenth sub-section of the Sixtieth section of the Act Twelfth Victoria, Chapter Eighty-one, as the said sub-section is extended by the Sixty-seventh and One hundred and Sixth Sections of the said Act, are hereby transferred to and vested in the Governor in Council.

XXXVII. For the purpose of encouraging and affording information with respect to the production of salmon and other fish, an apparatus for the artificial propagation of fish shall be kept in the department of the Commissioner of Crown Lands.

XXXVIII. The production of a copy purporting to be printed in the Canada Gazette or otherwise by the Queen's Printer, of any Regulation to be made by the Governor in Council under this Act, shall be primâ facie evidence of such Regulation, and that it is in force as Law.

Schedule A.

Form of Complaint.

Upper (or Lower) Canada,            }  
County (or District) of \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_\_.

To J. S. \_\_\_\_\_ Superintendent of Fisheries, (or a Justice of the Peace for the said County or District.)

A. B. of \_\_\_\_\_ complains that C. D. of \_\_\_\_\_ hath (state the offence briefly in any intelligible terms, with the time and place at which it was committed,) in contravention of the Fishery Act; wherefore the complainant prays that judgment may be given against the said C. D. as by the said Act provided.

(Signature)                   A. B.

Schedule B.

Summons to Defendant.

Upper (or Lower) Canada, }  
County (or District) of \_\_\_\_\_.

To C. D. of \_\_\_\_\_, &c.

Whereas complaint hath (this day) been made before me that you (state the offence in the words of the complaint, or to like effect) in contravention of the Fisheries Act; Therefore you are hereby commanded to come before me, at \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_, to answer the said complaint and be dealt with according to Law.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 185 \_\_\_\_\_.

J. S., Superintendent of  
Fisheries for Lower Canada, (or  
Justice of the Peace for \_\_\_\_\_)  
as the case may be.  
[L. S.]

#### Schedule C.

#### Subpœna to a Witness.

Upper (or Lower) Canada, }  
County (or District) of \_\_\_\_\_.

To E. F. of \_\_\_\_\_, &c.

Whereas complaint has been made before me that C. D. did (state the offence as in the Summons), and I am informed that you can give material evidence in the case; Therefore you are commanded to appear before me, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ to testify what you know concerning the matter of the said complaint.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 185 \_\_\_\_\_.

J. S., Superintendent, &c.,  
(as in Summons).  
[L. S.]

#### Schedule D.

Form of Conviction.

Upper (or Lower) Canada, }  
District (or County) of \_\_\_\_\_.

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_ at \_\_\_\_\_ in the said County (or District), C. D. of \_\_\_\_\_, is convicted before me, for that he did, &c. (stating the offence briefly, and the time and place where committed,) in contravention of the Fisheries Act; And I adjudge the said C. D. to forfeit (and pay) the sum of \_\_\_\_\_ (or mention the thing forfeited under this Act,) to be applied according to law, and also to pay to A. B. (the complainant) the sum of \_\_\_\_\_ for costs:

If the penalty be not forthwith paid, add, — and the said C. D. having failed to pay the said penalty and costs forthwith after the said conviction, I adjudge him to be committed to and imprisoned in the Common Gaol of the County (or District) of \_\_\_\_\_ for the period of \_\_\_\_\_

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_.

J. S.  
(as in Summons.)

[L. S.]

Schedule E.

Form of Warrant of Commitment for non-payment of penalty or forfeiture, and costs.

Upper (or Lower) Canada, }  
District (or County) of \_\_\_\_\_.

To the Constables and Peace Officers of the District (or County) of \_\_\_\_\_, and the Keeper of the Common Gaol of the said District (or County), at \_\_\_\_\_

Whereas C. D. of \_\_\_\_\_ was on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, convicted before me, for that he, &c. (as in Conviction,) and I did thereupon adjudge the said C. D. to forfeit and pay to A. B. &c. (as in Conviction); And whereas the said C. D. hath not paid the said penalty or forfeiture, and costs. Therefore, I command you the said Constables and Peace Officers, or any of you, to convey the said G. D. to the Common Gaol for the \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_ and deliver him to the keeper thereof with this warrant; And I command you the said keeper of this said Gaol, to receive the said C. D. into your custody, and keep him safely imprisoned in the said Gaol for the space of \_\_\_\_\_, and for so doing this shall be your sufficient warrant.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

J. S.,  
(as in Summons.)  
[L. S.]