

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

20 Victoria – Chapter 22

An Act further to secure the Independence of Parliament. Assented to 10th June, 1857.

Whereas it is expedient to repeal the Acts hereinafter mentioned, and to amend their provisions so as to secure the Independence of the Legislative Council and Assembly of this Province, and to consolidate them as so amended: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The Act passed in the seventh year of Her Majesty's Reign, intituled, *An Act for belter securing the Independence of the Legislative Assembly of this Province*, and the Act passed in the eighteenth year of Her Majesty's Reign, and intituled, *An Act to amend the Act for better securing the Independence of the Legislative Assembly of this Province*, are hereby repealed, except that any other Act or Acts repealed by them shall remain repealed.

II. The Chancellor and Vice Chancellors of Upper Canada, the Chief Justice and Judges of the Court of Queen's Bench for Lower Canada, the Chief Justice and Judges of the Courts of Queen's Bench and Common Pleas in Upper Canada and of the Superior Court in Lower Canada, the Judge of the Court of Vice Admiralty in Lower Canada, the Judge of any Court of Escheats, all County and Circuit Judges, all Commissioners of Bankrupts, the Official Principal of the Court of Probate in Upper Canada, and the Surrogates of the several Courts of Probate in the same, all Recorders of Cities, all Officers of the Customs, all Clerks of the Peace, Registrars, Sheriffs, Deputy Sheriffs, Deputy Clerks of the Crown and Agents for the sale of Crown Lands, and all Officers employed in the collection of any duties payable to Her Majesty in the nature of duties of excise, — shall be disqualified and incompetent to vote at any election of a Member of the Legislative Council or of the Legislative Assembly, either in the present Parliament or in any, Parliament hereafter to be holden; and if any public officer or person mentioned in this section, shall vote at any such election, he shall forfeit thereby the sum of five hundred pounds currency, to be recovered by such person as shall sue for the same, by action of debt, bill, plaint or information, in and before any Court of competent civil jurisdiction in this Province, and his vote at such election shall be null and void, to all intents and purposes.

III. Except as hereinafter specially provided, no person accepting or holding any office, commission or employment, permanent or temporary, at the nomination of the Crown in this Province, to which an annual salary, or any fee, allowance or emolument or profit of any kind or amount whatever from the Crown is attached, shall be eligible as a Member of the Legislative Council or of the Legislative Assembly, nor shall he sit or vote in the Legislative Assembly, or in the Legislative Council as an elected Member thereof, during the time he holds such office, occupation or employment.

Provided, first, that nothing in this section shall render ineligible, as aforesaid, any person who shall be a Member of the Executive Council of this Province, or who shall hold any of the following offices, that is to say: of Receiver General, Inspector General, Secretary of the Province, Commissioner of Crown

Lands, Attorney General, Solicitor General, Commissioner of Public Works, President of Committees of the Executive Council, Minister of Agriculture or Postmaster General, or disqualify him to sit or vote in either House, provided he be elected while holding such office, and not otherwise disqualified:

Provided, secondly, that nothing in this section shall render ineligible, as aforesaid, or disqualify to sit or vote in either House, any Officer in Her Majesty's Army or Navy, or any Officer in the Militia or Militiaman (except Officers on the Staff of the Militia receiving permanent salaries) unless he be otherwise disqualified:

Provided, thirdly, that nothing herein contained shall disqualify any Commissioner for temporary purposes, appointed before the passing of this Act and not otherwise disqualified, or any Counsel retained by the Crown in any case or matter now pending in the Courts of Law and not otherwise disqualified, from sitting or voting in either House during the present Parliament.

IV. Provided always, that no person whosoever then holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with Her Majesty, or with any Public Officer or Department, with respect to the Public Service of the Province, or under which any public money of the Province is to be paid for any service, work, matter or thing, shall be eligible as a Member of the Legislative Council or of the Legislative Assembly, nor shall he sit or vote in the Legislative Assembly, or in the Legislative Council as an elected Member thereof.

V. If any person hereby disqualified or declared incapable of being elected a member of the Legislative Council or of the Legislative Assembly, shall nevertheless be elected and returned as a member of either House, either in the present or any future Parliament, his election and return shall be null and void: And if any person hereby disqualified or declared incapable of sitting or voting in the Legislative Council or in the Legislative Assembly shall presume to sit or vote therein, either during the present or any future Parliament, he shall thereby forfeit the sum of five hundred pounds currency, for each and every day on which he shall have so sat or voted; and such sum may be recovered from him by any person who shall sue for the same, by action of debt, bill, plaint or information in any Court of competent civil jurisdiction in this Province.

VI. If any Member of the Legislative Assembly or any elected Member of the Legislative Council, shall, by accepting any office or becoming a party to any contract or agreement, be disqualified under the foregoing provisions to continue to sit or vote in the said Legislative Assembly or Council, his election shall thereby become void, and the seat of such Member shall be vacated, and a Writ shall forthwith issue for a new election as if he were naturally dead; but he may be re-elected as a Member of either House if he be eligible under the first proviso to section three of this Act.

VII. Provided always, that whenever any person holding the office of Receiver General, Inspector General, Secretary of the Province, Commissioner of Crown Lands, Attorney General, Solicitor General, Commissioner of Public Works, Speaker of the Legislative Council, President of Committees of the Executive Council, Minister of Agriculture or Post Master General, and being at the same time a Member of the Legislative Assembly or an elected Member of the Legislative Council, shall resign his

office, and within one month after his resignation accept any other of the said offices, he shall not thereby vacate his seat in the said Assembly or Council.

VIII. Any Member of the Legislative Assembly or elected Member of the Legislative Council, may voluntarily resign and vacate his seat in the manner hereinafter provided.

IX. Any such Member wishing to resign his seat, may do so by giving in his place in the Legislative Assembly or Legislative Council notice of his intention to resign it, in which case and immediately after such notice shall have been entered by the Clerk on the Journals of the House, the Speaker may address his Warrant under his hand and seal, to the Clerk of the Crown in Chancery, for the issue of a Writ for the election of a new member in the place of the member resigning; or such member may address and cause to be delivered to the Speaker a declaration of his intention to resign his seat, made in writing under his hand and seal before two witnesses, which declaration may be so made and delivered either during a Session of Parliament or in the interval between two Sessions, and the Speaker may upon receiving such declaration forthwith address his Warrant under his hand and seal to the Clerk of the Crown in Chancery, for the issue of a Writ for the Election of a new member in the place of the member so resigning, and a Writ shall issue accordingly, and an entry of the declaration so delivered to the Speaker shall be thereafter made in the Journals of the House, and the Member so tendering his resignation, shall be held to have vacated his seat and cease to be a member of such House.

X. Provided always, that no Member shall so tender his resignation while his election is lawfully contested, nor until after the expiration of the time during which it may by law be contested on other grounds than corruption or bribery.

XI. If any Member of the Legislative Assembly or any elected Member of the Legislative Council, shall wish to resign his seat in the interval between two Sessions of Parliament, and there be then no Speaker of the House to which such Member belongs, or if such Member be himself the Speaker, he may address and cause to be delivered to any two Members of the said House, the declaration before mentioned of his intention to resign; and such two Members upon receiving such declaration shall forthwith address their warrant under their hands and seals to the Clerk of the Crown in Chancery, for the issue of a new writ for the election of a Member in the place of the Member so notifying his intention to resign, and such writ shall issue accordingly. And the member so tendering his resignation shall be held to have vacated his seat and cease to be a member of such House.

XII. If any vacancy shall happen in the Legislative Council or in the Legislative Assembly by the death of any Member or by his accepting any office, the Speaker of the House to which such Member belonged, on being informed of such vacancy by any Member of such House in his place, or by notice in, writing under the hands and seals of any two Members of such House, shall forthwith address his warrant to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a Member to fill such vacancy, and a new writ shall issue accordingly; and if when such vacancy shall happen or at any time thereafter before the Speaker's warrant for a new writ shall have issued, there be no Speaker of the House, or the Speaker be absent from the Province, or if the Member whose seat is vacated be himself the Speaker, then any two Members of the House may address their warrant under their hands and

seals to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a Member to fill such vacancy, and such writ shall issue accordingly.

XIII. The notice of any vacancy in the Legislative Council or Legislative Assembly, which shall be given to the Clerk of the Crown in Chancery, in and by any warrant of the Speaker or of two Members of the proper House, in the manner hereinbefore provided, shall be held to be the notice of such vacancy mentioned in the twenty-fourth section of the Act of Imperial Parliament passed in the Session held in the third and fourth years of Her Majesty's Reign, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*.

XIV. A warrant may issue to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a Member of the Legislative Assembly to fill up any vacancy arising subsequently to a general election and before the first meeting of Parliament thereafter, by reason of the death or acceptance of office of any Member, and such writ may issue at any time after such death or acceptance of office: Provided always, that the election to be held under such writ, shall not in any manner affect the rights of any person who may be entitled to contest the previous election; and the report of any Election Committee appointed to try such previous election, shall determine whether the Member who shall so have died or accepted office, or any other person, was duly returned or elected thereat, which determination, if adverse to the return of such Member and in favor of any other Candidate, shall avoid the election held under this section, and the Candidate declared duly elected at the previous election shall be entitled to take his seat as if no such subsequent election had been held.

XV. Provided always, that the foregoing enactments shall be subject to the provision in the twenty-fourth section of the Act of 1856 for changing the constitution of the Legislative Council; and an accidental vacancy of the seat in the said Council for any electoral division, happening within the three months next before the regular periodical vacancy of such seat, shall not be filled until the time appointed for filling such periodical vacancy; And provided also, that nothing herein contained shall repeal or affect the provisions of the twenty-second section of the said Act, and the acceptance of the Office of Speaker of the Legislative Council by an elected Member thereof, shall not vacate his seat.