

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

20 Victoria – Chapter 43

An Act to provide for the Codification of the Laws of Lower Canada relative to Civil matters and Procedure. Assented to 10th June, 1857.

Whereas the Laws of Lower Canada in Civil Matters, are mainly those which at the time of the cession of the country to the British Crown, were in force in that part of France then governed by the Custom of Paris, modified by Provincial Statutes, or by the introduction of portions of the Law of England in peculiar cases; and it therefore happens, that the great body of the Laws in that division of the Province, exist only in a language which is not the mother tongue of the inhabitants thereof of British origin, while other portions are not to be found in the mother tongue of those of French origin; And whereas the Laws and Customs in force in France at the period above mentioned, have there been altered and reduced to one general Code, so that the old laws still in force in Lower Canada are no longer re-printed or commented upon in France, and it is becoming more and more difficult to obtain copies of them, or of the commentaries upon them; And whereas the reasons aforesaid, and the great advantages which have resulted from Codification, as well in France as in the State of Louisiana, and other places, render it manifestly expedient to provide for the Codification of the Civil Laws of Lower Canada: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- I. The Governor is hereby authorized to appoint three fit and proper persons, Barristers of Lower Canada, to be Commissioners for Codifying the Laws of that division of the Province in Civil Matters, and two fit and proper persons, being also such Barristers, to be Secretaries to the Commission, one of whom shall be a person whose mother tongue is English but who is well versed in the French language, and the other a person whose mother tongue is French but who is well versed in the English language.

- II. Any Judge or Judges of the Court, of Queen's Bench or of the Superior Court for Lower Canada may be appointed a Commissioner or Commissioners under this Act; and if any such Judge be so appointed, it shall be lawful for the Governor to appoint any Circuit Judge, or Barrister of at least ten years standing at the Bar of Lower Canada, to be and act as an Assistant Judge of either of the said Courts, — or any Judge of the Superior Court to be and act as an Assistant Judge of the Court of Queen's Bench, and a Circuit Judge or Barrister as aforesaid to supply his place as Judge of the Superior Court, as an Assistant Judge thereof, — for and during the time that the Judge appointed a Commissioner under this Act shall continue to be such Commissioner; and every Assistant Judge so appointed shall, during the said time, have and exercise all the powers and authority and perform all the duties by law vested in or assigned to a Judge of the Court of which he shall have been appointed an Assistant Judge, as if he had been appointed a Judge of such Court, and shall reside at the place to be named for that purpose from time to time by the Governor; and in case of the vacancy of the office of any such Assistant Judge, another may be appointed in his stead in like manner and with like effect.

- III. The said Commissioners and Secretaries shall hold their offices during pleasure, and in case of vacancy, the Governor may appoint another or others to fill the same, and so on until the work is completed.
- IV. The said Commissioners shall reduce into one Code to be called the *Civil Code of Lower Canada*, those provisions of the Laws of Lower Canada which relate to Civil Matters and are of a general and permanent character, whether they relate to Commercial Cases or to those of any other nature; but they shall not include in the said Code, any of the Laws relating to the Seignorial or Feudal Tenure.
- V. The said Commissioners shall reduce into another Code, to be called the *Code of Civil Procedure of Lower Canada*, those provisions of the Laws of Lower Canada which relate to Procedure in Civil Matters and Cases, and are of a general and permanent character.
- VI. In framing the said Codes, the said, Commissioners shall embody therein such provisions only as they shall hold to be then actually in force, and they shall give the authorities on which they believe them to be so; they may suggest such amendments as they shall think desirable, but shall -state such amendments separately and distinctly, with the reasons on which they are. founded.
- VII. The said Codes shall be framed upon the same general plan, and shall contain, as nearly as may be found convenient, the like amount of detail upon each subject, as the French Codes known as the *Code Civil*, the *Code de Commerce*, and the *Code de Procédure Civile*.
- VIII. The Commissioners shall from time to time, report to the Governor their proceedings and the progress of the work entrusted to them, and shall in all matters not expressly provided for by this Act, be guided by the instructions they shall receive from the Governor; and whenever they shall think any section or division of the work sufficiently advanced for the purpose, they shall cause the same to be printed, and transmit a sufficient number of printed copies thereof with their Report to the Governor; and if the Governor in Council shall think it advisable, he shall cause one or more of such copies to be transmitted to each of the Judges of the Court of Queen's Bench and Superior Court for Lower Canada, with a request that he will return the same, with his remarks thereon, by a day to be named in the letter containing such request.
- IX. It shall be the duly of each of the said Judges to examine the portion of the Commissioners' work so submitted to him, and to return the same by the day named as aforesaid, with his remarks, and more especially to examine carefully that part of the work purporting to stale (he Law then in force, and to report distinctly his opinion, whether the Law as it then stands is correctly stated therein, and in what paragraph or paragraphs (if any) it is incorrectly stated, with his reasons and authorities, and a draft of the amendments which ought in his opinion to be made in such paragraph or paragraphs, in order that the Law may be correctly stated therein.
- X. The Judges or any of them may, in their Report on any portion of the said work referred to them, make suggestions for the amendment of the Law contained in such portion, with the reasons on which such suggestions are founded.

XI. At any time when any portion of the said work is before the Judges for their report, they or any of them may confer with the Commissioners or any of them, touching the same: and- the Commissioners shall in any such conference give all such information and explanation as it may be in; their power to afford and as the Judges may require, relative to any statement of the Law as it then stands, or any suggestion for its amendment, which the Commissioners may have made in such portion of their work as aforesaid.

XII. The reports of the Judges shall be communicated to the Commissioners, who shall make such corrections in their work as they may find advisable after having taken into consideration the reports and suggestions of the Judges; but if any of the Judges shall not send in their reports by the day named for that purpose, this shall not prevent the Codes from being completed and submitted to the Legislature as hereinafter provided.

XIII. The Commissioners shall from time to time incorporate with the proper portions of the said Codes, such amendments of the actual Law, as the Governor in Council shall think it right to recommend for adoption by the Legislature, after considering the Reports of the, Commissioners, and those of the Judges, if any, but such amendments shall be carefully distinguished from the actual Law.

XIV. When the said Codes or either of them, shall be completed, with such amendments as last mentioned, printed copies thereof and of the Reports of the Commissioners, and of the Judges if any, shall be laid before the Legislature, in order that such Code or Codes may be made Law by enactment; and if it be found advisable that either of the said Codes be completed and submitted to the Legislature before the other, the *Civil Code of Lower Canada* shall be the first so completed and submitted: Either House may propose any amendments to either Code, but such amendments shall be proposed by resolutions which may be passed by one House and sent to the other for its concurrence, and shall be subject, to amendment by the other, and to be otherwise dealt with as a Bill might be, until finally agreed to by both Houses, and shall then be communicated to the Commissioners, who shall with all possible despatch incorporate the substance of the amendments so agreed to, with the proper Code, which may then be passed as a Bill, at the same or any future session.

XV. The said Codes and The Reports of The Commissioners, shall be framed and made in the French and English languages, and the two texts, when printed, shall stand side by side.

XVI. Any two of the Commissioners may make any report or do any other thing which the Commissioners are hereby empowered to do; saving the right of the third Commissioner, if so advised, to make a separate report or enter his dissent and the reasons thereof in the minutes of the proceedings of the Commission.

XVII. The Commissioners shall be remunerated for their services at such rate as the Governor in Council shall determine, not exceeding four pounds per diem to each Commissioner while employed in the performance of his duties, nor twelve hundred and fifty pounds per annum to any Commissioner; and the said Secretaries shall be remunerated for their services at such rate not exceeding eight hundred and fifty pounds per annum, as the Governor in Council shall determine, but the said Secretaries shall give their whole time to the duties of their office.

XVIII. If any Judge of the Court of Queen's Bench or Superior Court for Lower Canada be appointed such Commissioner as aforesaid, he shall, while acting as such, receive no remuneration as Commissioner except the excess (if any) of the remuneration of a Commissioner over his salary as Judge; and any Assistant Judge to be appointed to supply the place of any such Judge while acting as Commissioner, shall receive a salary to be fixed by the Governor in Council, but not to exceed the highest salary of a Puisné Judge of the Court to which he shall be appointed, so that the charge upon the Province shall not be increased by the appointment of a Judge or Judges as Commissioners.

XIX. The Commissioners shall hold their meetings at such place as shall be appointed by the Governor, and the Secretaries shall keep minutes of the proceedings at such meetings.

XX. The remuneration to the Commissioners and Secretaries, with such expenses as may be incurred by them for travelling expenses, printing, stationery and other things necessary to the due performance of their duties under this Act, shall be paid by warrant of the Governor, out of the Consolidated Revenue Fund, as shall also the rent of their place of meeting, if such place be not in any Public Building.

XXI. All moneys expended under this Act shall be accounted for to Her Majesty and to the Legislature, in the manner provided by Law.