

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

20 Victoria – Chapter 59

An Act for the Appointment of County Attorneys, and for other purposes, in relation to the Local Administration of Justice in Upper Canada. Assented to 10th June, 1857.

Whereas it is expedient, that Local Crown Attorneys should be appointed in Upper Canada, and that other provisions should be made as hereinafter contained: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- I. In every County in Upper Canada, there shall be a County Attorney for such County, to aid in the Local Administration of Justice, and to perform the several duties by this Act assigned to County Attorneys.
- II. No person shall be appointed as a County Attorney, or shall act in that capacity, who shall not be a Barrister at Law of not less than three years' standing at the Upper Canada Bar, and be a resident in the County for which he shall be appointed; provided that any person now holding the Office of Clerk of the Peace, who is a Barrister at Law, may be appointed to the Office of County Attorney for the County of which he shall be Clerk of the Peace.
- III. It shall be lawful for the Governor to appoint a County Attorney for each and every County in Upper Canada, who shall hold office during pleasure, and upon the death, resignation or removal of any County Attorney, to supply the vacancy.
- IV. No County Attorney shall, by himself or partner in business, act or be directly or indirectly concerned as Counsel or Attorney for any prisoner or party, in respect to any charge against such prisoner or party of treason, felony or other offence, punishable under the criminal Law of this Province.
- V. It shall be the duty of every such County Attorney:

First — To receive all informations, examinations, depositions, recognizances, inquisitions and papers connected with criminal charges which shall be transmitted to him by Magistrates and Coroners of the County, — to examine the same and to cause such charges to be further investigated where necessary, and additional evidence collected if required, — and also to sue out process when necessary to compel the attendance of witnesses and the production of papers, so that prosecutions at the Assizes and Quarter Sessions may not be unnecessarily delayed or fail through want of existing proof that might be secured;

Secondly — To institute and conduct on the part of the Crown, prosecutions for felonies and misdemeanors at the Court of Quarter Sessions for the County he is appointed to, in the same manner as the Law Officers of Crown institute and conduct similar prosecutions at the Courts of Assize, and

with like rights and privileges, except as to the right of entering *a nolle prosequi*, and generally to attend to all criminal business at such Court of Quarter Sessions, — to perform also the like duties in the Recorder's Court in those Cities wherein such Courts are or shall be erected;

Thirdly — To watch over the conduct of cases at the Court of Quarter Sessions, wherein it is questionable if the conduct complained of be punishable by law, or where the particular act or omission presents more of the features of a private in jury than a public offence; and without unnecessarily interfering with private individuals, who wish in such cases to prosecute, to assume wholly the conduct of the case where justice towards the accused seems to demand Iris interposition;

Fourthly — To deliver to the 'Crown Officer all papers connected with the criminal business at the Court of Assize, on or before the opening of the Court; to be present at such Court, and if required, to assist the Crown Officer in attendance with the Criminal business of the Court, and in the absence of the Law Officers of the Grown and of Counsel appointed by the Attorney General, the County Attorney to represent the Crown himself, and take the charge and conduct of the criminal business to be done at such Court of Assize for his County;

Fifthly — To institute and conduct proceedings before Justices of the Peace (under the Statutes conferring summary powers to convict) for offences in relation to the Public Revenue; the Public Property, the Public Domain, the Public Peace, and the Public Health, and in relation to any other matter or thing made punishable on summary conviction before Justices of the Peace, provided he shall be required so to do by the general regulations touching his office to be made in pursuance of the provisions hereinafter contained; and the County Attorney is hereby empowered to institute such proceedings, on a complaint in writing, or as Public Prosecutor in cases wherein the public interests require the exercise of such office;

Sixthly — To advise and instruct Magistrates in respect to criminal offences brought before them for preliminary investigation or for adjudication, upon being requested by any such Magistrates so to do, such request to be in writing and to contain a statement of the particular case;

Seventhly — To perform all such duties and services as the Governor shall by regulations in Council from time to time prescribe and direct for carrying out, the provisions of this Act or any Act to be hereafter passed imposing duties upon County Attorneys, and also touching the office of County Attorney and the prosecution of offenders against the criminal laws of this Province;

Eighthly — To perform all the duties which are now performed by the County Treasurer in each County as "Receiver of Fees," and in relation to. the collections, receipts and disbursements for and in respect to the County Court, Court of Insolvent Debtors and Division Courts, in his County;

Ninthly — To perform all such other duties and services as may be required of or imposed upon County Attorneys by any Act to be passed in this Session of Parliament or hereafter to be passed.

VI. Every County Attorney, before lie shall be qualified to act as such, shall take before some County Judge the following oath, that, is to say:

“I do swear that I will truly and faithfully, according to the best of my skill and ability, execute the several duties, powers and trusts of County Attorney for the County of _____ without favor or affection to any party. So help me God.”

VII. In every case of misdemeanor tried at the Court of Quarter Sessions, in which costs are or may be ordered to be paid by a Defendant, the County Attorney shall be entitled, to fees as Attorney and Counsel for services rendered in such case, to be taxed by the Court according to the scale of allowance in the County Courts as nearly as the nature of such services will allow; such fees in ease of conviction to form part of the costs payable by a Defendant. And in all cases of felony tried as aforesaid and in all cases of misdemeanor in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the Defendant, the County Attorney shall be entitled to receive for the services rendered by him in each case the sum of Twenty-five shillings, to be paid upon certificate of the Chairman of the Court of Quarter Sessions, and to form a portion of the expenses of the administration of Criminal Justice in Upper Canada; and he shall on or before the tenth day of February in each year, render an account to the Inspector General, under oath, of all emoluments received by him under this Act for the then preceding year.

VIII. It shall and may be lawful for the Governor in Council to make such general regulations as to him shall seem expedient, for carrying out the provisions of this Act or any Act to be hereafter passed imposing duties upon County Attorneys, and also touching the office of County Attorney, and for the prosecution of offenders against the criminal laws of this Province, and from time to time to alter such regulations.

IX. From and after the passing of this Act, no person shall be appointed a Clerk of the Peace for any County in Upper Canada, who is not a Barrister at law of not less than three years' standing at the Upper Canada Bar; and such Clerk of the Peace shall be ex-officio County Attorney: for the County of which he is Clerk of the Peace.

X. In case of the illness or unavoidable absence of the County Attorney, it shall be lawful for the Senior County Judge of the County Court of the County, to appoint some Barrister at law to act for such County Attorney during such illness or absence, and notice of such appointment and the cause thereof shall be sent by such County Attorney to the Governor, who may at any time annul such appointment.

XI. In every case where parties are committed for trial, or bailed, to answer to any criminal charge, it shall be the duty of Justices of the Peace so committing or bailing, to deliver or cause to be delivered without delay to the County Attorney for the County, the informations, depositions, examinations, recognizances and papers connected with such charges; and the County Attorney shall be deemed the “proper officer” of the Courts within the meaning of the twelfth Section of the Act passed in the sixteenth year of Her Majesty's Reign, and intitled, *An Act to facilitate the performance of the duties of Justices of the Peace, out of sessions, in Upper Canada, with respect to persons charged with indictable offences*; and in every case of inquisition found before Coroners, such inquisition and every recognizance taken before them, with the written information (if any), and the depositions, and statements (if any) of the accused, shall be forthwith delivered to the County Attorney of the County in

which such inquisition shall be found; and in every case whatsoever in which any information may be laid or complaint made before any Justice of the Peace, whether proceedings have been taken therein or not, such justice shall hand over to the County Attorney all papers connected therewith, on being required so to do by such County Attorney.

XII. The duties and powers of the several County Treasurers in each and every County in Upper Canada, with respect to the collection of fees, fines, penalties and moneys, under the several Acts now in force in relation to the County Courts, the Insolvent Debtors' Courts, and under the Upper Canada Division Courts Acts, shall henceforth cease, and the County Attorneys for the several Counties in Upper Canada shall, respectively perform and have and exercise all the duties and powers and shall be subject to all the responsibilities, that the several County Treasurers can now perform and have and exercise and are now subject to as Receivers of Fees and Fee Fund Moneys in their respective Counties, And all the provisions of Law applicable to County Treasurers in respect to the matters aforesaid, shall extend and apply to County Attorneys.

XIII. The several County Court Clerks and Division Courts Clerks in Upper Canada, shall respectively deliver to the County Attorney for their respective Counties, such accounts and returns, and at such time and times, as they are now bound by law to do to the Treasurer of their respective Counties, and shall, in like manner, account for and pay over to such County Attorney, all fees, fines and moneys receivable by them as such Clerks as aforesaid, under any Statute or Law of this Province.

XIV. It shall be the duty of the several Deputy Clerks of the Crown, in the several Counties in Upper Canada, to submit their accounts and books for examination to the County Attorney of their respective Counties, and it shall be the duty of every such County Attorney to inspect and examine such accounts and compare them with the Books required to be kept by the Deputy Clerk of the Crown, and such County Attorney shall certify on each such account, that he believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and shall forthwith forward every such account to the Inspector. General of this Province.

XV. The County Attorney of every County in Upper Canada shall be the Receiver of Fees and Fee Fund Moneys from the several County Court and Division Courts Clerks in his County, and every such Attorney shall be paid a percentage of four pounds on every hundred pounds of the gross produce of the Court Fees paid over to him by such Clerks, and a like percentage on all public moneys coming into his hands. And every County Attorney shall give such security, and for such sums, and with so many sureties, and in such manner and form, as the Governor of this Province may see reason to direct, for the due performance of his office and the due payment of all moneys received by him under the provisions of this Act or any other Act of the Parliament of this Province.

XVI. The Warrants which are now required by law to be issued in favor of County Treasurers to meet the disbursements required on account of the County and Division Courts, shall be issued henceforth in favor of the County Attorneys at the times and in the manner now required by law.

XVII. Nothing in this Act shall affect or be construed to affect the validity of any Bond, Covenant or Security given by Clerks, Bailiffs, Officers of Courts or County Treasurers, or the remedy given

thereunder, but the same may be enforced in case of breach thereof in the same manner as if this Act had not been passed; provided that Bonds or Securities which at the time of this Act coming into force are enforceable in the name of the County Treasurer, may be enforced, sued on and prosecuted by and in the name of the County Attorney for the particular County.

XVIII. In citing, pleading, or otherwise referring to this Act, it shall, in all cases whatsoever, be sufficient to use the expression "The Upper Canada County Attorneys' Act," or words of similar import.

XIX. In construing this Act, the following words shall have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the context repugnant to such construction: the word "County," shall include any two or more Counties united for judicial purposes; the words "Courts of Assize," shall include Courts of Oyer and Terminer and General Gaol Delivery; the word "Assizes," shall be understood to mean the Courts of Assize, Nisi Prius, Oyer and Terminer and General Gaol Delivery, and the Sittings of these Courts; and the rules of construction laid down by the Interpretation Act shall be applicable to this Act.

XX. This Act shall commence and take effect on the first day of January, 1858.