

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

20 Victoria – Chapter 81

An Act to authorize the City of Toronto to erect Water Works, and to levy a water rate. Assented to 10th June, 1857.

Whereas the construction of Water Works to afford a good supply of pure water, would conduce to the health and comfort of the inhabitants of the City of Toronto: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- I. The persons hereafter to be appointed in the manner provided in this Act, and their successors, shall constitute a Board to be called and known as the Water Commissioners of the City of Toronto.
- II. It shall be the duty of the said Commissioners to examine, consider and decide upon all matters relative to supplying the said City of Toronto with a sufficient quantity of pure and wholesome water for the use of its inhabitants, and the amount of money necessary to effect that object, subject to the approval of the Common Council, and under such authority and instructions as may from time to time be specified in any By-laws to be passed by the said Common Council for that purpose.
- III. The said Commissioners shall have power to employ engineers, surveyors and such other persons as in their opinion may be necessary to enable them to fulfil their duties under this Act.
- IV. It shall and may be lawful for the said Commissioners, their agents, servants and workmen, from time to time, and at such times hereafter as they shall see fit, and they are hereby authorized and empowered to enter into and upon the land of any person or persons, bodies politic or corporate, in the City of Toronto, or within twenty miles of the said City, and to survey and set out such parts thereof as they may require for the purposes of the said Water Works, and also to divert and appropriate any spring or stream of water thereon, as they shall judge suitable and proper, and to contract with the owners and occupiers of the said lands and those having an interest or right in the said water, for the purchase thereof, or of any portion thereof, or of any privilege that may be required for the purposes of the said Commissioners; and in case of any disagreement between the said Commissioners and the owners and occupiers of such lands, or any person or persons having an interest in the said water or the natural flow thereof, or any such privilege as aforesaid, respecting the amount of purchase or the value thereof, or as to the damage such appropriation shall cause to them or otherwise, such owner or occupier shall name an arbitrator to act on his behalf, for the purpose of deciding the amount of purchase or value thereof, or the damage caused by such appropriation, and the said Commissioners shall also name an arbitrator on behalf of the said City, and the two so chosen shall, within three days after the nomination of a person to act. for the said City, select a third arbitrator, and in case they fail to do so, the County Judge of the County of York, or of any Union of Counties for the time being of which the County of York may be one, shall appoint such third arbitrator; and the award or determination of such arbitrators, or any two of them, shall be final, as to the amount of such purchase, value or damage as aforesaid; but if such owner or occupier shall not name such arbitrator as aforesaid, within one

month after such disagreement as aforesaid, then any award made by the arbitrator appointed by the Commissioners, and the arbitrator appointed by the County Judge as aforesaid, shall be conclusive as to the amount to be paid for such purchase, value or damage as aforesaid.

V. Provided always, that if such owner or occupier be an infant or *non compos mentis*, or under any other disability to act for himself, or be absent from the Province, or unknown, and there be no person in this Province known to be legally authorized to act for him in the matter, with whom an agreement can be legally made, then the County Judge aforesaid, on the application of the said Commissioners, and on being satisfied by affidavit of such lad, shall appoint an arbitrator to act for such owner or occupier, and the said Commissioners shall appoint another, and the two arbitrators so appointed shall, before they act as such, appoint a third, or if they cannot agree, then the said County Judge, on the application of either of them, (after notice to the other of such application) shall appoint the third arbitrator, and the award of the said arbitrators or of any two of them, shall be conclusive as to the amount of such purchase, value or damage as aforesaid; and any arbitrator so appointed under this Act, shall, before voting upon any arbitration, be sworn before any Commissioner for taking affidavits, to discharge his duty as such arbitrator faithfully, and shall have full power and authority to administer an oath to any witness examined on such arbitration; and every award made by such arbitrators shall be examinable by the Superior Courts of law or Equity, in the same manner and on the same grounds as any award may now be examined by such Courts, on any rule of reference made in any cause pending therein.

VI. The lands and water which shall be ascertained, set out and appropriated by the said Commissioners for the purposes aforesaid, shall thereupon and for ever thereafter be vested in the Mayor, Aldermen and Commonalty of the City of Toronto, and their successors; and it shall and may be lawful for the said Commissioners and their successors, to construct, erect and maintain upon the said lands, all such reservoirs, water works and machinery requisite for the said undertaking, and to convey the said water thereto and therefrom, in, upon and through any of the premises and lands lying intermediate between the said reservoir and water works, and the springs, streams, rivers or lakes from which the same are procured, and the City of Toronto, by one or more lines of pipes or mains, as may from time to time be found necessary; and for the better effecting the said purposes, the said Commissioners, their successors and servants, are hereby empowered to enter and pass upon and over the said grounds and lands intermediate as aforesaid, and the same to cut, trench and dig up if necessary, and to lay down the said pipes or mains through the same, and upon, over, under and through the highways, railways and roads of and in the Townships of the County of York, and through the public ways, streets, lanes or other passages of the said City of Toronto, and in, upon, through or under the lands, grounds and premises of any person or persons, bodies politic, corporate or collegiate whatsoever, and to set out, ascertain, use and occupy such part or parts thereof, as the said Commissioners or their successors shall think necessary and proper for the making and maintaining of the said works, or for taking up, removing or altering or repairing the same, and for distributing water to the inhabitants of the City of Toronto, or for the uses of the Corporation of the said City, or of the proprietors or occupiers of the lands through or near which the same may pass; and for this purpose to sink and lay down pipes, mains, tanks, reservoirs and other conveniences, and from time to time to alter all or any of the said works, as well in the position as in the construction thereof, as to the said Commissioners or their successors shall seem meet, doing as little damage as may be in the execution

of the powers hereby granted to them, and making reasonable and adequate satisfaction to the proprietors, to be ascertained, in ease of disagreement, by arbitrators chosen as aforesaid; Provided always, that nothing herein contained shall be construed to authorize the said Commissioners, or any person acting under their authority, to take fertile purposes of the said works, tiny house, garden or orchard, without the consent of the owner.

VII. If any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the said Commissioners or their managers, contractors, servants or agents or workmen, or any of them, in the exercise of any of the powers and authorities in this Act authorized and contained, or if any person shall wilfully or maliciously let off or discharge any water, so that the same shall run waste or useless out of the said works, or if any person shall throw or deposit any thing or noisome or offensive matter into the said water or Witter works, or in any way foul the same, or commit any wilful damage or injury to the works, pipes or water, or encourage the same to be done, the person so offending shall, besides being subject to an action at law for the damages done thereby, be held guilty of a misdemeanor, and upon conviction thereof, before any of the Courts of criminal jurisdiction in the United Counties of York and Peel, or a Magistrate of the said United Counties, or of the City of Toronto, shall be punished by the said Court or Magistrate, by fine or imprisonment or either, at the discretion of the Court or Magistrate, as in other misdemeanors at common law, or by summary conviction, to the extent to which any penalty may be inflicted by a Magistrate under any law concerning summary convictions.

VIII. The Commissioners shall keep regular books of accounts, and books recording the whole of their official proceedings; and the said Commissioners and the clerks employed in the service shall be sworn to the faithful performance of their duties; and all such books shall be open to the examination of any person or persons appointed for that purpose by the Mayor, Aldermen and Commonalty of the City of Toronto: the Commissioners shall also on the thirtieth day of June, and thirty-first day of December, and at such other periods as may be required by resolution of the said Common Council, in each and every year, make a report to the said Mayor, Aldermen and Commonalty of the City of Toronto, of the condition of the works under their charge, accompanied by a statement of their receipts and expenditure on account of the same.

IX. The said Commissioners for the time being, shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof and the terms of payment, and they may erect, such number of public hydrants, and in such places as they shall see fit, and direct in what manner and for what purposes the same shall be used, all which they may change at their discretion.

X. From and after the passing of this Act, the said Commissioners shall have power to contract with parties willing to take water from them at a rate to be fixed by them, in the same manner as any private company or companies can or may now contract and charge for the same; and when the water works now erected and in use in the said City, or any other water works that may be erected by any Company now incorporated, shall be acquired by the said City, or any sums of money that may have been *bonâ fide* expended, or liabilities incurred with a view to the construction of any water works by any Company now incorporated, shall be repaid or assumed by the said City, then the owner and

occupier of each and every house, tenement or lot in the said City of Toronto, in which the said water shall be used, shall each be liable for the payment of a special water rate to be fixed by the Commissioners, and such water rate so fixed shall be lien upon the said house, tenement or lot, in the same way or manner as other taxes assessed on real property in the said City of Toronto are liens, and shall be collected in like manner if not previously paid to the said Commissioners; Provided always, that the said Common Council shall, within three months from the passing of this Act, give notice to the said incorporated water Companies of their intention to purchase such works or acquire such rights as in this section mentioned, or the said power to levy a special rate shall cease.

XI. A majority of the said Commissioners shall constitute a quorum for the transaction of any business allowed or required by the powers or duties of the office.

XII. The said Commissioners may prosecute or defend any action or proceeding at law or in equity, by the name of "The Water Commissioners of the City of Toronto," against any person or persons for money due for the use of the water, for the breach of any contract, express or implied, touching the execution or management of the works, or the distribution of the water, or of any promise or contract made to or with them, and also for any injury or trespass or nuisance done or suffered to the water courses, pipes, machinery or any apparatus belonging to or connected with any part of the works, or for any, improper use or waste of the water; And any vacancy or the filling any vacancy in the Board of Commissioners, either before or after any cause of action arises or suit is commenced, shall not change the right of the said Commissioners as a body to commence and maintain any such action or process at law or in equity, but in all such cases they shall be considered from the time of the organization of the Board as a corporation.

XIII. The Commissioners and their officers shall have, the like protection in the exercise of their respective offices, and in the execution of their duties, as Justices of the Peace may have under the laws of this Province.

XIV. For the purpose of constructing the said Water Works and paying the expenses attending thereon, or for the purchase of any existing Water Works, or the rights of any Company now incorporated, it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the City of Toronto, in the same manner and by the same means as is provided by law for the raising of any moneys beyond the sum of five hundred pounds by By-law, to raise by loan upon the credit of the debentures hereinafter mentioned, from any person or persons, body or bodies corporate, either in this Province, Great Britain or elsewhere, who may be willing to lend the same, a sum of money not exceeding in the whole two hundred thousand pounds of lawful money of Canada, and for the Mayor of die said City of Toronto for the time being, to cause to be issued debentures or bonds of the said City, under the Corporation seal, signed by the Mayor and countersigned by the Chamberlain of the said City for the time being, for such sum, not exceeding in the whole the said sum of two hundred thousand pounds, authorized to be borrowed under this Act; and the principal sum secured by the said debentures shall be payable within twenty years from the issuing thereof, and the interest accruing thereon shall be made payable semiannually, either in sterling or in currency, in this Province, Great Britain, or elsewhere, as the Common Council of the said City of Toronto shall deem expedient or necessary; Provided always, that before the vote of the rate-payers is taken upon the purchase of any

existing Water Works, or rights of any incorporated Water Company, the sum required for such purchase shall be agreed upon between the Common Council and such Company or Companies, or be settled by arbitrators, to be chosen in the manner hereinbefore mentioned, and such sum so agreed upon or decided by arbitrators, shall be the amount referred to the vote of the rate-payers.

XV. The funds derived from the negotiation of the debentures to be issued under this Act, shall, when received by the Chamberlain for the time being, be deposited by him in some one or more of the chartered banks of the Province, on such conditions as the said Common Council shall from time to time agree upon, and only be withdrawn therefrom as they may from time to time be required, for the payment and discharge of the liabilities that may be incurred in carrying out the improvements contemplated by this Act; and any cheque for the withdrawal of any part of such funds shall be signed by the Chamberlain and also by the Mayor of the said City of Toronto for the time being.

XVI. This Act shall not have any force or effect until the Mayor, Aldermen and Commonalty of the City of Toronto, shall pass a By-law authorizing the construction of the said Water Works; and at the first meeting of the Common Council of the said City of Toronto after the said By-law shall have been passed, it shall be the duty of the Common Council to proceed to the election of three Commissioners, who shall be elected by a majority of the whole Council.

XVII. The said Water Commissioners shall, at their first meeting after their election to the said office as aforesaid, determine by lot or otherwise, the terms during which they shall respectively hold their offices, and these shall be as follows: one of them shall remain in office one year, one two years, and one three years, to be computed from the time of their election by the said Council; and as their terms of office severally expire, or vacancies may occur by death, resignation or removal from the City, or otherwise, it shall be the duty of the Common Council for the time being, to elect a person or persons to till such vacancy or vacancies; Provided always, that any retiring member of the said Board shall be eligible for re-appointment; and further, that it shall at all times be competent for the Common Council of the said City of Toronto, to remove the said Water Commissioners or any or either of them from office, by a vote of a majority of all the members of the said Common Council.

XVIII. The Chairman of the said Commissioners, and the said Commissioners, shall be paid for their services by an annual vote of the said Common Council, and shall also be paid all reasonable travelling expenses while employed upon or about the work.

XIX. As soon as the said City of Toronto shall commence the construction of Water Works under this Act, the works and property of any incorporated Water Company shall be exempt from municipal taxation within the said City.

XX. The said Common Council shall commence the construction of the works under this Act, within one year after the passing hereof, or the powers hereby conferred shall cease.

XXI. This Act shall be deemed and taken as a Public Act.