

The Provincial Statutes of Canada, passed in the year 1841. Kingston: Stewart Derbshire & George Desbarats, 1841.

4 & 5 Victoria – Chapter 38

An Act to repeal certain Ordinances therein mentioned and to establish a Board of Works in this Province. 17th August, 1841.

Whereas it is expedient to repeal two certain Ordinances hereinafter mentioned and to establish a Board of Works in and for this Province; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and by the Government of Canada*, and it is hereby enacted by the authority of the same, that a certain Ordinance of the Legislature of the late Province of Lower Canada, passed in the second year of Her Majesty's Reign, and intituled *An Ordinance to establish a Board of Works in this Province*, and a certain other Ordinance of the said Legislature, passed in the fourth year of Her Majesty's Reign, and intituled *An Ordinance to amend and render permanent the Ordinance establishing a Board of Works in this Province*, shall be and the said Ordinances are hereby repealed.

II. Provided always, and be it enacted, that all contracts and agreements made and entered into by the Board of Works heretofore established and subsisting under the authority of the said Ordinances, and all rights, titles, interests or obligations. by the said Board of Works, or by any person or party whatsoever, acquired, held or contracted under the authority of the said Ordinances, or either of them, and ail matters and things done or performed by the said Board of Works, or by any person or party under the said authority, shall subsist and continue to be good and valid, and in full force and effect to all intents and purposes, as if this Act had not been passed; and the Board of Works to be established under the authority of this Act, shall, with regard to all such contracts, agreements, rights, titles, interests, obligations, matters and things, be substituted for the Board of Works established under the authority of the Ordinances aforesaid.

III. And be it enacted, that there shall be in and for this Province, a Board of Works for the superintendence, management and control of public works therein; which said Board of Works shall consist of such and so many persons not exceeding five in number, as the Governor, Lieutenant Governor, or person administering the Government of this Province, shall from time to time appoint to be members of the said Board, one of whom shall be appointed to be Chairman; and the said Board, shall have such powers, authority, and capacities as are provided by this Act, or may hereafter be provided by any Act of the Legislature of this Province, and no others.

IV. And be it enacted, that a fit and proper person shall be appointed in the manner aforesaid, to be Secretary of the said Board, and that the Governor, Lieutenant Governor, or person administering the Government, may remove the members of the said Board, or the said

Secretary, or any of them, and appoint others in their stead, or reinstate those so removed, when and so often as he shall deem it expedient.

V. And be it enacted, that the Chairman and the Secretary of the said Board shall, respectively, receive a yearly salary, and their actual disbursements and travelling expenses, when away from their usual place of residence on the business of the Board, and shall devote their whole time to the business of their respective offices, and shall not exercise any other profession or calling while they shall respectively hold the said offices; and the members of the Board, other than the Chairman, shall receive their actual disbursements and travelling expenses when away from their several places of residence on the business of the Board.

VI. And be it enacted, that the Chairman and members of the said Board for the time being, shall be a body politic and corporate, by the name of "The Board of Works," and may by that name sue and be sued, and may have a common seal, and alter it at pleasure, and may hold real property, and shall, generally have all the powers and capacities which bodies politic and corporate have by Law.

VII. And be it enacted, that the office of the said Board shall be at such place as the Governor, Lieutenant Governor, or person administering the Government, shall appoint for that purpose, and shall be the legal office of the Corporation; and the Board shall meet thereat, or at such other place as the Governor, Lieutenant Governor, or person administering the Government shall appoint, at such times as he may direct, and at any time to which it may have adjourned at any previous meeting.

VIII. And be it enacted, that the Chairman for the time being, shall be the legal organ of the Corporation, and all writings and documents signed by him and scaled with the seal of the Corporation, and no others, shall be held to be acts, of the Corporation.

IX. And be it enacted, that it shall be the duty of the said Board to examine and report upon all matters which may be referred to it by the Governor, Lieutenant Governor, or person administering the Government, connected with the objects for the promotion of which it is constituted, as aforesaid, and to obtain all such evidence and information, plans, estimates, drawings, or specifications, and to cause such surveys, visits, and examinations to be made, and generally to do all such things as may be necessary to enable it to make such report in the manner best adapted to advance the public good: Provided always, that no expense shall be incurred or authorized by the Board, with regard to any matter so referred, unless with the sanction and approval of the Governor, Lieutenant Governor or person administering the Government.

X. And be it enacted, that the said Board may suggest to the Governor, Lieutenant Governor, or person administering the Government of this Province, any public works or improvements therein, which it may appear to the Board, could be undertaken with advantage to the Province; but shall incur no expense relative to the object of such suggestion, unless with the sanction and approval of the Governor, Lieutenant Governor, or person administering the Government as aforesaid.

XI. And be it further enacted, that all applications for any grant of public money, for any of the objects for the superintendence of which the said Board is constituted, as aforesaid, which the Governor, Lieutenant Governor or person administering the Government, shall think may be undertaken with advantage to the public, or any matter connected with such object which he may himself suggest, shall be referred to the said Board, which shall report thereon in the manner and under the provisions aforesaid.

XII. And be it enacted, that the said Board shall in like manner report on any reference which may be made to it, with regard to the tolls and duties to be collected on or for the use of any public works; and may make such regulations for the use of any public work of any kind, vested in the Board, or under its control, as shall not be inconsistent with the Law, or with the purposes of such work; but such regulations shall impose no fine, unless the power of imposing such fine shall be given to the Board by some Law relating to such work.

XIII. And be it enacted, that no sum of public money, now appropriated or to be hereafter appropriated for any public work, of the nature of those for the superintendence of which the said Board is constituted, as aforesaid, and the expenditure of which is not by Law directed to be made, under the control of, or by any certain person or persons, or officer, or body corporate, shall be expended, except under the control and superintendence of the said Board.

XIV. Provided always, and be it enacted, that no part of any sum so appropriated, shall be expended or advanced until the said Board shall have reported to the Governor, Lieutenant Governor, or person administering the Government, in detail, the mode in which it is proposed to expend the same, nor until such report shall have been approved by him; nor shall any contract be entered into by the said Board for the performance of any work, except good and sufficient security, to the satisfaction of the Board, and of the Governor, Lieutenant Governor, or person administering the Government, be given for the performance of the contract, within a time to be specified in the contract.

XV. And be it enacted, that no contract shall be entered into, or any money expended on any work, for which any public money shall have been or shall be appropriated, unless it shall appear that the work can be completed, according to the intention of the Legislature, for the sum appropriated for it; excepting always such preliminary expenses as shall be necessary to ascertain whether it can or cannot be so completed.

XVI. And be it enacted, that the said Board shall (with the approval of the Governor, Lieutenant Governor, or person administering the Government, as aforesaid) employ for the accomplishment of the objects for which it is constituted, such and so many Engineers, Surveyors, Architects, Clerks, Draughtsmen, Superintendents, and other persons as may be necessary, and allow, and pay them a fair and adequate compensation, not exceeding the usual allowances, salary, or pay allowed to such persons, respectively, by other persons.

XVII. And be it enacted, that all public works which are not or shall not hereafter be specially vested in other persons, bodies or officers, shall be and are hereby vested in the said Board of Works, and placed under its superintendence, management and control, excepting always, that the tolls, revenue, or income derived from any public work, shall be or continue to be received, and accounted for, by the persons appointed or to be appointed for that purpose, but the amount of such tolls and the expenses of collecting them, and all such other information as the Board may require from time to time, shall be reported and furnished to it by such persons on the requisition of the Secretary or Chairman.

XVIII. And be it enacted, that it shall be lawful for the said Board of Works, their Engineers, Agents, Servants and Workmen to enter into and upon any and all lands and grounds to whomsoever belonging, and to survey and take levels of the same or of any part thereof, for any or all of the purposes and objects for which the said Board is so constituted, as aforesaid, and in and for the execution of the said purposes, and for the attainment of the said objects or any of them, to set out and ascertain such parts of any such lands and grounds, as the said Board shall deem necessary or proper; making compensation for all damages which shall be sustained by the owner or occupier of such land or ground such compensation being ascertained by arbitration in the manner hereinafter provided, in case the said Board and the party to whom compensation is to be made shall not agree as to the amount thereof.

XIX. And be it enacted, that the said Board shall have power to acquire and hold all such land and real property of any description as may be necessary or useful for the performance of any work directed, or to be hereafter directed by the Legislature, and may for that purpose contract and agree with all persons, bodies corporate, guardians, tutors, curators and trustees, whatsoever, not only for and on behalf of themselves, their heirs, successors and assigns, but also for and on behalf of those whom they shall represent, whether infants, (Minor Children) absentees, lunatics, idiots, femmes covert, or other persons otherwise incapable of contracting, who are or shall be possessed of or interested in such property, and all such contracts and agreements, and all conveyances or other instruments made in pursuance thereof, shall be valid and effectual in Law, to all intents and purposes whatsoever.

XX. And be it enacted, that whenever the owner, or person so representing, as aforesaid, the owner of any such land or real property, shall refuse to agree for the sale and conveyance thereof, it shall be lawful for the said Board of Works to make a legal Tender to him or her of the probable and reasonable value of such land or real property, with a notification that the said Board of Works will submit the settlement of the value thereof to arbitration; and upon such tender and notification having been so made, it shall be lawful for the said Board of Works to enter upon and take possession of the land and real property to which such tender shall relate: Provided always, that the said Boards of Works, shall, within three days after so taking possession, name an Arbitrator, and the owner, or person representing the owner of the land or real property so taken possession of shall, within three days from such nomination also name an Arbitrator, and the two Arbitrators so named shall before proceeding name a third Arbitrator; and the said three Arbitrators shall inquire of, and they or any two of them shall award and adjudge upon the value of such lands and real property, and shall signify their award and judgment to the parties

interested, within a period not exceeding ten days next after the appointment of the said third Arbitrator; and the said Board of Works shall upon the signification of any such award and judgment, forthwith tender to the owner, or person representing the owner of such land or real property, the sum so demanded and adjudged; and if the same exceed the sum originally tendered, the Board of Works shall pay the costs of Arbitration, but if not the costs shall be paid by the person so refusing the tender made by the said Board, as aforesaid.

XXI. And be it enacted, that any award made under this Act, concerning land or real property situate in that part of this Province, formerly called Upper Canada, shall be subject to be set aside on application to the Court of Queen's Bench, in the same manner and on the same grounds, as in ordinary cases of submission to arbitration by the parties; in which case a reference may be again had to arbitrators as hereinbefore provided: and any award made under this Act, concerning land or real property situate in that part of the Province formerly called Lower Canada, shall be liable to be set aside at the instance of any party interested by the judgment of any Court of competent jurisdiction, in that part of the said Province, if the Court shall be of opinion that injustice has been done by the award to the party complaining, and the value to be paid by the Board for such land or real property shall in such case, be finally determined by the judgment of such Court: Provided always, that no such award shall be set aside in any case unless the application to the Court shall be made within one year from the date of such award.

XXII. And be it enacted, that if the said Board shall neglect in any way to comply with any of the requirements of this Act, touching the appointment of an arbitrator, or if no award shall be made within the period hereinbefore prescribed for making the same, then the party to whom the compensation is due, shall have an action against the Board for the amount of such compensation, which shall then be ascertained, as to Law may appertain, saving the right of the Board to plead any tender made of the amount of such compensation: Provided always, that nothing herein contained shall prevent the parties from agreeing to the extension of the period for making any such award, and such period shall in any such case be extended accordingly for all the purposes of this Act.

XXIII. And be it enacted, that the Arbitrators so appointed, as aforesaid, shall have power to examine any person upon oath, touching the value of the property, or the amount of any compensation which they shall be required to ascertain, and they or any one of them may administer such oath; and the said Arbitrators shall themselves be sworn to the due performance of their duties before some Judge or Justice of the Peace, before they shall proceed to perform such duties.

XXIV. And be it enacted, that it shall be the duty of the Secretary of the said Board, (with such assistance as may be found necessary) to keep a separate account of the monies appropriated for and expended on each Public Work; to have charge of and keep all plans, contracts, estimates and documents, models or other things relative to any such Work; to keep regular accounts with each contractor, or other person employed by the Board; to see that all contracts made with the Board are properly drawn and prepared; to draw out all certificates upon which any warrant is to issue, as hereinafter mentioned; to prepare all reports to be submitted to the Board for its adoption, and

to receive and answer, according to the instructions he may receive from the Board, all letters to or from Members of the Board, or other persons on the business thereof; to notify the Members of all Meetings of the Board, which may be called at any time, other than that to which the Board shall have adjourned at its then last Meeting; to keep minutes of its proceedings at all Meetings; and to proceed to any place at which any Public Work may be undertaken, if directed to do so by the Board; to have the general superintendence of all other matters which he may be instructed to superintend by the Board; and generally to do all ministerial acts connected with the business of the Board, which it may direct him to do, or which may devolve upon him, by a fair construction of the meaning and intent of this Act, in all cases not expressly provided for: Provided always, that it shall be lawful for the Governor, Lieutenant Governor or Person administering the Government, to require any person or persons, whomsoever, having in their possession any instruments, plans, papers, books, drawings, models, estimates or documents, relative to any Public Work, and belonging to the Province, to deliver the same to the Chairman of the said Board; and also from time to time to place in his charge and keeping, for the uses of the Board, any instruments, books, drawings, models or documents, relative to the objects for which the said Board is constituted, which may be the property of the Province, and required for the better attainment of the objects of the Board.

XXV. And be it enacted, that the said Board shall have power to send for, and examine on oath all such persons as it shall deem necessary to examine, touching any matter referred to the Board, as aforesaid, and to cause such persons to bring with them such papers, documents and things, as it may be necessary to examine with reference to such matter; and to pay such persons a reasonable compensation for their time and disbursements; and such persons shall be bound to attend at the summons of the said Board, after due notice, under penalty of such damages as may be awarded in favor of the said Board, as the loss the Public may have sustained by the non-attendance of such person, in an action to be brought by the Board in that behalf.

XXVI. And be it enacted, that the Board may require any account sent in by any Contractor, or any person in its employ to be attested on oath, which oath, as well as the oath to be taken by any witness, the Secretary or any Member of the Board may administer; and any false statement wilfully made under any such oath, or in any case where an oath is required or authorized by this Act, shall be perjury.

XXVII. And be it enacted, that no warrant shall be issued for any sum of the public money appropriated for any public work under the superintendence of the said Board, except on the certificate of the Chairman, sealed with the seal of the said Board, that such sum ought to be paid to the person or persons named in the certificate in whose favor a warrant may be issued accordingly.

XXVIII. Provided always, and be it enacted, that it shall be lawful for the Board, from time to time, to grant, such certificates, in favour of their Secretary, for such sums as may be necessary to meet any disbursements allowed to him, or the Members of the Board when on duty, or which the Board may order to be made immediately by the Secretary, in any report approved by the Governor, Lieutenant Governor or Person administering the Government; but the sum which shall

at any one time be in the hands of the said Secretary, shall in no case exceed five hundred pounds, currency.

XXIX. And be it enacted that the said Secretary shall make up detailed accounts of the expenditure of all monies advanced or paid under certificates of the said Board, showing the sum appropriated for each public work, the sum so paid or advanced, and the balance, if any, remaining unexpended, and in whose hands; and each such account shall be accompanied by vouchers, corresponding with the numbering of the items of such account, and shall be made up to, and closed on, the first day of January, and the first day of July in each year; and shall be attested before some Judge of the Court of King's Bench or of the Court of Queen's Bench, or before some Justice of the Peace, and shall be transmitted to the Officer whose duty it shall be to receive it, within fifteen days after the said periods, respectively.

XXX. And be it enacted, that it shall be the duty of the Chairman of the said Board of Works, to transmit to the Executive Government of this Province, to be laid before the other two branches of the Legislature, within fifteen days after the opening of the Session, a detailed statement of the several public works carried on under the direction of the Board, and of the progress made in the said works since the previous Session of the Legislature, and of the amount of monies so far expended upon them, respectively, together with all such further information as the said Chairman may deem proper to be submitted for the information of the Provincial Parliament.

XXXI. And be it enacted, that, nothing in this Act contained shall be taken or construed to authorize the expenditure of any greater or further sum of money in the payment of the yearly salary of the Chairman and Secretary, or in the payment of their travelling expenses, or in the payment of the actual disbursements and travelling expenses of the other members of the Board, than is at present provided for by an Act of the Imperial Parliament of Great Britain and Ireland, passed in the third and fourth years of the Reign of our Sovereign Lady Queen Victoria, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*.

XXXII. And be it enacted, that any member of the Legislative Assembly of this Province, accepting the office of Chairman or of Secretary of the said Board of Works, shall thereby vacate his seat as such member, and shall be incapable of sitting or voting in the said Legislative Assembly, unless elected to the said Assembly subsequent to his acceptance of any such office, as aforesaid.

XXXIII. And be it enacted, that the due application of all monies expended by, for, or under the superintendence of the said Board, shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of the Treasury, in such manner and form as Her Majesty, Her Heirs, and Successors shall direct.

XXXIV. And be it enacted, that this Act shall be deemed and taken to be a public Act, and as such shall be judicially taken notice of by all Judges and other persons and in all Courts without being specially pleaded.