

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

4 & 5 Victoria – Chapter 91

An Act to regulate the taking of securities in all Offices in respect of which security ought to be given, and for avoiding the grant of all such Offices in the event of such security not being given within a time limited after the grant of such office.

18th September, 1841.—Presented for Her Majesty's Assent and reserved "for the signification of Her Majesty's pleasure thereon."

19th March, 1842.—The Royal Assent signified by the Proclamation of His Excellency Sir Charles Bagot, Governor General.

Whereas it is highly expedient that provision should be made for preventing any negligence, omission or irregularity, in the giving of due securities by all persons employed in situations of Public Trust, and concerned in the Receipt and Distribution or Expenditure of public money, who are required to give security to account for public monies coming to their hands, and for ascertaining the death of any surety or sureties of any such person; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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, and intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted that every person who shall after the passing of this Act be appointed to any Civil Office, or Employment or commission, in any public Department within this Province, or to any such Office or Employment of public trust under the Crown, or wherein he shall be concerned in the collection, receipt, disbursement or expenditure of any public moneys, and who by reason thereof shall be required to give security with surety or sureties, or otherwise, shall within one month after notice of such appointment, if he shall then be within this Province, or within three months, if he shall then be absent from the said Province, (unless he shall sooner arrive in the said Province, and then within one month after such arrival) give, execute, and enter into a bond or bonds or other security or securities in such sum and with such sufficient surety or sureties as shall be approved of by the Governor of this Province or by the principal officer or officers, or person or persons in the Office or Department to which he shall be appointed, for the due performance of the trust reposed in him, and for the duly accounting for of all public moneys entrusted to him or placed under his controul.

II. And be it enacted, that every person Who before the passing of this Act shall have been appointed to, and shall hold any Civil Office or employment or commission in any public Department within this Province, or any such office or employment of public trust under the Crown, or wherein he shall be concerned in the collection, receipt, disbursement or expenditure of public moneys, and who by reason thereof shall have been or shall be required to give security with surety or sureties, or otherwise, and who shall not before have given such security shall within one month after the passing of this Act, if such person shall be within this Province, or

within three months if he shall then be absent from the said Province (unless he shall sooner arrive in the said Province, and then within one month after such arrival) give, execute, and enter into a bond or bonds, or other security or securities, in such sum of money and with such sufficient surety or sureties as shall be approved of by the Governor of this Province, or by the principal officer or officers, or person or persons in the Office or Department to which he belongs, for the due performance of the trust reposed in him, and for the duly accounting for of all the public moneys entrusted to him or placed under his controul.

III. And be it enacted, that every person who by reason of his appointment to, or holding of any Civil Office or employment or commission in any public Department, or of public trust under the Crown, in this Province, or who by reason of being concerned in the collection, receipt, disbursement or expenditure of any public moneys, shall, before the passing of this Act, have given or executed, or entered into, or shall hereafter give, or execute or enter into, any bond or bonds, or other security or securities, for the due performance of the trust reposed in him or for the duly accounting for of public monies entrusted to him, shall cause the said bond or bonds, security or securities to be recorded at full length at the office of the Registrar of the Province, in manner hereinafter mentioned, and shall forthwith after such registration as aforesaid, deposit the said original bond or security at the office of the Inspector General of Public Provincial Accounts, and every such bond or security entered into before the passing of this Act, shall be recorded and deposited as aforesaid, if the person on whose behalf the same shall have been entered into, shall reside or be within this Province, within one month after the passing of this Act, and if absent from the said Province, within three months (unless he shall sooner arrive within the Province, and then within one month alter such arrival) after the passing of this Act; and as to all such bonds and securities to be entered into after the passing of this Act, such bonds and securities shall be recorded and deposited as aforesaid, within the like periods, respectively, after entering into the same, according to the presence in or absence from the Province, as hereinbefore mentioned, of the person appointed, at the time of giving, executing or entering into such bond or ether security as aforesaid.

IV. And be it enacted, that the said Registrar of the Province shall make an entry, and likewise if required, shall give a certificate in writing under his hand and seal, of every such bond or security brought to him to be registered, as aforesaid, and therein shall mention the certain day on which such bond or security shall be so registered or entered, expressing also in what book, page, or number the same is entered; and for the purpose of entering or registering bonds or securities under the provisions of this Act, as aforesaid, the said Registrar shall provide a separate Register Book, and every page of such Register Book, and every bond or security that shall be entered therein, shall be numbered, and the day of the month and year when every such bond or security is registered, shall be entered in the margin of the said Register Book, and in the margins of the said bonds or securities, and that the said Registrar shall keep a separate alphabetical calendar of the names of the principals and sureties mentioned in such bonds or securities, with references to the book, page or number, where the bonds or securities containing such names are to be found, and the said Registrar shall duly enter and register the said bonds or securities in the same order of time in which they shall respectively come to his hands.

V. Provided always and be it enacted, that if any person who by reason of his appointment to, or holding of any such Civil Office, or Employment or Commission in any public Department, or of public trust, or who by reason of being concerned in the collection, receipt, the disbursement or expenditure of any public money, is required or bound to give any such security, or register and deposit any such bond or security, as aforesaid, shall neglect to give such security and to cause such bond or security to be duly registered and deposited in manner aforesaid, and within the period specified by this Act, he shall forfeit and be deprived of the appointment, office, employment, or commission, in respect whereof such security ought to have been given, and such bond or security registered and deposited as aforesaid, and every such appointment, office, employment or commission, shall from and after the period specified in this Act for registering and depositing such bond or security, be wholly void and of none effect: Provided always that such avoidance shall not annul or make void any Act or order or other matter or thing done by such person during the time he actually held such appointment office employment or commission: Provided always that no such forfeiture shall take place by reason of any such bond or security not being registered or deposited under this Act, in which the proper sureties shall have been given, and bond made out, and where the failure of registry and deposit shall have arisen from the loss of such bond or security in the transmission thereof from a distance: Provided that in every such case a new bond or security specifying the reason of such delay shall be made out and signed, registered and deposited within the like period after the person giving such security shall have received notice of the loss, regard being had to the place where he shall then be, as is required by this Act for the registry thereof, if such loss had not arisen.

VI. And be it enacted, that every such person as aforesaid who shall have given any bond or bonds, or other security or securities, with surety or sureties for the due execution of the trust reposed in him, or for the duly accounting for of public moneys, coming to his hands, shall give notice in writing to the Chief Secretary of the Province, or to the principal officer or officers, or person or persons, of the department to which he belongs, of the death, bankruptcy, insolvency or residence out of the Province, of any surety or sureties, or person or persons bound for or with him in any such security or securities, within one calendar month after the same shall have come to his knowledge, if he shall then be or reside in this Province, or within three months if he shall be beyond this Province, (unless he shall sooner arrive in the said Province, and then within one month after such return) and any person who shall neglect to give such notice within such period as aforesaid, shall forfeit one fourth part of the sum for which the surety so dead or bankrupt, or insolvent or resident out of the Province, shall have become security, to the use of Her Majesty, Her Heirs and Successors, to be recovered in any court of competent jurisdiction, by action of debt, bill, plaint or information at the suit of the Crown, and every such person who shall upon the death, bankruptcy, insolvency or residence out of the Province of any surety, neglect to give the security of another surety to be approved in such manner as such surety dying or becoming bankrupt, insolvent, or resident out of the Province was approved within such period from his having given notice of the death, bankruptcy, or insolvency or residence out of the Province of the former surety as is by this Act limited for giving, registering and depositing the original security, and to register and deposit the bond or security of such new surety within such period from his having given the security of such new surety as is by this Act limited for the enregistering and depositing of the original bond or security, the same regard being had to the place in which such persons may

then be, shall forfeit his appointment, office, employment or commission in like manner and under and subject to such provisions as aforesaid.

VII. Provided always And be it enacted, that it shall be lawful for the Governor of this Province, by and with the advice and consent of the Executive Council, to remit any forfeiture or penalty in any case in which the failure of giving any security, or registering and depositing any bond or security under this Act, shall not have arisen from any wilful neglect of the person bound to give, register or deposit such security, and if it shall appear to the Governor of this Province, that the period limited by this Act for giving the security for such new surety as aforesaid, is in consequence of particular accidents, casualties or circumstances insufficient, or that by reason of the distance or loss of letters or illness, or the refusal of any surety to give the security, or of such surety being not deemed eligible, and being rejected, or any other accident or casualty, that further time will be necessary to enable the security of such new surety to be given, it shall be lawful for the Governor of this Province, by and with the advice and consent of the Executive Council, to allow such further period for giving the security of such new surety as shall appear to be reasonable and proper, provided that such extended period shall in no case exceed two months beyond the period allowed by this Act, provided also that the precise period proposed to be allowed, together with special grounds for allowing the same, shall be either entered in the book in which the original security shall have been registered, or endorsed on the back of the original bond or other security itself, and the person required to give the security of such new surety shall not be subject to any forfeiture or penalty for not giving the same, within the time limited by this Act, if he gives it within such extended period so allowed as aforesaid.

VIII. Provided always and be it enacted, that where the securities of the principal and sureties are executed at different times, whether the same are taken in one and the same bond, deed or other instrument, or in different ones, the period limited for registering and depositing such securities shall be estimated from the time of the execution thereof, by the person who shall have been the last to execute any such bond or other instrument.

IX. Provided always and be it enacted, that no neglect, omission or irregularity in giving or renewing the bonds or other securities or registering the same, within the periods or in the manner prescribed by this Act, shall be construed to vacate or make void any such bond or other security, or to discharge any surety from the obligations of any such bond or security.

X. Provided also and be it enacted, that all bonds or other securities required to be registered and deposited, shall be registered and deposited by the proper officer, notwithstanding the period prescribed for registering and depositing the same shall have expired; but no such registering and depositing of any such bond or other instrument or security shall be deemed or construed to waive any forfeiture or penalty, or to exempt the person on whose behalf the same shall have been registered and deposited, from any forfeiture or penalty under any of the provisions of this Act.

XI. And be it enacted, that all and every the provisions of this Act shall be held and construed to relate to all bonds and covenants now given and entered into, and hereafter to be given and

entered into, by the Sheriffs of the respective Districts of that portion of the Province heretofore called Upper Canada, and the said bonds and covenants shall be registered in the office of the Registrar of the Province and deposited in the office of the Inspector General of Public Provincial Accounts, in the manner hereinbefore mentioned, and each and every Sheriff shall be held and constrained to observe the same formalities in furnishing security, giving notice of death, bankruptcy, insolvency or removal from the Province of any of his sureties, and enregistering and depositing of his bonds and securities as any other person hereinbefore mentioned, and shall be liable to all the penalties and forfeitures hereinbefore recited, any law, usage or custom to the contrary notwithstanding.

XII. And whereas, great inconveniences have been experienced by the several Sheriffs of this Province under the terms and conditions imposed upon them by the sixth clause of an Act of the Legislature of the late Province of Upper Canada, passed in the third year of His late Majesty's Reign, intituled *An Act to make certain regulations relating to the office of Sheriff in this Province, and to require the several Sheriffs of this Province to give security for the due fulfilment of the duties of their office*, by reason of accidental neglect or omission to comply with those terms and conditions; Be it enacted, that from and after the passing of this Act, the sixth and nineteenth clauses of the said hereinbefore recited Act shall be and they are hereby repealed.

XIII. And whereas it is desirable to establish a degree of uniformity throughout this Province, in carrying into effect the objects of this Act; Be it enacted, that each and every Collector, or Comptroller of the Customs now holding office as such at any of the Inland Ports, in that part of this Province heretofore called Lower Canada, and now required pursuant to the provisions of an Act of the Legislature of the said last mentioned Province, passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled *An Act to regulate and establish the salaries of the Officers of the Customs at the Inland Ports in this Province, and for other purposes therein mentioned*, which said Act was continued by an Ordinance of the Special Council of the said late Province of Lower Canada, passed in the third year of Her Majesty's Reign, intituled *An Ordinance further to continue for a limited time certain Acts therein mentioned*, and each and every Sheriff or Coroner, now holding office as such in the part of the Province last aforesaid, and now required pursuant to the provisions of an Act of the Legislature of the said last mentioned Province, passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled *An Act for making certain regulations respecting the Office of Sheriff*, which said Act was continued and made perpetual by an Ordinance of the Special Council of the said late Province of Lower Canada, passed in the third year of Her Majesty's Reign, intituled *An Ordinance to render permanent certain Acts therein mentioned*, shall within one month from and after the passing of this Act, if he shall then be within this Province, or within three months, if he shall then be absent from this Province, unless he shall sooner arrive in the said Province, and then within one month, after such arrival, enregister one copy of the bonds or acts of suretyship, required by such acts for the due fulfilment of the duties of his office, with the Registrar of the Province, and subsequently deposit the same with the Inspector General of Public Provincial Accounts, in the manner hereinbefore provided in reference to other bonds or securities, and shall in like manner give notice of the death, bankruptcy, insolvency or residence out of the Province, or any of his sureties, and be liable to all the penalties and forfeitures, provisions and regulations as are hereinbefore provided for the

bonds or securities of other public Officers within this Province, any thing in the said Acts to the contrary notwithstanding, and each and every such Collector or Comptroller, Sheriff or Coroner, who may hereafter be appointed to Office, within that part of this Province, heretofore called Lower Canada, shall be held and constrained to observe the same formalities, in furnishing security and other matters as any other person hereinbefore mentioned, and so much of the provisions of the said hereinbefore recited Acts, as are repugnant to or inconsistent with the requirements of this Act, shall be and each and every of them is hereby repealed: Provided always, that nothing herein mentioned shall extend or be construed to extend to repeal such portions of the said hereinbefore recited Acts, as relate to the transmission, deposit or recording of the duplicate copy of such bond or act of suretyship to or in the office of the Prothonotary or Clerk of the Court of King's Bench, or Provincial Court of the District for which such Sheriff or Coroner shall respectively have been appointed, or in which such Collector or Comptroller shall respectively perform the duties of his office.

XIV. And be it enacted, that as soon as a certain Ordinance of the Special Council of the late Province of Lower Canada, passed in the fourth year of Her Majesty's Reign, intituled *An Ordinance for the better regulation of the office of Sheriff in this Province*, the operation of which has been delayed by the tenth section of a certain Ordinance, passed in the same year, intituled *An Ordinance to amend two certain Ordinances therein mentioned relative to the administration of Justice in this Province and to make other and further provision on the same subject*, and also another certain Ordinance of the said Special Council, passed in the same year, intituled *An Ordinance to prescribe and regulate the registering of titles to lands, tenements, and hereditaments, real or immoveable Estates, and of charges and incumbrances on the same, and for the alteration and improvement of the Law in certain particulars in relation to the alienation and hypothecation of real Estates and the rights and interest acquired therein*, shall have force and effect, each and every Sheriff, under Sheriff, Registrar or Deputy Registrar shall be held and constrained to deposit a duplicate copy of each and every bond by him entered into in pursuance of the said hereinbefore recited Ordinances, in the manner, within the periods, with the formalities, and subject to the penalties in case of neglect, in furnishing such security and other matters as any other person hereinbefore mentioned, and so much of the provisions of the said hereinbefore recited Ordinances as are repugnant to, or inconsistent with the requirements of this Act, shall be and each and every of them is hereby repealed.

XV. And be it enacted, that the Registrar of the Province shall cause to be prepared for the information of the Provincial Legislature, within fifteen days after the opening of each and every session thereof, a detailed statement of all bonds or securities so registered at his office since the commencement of this Act, or of any changes or entries that may have been made in reference to the names and residences of such sureties, and of the amounts in which they shall be severally liable since the period of the previous return submitted to the Provincial Legislature.

XVI. And be it enacted, that nothing in this Act shall extend or be construed to extend to any District Treasurers or any other officer or officers having the control or management of moneys levied and applied for municipal or local purposes.

XVII. And be it enacted, that the words "Governor of this Province," wheresoever they occur in the foregoing enactments, shall be understood as comprehending the Governor, Lieutenant Governor, or person authorized to execute the office or functions of Governor of this Province.