

The Provincial Statutes of Canada, passed in the year 1843. Kingston: Stewart Derbishire & George Desbarats, 1843.

7 Victoria – Chapter 18

An Act for the establishment of a better Court of Appeals in Lower Canada. 9th December, 1843.

Whereas the Provincial Court of Appeals now existing in Lower Canada, has been found by experience to be altogether insufficient and inadequate for the due administration of Justice; 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, 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 by the authority of the same, that so much of an Act of the Legislature of Lower Canada, passed in the thirty fourth year of the Reign of His late Majesty King George the Third, intituled, *An Act for the division of the Province of Lower Canada, for amending the Judicature thereof, and for repealing certain laws therein mentioned*, as in any manner relates to the establishment and constitution of the said Provincial Court of Appeals in Lower Canada, shall be, and the same is hereby repealed, and the said Provincial Court of Appeals shall be and the same is hereby abolished.

II. And be it enacted, that there shall be established in Lower Canada, a Court of Record to be called "The Court of Appeals for Lower Canada"; and the said Court shall consist of all the Justices of the several Courts of Queen's Bench in Lower Canada.

III. And be it enacted, that the Court of Appeals hereby established, and the Justices thereof, shall have, hold and exercise an Appellate Civil Jurisdiction, and also the Jurisdiction of a Court of Error, within and throughout Lower Canada, with full power and authority to take cognizance of, hear, try and determine in due course of Law, all causes, matters and things appealed and to be appealed, removed and to be removed by Writ of Error from all and every the Courts and jurisdictions wherefrom an Appeal or Writ of Error by law lies or is allowed, or hereafter may by law lie or be allowed.

IV. And be it enacted, that all and every the powers, authorities and jurisdiction which by law are required to be exercised, and may or might be exercised by and are vested in the Provincial Court of Appeals hereby abolished, and by or in the several Judges or Members thereof, or any of them, as well in Court as out of Court, in Term as out of Term, or in Vacation, shall, in so far as the same may not be inconsistent with the other provisions of this Act, become and be vested in the Court of Appeals hereby established, and shall and may be as effectually exercised by the said last mentioned Court of Appeals and the Justices thereof, severally and respectively, in Court or out of Court, in Term or out of Term, or in Vacation, as the same might have been exercised and enjoyed by the Provincial Court of Appeals hereby abolished, and the several Judges or Members thereof, or any of them, in Court or out of Court, in Term or out of Term, or in Vacation, if this Act had not been passed.

V. And be it enacted, that in the Court of Appeals hereby established, the Chief Justice of Lower Canada, or in his absence, or in the case of vacancy of his office, the Chief Justice for the District of Montreal or for the District of Quebec, as the case may be, or in the absence of both the said Chief Justices, or in case of vacancy of their offices, respectively, the senior of the other Justices present shall preside; and when both the said Chief Justices shall happen to be sitting together in the said Court, the Chief Justice of Lower Canada shall have precedence.

VI. And be it enacted, that three Terms of the Court of Appeals hereby established shall be holden in every year by the Justices thereof, in which Terms any four of the said Justices shall form a Quorum, and may hold the Court and exercise the powers and authority thereof; and that the said Terms shall be so holden alternately in the Cities of Quebec and Montreal, during the following periods, that is to say: from the first to the tenth day of each of the months of March, July and November, both days inclusive: Provided always, that the first Term of the said Court shall be held in the City of Quebec.

VII. And be it enacted, that in any case brought before the Court of Appeals hereby established, the Justices of the Court appealed from shall not sit and act in the said Court of Appeals, whether such Justices shall in the Court below have concurred in or dissented from the Judgment appealed from, or shall have been absent at the rendering thereof: Provided always, that any Judgment or Order concurred in by any Majority of the Justices present at any sitting of the said Court of Appeals, shall have the same force and effect as if concurred in by all the Justices present: And provided also, that the judgment appealed from shall stand and be affirmed in all cases where the Justices present at any sitting of the said Court of Appeals shall be equally divided on the question whether such judgment shall be affirmed or not.

VIII. And be it enacted, that it shall be lawful for the Governor of this Province to appoint, from time to time, a Clerk of the Court of Appeals hereby established; and the said Clerk shall reside either in the City of Quebec, or in the City of Montreal, and shall, by an instrument under his hand and seal, appoint a Deputy who shall reside in that one of the said Cities in which the said Clerk shall not have his domicile; and such Deputy is hereby authorized to perform the duties of the Clerk of the Court of Appeals, and shall continue to perform the said duties as acting Clerk of the said Court of Appeals, in case of the death, dismissal, suspension from office, or resignation of the said Clerk, until the appointment of his Successor in the said office; and the instrument by which such Deputy Clerk shall have been appointed, shall be entered at full length in the Register of the Court: Provided always, that it shall be lawful for the said Clerk, at all times, to remove such Deputy, and to appoint another in his place.

IX. And be it enacted, that no Clerk or Deputy Clerk of the said Court of Appeals, shall during his continuance in office, or while he shall be such Deputy, practise as an Advocate, Proctor, Solicitor, Attorney or Counsel in any Court of Law in Lower Canada.

X. And be it enacted, that all Writs and Process to be issued from and out of the said Court of Appeals hereby established, shall run and be in the name and style of Her Majesty, Her Heirs and

Successors, and shall be sealed with the seal of the said Court, and shall be tested in the name of that one of the Justices of the said Court present in Lower Canada, who for the time being, shall be entitled to precedence over the other Justices thereof, and shall be signed by the said Clerk or his Deputy, whose duty it shall be to prepare and make out the same; and every such Writ or Process shall be in both the English and the French language; any law, usage or custom to the contrary notwithstanding.

XI. And be it enacted, that whenever any number of the Justices of the said Court of Appeals hereby established shall be lawfully recused, or disqualified or rendered incompetent, either by reason of interest or otherwise, to sit in the said Court of Appeals, in any cause cognizable thereby, so as to leave the said Court without a Quorum to take cognizance of the same, it shall be the duty of the Clerk of the Court, when duly required so to do in writing by any of the parties, to report the fact to the Governor of this Province, and such report shall be signed by him and sealed with the seal of the said Court; and it shall then be lawful for the Governor of this Province, by an instrument under his hand and seal to appoint *ad hoc* a like number of Members of the Bar of Lower Canada, to sit in the said Court of Appeals, in the place and stead of the Justices so recused, or disqualified or rendered incompetent, for the purpose of hearing and determining such cause as aforesaid; and the persons so appointed to act as Justices *ad hoc*, shall, when acting as such, have the same powers and authority in and with respect to the said cause as the Justices so recused, disqualified or rendered incompetent would otherwise have had: Provided always, that the persons so appointed shall be of at least eight years' standing at the Bar of Lower Canada.

XII. And be it enacted, that all and every the Laws of Lower Canada, which immediately before the period hereinafter appointed for the commencement of this Act, shall be in force to govern and direct the proceedings and practice of the Provincial Court of Appeals hereby abolished, and which are not repealed or varied by this Act, or inconsistent with the provisions thereof, shall continue to be in force and be observed in and by the Court of Appeals hereby established, in the same manner as they would have been observed in the Provincial Court of Appeals hereby abolished, if this Act had not been passed.

XIII. And be it enacted, that it shall be the duty of the Court of Appeals hereby established, within twelve months after the commencement of this Act, to make and establish, as well for the said Court of Appeals as for the several Courts of Queen's Bench in Lower Canada, in the Superior Terms thereof, a Tariff of Fees for the Officers of the said Courts, respectively, and the Attornies practising therein, and also such Rules of Practice as may be necessary in civil matters, touching the service of Process, the execution and return of Writs, proceedings for bringing causes to issue and judgment as well those to be had in Court as out of Court, in term as out of term and in vacation, and other matters of proceeding and regulations touching the conduct of the business before the said Courts respectively; which Tariff of Fees and rules of practice, the said Court of Appeals shall have power and authority to repeal, alter and amend from time to time: Provided always, that no rule of practice so to be made and established by the said Court of Appeals, shall be contrary to, or inconsistent with this Act, or any other Act or Law in force in Lower Canada; otherwise the same shall be null and void: And provided also, that until such Tariff of Fees and rules of practice shall be made and duly established by the said Court of Appeals as aforesaid, for

the said Court and for the said Courts of Queen's Bench, respectively, the Tariff of Fees and rules of practice in force with regard to the Provincial Court of Appeals hereby abolished, immediately before the commencement of this Act, shall be in force with regard to the Court of Appeals hereby established, and the Tariff of Fees and rules of practice in force at the time last mentioned with regard to the several Courts of King's Bench (hereafter to be in certain cases called Courts of Queen's Bench) in Lower Canada, shall continue to be in force with regard to the said Courts, respectively; subject however to such amendments as may be made therein by the said Courts of Queen's Bench, respectively, until a Tariff of Fees and rules of practice shall have been made for the said Courts of Queen's Bench respectively, by the said Court of Appeals: Provided always, that nothing herein contained shall be held to continue in force or to render valid any part of the said rules of practice which may be contrary to or inconsistent with this Act, or any Act or Law in force in Lower Canada.

XIV. And be it enacted, that so much of the Act of the Legislature of Lower Canada, passed in the forty-first year of the Reign of His late Majesty King George the Third, intituled, *An Act to amend certain forms of proceeding in the Courts of Civil Jurisdiction in this Province, and to facilitate the Administration of Justice*, or of any other Act or Law, as empowers any Court of King's Bench, (or Queen's Bench) to establish orders and rules of practice touching the service of Process, the execution and returns of Writs, or proceedings for bringing causes to issue, and other matters of regulation within the said Courts, for or with regard to the Superior Terms of the said Courts, shall be and is hereby repealed from and after the expiration of one year from the commencement of this Act.

XV. And be it enacted, that all final judgments rendered by the said Court of Appeals hereby established, shall contain a summary statement of the points of Fact and Law, and the reasons upon which such judgment shall be founded, and the names of the Justices who shall have concurred therein or entered their dissent therefrom.

XVI. And whereas it is necessary to provide for the performance of the duties of the Justices of the several Courts of Queen's Bench in Lower Canada, during the Terms of the Court of Appeals hereby established, and during a certain time before and after: Be it therefore enacted, that the Circuit Judges in and for either of the Districts of Quebec and Montreal, and the Commissioners of Bankrupts resident in the Districts of Three Rivers and St. Francis, respectively, shall, during any Term of the Court of Appeals, and during the four days next before the first day, and during the four days next after the last day of such Term, have and exercise, in such Districts, respectively, the same powers and authority as if they were appointed, for the period aforesaid, Assistant Judges of the Court of Queen's Bench in and for such Districts, respectively; excepting always the power of sitting in the said Court of Appeals.

XVII. And be it enacted, that an Appeal shall be from the judgments of the Court of Appeals hereby established, to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, in that part of the United Kingdom of Great Britain and Ireland called England, in all, each and every of the cases in and with respect to which an Appeal, immediately before the commencement of this Act, would lie from the judgments of the Provincial Court of Appeals hereby abolished, to Her Majesty

in Her Privy Council, upon the terms and conditions, and in the manner and form, and under and subject to the restrictions, rules and regulations established with regard to Appeals from the said Provincial Court of Appeals to Her Majesty in Her Privy Council.

XVIII. And be it enacted, that all and every the Records, Registers, Documents and proceedings of the Provincial Court of Appeals hereby abolished, shall forthwith after the commencement of this Act, be transmitted into and make part of the Records, Registers, Documents and proceedings of the Court of Appeals hereby established.

XIX. And be it enacted, that no judgment, order, rule, or act of the Provincial Court of Appeals hereby abolished, legally pronounced, given, had or done before the commencement, of this Act, shall be hereby avoided, but shall remain in full force and virtue, as if this Act had not been passed; nor shall any Cause, Appeal, Writ of Error, or proceeding, depending in the said Provincial Court of Appeals be abated, discontinued, or annulled, but the same shall in their then present condition, be respectively transferred to, and subsist and depend in the Court of Appeals hereby established, to all intents and purposes, as if they had been respectively commenced, brought or recorded in the said last mentioned Court; and the said last mentioned Court shall have full power and authority to proceed accordingly in and upon all such Causes, Appeals, Writs of Error and proceedings, to judgment and execution, and to make such rules and orders respecting the same, as the Provincial Court of Appeals hereby abolished might have made, or as the said Court of Appeals hereby established is hereby empowered to make in Causes, Appeals, Writs of Error and proceedings commenced in, or depending before the said last mentioned Court.

XX. And be it enacted, that every Writ or Process which shall have been made returnable into the Provincial Court of Appeals hereby abolished, on any day subsequent to the commencement of this Act, shall be returnable into the Court of Appeals hereby established, and shall be held and considered to be returnable on the first, day of the Term of the said last mentioned Court, next following the day on which such Writ or Process shall have been made returnable.

XXI. And be it enacted, that so much of any Act, Ordinance or Law, as shall be repugnant to or inconsistent with this Act, shall be and is hereby repealed.

XXII. And be it enacted, that the words, "Governor of this Province" wherever they occur in the foregoing enactments, are to be understood as meaning and comprehending the Governor or the Person authorized to execute the commission of Governor within this Province, for the time being; and that the words, "Lower Canada" wherever they occur in the said enactments, are to be understood as meaning and comprehending that part of this Province of Canada, which formerly constituted the Province of Lower Canada; and any word or words importing the singular number only, shall be understood to include several matters of the same kind as well as one matter, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

XXIII. And be it enacted, that the foregoing enactments of this Act shall commence and have force and effect upon, from and after the twenty first day of April, one thousand eight hundred and forty four, and not before.