

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbshire & George Desbarats, 1849.

12 Victoria – Chapter 50

An Act to amend the School Law of Lower-Canada. 30th May, 1849.

Whereas it is necessary to amend a certain Act passed in the ninth year of Her Majesty's Reign, intituled, *An Act to repeal certain enactments therein mentioned, and to make better provision for Elementary Instruction in Lower-Canada*: 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 from and after the passing of this Act, it shall be lawful for the Governor in Council, from time to time, to alter the limits of existing School Municipalities, to subdivide the same, or to establish new ones for School purposes, of all which public notice shall be given by the Superintendent of Schools for Lower-Canada, in such manner as the Governor shall direct.

II. And be it enacted, That from and after the first day of July next, the monthly School fees, in each School Municipality shall not be demandable except for each child of from seven to fourteen years of age capable of attending School: Provided always, that children of from five to sixteen years of age residing in any School District, shall have a right to attend the School thereof, upon payment of the said monthly fees.

III. And be it enacted, That the thirteenth paragraph of the twenty-first Section of the said above cited Act, shall be and the same is hereby repealed; and that hereafter the School Commissioners shall not exact the monthly School fees from indigent persons, nor from any other persons for or on account of children who are mentally deranged, blind, deaf and dumb, or incapable of attending School by reason of some grave and protracted illness, nor for or on account of children absent from the School Municipality for their education, or attending a College or other Educational Institution, either incorporated or receiving a special allowance out of public funds other than those under the control of the School Commissioners.

IV. And be it enacted, That when in any School Municipality the valuation of property shall have been duly made, and the repartition or assessment for Schools, founded upon the said valuation, shall have been established before the first of July in any year, for the then following scholastic year, it shall be lawful for the persons who shall be so assessed, or for any other of the inhabitants of such School Municipality or School District, in the said month of July in such year, to pay, as a voluntary contribution, into the hands of the Secretary-Treasurer, the sum of money required for the scholastic year then commenced, to equal the amount of public monies granted to such Municipality out of the School fund, for the said scholastic year; the payment of which said voluntary contribution shall be attested under oath before a Justice of the Peace, by the Secretary-

Treasurer and by the President, or some other of the School Commissioners, of the said Municipality, and such oath or attestation shall be transmitted to the Superintendent of Schools, before the tenth day of September: Provided always that the said Secretary-Treasurer shall not receive the amount of the said voluntary contribution by portions or otherwise than in one and the same payment; and the Secretary-Treasurer shall hold the said amount in lieu of the fund which would have been raised by assessment for the said scholastic year so commenced, and the said repartition or assessment shall thereupon be and remain inoperative for that year in such Municipality or School District: Provided always, that the monthly School fees and any assessment imposed for the erection of School Houses, shall be levied by the Municipality or School District when they shall not have been voluntarily paid.

V. And be it enacted, That whenever the School Commissioners of indigent Municipalities shall, in good faith, have carried into execution the provisions of the law, and the amount of the assessment actually levied, shall notwithstanding fall short of the amount required by law, the Superintendent of Schools shall have power, upon a representation to that effect, and upon a proof of the facts to his satisfaction, to exempt such municipalities or any of them, from the payment of the whole or of part of the assessment for the current year, and in that case he shall be authorized to grant them the amount to which they would otherwise be respectively entitled out of the Common School Fund; Provided always, that no such indulgence shall be so granted, unless the representation aforesaid be supported in writing by three of the School Visitors of the Municipality in question, (other than the School Commissioners,) or of the neighbouring Municipalities, who shall certify that they have a personal knowledge of the facts alleged, that the School Laws have been *bonâ fide* enforced in such Municipality, that they have themselves visited the Schools therein, and were satisfied therewith.

VI. And be it enacted, That the Clergymen of all religious denominations in each School Municipality shall be eligible to be such Commissioners without any property qualification; any Law or Statute to the contrary notwithstanding.

VII. And be it enacted, That notwithstanding the provisions contained in the sixteenth section of the said Act above cited, every Secretary-Treasurer now in Office, or who may hereafter be chosen or appointed, shall be held after the first day of July next, before continuing or entering upon his duties as such Secretary-Treasurer, to give security to the said School Commissioners, either by a Notarial Instrument (*Acte notarié*) the minute of which shall remain with the notary receiving it, or by a bond (*Acte sous seing privé*) signed and acknowledged before a Justice of the Peace; the said security to be given by at least two solvent sureties jointly and severally (*solidairement*) to the satisfaction of the President of the School Commissioners, and for the total amount of the monies for which the said Secretary-Treasurer may at any time be responsible arising as well from the Local School Fund, or any particular contributions and donations paid into his hands for the support of Schools, as from the Common School Fund, which security shall be renewed whenever its renewal, shall be required by the School Commissioners; Provided always, that whenever the said security shall be as aforesaid entered into by Bond (*Acte sous seing privé*) the original thereof shall within one month after its execution be deposited in the hands of the County Registrar who shall keep the same in his custody and deliver copies thereof, which, being certified by him to be

true, shall be considered to all intents and purposes as authentic, and for every such copy the said Registrar shall be entitled to demand and receive six pence currency for every hundred words therein; Provided also, that the School Commissioners shall at all times have power to remove the Secretary-Treasurer, and to appoint another in his place; Provided always, that no School Master shall be elected or serve as a Secretary-Treasurer nor be appointed a Justice of the Peace.

VIII. And be it enacted, That whenever School Commissioners shall be appointed by the Governor in Council in all or any of the cases provided by the third Section or by any other Section of the Act hereinbefore cited, the School Commissioners antecedently in office, shall, from the date of such appointment, cease to possess any power or to act as such, as also all Assessors, Collectors, and other Officers appointed by or acting under them; Provided always, that it shall be lawful for the Governor in Council, at all times, and so often as he may deem it necessary so to do, to annul the appointment of Commissioners so by him made and that of the other Officers acting under them, and to name and appoint other Commissioners in their stead, who shall in that case proceed to the nomination of the said Officers, to perform the other duties pertaining to their office, and during their incumbency in the said office, to do, in pursuance of the said above cited Act or of this Act, all those things which their predecessors may have neglected or refused to do.

IX. And be it enacted, That no person shall be entitled to vote at elections of School Commissioners in any School Municipality, unless he shall have previously paid up all contributions then due and payable by him for School purposes in such Municipality; and any person so voting in contravention to this enactment, shall incur a penalty not exceeding two pounds ten shillings, currency.

X. And be it enacted, That whenever on the occurrence of a vacancy in the Office of School Commissioner, in the case provided for by the fourteenth Section of the said above recited Act, the election of another person to the said Office shall not have taken place within one month after the occurrence of such vacancy or incapacity, it shall be lawful for the Governor in Council to fill up such vacancy: Provided always, that in all cases of incapacity arising from sickness, no such election or appointment to fill the said Office shall take place, unless the said incapacity shall have been established by the certificate of a Physician deposited with the Secretary-Treasurer; and the vacancy arising from such incapacity shall date from the day of the deposit of such certificate.

XI. And be it enacted, That whenever a site for a School House shall be selected by the School Commissioners, or in the case of an alteration in the limits of School Districts, or of the creation of new ones in any School Municipality, an appeal shall at all times lie to the Superintendent of Schools: Provided always, that no such appeal shall be brought without the approbation in writing of three School Visitors other than the School Commissioners of the said Municipality.

XII. And be it enacted, That in the event of any difficulties arising between the School Commissioners and the Secretary-Treasurer of any School Municipality, or in the event of an application in writing to the same effect being addressed to the Superintendent of Schools by at least five of the assessed contributors to the Local School Fund of such Municipality, on the subject of the accounts, or of the rendering of the accounts of the said Secretary-Treasurer for the year

ending on the first of July then preceding, the Superintendent of Schools shall have power at all times to cause the said accounts, together with the vouchers in support of the same, or copies thereof, to be laid before him, and shall upon the whole matter render a full and explanatory judgment, which shall be entered in a Register to be by him kept for that purpose, which judgment shall have the force of a decision of Arbitrators (*sentence arbitrate*) as to all parties concerned, and of such judgment copies may be given by him which being by him certified as true, shall be taken and deemed to be authentic.

XIII. And be it enacted, That every document, or copy of a document, signed or certified by the Superintendent of Schools, shall be *primâ facie* evidence of the truth of what is therein stated.

XIV. And be it enacted, That so much of the Eleventh Paragraph of the Twenty-first Section of the said above cited Act, as provides that after the deductions therein mentioned the School monies in any School Municipality shall be distributed in equal shares among the School Districts of such Municipality, shall be and the same is hereby repealed from and after the first day of July next, and that from and after the last mentioned day, the amount of the School monies, after deducting the sum of twenty pounds currency, for the support of a Model-School, if any such School there be, shall be divided amongst the several School Districts in such Municipality in proportion to the number of children between seven and fourteen years of age residing therein and capable of attending School; the Girls School established in virtue of the Thirtieth Section of the said above cited Act, being counted 'as one School District, and the Model-School as another School District, without prejudice nevertheless to the previous grant of twenty pounds as above mentioned; and the proportion of the monies to be allotted to the said Girls School and to the said Model-School respectively, shall be determined by the number of children of the age prescribed for attending School, residing in the School District in which such Model-School or Girls School is established.

XV. And be it enacted, That whenever it shall be necessary to purchase or to build a School House in any School District of any School Municipality, and it shall appear to the School Commissioners, from their knowledge of the circumstances of the case, that it would be just that such School House should be purchased or built by the inhabitants of the said School District specially, and not by the Municipality generally; and also in all cases, whenever, under like circumstances, it may be necessary to repair and keep in order any School House in any particular School District, it shall be lawful for the said School Commissioners to levy, at the time and in the manner prescribed by the said above cited Act for levying assessments for the building of School Houses in general, a special assessment in each such School District, for the purchase or building, and for the repairing and keeping in order of the School House of such School District, and in such case such School District shall for that year be exempt from any assessment for the purchase or building of School Houses, except it be for a Model-School: Provided always, that in every case of special assessment, as hereinabove mentioned, in any School District, or, of a general assessment in the whole of the Municipality, for the purchase or building of School Houses, other than a Model-School, after such special assessment shall have taken place, it shall be lawful for any of the parties, so assessed in every School District so separately assessed, to appeal to the Superintendent of Schools, who may set aside such assessment, or relieve therefrom the School Districts or any one of them so appealing or confirm the same, as may to him appear most equitable under the circumstances.

XVI. And be it declared and enacted, That the School Commissioners of any School Municipality, may institute suits or prosecutions in the manner provided for in the fourteenth paragraph of the said twenty-first section of the said above cited Act, as well for the assessments for Schools or School Houses as for the said monthly School Fees, and for ail arrears of the said assessments or monthly fees due by virtue of the said Act above cited or which may hereafter, become due at any time by virtue of the said Act, or of this Act; and that all such suits or prosecutions may be instituted either before two Justices of the Peace in the County, or before a Circuit Court, but not before any other tribunal, without prejudice nevertheless to any suits or prosecutions now pending: Provided always, that, in all such suits or prosecutions, judgment may be rendered with costs; and provided also, that no judgment rendered upon such suits or prosecutions shall be liable to be appealed from, nor shall any such suit or prosecution be removed by Writ of *Certiorari*.

XVII. And be it enacted, That whenever an assessment maintained by the School Commissioners in any School Municipality shall have been annulled or set aside, it shall be the duty of the said Commissioners forthwith, and in a summary manner, to cause a new assessment to be made, which new assessment shall be made and take effect in such Municipality for the whole time, as well passed as to come, for which the assessment so annulled or set aside would have been in operation and in force if it had been valid; Provided always, that such annulling, avoidance or setting aside of the said assessment as aforesaid, shall not have the effect of invalidating any payments made under the authority of the assessment so annulled or set aside, which payment shall go towards the discharge of the new assessment for the period for which they shall have been made, the assessment so annulled or set aside being hereby declared invalid for the future only, and not with regard to such payments, nor with regard to any judgments already rendered to enforce such payments,

XVIII. And be it enacted, That any thing in the twenty-sixth section of the said above cited Act or in any other part of the said Act contained to the contrary notwithstanding, whenever the Trustees of Dissentient Schools shall have been chosen and shall have established one or more Dissentient Schools in any School Municipality, and the said Trustees shall not be satisfied with the arrangements antecedently made by the School Commissioners of the said Municipality relative to the recovery and the distribution of the assessment, they may, by a written declaration to that effect addressed to the President of the School Commissioners at least one month before the first day of January or July in any year, acquire the right of receiving themselves, for the following and all future years during which they shall continue to be such Trustees of Dissentient Schools according to law, the assessment levied on the inhabitants so dissentient, who shall have signified their dissent in writing conformably to the said above cited Act, or who shall hereafter signify the same at the times and in the manner hereinbefore provided, and the said Trustees shall in such case, be entitled to obtain a copy of the assessment in force, of the lists of children capable of attending School, and of other documents in the hands of the School Commissioners or of the Secretary-Treasurer, and connected with the future government of Dissentient Schools; the said Trustees may and shall also receive the amount of the monthly fees payable in respect of the children of such dissentient parents or masters, and may institute all suits or prosecutions, and do all other things necessary for the recovery of the said assessments and monthly fees; and they, the

said Trustees, shall be a Corporation for the purposes of their own Dissentient Schools and School Districts, and shall be entitled to receive from the Superintendent, shares of the General School Fund, bearing the same proportion to the whole sums allotted from time to time to such Municipality as the number of children attending such Dissentient Schools bears to the entire number of children attending School in such Municipality at the same time, and a similar share of the building fund; and the said Trustees shall have the right to constitute their own School Districts independently of the School Districts established by the Commissioners aforesaid, and shall have the same rights and shall be subject to the same duties and penalties as the said School Commissioners, in respect of the collection and application of the monies by them received, of the rendering and examination of their accounts, and of all other matters whatever in reference thereto, and may be removed and others appointed by the Governor in Council, or by the Superintendent of Schools in all those cases in which School Commissioners are liable to be so dealt with; Provided always, that if after such declaration of separate management, there should be no subsisting assessment, or if the assessment should not appear to them a proper one, the said Trustees may in the months of July and August in each year, proceed to make such assessment for the future, conformably to the said Act, upon the inhabitants so dissentient as aforesaid; and provided also, that the said Trustees shall be, and they are hereby held to furnish to the Superintendent a written statement, under the oath of at least two of them, of the number of children attending such Dissentient School at least one month previous to the said first days of January and July, to enable the said Superintendent to make the proper apportionment of the said general and building funds.

XIX. And be it enacted, That notwithstanding the provisions contained in the twenty-seventh section of the said above cited Act, the School allowance may be granted in every School Municipality in respect of every School in the School District whereof the number of children of the age required for attending such School shall amount to at least fifteen, although it shall not have been actually attended by that number throughout the scholastic year, whenever the School Commissioners shall have endeavoured in good faith to carry out the law; so also the School Commissioners who shall have *bonâ fide* engaged a Master or a Mistress for any School District, may pay to the said Master or Mistress the remuneration agreed upon, although the number of children who shall have regularly attended the School should not have been sufficient according to the provisions of the said twenty-seventh section.

XX. And be it enacted, That the Superintendent of Schools shall have power to refuse the School allowance, for any year, to any Municipality the School Commissioners of which shall not have rendered sufficient accounts accompanied by vouchers, of the application of the School monies for the years preceding or for any one of them, whatever be the source whence those monies were derived.

XXI. And be it enacted, That the monthly fees hereinbefore mentioned payable on account of children attending a Model-School, or a separate Girls School, or a School kept by some religious community forming a School District according to the provisions of the said above cited Act or of this Act, shall form no part of the School Fund, but such monthly fees, to the amount established

for the other children in the Municipality, shall be payable directly to the Teacher, and be for his or her use, unless different monthly fees shall have been agreed upon.

XXII. And be it enacted, That the Secretary-Treasurer may, in the discretion of the School Commissioners, receive a remuneration of four per cent, instead of two and a half per cent., in the manner and for the purposes mentioned in the thirty-first section of the said above cited Act.

XXIII. And be it enacted, That in any case in which difficulties of a grave nature on the subject of Schools shall have occurred in any School Municipality, and whenever in consequence thereof it shall become necessary that the Superintendent of Schools should repair to the spot, to correct the evil, or to obtain information, and he shall be unable so to repair to the spot, by reason of the other duties of his office, or of sickness, or some other cause, it shall be lawful for the Governor to appoint whenever need shall be, upon a representation in that behalf from the Superintendent of Schools, a proper person in the stead of the said Superintendent of Schools, to act in relation to such difficulties, and with all the powers of the said Superintendent, unless those powers be otherwise defined and limited in the order containing the nomination of such Deputy.

XXIV. And be it enacted, That if there should be no existing property-valuation either for the County or for the particular Municipality in question, upon which a repartition or assessment for Schools can be based, or if the persons in whose hands such valuation shall be deposited should refuse, or neglect, after having been thereunto required by ten days' notice in writing, to deliver to the School Commissioners of a School Municipality entitled thereto, or to their Secretary-Treasurer, the original of the said valuation, or a certified copy thereof, (which copy being so certified to be true, by the person so having the custody of the original, shall be *primâ facie* evidence of the truth of what is therein stated), the said School Commissioners shall have the power, at all times after such refusal or neglect, to cause such property-valuation to be made by three Assessors to be appointed and authorized by them for that purpose; and if the said Commissioners neglect to give, within one month after their election or appointment, the notice hereinabove required, to obtain either the original or a copy of the said valuation, or if they should neglect to cause the said valuation to be made in their School Municipality within three months next after their said election or appointment, in the cases hereinabove in this section mentioned, each of the said Commissioners shall be liable to a penalty of Two pounds Ten shillings currency, for having neglected to give the said notice, and to a further penalty of Five shillings currency, for each and every day that the said Commissioners shall have been in default in causing the said valuation to be made, as required in the case hereinbefore mentioned: Provided always, that when a valuation applicable to the levying of the said repartition or assessment for Schools shall be in existence, and the persons who shall be in possession thereof, shall refuse or neglect to hand over and deliver as aforesaid, either the said original or the said copy so certified within ten days after being thereunto required by notice as aforesaid, every such person shall, for such refusal or neglect, incur a penalty of Five pounds currency; and for every such copy so duly certified and delivered, such person shall be entitled to receive from the said School Commissioners the sum of Two pounds currency, and no more; Provided also, that whenever the valuation to be copied shall comprise a larger territorial extent, a copy of so much thereof as relates to such School Municipality shall be deemed sufficient.

XXV. And be it enacted, That the persons authorized to make the property-valuation, upon the basis of which the repartition or assessment for Schools in any School Municipality may be established, shall at all times, hereafter, have the right to enter in and upon any property, whether in the possession of the proprietor or of any other occupant, to inspect the said property, and to require from such proprietor or occupant any and every information calculated to aid in the making and completing of the said valuation; and in case of any obstruction or refusal to allow the said persons or any of them to effect such valuation, in manner aforesaid, or to give them such information as aforesaid, every person so refusing or obstructing them shall incur a penalty of One pound currency.

XXVI. And be it enacted, That when a property-valuation, upon the basis of which the repartition or assessment for Schools may be established as aforesaid in any School Municipality, shall hereafter be made, it shall be amended by that authority only, by which it shall have been ordered to be made; and the repartition or assessment, based on such valuation, shall not be amended, except by the School Commissioners only; and the same may be amended by the said School Commissioners in the manner and at the time prescribed by the said above cited Act, or at any other time during their incumbency in the said office.

XXVII. And be it enacted, That the balance remaining unexpended or unclaimed out of the portion of the Common School Fund belonging to Lower-Canada shall Be appropriated by the Superintendent of Schools, under the authority of the Governor in Council, in aiding to finish School Houses actually; commenced, or to build new ones, or to make extensive repair to old ones, in such manner as he shall deem most conducive to the advancement of Elementary Education.

XXVIII. And be it enacted, That the fifty-first Section of the said above cited Act shall be, and the same is hereby repealed, and that from and after the passing of this Act, any person who shall act as Assessor, to make a property valuation upon the basis of which the repartition or assessment for Schools may be established, as aforesaid, without being a proprietor of real or personal property in the Municipality in which he shall so act, to the amount of One Hundred pounds currency, shall incur a penalty of Two pounds Ten shillings currency, unless such Assessor be otherwise exempt by law from possessing such qualification.

XXIX. And be it enacted, That any thing contained in the tenth paragraph of the fiftieth section of the said above cited Act, to the contrary notwithstanding, the School Teachers bound by the provisions thereof to undergo an examination before the Board of Examiners, and to be provided with a certificate of qualification on or before the first day of July, one thousand eight hundred and fifty-six, shall be bound to comply with the same formalities and obligations immediately after the first day of July, one thousand eight hundred and fifty-two.

XXX. And be it enacted, That reckoning from the first day of July last, the sum to be allowed to the Superintendent of Schools for a Secretary, shall be Two hundred and twenty-five pounds currency,

and for a Clerk One hundred and seventy five pounds currency per annum, in lieu of the allowances for the like purposes in the above cited Act mentioned.

XXXI. And be it enacted, That all fines and penalties imposed by this Act, and by the said above cited Act, shall be prosecuted and recovered with costs before a Justice of the Peace in the County, or before a Circuit Court, and not before any other Tribunal, without prejudice nevertheless to any suits or prosecutions now pending, and that the amount of the same shall form part of the local School Fund as provided for in the said above cited Act, in the School Municipality where the said fines and penalties shall have been incurred.

XXXII. And be it enacted, That this Act shall apply only to Lower-Canada.