

Laws of Her Majesty's Province of Upper Canada, passed in the year 1850. Toronto: Stewart Derbshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 13

An Act to amend the Laws relating to the Public Works of this Province. 10th August, 1850.

Whereas it is expedient and necessary to alter, amend and enlarge a certain Act passed in the Session held in the ninth year of the Reign of Her present Majesty, intituled, *An Act to amend the Law constituting the Board of Works*; and also another Act passed in the Session which was held in the tenth and eleventh years of Her said Majesty's Reign, intituled, *An Act to amend the Act intituled, An Act to amend the Law constituting the Board of Works*: 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 the Commissioners of Public Works shall have power for and in the name of Her Majesty, Her Heirs and Successors, to acquire and take possession of any lands or real estate, streams, waters or watercourses adjoining or lying in the neighbourhood of any public work under their management and control, which in their judgment they may deem requisite for the enlargement or improvement of such work, or for obtaining better access thereto, and to enable them to acquire and take possession of all such lands or other property, the said Commissioners are hereby vested with all the powers, rights and privileges conferred upon them by the first recited Act, for the purpose of enabling them to acquire such lands or real estate, streams, waters and water-courses as are contemplated by the said Act hereinbefore first recited, and to take possession of them whenever the owners or occupiers thereof refuse or fail to agree with the said Commissioners for the purchase thereof; and the said Commissioners shall have full power and authority whenever they deem it expedient to sell, alien and convey to any person or body corporate, any lands or other real estate which they may have under their control and which may not be required for the use of any such Public Work, the proceeds of all which sales shall be by the said Commissioners accounted for in due course of law.

II. And be it enacted, That no claim for land or other property alleged to have been taken for or injured by the construction, improvement, maintenance or management of any public works, or for damages alleged to have been occasioned either directly or indirectly to any such land or other property by the construction, maintenance, or management of any such public work, and no claim arising out of or connected with the execution of any contractor agreement for the performance of any such public work or of any part thereof, shall be entertained by the Arbitrators appointed or to be appointed under the first hereinbefore recited Act, unless such claims and the particulars thereof shall have been filed at the office of the said Commissioners, within six calendar months next after the loss or injury complained of, when such claim shall relate to the taking of or damage occasioned to land or other property; and when such claim relates to or is alleged to arise out of the execution or fulfilment of any contract or agreement for the construction of any public work,

unless the same shall have been filed at the said office, within three calendar months next after the date of the final estimate made under such contract: Provided that nothing herein contained shall prevent the said Arbitrators from entertaining, investigating or awarding upon any claims filed within the delay allowed by any former Act.

III. And be it enacted, That whenever the said Commissioners cannot effect an amicable settlement of any such claim, they shall refer the same to the said Arbitrators within sixty days from the filing thereof; and the said Arbitrators shall proceed to investigate and make their award thereon, at such time and place as the Commissioners shall appoint.

IV. And be it enacted, That the said Arbitrators shall within two months next after the passing of this Act, meet at such time and place as the said Commissioners shall appoint, and shall continue to meet from day to day until all claims filed in the Office of the Public Works within the time allowed by law shall have been heard, investigated, awarded upon and determined.

V. And be it enacted, That the said Arbitrators in estimating and awarding the amount of damages to be paid by the said Commissioners to any claimant for injury done to any land or real property, and in estimating the value of lands taken by the said Commissioners under this or any former Act, shall not only take into consideration the advantages which may have accrued or are likely to accrue to such land or real property by reason of the work or works, in the construction or maintenance of which such injury shall have been occasioned, but shall also estimate or assess such land or real property in accordance with the value thereof at the time when the injury complained of was occasioned, and not according to the value of the adjoining lands at the time of making their award.

VI. And be it enacted, That the said Arbitrators in investigating and awarding upon any claim arising out of any contract in writing, shall be bound to decide in accordance with the conditions and stipulations contained in such contract, and the said Arbitrators shall not in any case have power to award compensation to any claimant on account of his having expended larger sums of money in the performance of any work than the sum or sums for which he had contracted or agreed to perform such work; nor shall the said Arbitrators have power to award to such claimant any amount of interest upon any sum of money which they may consider to be due to such claimant in the absence of any contract or agreement in writing, stipulating payment of such interest; and no clause in any such contract in which any drawback or penalty shall be stipulated for the non-performance of or neglect to complete any public work, or to fulfil any of the covenants contained in such contract shall be considered as comminatory, but the same shall be taken, construed and enforced as importing an assessment by mutual consent of the damages arising out of such non-performance or neglect.

VII. And be it enacted, That it shall be the duty of the Commissioners of Public Works, either to construct back ditches or drains for carrying off all water accumulating behind the banks of all Public Canals under their control or to pay a reasonable amount of compensation to the owners or proprietors of the Lands injured by the accumulation of such water, and whenever the said Commissioners shall have constructed any such ditches or drains, and whenever the said

Commissioners shall have made and put up any fence or fences dividing the property of private individuals from any bridge, canal or other work heretofore constructed or which shall hereafter be constructed at the public expense, the said Commissioners of Public Works, and the Government of the Province, shall be forever released and discharged from all liability or obligation in regard to such fences, ditches or drains which shall thenceforward be maintained, repaired and renewed, when necessary, by the adjoining proprietors, who shall be alone liable for any damages arising out of the disrepair of any such fences, ditches or drains: Provided always, that whenever the provisions of this Act shall have the effect of imposing upon any person any liability or obligation beyond what would have otherwise fallen upon him in regard of such fences, ditches or drains, it shall be lawful for such person by one claim filed in the manner and within the time required by this Act, to demand compensation for all losses, injuries and expenses accrued or incurred or which thereafter might accrue or be incurred to and by himself, his heirs, assigns and legal representatives, by reason of such additional liability or obligation; and it shall be lawful for the said Arbitrators in all such cases to award such compensation as they may deem sufficient to cover all such losses, injuries and expenses for the future as well as for the past.

VIII. And inasmuch as the said Commissioners fulfil all duties and exercise all powers conferred upon them by law as the servants or agents of Her Majesty, in respect of the Public Works of this Province: And inasmuch as all property acquired by them under the authority of law is acquired for and vested in Her Majesty: And inasmuch as the said Commissioners are not by law clothed with any Corporate capacity: Be it declared and enacted, That the said Commissioners cannot and shall not as such Commissioners sue or be sued or impleaded in any Court of Law or Equity in this Province, for any cause or under any pretence whatever: Provided always, that in case any claim should arise against the said Commissioners of a nature different from those described in this Act, or the Acts hereinbefore recited, which the said Commissioners are unable to settle amicably, then every such disputed claim (unless the same be made for salary, wages, or allowances, by any subordinate officer or person in the employ of the said Commissioners) shall and may be referred to the said Arbitrators, who shall have power and authority, and are hereby required, to investigate and give their award upon such disputed claim, in like manner as hereinbefore and in the said recited Acts provided for their award upon the claims therein referred to: Provided always, That no such disputed claim shall be entertained by the said Arbitrators unless the same, with the particulars thereof, shall have been filed at the office of the said Commissioners within six calendar months after the same may have arisen or accrued.

IX. And be it enacted, That whenever it shall become necessary to resort to any legal proceedings before any Court of Law or Equity in any part of this Province, for the purpose of enforcing performance of any contract or obligation made or entered into by any person with the said Commissioners, or for any other purpose connected with the duties and powers conferred upon the said Commissioners by this or the said above recited Acts, all such proceedings shall be brought or instituted in the name of Her Majesty's Attorney-General or Solicitor-General for that part of the Province in which such proceedings shall be had, for and in behalf of Her Majesty.

X. And be it enacted, That the said Arbitrators, in investigating any claim referred to them, shall cause all legal evidence offered on either side, to be taken down and recorded in writing, and shall

make or cause to be made a list of all plans, receipts, vouchers, documents and other papers which may be produced before them during any such investigation: And with a view to enable the said Arbitrators to perform their several duties with accuracy and despatch, it is hereby enacted, that the Governor of this Province shall appoint a fit and proper person to act as Clerk to the said Arbitrators for Lower Canada, and another to act as Clerk to the Arbitrators for Upper Canada; And the said Governor shall have power from time to time to remove such Clerks and to put and appoint others in their places, as and whensoever he may see fit so to do; And each of the said Clerks shall be allowed the sum of Fifteen Shillings for every day of his attendance to his duties as such Clerk.

XI. And be it enacted, That it shall be the duty of the said Clerks to deliver to any person requiring the same certified copies of any depositions, documents or other papers taken or filed before the said Arbitrators: Provided always, that before delivering any such certified copies the said Clerk shall be entitled to receive payment at the rate of Six Pence for every hundred words contained in the same, and One Shilling additional for such certificate.

XII. And with a view to remove various doubts and difficulties which have arisen in Lower Canada as to the mode of proceeding which should be adopted to obtain the revision of awards given by such Arbitrators: Be it enacted, that from and after the passing of this Act, any Claimant who shall be dissatisfied with any award made or pronounced by the said Arbitrators in Lower Canada, may appeal from such award by petition, addressed to the Superior Court, sitting in Term, or to any two Judges thereof, sitting in vacation in the District in which such award shall have been made or pronounced, praying such Court or Judges, for reasons to be set forth at length in such petition, to revise and re-consider the same, and to set aside and annul the same, either wholly or in part and if in part, stating what part, or to amend or reform the same; and it shall be lawful for Her Majesty's Attorney General or Solicitor General for Lower Canada, for the time being, to appear in such Court or before such Judges to answer such petition for and on behalf of Her said Majesty; And it shall be lawful for Her Majesty's Attorney General or Solicitor General, whenever the said Commissioners shall be dissatisfied with any award made or pronounced by such Arbitrators, to apply in like manner by information, for and on behalf of Her said Majesty, to the said Court or to the said Judges, for reasons to be set forth in such information, to set aside or annul such award, either wholly or in part, or to amend or reform the same; and it shall be lawful for such Court or Judges either to amend or reform such award or to set aside and annul the same; and if such Court or Judges shall be of opinion that the Claimant in any such appeal is entitled to recover an amount of compensation larger than that awarded by the Arbitrators, the Claimant shall be entitled to receive from the said Commissioners not only the amount of compensation specified in the judgment of the said Court, but also such costs as the said Court or Judges may award upon such appeal; and when in any appeal instituted by Her Majesty's Attorney General or Solicitor General, such Court or Judges shall set aside or annul any such award, or shall diminish the amount of compensation awarded to the Claimant, then it shall be lawful for such Court or Judges to award costs to Her Majesty's Attorney General or Solicitor General, as the case may be, for and in behalf of Her Majesty.

XIII. And be it enacted, That in every such appeal the Arbitrators shall be bound to produce before the said Superior Court or the said Judges all such evidence as shall have been taken down and recorded before them, together with all plans, receipts, vouchers and other documents which shall have been submitted to and filed before them in relation to such claim; and the said Court or the said Judges shall not allow any other evidence to be adduced before them upon any such petition in appeal except when the said Arbitrators shall have rejected and refused to record evidence by law admissible: Provided always, that no such appeal from any such award shall be or be entertained unless such Petition in appeal shall have been filed before the said Court or the said Judges within four months from the date of such award and unless due notice of such Petition shall have been given at least twenty full days before the filing of such Petition.

XIV. And be it enacted, That notice of any proceeding had or to be had under the authority of this Act or of either of the above recited Acts, shall be given to the said Commissioners at their Office, if such notice relate to a proceeding had or to be had in that one of the two sections of the Province respectively known as Upper Canada and Lower Canada, in which such Office for the time being is situate, but if it relate to a proceeding had or to be had in the other section of the Province, such notice shall be served at some place which shall be appointed by the said Commissioners as their domicile elect for such other section of the Province; Provided always, that the said Commissioners shall give notice of the election of such domicile by inserting an advertisement once every month in the Canada Gazette, specifying the place where they shall have elected the same.

XV. And be it enacted, That nothing in this Act contained shall prevent or be construed to prevent any proceedings now pending in any Court of law in Lower Canada, and in or to which the said Commissioners have become or have been declared to be parties from being dealt with as if this Act had not been passed.

XVI. And be it enacted, That whenever any sum of money has or shall have been appropriated by any Act of the Legislature of this Province, for the purpose of making or improving any Road or highway, the said Commissioners may in their discretion intrust the whole or any part of such appropriation to the Municipal Councils of the Municipalities through which such road or highway shall pass to be appropriated by such Municipal Councils in the manner and for the purposes by law provided.

XVII. And be it enacted, That any Law or Act, or any part or parts of any Act or Acts repugnant to or inconsistent with the present Act shall be and the same are hereby repealed.