

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

13 & 14 Victoria – Chapter 39

An Act to amend and consolidate the Act providing for the organization of the Notarial Profession in Lower Canada. 10th August, 1850.

Whereas it is expedient to amend in the manner hereinafter mentioned, the Act passed in the Session held in the tenth and eleventh years of Her Majesty's Reign, and intituled, *An Act for the organization of the Notarial Profession, in that part of this Province called 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 the third, fifth, tenth, eleventh, twelfth, thirteenth, twentieth, twenty-first, twenty-fourth and twenty-fifth sections of the said Act, shall be and are hereby repealed; and each of the Boards of Notaries created and established by the said Act, shall be a Corporate Body in itself, and as such be entitled to all the privileges vested by law in Corporate Bodies generally; and shall each have power to acquire, hold, possess and enjoy real and personal estate not exceeding in value five thousand pounds currency; and in all actions instituted against any of the said Boards, service of process at the office or domicile of the Secretaries of the respective Boards shall be good and sufficient

II. And be it enacted, That the members of each Board shall elect at the first annual general meeting of the said Boards which shall take place after the passing of this Act:

First.—A President, who shall only vote when the votes are equally divided, shall call special meetings of the Board when he shall deem it expedient, or on the requisition of two members, stating the purpose of the meeting, or on that of the Syndic hereinafter mentioned, and shall preserve order at all meetings.

Secondly.—A Secretary, who shall draw up and enregister the proceedings of the Board, shall have custody of all Records and deliver copies thereof, shall collect the facts relative to any charge brought against a Notary, and report the same to the Board; and who shall be authorized to appoint a Deputy to represent him in case of illness or of absence, with the approbation of the Board of Notaries for his District; and the said Deputy shall be appointed by a written instrument under the hand of the Secretary, which instrument shall be entered in the book of proceedings of the said Board.

Thirdly.—A Treasurer, who shall have charge of the common fund hereinafter mentioned, shall receive and pay moneys upon the order of the Board, and shall account for the same as the Board shall direct.

Fourthly.—A Syndic, who shall be the prosecutor on any charge brought against a Notary; Provided always, that in addition to the special powers hereby assigned to the officers aforesaid, each of them shall, if he be a member of the Board, vote as such in the same manner as the other members, at all meetings of the Board, except that with regard to any matter relating to any charge against a Notary, the Syndic conducting the prosecution shall not vote: And provided also, that in case any of the officers aforesaid shall be absent or prevented from acting, his place may be supplied by the appointment of another *pro tempore* by the majority of the members present at any meeting at which there shall be a quorum: Provided also, that the present officers of the Boards of Notaries shall continue in office until the said elections of officers of the said Boards shall take place as prescribed by this Act.

III. And be it enacted, That each of the said Boards of Notaries shall have power and authority:

First.—To maintain internal discipline among the Notaries within their jurisdiction, to award, censure and enforce such discipline.

Secondly.—To prevent or reconcile all differences between Notaries and all complaints and claims by third persons against Notaries concerning their functions, to express their opinion respecting the damages thence arising, and to repress by censure or other means of discipline, whatever offence may be the subject thereof, without prejudice to any right of action, if any such doth accrue.

Thirdly.—To grant or refuse, after public examination, all certificates of qualification required by applicants for admission, either as Students or Notaries, and to deliberate thereon as they shall think proper.

Fourthly.—To receive and keep the records of Notaries, deceased, absent or removed from office or interdicted.

Fifthly.—To summon before it, when need shall be, any Notaries within its jurisdiction.

Sixthly.—To alter from time to time, if any such Board shall think proper, the quorum for the examination of candidates for the study of or admission to the profession, and the granting or refusal of the necessary certificates for the said purpose, and also for receiving complaints, claims and petitions from Notaries and third parties, on the various subjects within the powers of the Boards of Notaries, and for the despatch of other routine business of a similar nature: Provided that such quorum shall not be less than five for the Quebec and Montreal Boards of Notaries respectively, nor less than three for the Three Rivers Board of Notaries; but whenever any decision shall be required to be taken on any matter so brought before the Board, the quorum shall be the same as provided in the second section of the Act above cited.

Seventhly.—To cause any such Notary to be punished according to the nature of his offence, by removal or suspension from office, or by depriving him of his vote at General Meetings, or by

excluding him from the Board for a time not exceeding three years for the first offence, nor more than six years for a second or subsequent offence: Provided always that if the charge brought before the Board against any Notary shall appear sufficiently serious to call for his suspension from the exercise of his functions or his removal from office in cases of fraud or corruption, the Board shall associate with it by lot, a number of Notaries equal to the number of Members of the Board, from among those within its jurisdiction, who shall be bound to serve, under a penalty of five pounds currency; and the Board thus composed may, by a majority of the whole, pronounce its opinion as to such suspension and the duration thereof, or as to such removal from office; but no opinion shall be pronounced unless two thirds at least of all those summoned to attend the meeting be present; and in any such case the opinion so pronounced shall be submitted to the Superior Court for judgment thereon in the manner provided by the twenty-second section of the Act above cited; Provided also, that nothing in this section shall deprive the party injured of any remedy which he may have against the Notary.

Eighthly.—To fix the time of the General Meetings of Notaries either for the appointment of the Officers mentioned in the second section of this Act, and all other meetings to be held under the eighth section of the said above mentioned Act.

Ninthly.—To make such By-laws and orders as from time to time shall be found requisite for the administration of all matters under their control, and for the due putting into execution of this Act and the Act above mentioned; but no such By-law or order shall have any force or effect unless the same shall have been adopted at a General Meeting of the Notaries interested.

IV. And be it enacted, That the Members of each Board of Notaries shall elect in the manner hereinbefore prescribed, the President and other officers above mentioned, and such election shall be renewed every three years, (the same persons being nevertheless capable of being re-elected, and the senior in age having the preference in any case of equality of votes,) and any Notary who shall refuse to accept the office of Member of a Board or to perform the duties of President, Secretary, Syndic or Treasurer, shall thereby incur a penalty of five pounds currency, unless he shall have already filled one of the said offices; and any Notary appointed a member or elected as an officer of the Board, who shall not attend regularly at the meetings of the Board, or who shall neglect to fulfil the duties of his office, shall incur a penalty not exceeding two pounds ten shillings currency, unless he shall have been prevented from attending through illness or other serious causes, touching which a quorum of the said Board shall decide; and any member or officer of a Board who shall be guilty of such refusal or neglect after having been elected and after having accepted office, shall also incur a penalty of two pounds ten shillings currency; and the Board may by a By-law to be previously passed for that purpose, determine what shall be considered neglect or refusal to fulfil the duties of members or officers of the Board.

V. And be it enacted, That the Secretary of each Board of Notaries or his deputy shall be entitled to receive and demand the sum of ten shillings for the certificate of capacity and qualification which he shall deliver to any candidate, besides the expenses of advertising; two shillings and six pence currency on the entry of every declaration in the cases provided for by the said Act; and moreover for every summons, one shilling and three pence currency, and six pence for each copy

thereof, and also at the rate of six pence currency per hundred words, and two shillings and six pence currency, for the certificate of any copy delivered by him of any deed in his custody; and one shilling currency, for searching for any deed or other document provided the year in which the same shall have been executed, be furnished to the Notary; and if the year be not given, one shilling currency for every year over which the search extends.

VI. And be it enacted, That it shall be lawful for each Board of Notaries to establish a common fund, which shall not exceed however the expenses established and approved of as necessary at any general meeting, and apportioned among the several Notaries of the district; and in order to assist in forming the said fund and to meet the expenses of each Board, there shall be paid in each year by each practising Notary, to the Treasurer of the Board for his district within one month after the appointment of the said Treasurer, a fixed contribution of ten shillings currency, for the recovery of which, in default of payment, the Syndic may bring an action before any Court having jurisdiction to that amount; and any Notary who shall refuse or neglect to pay his contribution, shall be liable to be censured, reprimanded, or called to order, or to be suspended from the exercise of his functions until he shall have discharged the said debt, the whole according to circumstances and after the notices prescribed and given by the Board; and if the Board shall think proper to suspend any Notary for contravening the provisions of this section, such Board shall add to its number any other Notaries within its jurisdiction as prescribed by the third section of this Act; the fixed contribution shall not prevent any Board of Notaries from submitting to the vote of the general and annual meeting of the Notaries an additional contribution to meet the expected or unforeseen expenses during the year, which contribution shall be paid by each Notary, in the same manner and under the same penalties as the fixed contribution; and a statement of the receipts and expenditure of each Board of Notaries shall be submitted in each year to the Board by the Treasurer thereof.

VII. And be it enacted, That from and after the passing of this Act, it shall be the duty of each and every Notary in Lower Canada, to continue to number consecutively all deeds, contracts or instruments which may be executed before him, and remain of record in his office (*étude*), and to note the number of each and every such deed, contract or instrument, in the margin of his repertory, opposite to the entry of such deed, contract or instrument, as well as in every copy thereof: Provided always, that all discharges, ratifications, and other accessory instruments, executed and entered at the end of the principal deed, as being relative thereto and forming part thereof, shall be entered in the repertory according to their dates, with the other minutes merely referring to the number of the principal deed after the entry of such accessory instruments; and it shall also be the duty hereafter of each and every Notary, to keep, besides the repertory required by law, an index to all minutes of his deeds, both principal and accessory, under a penalty not exceeding five pounds currency.

VIII. And be it enacted, That any Notary who shall be convicted of having passed any deed, contract or instrument, without entering therein the number thereof, and the day, year and place on and at which it was passed, and the Christian and surnames, additions and places of residence of the parties and witnesses thereto, or shall use abbreviations not allowed by law, or shall neglect to insert all sums and dates in words at length, or to read over the instruments to the parties, and

to make mention of his having done so, and also of their having signed the same, or declared themselves unable to sign, or to cause all marginal notes and additions to be approved and authenticated, or to state the number of words struck out or marginal notes added, or shall make any interlineation, erasures or additions in the body of the instrument, or shall contravene or fail to observe any of the other forms prescribed by law, with regard to Notarial instruments, or shall neglect to keep his minutes, repertory and index in proper order and in a good state of preservation, and shall pass any instrument to which an interdicted person shall be a party without the assistance of the Curator or Counsel of such interdicted party when the interdiction shall have been duly notified, shall for each such offence incur a penalty not less than two pounds nor exceeding five pounds currency, over and above all damages which may be recovered by any party interested, and as the case may be, may be suspended for a space of time not exceeding three months, and any Notary who shall (except when authorized by law or under the order of a Judge or some other competent authority) allow any minute to go out of his possession, or shall neglect to sign any minute or complete the same, shall thereby incur a penalty of not less than Five Pounds nor exceeding Twenty-five Pounds currency, or may be suspended for any space not less than three months nor more than a year, according to circumstances, and may even be removed from office in case of forgery, fraud or corruption, over and above all damages, if there be any, which may be incurred by the parties.

IX. And whereas it is necessary to make more safe and effective legislative provision for the keeping, transmission and preservation of Notarial minutes, records and repertories: Be it enacted;

First.—That the minutes, repertory and index of any Notary who shall die, or shall become incapable of acting as such, or shall refuse to practice and to deliver copies of his notarial deeds, or shall have been interdicted or removed from office, or shall have left his domicile in Lower Canada, shall be deposited by him or by the party in whose custody he shall have deposited them, or by his heirs or legal representatives, with the Board of Notaries for the District wherein such Notary shall have resided; and on the refusal or neglect of any such Notary or of the party in whose custody such notarial documents shall be, to deposit the same, the Secretary of such Board of Notaries or his Deputy, may, in the name of the said Board, sue for the recovery and possession of the said minutes and repertories by an action of *revindication*, before the Superior Court in the said District, either in Term or in Vacation, before any one Judge of the said Court who shall be invested with the same power and authority as the said Court, for the hearing, trying and determining the said action, and all proceedings incident and relative thereto, and for the enforcing of his orders and judgments, and condemning to costs, and inflicting and imposing the same fines and penalties as the said Court can inflict and impose on parties refusing to obey the said judgments or opposing the execution thereof.

Secondly.—That it shall be lawful for any Notary desirous of withdrawing from practice, to deposit in the same manner his minutes and repertory with the Board of Notaries for the District wherein such Notary shall reside.

Thirdly.—That the heirs or legal representatives of any Notary deceased, interdicted or absent from Lower Canada, who shall neglect to comply with the foregoing requirements, shall incur a penalty of Ten Pounds currency for each month during which such neglect shall continue, reckoning from the day on which they shall have been called upon to make such deposit as aforesaid; without prejudice to the right of any party to recover damages for any injury by him sustained by reason of such neglect: Provided that, whenever any Notary so interdicted or absent shall again be admitted to practice, he shall be entitled again to obtain possession of his minutes and papers, as shall also any Notary who shall have voluntarily ceased to practice, and shall have deposited his minutes and repertory as aforesaid, and shall afterwards wish again to commence practising: Provided also, that any Notary who shall have been absent from Lower Canada for ten years, without having, during that time, resided, at least, two years therein, shall not again practice on his return until he shall have passed an examination as to his moral character and ability, to the satisfaction of the Board of Notaries for the District in which he intends to reside.

Fourthly.—That in all cases where by this Act or by the Laws in force in Lower Canada, the minutes, repertory and index of the Acts and instruments passed by any Notary are required to be deposited as aforesaid, it shall be the duty of the Secretary to the Board of Notaries with whom the same ought to be deposited, or his Deputy, to prosecute the deposit thereof; and the widow of a deceased Notary during her lifetime, or the legal representatives of such deceased Notary during the ten years next after the decease of such Notary, if his widow should die before the expiration of the said ten years, or the representatives and assigns of any absent Notary, or the Notary who cannot practice or who shall have refused to practice and to deliver copies of his Acts or who shall have been interdicted, removed or dismissed, shall every six months receive from the Board of Notaries with which such deposit shall have been made, one-half of the fees and emoluments received by the Secretary for searching and delivering copies of any deed deposited in his custody.

Fifthly.—That all copies of minutes so deposited, certified as such and signed by the Secretary or his Deputy having the custody thereof, shall be deemed authentic and shall be received in evidence in the same manner as copies signed by the Notary who shall have passed the minutes.

X. And be it enacted, That after the passing of this Act, Notaries may when thereunto required, deliver extracts duly certified by them from their minutes, and the Secretaries of the Boards of Notaries may deliver extracts from the minutes which shall be lawfully in their custody and possession, which extracts shall be authentic and shall be evidence of their contents until inscribed *en faux*; but the said extracts shall contain the date and nature of the deed, the Christian and surnames, additions and place of residence of the parties, the place where the deed shall have been passed, the name of the Notary who shall have received the same, and shall contain at full length the clauses or parts of clauses required by the person demanding such extracts for the purpose of ascertaining and preserving his rights, and lastly the day on which such extract shall be delivered, mention whereof shall be made on the minute.

XI. And be it enacted, That all notifications, protests and services thereof, made by any Notary at the request of a party who shall not have accompanied such Notary nor signed the deed, shall be

authentic and be evidence in themselves of their contents until called into question or disavowed by the person (or any other to whom it shall appertain) in whose name such notification, protests and services shall have been made; and that notwithstanding any law or judicial decision to the contrary, Notaries shall continue in the same manner as advocates and attorneys, to sign in the name of petitioning parties, and without any other special power, memorials or petitions required for the calling together of meetings of relatives and friends, (*assemblées de parents*) in cases of tutelage, curatorship, (*tutelle, curatelle,*) sale of real property of minors and interdicted persons, divisions or licitations (*partages ou licitations*) and other like matters concerning family affairs and successions.

XII. And be it enacted, That every Board of Notaries may, from time to time, and as often as they shall think proper, elect from among the members thereof, or from the other Notaries of the District, one or more Notaries not exceeding three: who after having received sufficient notice of their appointment, and after they shall have been sworn at some sitting of a Court of civil jurisdiction, to the faithful and impartial discharge of the duties imposed on them by this Act, and which they shall be bound to perform under a penalty of five pounds currency, shall visit the offices, records, minutes, repertory and index of inculpated Notaries, when such inculpation shall appear so serious as to deserve to be punished by fine or by suspension or dismissal in cases of forgery, fraud or corruption; to establish whether such inculpated Notaries have conformed to the laws of this Province, and the requirements of this Act, and to obtain information on all matters and things mentioned in the instructions which they shall receive from the Board of Notaries, to whom they shall make a faithful and circumstantial report; and every Notary who shall refuse either to permit the visit of the Notary so delegated by the Board of Notaries for his district, or to grant him access to his papers, shall for every refusal incur a penalty of ten pounds currency, to be recovered in a summary manner before the nearest Justice of the Peace: Provided always, that no Notary so delegated to make any such visit shall be required to make more than one visit in three years; and that he shall be entitled to receive, out of the common fund of the Board of Notaries in whose jurisdiction he shall be, such sum as the said Board shall think proper: Provided that such sums shall not exceed One pound five shillings for every day usefully employed in making the said visit, including daily expenses and disbursements, and including also the said report.

XIII. And be it enacted, That the enregistration of the Declarations of Notaries and of certificates of admission to the profession shall not hereafter be made in the office of the Prothonotaries of the Superior Court, any provision relating thereto in the Act above cited to the contrary notwithstanding.

XIV. And be it enacted, That the regular classical education mentioned in the seventeenth section of the Act above cited, shall comprise the same branches as are taught during five years in the Seminaries or Colleges mentioned in the fourteenth section of the said Act.