

*Laws of Her Majesty's Province of United Canada*, passed in the year 1851. York: Stewart Derbyshire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 36

**An Act to incorporate the Canada Guarantee Company. 2d August, 1851.**

Whereas a Guarantee Company, for the purpose of interposing their guarantee for the integrity and faithful accounting of Public Officers and their Deputies, Managers, Secretaries, Cashiers, Collectors, Receivers, Clerks and other persons of reputation, would be of great advantage and convenience within this Province, and the several persons hereinafter named have, by their petition, prayed to be incorporated as a Company for such purpose, with the requisite powers and capital for carrying on the said business: 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 Philip Durnford, Peter McGill, Alexander Simpson, Joseph Wenham, William Workman, Ferdinand MacCulloch, Charles Smith Ross, David Davidson, Benjamin H. LeMoine, and their successors, and such and so many other persons or parties as shall become shareholders in the capital stock hereinafter mentioned, shall be, and they are hereby constituted a body politic and corporate by the name and designation of The Canada Guarantee Company, and shall be entitled to carry on, and from time to time to make By-laws not inconsistent with this Act or with any law of or in this Province, for the more effectually carrying on of the business of a Guarantee Company in all its various branches and departments, by interposing the guarantee of the Company for the integrity and faithful accounting of Public Officers and their Deputies, Managers, Secretaries, Cashiers, Collectors, Receivers, Clerks and other persons of reputation, approved of by the Company, on payment of an annual or other gross or periodical premium *per centum*, in proportion to the amount of security required and the circumstances of every individual case, and for transacting such other description or species of Guarantee transactions as the Directors of the Company shall from time to time deem expedient, and with and under the conditions and declarations, and the powers and privileges hereinafter set forth or referred to.

II. And be it enacted, That the capital stock of the Company hereby incorporated shall be One Hundred and Twenty-five Thousand Pounds, currency, divided into Ten Thousand indivisible Shares of Twelve Pounds Ten Shillings each, with power to increase the same as hereinafter mentioned.

III. And be it enacted, That so soon after the passing of this Act as may be, the persons hereinbefore named, or a majority of them, shall appoint a Committee of five of their own number, which Committee, or a majority of them, shall cause books of subscription for the capital stock of the Company to be opened in the City of Montreal, and at such other places, and under such regulations as they may direct.

IV. And be it enacted, That so soon as the sum of Twelve Thousand Five Hundred Pounds, or upwards, shall have been subscribed for, and not less than five *per centum* thereof shall have been paid and deposited in some one or more of the incorporated Banks of this Province to the credit of the said Committee, to the use of the Company, it shall be lawful for the Committee aforesaid, or a majority of them, to call by advertisement a general meeting of the subscribers, at a time and place in the City of Montreal, to be announced in such advertisement, for the purpose of electing Directors for the management of the affairs of the Company, of which meeting not less than thirty days' notice shall be given by such advertisement.

V. And be it enacted, That the scale of voting at general meetings shall be as follows, that is to say: for any number of shares not being less than five, one vote; for every number of shares not being less than fifteen, but less than twenty-five, two votes; for every number of shares not being less than twenty-five, but less than forty, three votes; for every number of shares not being less than forty, but less than fifty, four votes; for every number of shares not being less than fifty, but less than seventy-five, five votes; for every number of shares not being less than seventy-five, but less than one hundred, six votes; for every number of shares not being less than one hundred, but less than one hundred and twenty-five, seven votes; for every number of shares not being less than one hundred and twenty-five, but less than one hundred and fifty, eight votes; for every one hundred and fifty, or more shares, ten votes, being the maximum for any one Shareholder; and any absent Shareholder may vote by proxy, provided such proxy be also a Shareholder: Provided always, that no Shareholder in default for non-payment of any instalment shall be entitled to vote at any meeting of the Shareholders.

VI. And be it enacted, That for the management of the affairs of the Company, there shall be nine Directors, who shall be elected by the Shareholders at their first general meeting, to serve as Directors until the next annual general meeting; when, and at every succeeding annual general meeting, a like number of Directors shall be elected to serve for the ensuing twelve months: Provided always, that no person shall be qualified to be a Director, unless he be, and continue to be, during his directorship, the proprietor in his own name and right, of not less than twenty shares of the capital stock of the Company, and be moreover a resident in the Province, and a natural born or naturalized subject of Her Majesty: And provided also, that the Directors in office at the period of each annual election of Directors shall be eligible for re-election for the then ensuing twelve months.

VII. And be it enacted, That notwithstanding any thing in the next preceding section contained, it shall be competent to the Shareholders, at any special or general meeting, to reduce to not fewer than five, or to increase to not more than thirteen, the number of Directors: Provided always, that not less than thirty days previous public notice shall be given of an intention to propose a reduction or an increase in the number of Directors.

VIII. And be it enacted, That whenever a vacancy in the directorship shall occur in the interval between two annual general meetings, the remaining Directors shall fill up the vacancy by election from among the qualified Shareholders; and every Shareholder so elected shall be and serve as a

Director until the annual general meeting next following the date of his election, and at all meetings of Directors not less than three shall form a *quorum*.

IX. And be it enacted, That it shall be lawful for the Directors, for the time being, to appropriate annually from the profits of the said Corporation or Company a sum not exceeding Five Hundred Pounds, currency, for their remuneration, to be divided among them according to such rules as they may appoint; which sum may be increased or diminished by the Shareholders at their annual general meeting.

X. And be it enacted, That the Directors shall have full power to accept or reject all Guarantee proposals; also, to fix the general rates, terms and conditions on which Guarantee agreements shall be undertaken by the Company, and likewise to revive or re-establish any Guarantee agreement or policy which may have expired by reason of the assured failing to pay the premium, or otherwise; provided, that until the fund hereafter described as "The Shareholders' Fund" shall amount to, or the securities wherein the same shall be invested, shall be of the value of Twenty-five Thousand Pounds at least, no Guarantee proposal shall be undertaken by the Company on behalf of anyone individual to an extent exceeding Two Thousand Five Hundred Pounds, excepting in cases where on behalf of the Crown, or of any incorporated or chartered Bank, Savings Bank, Friendly Society, or Charitable or other incorporated Society in this Province, a greater amount of security shall be required, in which several cases the Company shall be at liberty to undertake risks on behalf of any one individual to the extent of Five Thousand Pounds currency, and no more; and it shall be lawful for the Directors to make such regulations as they shall see fit for the purpose of allowing persons who shall effect Guarantee Policies, or the parties whose integrity shall be thereby guaranteed, to participate in the profits arising from the business, and that, to such extent, and upon such terms and conditions as the Directors may from time to time think proper for increasing the business of the Company.

XI. And be it enacted, That no bond or policy given or entered into by the Company shall in any wise limit or restrict the general liability of the Company or its individual members, as regards the recovery of any moneys by such bond or policy to be secured, within the limitations or restrictions hereinafter mentioned.

XII. And be it enacted, That it shall be lawful for the Directors to establish Branches or Agencies of the Company, in such places within this Province as they may deem advantageous, with such Agents, Managers, Secretaries, Local Boards, and other means of management, and at such commissions and salaries, and subject to such regulations and conditions as they may think fit, with full power for the Directors to determine and recall, suspend and dismiss, without reason assigned, or to vary and modify the institution, functions, powers, duties and allowances of all such Branches, Agencies, Agents, Managers, Secretaries and Local Boards.

XIII. And be it enacted, That it shall be lawful for the Guarantee of the Company to be accepted for any person who is or who hereafter shall be appointed to any public office or employment, and shall be required by himself, or by himself and Sureties, to give security by bond, deposit or otherwise, under any Law or Act of Parliament or otherwise, now or hereafter to be in force; and

every such Guarantee of the Company shall be given and executed by their bond or policy, to and in favor, and to the use of Her Majesty, Her Heirs and Successors, and subject to such conditions as shall be required by the Principal Officer of the office or department in which the appointment is or shall be made, and the same when taken and accepted shall be in lieu of the security required by any Act or Statute, Rule or Regulation now in force, or to be from time to time in force; and the acceptance of every such guarantee and bond or policy, for and on behalf of Her Majesty, Her Heirs and Successors, shall be held to be sufficient, and sufficiently proved by the signature of the Principal Officer of the office or department, or the signature of the Inspector General of Public Accounts, when the security is for or on behalf of such Principal Officer himself, subscribed under the word "accepted," on the face of, or endorsed upon the bond or policy; any law or usage to the contrary notwithstanding.

XIV. And be it enacted, That it shall be lawful for the Principal Officer of the office or department in which any such bond or policy shall be taken or accepted as aforesaid, and the Inspector General of Public Accounts for the time being, by certificate under their respective hands, to declare that the public revenue has been, and to what extent damnified; or to state the amount of the loss occasioned by any act done, or any payment or duty omitted, in contravention of the duty or purpose for the due performance of which such bond or policy shall have been taken and accepted; and such certificate shall be taken and accepted as aforesaid, and shall be final and conclusive evidence in every action, suit or other proceeding, of the truth of the contents of such certificate, and that the said bond or policy has become forfeited thereby, to the amount of the loss stated in the said certificate; and thereupon, such amount shall be recovered together with the costs of such action, suit, or other proceeding, to and for the use of Her Majesty, Her Heirs and Successors: Provided always, that when the Principal Officer himself shall be the defaulter, the certificate of the Inspector-General of Public Accounts alone shall be sufficient.

XV. And be it enacted, That for or in addition to the bonds or securities entered into and given, or to be entered into and given by any, and the sureties of any Manager, Treasurer, Actuary, Cashier, Clerk, or other person of or in the employ of any Bank, Savings Bank, Friendly Society, Loan Society, Benefit Society, Building Society or Charitable or other Society, under or by virtue of any Act of the Parliament of this Province, or of the former Parliament of either section of this Province, or of any constitution, by-law, rule, or regulation of or relating to the said several Banks and Societies, or to any or either of them, the guarantees and bonds or policies of the Company hereby incorporated may be substituted or taken and accepted; and thereupon the provisions in any such act, or in any such constitution, by-law, rule, or regulation, in relation to such bonds and securities, shall, in so far as the same may be practicable, become and be applicable to the guarantees and bonds or policies of the Company substituted or taken and accepted in lieu thereof; and the acceptance by any such Bank, Savings Bank, Friendly Society, Loan Society, Benefit Society, Building Society, Charitable or other Society, of every such guarantee and bond or policy of the Company, shall be held to be sufficient and to be sufficiently proved by the official signature of their President, Cashier, or Principal Manager, subscribed under the word "accepted" on the face of, or endorsed upon the bond or policy; any law or usage to the contrary notwithstanding.

XVI. And be it enacted, That it shall be lawful for the Company to purchase, and hold in their corporate name, lands, tenements and hereditaments, for the purpose of occupying the same as a place or places of business, not exceeding in the whole the annual value of Two Thousand Pounds at the time or respective times of such purchase.

XVII. And be it enacted, That instalments of the capital stock of the Company, may from time to time be required to be paid up, provided that no instalment shall exceed ten per centum of the amount subscribed, nor shall be required to be paid until after at least thirty days' notice in the Canada Gazette, and in any such other newspaper or newspapers published in the Province, as to the Directors shall From time to time seem meet; nor shall successive instalments be required at less than an interval of three months, nor shall the aggregate amount of instalments in any one year exceed thirty per centum, except as regards any instalments which may be required under the provision hereinafter contained for increasing the amount of the Shareholders' Fund.

XVIII. And be it enacted, That if any Shareholder shall make default in the payment of any instalment on his shares, he shall *ipso facto* be and become further liable to the payment to the Company of interest on the amount of the unpaid instalment from tire date on which the same should have been paid; and the Company in its corporate name may recover the amount of every unpaid instalment with interest as aforesaid, and costs of suit, in any Court of competent jurisdiction.

XIX. And be it enacted, That in any action by the Company against a Shareholder for the recovery of an unpaid instalment on his shares with interest, it shall be sufficient for the Company to declare that the defendant is a holder of one or more shares of the capital stock, and is indebted to them in the amount of the unpaid instalment and interest; and in every such action it shall not be competent to the defendant to plead the general issue, but he may, by a plea in denial, traverse any particular matter or matters of fact alleged in the declaration, or specially plead some particular matter or matters of fact in confession and avoidance, and the certificate of the Secretary or Principal Manager of the Company, and a number of the Canada Gazette containing the notice calling in the instalment sued for, shall be sufficient *primâ facie* evidence of the defendant being a holder of the number of shares specified in the certificate and of the instalment thereon demanded having been duly called in; and no other Shareholder shall be deemed an incompetent witness in such actions either for or against the Company; any law or usage to the contrary notwithstanding.

XX. And be it enacted, That in all actions by or against the Company, copies of the proceedings of the Shareholders, or of the directors of the Company, extracted from their minute book or books of proceedings, and certified by their Secretary or Principal Manager, shall be *primâ facie* evidence of the contents of such copies in all Courts of civil jurisdiction in this Province.

XXI. And be it enacted, That the shares of the Company shall be transferable, and all transfers of shares shall be registered in a book or books to be kept for that purpose, in such form as the Directors may appoint, provided that no share shall be transferable until all the instalments

thereon called in shall have been paid up, and the party desirous of transferring shall have discharged all other his liabilities to the Company.

XXII. And be it enacted, That it shall be lawful for the Company to borrow, on mortgage or bond, from time to time, any sum of money not exceeding, in the whole, Twelve Thousand Five Hundred Pounds, Currency.

XXIII. And be it enacted, That the period for the re-payment of moneys borrowed by the Company, with the interest thereof, to be inserted in the mortgage deed or bond, shall not exceed eighteen months interval from the date of the loan.

XXIV. And be it enacted, That all meetings of the Company shall be held at the chief place of business of the Company in the City of Montreal, or at such other place in the said City as the Directors may from time to time appoint; that the Directors shall be authorized to call Special General Meetings of the Shareholders, whenever, in their opinion, the interests of the Company shall require the same; and that an Annual General Meeting of the Shareholders shall be held on the first Monday, or if that shall be a Holiday, then, on the first Tuesday of the month of July, in every year.

XXV. And be it enacted, That any number not less than twenty of the Shareholders, holders of not less than one-third part of the capital stock of the Company, may at any time, in writing, require of the Directors to call an Extraordinary General Meeting of the Shareholders, for any special purpose or purposes, to be specified in the requisition, and relating to the affairs and interests of the Company; and thereupon, it shall be the duty of the Directors to call the same, giving thirty days previous public notice of the time and place, when and where it shall be held; but if the Directors shall refuse, or for one week shall neglect to comply with the requisition, the Shareholders making the requisition may themselves call such Extraordinary General Meeting, giving a like previous public notice, and specifying in the notice the special purpose or purposes for which the meeting is called.

XXVI. And be it enacted, That "The Shareholders' Fund" shall consist of the moneys not required for the immediate purposes of the Company, and the same may be laid out in or on the security of any public stock or debentures of the Imperial or Provincial Governments, stock of Chartered Banks now doing business in this Province, or on real security; and that it shall be lawful to deposit with any such Chartered Bank (but not on the security of the stock of any such Chartered Bank) any sum not exceeding, at any one time, one-fifth of the said fund for the time being, or the sum of Five Thousand Pounds; and as regards other moneys belonging to the Company, the same may be invested in all respects as the said Directors may from time to time think proper.

XXVII. And be it enacted, That the Directors of the Company may appoint from among their number a President, and also a Vice-President, and may appoint such Officers, Managers, Secretaries, Treasurers, Clerks, and others as they may see fit, and may assign to such officers such salaries or remuneration, and require such security to be given by them, as they may think proper.

XXVIII. And be it enacted, That all bonds or policies granted by the Company, shall be signed by the President or Vice-President, and countersigned by the Secretary, Manager or Treasurer, and shall be sealed with the seal of the said Company, and the signature of any private person or co-partnership, under the word "accepted" on the face of or endorsed upon a bond or policy of the Company to and in favor of such private person or co-partnership, shall be held to be a sufficient acceptance of such guarantee and bond or policy of the Company; any law or usage to the contrary notwithstanding.

XXIX. And be it enacted, That no Shareholder shall be liable for or charged with the payment of any demand due from the Company, beyond twice the amount of the capital stock subscribed for or held by such Shareholder.

XXX. And be it enacted, That the first Ten per centum of the subscribed and paid up capital stock of the Company, shall constitute the commencement of a fund, to be kept apart from the other funds and property of the Company, and to be called "The Shareholders' Fund," which shall also receive all instalments of the capital as well as all sums to be appropriated to the Shareholders by way of profit or otherwise, and the interest and proceeds of the said instalments and appropriated sums; that the expenses of instituting the Company shall in the first place be advanced from the Shareholders' Fund; that all premiums to be received by the Company, and the whole returns and income arising from the business thereof, and the interest and accumulations thereof, shall form a separate fund, called "The Guarantee Fund," which shall, as between the Shareholders, be primarily liable for all claims and demands on the Company in respect of its guarantees, and of its whole other business and expenses of management; that another separate fund shall also be formed, to be called "The Reserve Fund," which shall, as between the Shareholders, be primarily liable for any deficiency of the Guarantee Fund, and to the credit of which shall be carried such proportion of the profits of the Company, ascertained from time to time as hereinafter mentioned, as the Directors may deem expedient, and to include also the interest on the same Reserved Fund; and the Shareholders' Fund shall be liable for any deficiency of the Reserve Fund, but shall, as between the Shareholders, never be resorted to, after the expenses of the first institution of the Company shall have been defrayed, until the Guarantee Fund in the first instance, and next the Reserve Fund, shall be exhausted; and that all sums so taken from the Shareholders' Fund, shall, as soon as possible, be replaced from the Guarantee Fund, with interest at five per centum.

XXXI. And be it enacted, That for the first year, counting from the period when Five Thousand Pounds of the capital stock shall be paid in, no interest or dividend shall be paid; that thereafter, and until the expiration of three years from the above mentioned period, it shall be in the power of the Directors to appoint half yearly interest or dividends to be paid, not exceeding six per centum per annum, and after the expiration of such first three years, then not exceeding eight per centum per annum, on the amount of the Shareholders' Fund, as it shall stand for the time being; the Shareholders' Fund to be always considered as the paid-up capital of the Company, upon which interest or dividends are to be calculated; and that the whole interest and annual produce of the Shareholders' Fund shall be devoted, if required, to the payment of such interest or dividends to the Shareholders.

XXXII. And be it enacted, That every time a division of the profits shall be thought fit to be declared, one moiety of the net profits shall be carried to the Reserve Fund, and the other moiety to the Shareholders' Fund; excepting always such parts of the profits as may be appropriated as a bonus to the parties transacting business with the Company, if the Directors shall have allowed such participation as aforesaid; and that it shall be lawful for the Directors, from time to time, as they shall think fit, to declare dividends out of the income of the Reserve Fund, and also out of the capital thereof, whenever the Shareholders' Fund shall be found to exceed the sum of Twenty-five Thousand Pounds, but only to the extent of such excess.

XXXIII. And be it enacted, That it shall be lawful for the Directors to increase the capital of the Company by the issue of new shares, either at once or from time to time to the amount in the whole (including the present declared capital) of Two Hundred and Fifty Thousand Pounds; and if the shares of the Company shall be at a premium, the same shall be offered to the Shareholders rateably according to the amount of their shares in the original capital, or the same or any of them, may at the option of the said Directors be sold, and the profits arising from such sale added to the Shareholders' Fund, but if the new shares shall not be at premium, then the same may be disposed of as the Directors may think fit, and on such terms and conditions as they may think proper.

XXXIV. And be it enacted, That if at any time it shall be found that losses have been sustained equal to the whole Reserved Fund, for the time being, and to one third of the Shareholders' Fund, for the time being, that then, and as soon as the same shall have been ascertained, the Directors or any three of them, shall call a special general meeting of the Company to consider the subject, and such meeting may determine on the dissolution of the Company; and further, that the Company may be dissolved at anytime, with the consent and approbation of, at least, three fourths in number of Directors, and with the approbation in writing of the Shareholders holding, at least two third parts of the whole capital stock of the Company; such consent to be testified in writing, and to be given at a Special or Extraordinary General Meeting to be called for that purpose; and upon any such dissolution as aforesaid, the Directors shall notify the same to the Shareholders by letter, and by advertisement in the Canada Gazette, and in such other newspapers as they may think fit, which advertisement in the Gazette and newspapers shall be continued once a week for at least one calendar month succeeding the resolution for dissolution; and within thirty days after such dissolution, the Company shall discontinue business; and upon any such dissolution as aforesaid, the Directors shall, as speedily as possible, cause the books to be balanced, and sell, call in, and convert into money the estate, property and effects of the Company, in every respect, as they shall think fit, and in such manner and subject to such provisions as they shall direct, and shall thereupon transfer such guarantee, bonds or policies, as may be then subsisting, to other offices to be approved of by the parties entitled to such bonds or policies, or otherwise to transact with and obtain discharges from the persons entitled to such bonds or policies, (and for which purpose any of the funds of the Company may be applied, at the discretion of the said Directors) and subject as aforesaid; and after discharging all the debts and liabilities of the Company, to divide the net surplus of the produce of the estate, property and effects of the company rateably amongst the Shareholders according to the amounts of their

shares; and if, upon the sale and conversion into money of the estate, property and effects of the Company, the amount shall be insufficient to pay and discharge all the debts and liabilities of the Company, then the deficiency shall be answered and paid by the Shareholders in such manner and in all respects as, but to no greater extent than, they are by this Act made liable to the debts and obligations of the Company.

XXXV. And for the purpose of making provision for actions and suits by or against the Company during the winding up of the concerns thereof, in the event of its dissolution, Be it enacted, That notwithstanding such dissolution, the Company shall be considered as subsisting for the purpose of winding up the affairs thereof, and may sue and be sued, in and by their corporate name, according to the provisions of this Act, so long as any matters relating to the Company shall remain unsettled.

XXXVI. And be it enacted, That all advertisements shall be inserted in the Canada Gazette, and in such other newspapers published in the City of Montreal and elsewhere, as the Directors shall from time to time appoint.

XXXVII. And be it enacted, That a list of the Shareholders and a copy of the annual balance-sheet, including the amount of the Shareholders' Guarantee, and Reserve Funds respectively, and the actual state of investment of the said several funds to be verified by the, Manager, or a Director, before a Justice of the Peace, shall, on or before the first Day of July in each and every year, be sent or delivered to the Secretary of the Province for the information of the Governor General in Council; and also, that notwithstanding any thing hereinbefore contained, it shall be lawful for the Governor of the Province, by and with the advice and consent of the Executive Council, to direct the Company to increase their paid up capital to the amount of Forty Thousand Pounds, but so as no greater sum shall be called for than the sum of Twelve Thousand Five Hundred Pounds in any one year, and subject in all respects to the provisions hereinbefore contained or referred to, with respect to instalments, except as to the amounts thereof.

XXXVIII. And be it enacted, That if by any reason whatever, the Shareholders' Fund for the time being shall be diminished by misapplication, or by reason of its being taken to fulfil the engagements of the Company, and the amount subtracted or taken therefrom shall not within eighteen months from the time of its being so subtracted or taken, be replaced from time to time, or if the increase of the said fund shall not be made, when the same shall be directed, then it shall be lawful for the Governor, by and with the advice and consent of the Executive Council as aforesaid, by notice to be published in the Canada Gazette, to declare that the powers hereby conferred on the Company of effecting such guarantees as aforesaid shall absolutely cease, and to give such order for the winding up the affairs of the said Company, and the indemnifying, out of the capital and estate, property and effects of the Company, the persons guaranteed, as to the Governor in Council shall seem fit; and from and after the appearance of such notice in the Canada Gazette, the said Company shall not effect any further or other policies or guarantees, but shall nevertheless continue to be a corporate body for the purpose of winding up the affairs of the Company as is hereinbefore provided.

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XXXIX. And be it enacted, That this Act shall be a Public Act, and shall be judicially taken notice of as such.