

*Laws of Her Majesty's Province of United Canada*, passed in the year 1851. Quebec: Stewart Derbyshire and George Desbarts, 1852.

16 Victoria – Chapter 66

**An Act to incorporate a Joint Stock Company for the purpose of supplying the City of Hamilton with Water. 10th November, 1852.**

Whereas certain inhabitants of the city of Hamilton have petitioned for the passing of a law incorporating a Joint Stock Company, for the purpose of supplying the said City with Water: 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 John Mills, Robert J. Hamilton, Samuel B. Freeman, Calvin McQuesten, Henry J. Lawry, George M Ryckman, Alexander Carpenter, Sir Allan Napier MacNab, Henry McKinstry, Robert Roy, Jas. Adam, Michael W. Browne, Charles A. Sadleir, Æneas Kennedy, Robert R. Smiley, Donald Stuart, John C. Munro, W. L. Distin, Hutchinson Clark, Wm. G. Kerr and Thomas Davidson, with such other persons as shall become Stockholders in such Joint Stock or Capital as is hereinafter mentioned, are hereby constituted and declared to be a body corporate and politic, by and under the name and style of *The Hamilton Water Works Company*; and that by that name they and their successors shall and may have continued succession, and be capable of contracting and being contracted with, and suing and being sued, and taking all other proceedings in all courts of law and equity in all manner of actions and matters whatsoever; and also of purchasing and holding for the uses of the said Company, any real or personal estate, and of letting, conveying or otherwise disposing of the same, and to have a corporate seal, and to alter the same at pleasure.

II. And be it enacted, That it shall and may be lawful for the said Company, and their successors, and their agents, servants and workmen, and they are hereby authorized and empowered, to enter into and upon the lands of any person or persons, bodies politic or corporate, within ten miles of the said City of Hamilton, and to survey, set out and ascertain such parts thereof, and divert and appropriate any spring or stream of water thereon, as they shall judge suitable and proper for the purposes of the said Company, and to contract with the owners or occupiers of the said land, and those having an interest or right in the said water for the purchase thereof, or of any part thereof, or of any privilege that may be required for the purposes of the said Company; and in case of any disagreement between the said Company and the owners or occupiers of such lands or persons having an interest in the said water or the natural flow thereof, or any part thereof, respecting the amount of purchase or value thereof, or as to the damages such appropriation shall cause to them, or otherwise, it shall and may be lawful for the owners or occupiers so disagreeing with the said Company upon the value of the said lands, rights or privileges, or the amount of such damages, to nominate and appoint one indifferent person, and for the said Company to nominate an indifferent person, who, together with one other person to be nominated by the persons so named, shall be arbitrators to award, determine, adjudge and order the respective sums of money

which the said Company shall pay to the respective persons entitled to receive the same, the award of the majority of whom shall be final; and the said arbitrators shall be, and they are hereby required to attend at some convenient place, at or in the vicinity of the said City, to be appointed by the said Company, after eight days' notice given for that purpose by the said Company, then and there to arbitrate and award, adjudge and determine such matters and things as shall be submitted to their consideration by the parties interested; and that each arbitrator shall be sworn before some one of Her Majesty's Justices of the Peace, in and for the said County of Wentworth, or the said City, any of whom maybe required to attend the said meeting for that purpose, well and truly to assess the value or damages between the parties, according to the best of his judgment; Provided always, that any award made under this Act shall be subject to be set aside on application to the Court of Queen's Bench, in the same manner and on the same grounds as in ordinary cases of arbitration, in which case a reference may be again made to arbitration as hereinbefore provided; and that any sum so awarded shall be paid within three months from date of award, or determination of any motion to annul the same, and in default of such payment, the proprietor may resume the possession of his property, and all his rights shall thereupon revive: And in the event of any party so disagreeing, omitting or refusing to appoint an arbitrator, the Judge of the County Court of the County of Wentworth may, upon application of the Company, as often as occasion may require, name an arbitrator in his stead, and the award of such arbitrator and those to be named as aforesaid, or a majority of them, shall be binding on all parties concerned, subject as aforesaid.

III. And-be it further enacted by the authority aforesaid, That the lands and water which shall be so ascertained, set out or appropriated by the said Company for the purposes thereof, as aforesaid, shall thereupon, and for ever thereafter, be vested in the said Company, and their successors, but subject nevertheless to the provision hereinbefore contained for the resumption of the same, and it shall and may be lawful for the said Company and their successors to construct, erect and maintain upon the said lands, all such reservoirs, water-works and machinery requisite for the said undertaking, and to convey the waters thereto and therefrom in, upon, or through any of the grounds and lands lying intermediate between the said reservoirs and water-works, and such springs and streams, and the said City of Hamilton, by one or more lines of pipes as may from time to time be found necessary; and for the better effecting the purposes aforesaid, the said Company and their successors and their servants are hereby empowered to enter and pass upon and over the said grounds and lands intermediate as aforesaid, and the same to cut and dig up if necessary, and to lay down the said pipes through the same, and upon, over and through the highways and roads of the Township of Barton, in the said County of Wentworth, and through the public ways, streets, lanes or other passages of the said City of Hamilton, and in, upon, through or under the lands, grounds and premises of any person or persons, bodies corporate, politic or collegiate whatsoever, and to set out, ascertain, use and occupy such part or parts thereof, as they the said Company or their successors shall think necessary and proper for the making and maintaining of the said works, and for distributing the waters of the said Company's establishment to the different inhabitants of the said City of Hamilton, or for the uses of the Corporation of the said City, and upon such terms and prices as they can agree upon, and for this purpose to sink and lay down pipes, trunks, reservoirs and other conveniences, and from time to time to alter all or any of the said works, as well in the position as in the construction thereof, as to the said Company or

their successors shall seem meet, doing as little damage as may be in the execution of the powers hereby granted to them, and making reasonable and adequate satisfaction to the proprietors, to be ascertained in case of disagreement by arbitration as aforesaid, such work to be done within the City being subject nevertheless to the By-laws and Orders of the Corporation of said City.

IV. Provided always and be it enacted, That nothing herein contained shall extend to authorize the said Company or any persons acting under their authority, to take, use, or injure or damage for the purposes of the said Water Works, any house, or other building, or any land used or set apart as a garden, orchard, yard, park, paddock, plantation, planted walk or avenue to a house or nursery ground for trees, nor to convey from the premises of any person, any water already appropriated, necessary for his domestic uses, without the consent in writing of the owners or proprietors thereof first had and obtained.

V. And be it enacted, That if any person shall wilfully or maliciously hinder or interrupt, or cause or procure to be hindered or interrupted, the said Company or their managers, servants, agents or workmen, or any of them, in the exercise of any of the powers and authorities in this Act authorized and contained, or if any person shall wilfully or maliciously let off or discharge any water, so that the same shall run waste or useless out of the works of the said Company, or if any person shall throw or deposit any thing or noisome or offensive matter into the water of the said Company, or in any way foul the same, or commit any wilful damage or injury to the works or water of the Company, or encourage the same to be done, every person offending in any of the cases aforesaid shall, besides being subject to an action at law for the damages done thereby to the said Company, be held guilty of a misdemeanor, and upon conviction thereof before any of the Courts of Criminal Jurisdiction in the County of Wentworth, shall be punished by such Court by fine and imprisonment, or either, at the discretion of the Court, as in other misdemeanors at common law, or by summary conviction as hereinafter provided for,

VI. And be it enacted, That in case the works for supplying the said City of Hamilton with water as aforesaid, shall not be completed within five years from and after the commencement of this Act, then and from thenceforth all the powers and authorities herein contained relative thereto, shall cease and determine, save only as to so much and such parts thereof as shall have been completed within the said term of five years, and the proper use of the waters then at the disposal of the said Company, and such property as the said Company may have paid for.

VII. And be it enacted, That the property, affairs and concerns of the said Company, shall be managed and conducted by three Directors, or such number as shall be required by the By-laws of the said Company, one of whom shall be chosen President, who shall hold their offices for one year, which said Directors shall be Stockholders to the amount of at least ten Shares, and be elected on the first Monday in January, in each and every year, at the said City of Hamilton, at such time of the day as a majority of the Directors for the time being shall appoint, and public notice thereof shall be given in any newspaper or newspapers that may be published in the said City of Hamilton, at least one month previous to the time of holding the said election; and the said election shall be held and made by such of the Stockholders of the said Company as shall attend for that purpose in their own proper persons or by proxy, and all elections for such Directors shall

be by ballot, and the persons to the number required, who shall have the greatest number of votes at any election shall be Directors; and if it shall happen at any such election that two or more have an equal number of votes, in such manner that a greater number than required shall appear to be chosen Directors, by admitting them both, then the said Stockholders hereinbefore authorized to hold such election, shall proceed to elect by ballot until it is determined which of the said persons so having an equal number of votes shall be Director or Directors, so as to complete the whole number required; and the said Directors so chosen, so soon as may be after such election, shall proceed in like manner to elect by ballot, one of their number to be President; and if any vacancy or vacancies shall at any time happen among the Directors or in the Presidency, by death, resignation or removal from the Province, such vacancy or vacancies shall be filled for the remainder of the year in which they may happen, by a Stockholder or Stockholders, to be nominated by a majority of the Directors present at any Meeting called for the purpose.

VIII. And be it enacted, That each Stockholder shall be entitled to a vote for each share which he, she, or they shall have held in his or her own name, at least one month prior to the time of voting.

IX. And be it enacted, That in ease it should happen that an election of Directors should not be made on any day when pursuant to this Act, it ought to have been made, the said Corporation shall not for that cause be deemed to be dissolved, but it shall and may be lawful on any day to be named by a majority of Stockholders, to make an election of Directors in such manner as shall have been regulated by the By-laws and ordinances of the said Company.

X. And be it enacted, That the Directors for the time being, or a majority of them, shall have power to make and subscribe such Rules, Orders and By-laws as to them shall seem right and proper, touching the management and disposition of the affairs, stock, property, estate and effects of the said Company, and the preservation of the same from spoil or injury, and for the summary conviction of any person who shall trespass upon, injure or spoil any of the said Company's works, water or property, and the number of Directors, and touching the duty of the officers, clerks and servants, and all such matters and things as appertain to the business of the said Company, and from time to time to alter or repeal such By-laws, Orders and Regulations or any of them, and to make others, and to impose and inflict such reasonable fines and forfeitures, to be levied and recovered by such ways and means as hereinafter mentioned, upon and against all persons offending against the same as to the Directors for the time being, or a majority of them shall seem meet, not exceeding the sum of five pounds for any offence, which said Rules, By-laws and Orders imposing any such penalty, being reduced into writing, under the common seal of the said Company, and printed and published and painted on boards, shall be hung up and affixed on the front of the Water works, and shall from time to time be renewed as often as the same shall be obliterated, defaced or destroyed (so as to render them illegible) and that such Rules, By-laws and Orders shall be binding upon and observed by all parties, and shall be sufficient in any Court of law or equity, to justify all persons who shall act under them: Provided that such Rules, By-laws and Orders be not repugnant to the laws of the Province, or to any direction in this Act contained, and that any summary conviction shall be a bar to any other prosecution for the same offence.

XI. And be it enacted, That on the first Monday in January next, a meeting of the Stockholders shall be held in the said City of Hamilton, who in the same manner as hereinbefore provided, shall proceed to elect three persons to be Directors, who shall elect by ballot one of their number to be their President, and shall continue in office until the first Monday in January after their election, and who during such continuance shall discharge the duties of Directors in the same manner as if they had been elected at the annual election; Provided always, that if shares shall not then be taken to the amount of one thousand pounds in the Capital Stock of the said Company, then the said meeting shall not be held until that amount of stock shall have been taken up, and at least thirty days' notice thereof given in any paper or papers published in the said City.

XII. And be it enacted, That the whole Capital or stock of the said Company, exclusive of any real estate which the Company may have or hold by virtue of this Act, shall not exceed in value twenty-five thousand pounds, to be held in one thousand shares of twenty-five pounds each, and that the shares of the said Capital Stock may after the first instalment shall have been paid in, be transferred by the respective persons subscribing or holding the same, to any other person or persons, and such transfer shall be entered or registered in a book or books to be kept for that purpose by the said Company.

XIII. And be it enacted, That so soon as Directors shall have been appointed as aforesaid, it shall and may be lawful for them to call upon the Stockholders of the said Company, by giving thirty days' notice thereof in any newspaper published in the aforesaid City, for an instalment of five per cent upon each share which they or any of them may respectively subscribe, and that the residue of the sums or shares of the Stockholders shall be payable by instalments at such time and in such proportions as a majority of the Directors shall agree upon and order by such notice as aforesaid, so that no instalments shall exceed five per cent, nor become payable in less than thirty days after such public notice; Provided always, that the said Directors shall not commence the construction of any works belonging to the said Company, until the first instalment shall be paid in.

XIV. And be it enacted, That if any Stockholder or Stockholders shall refuse or neglect to pay at the time required any instalment or instalments that shall be lawfully required by the Directors, upon any share or shares, such Stockholder or Stockholders so refusing or neglecting shall thereby in the discretion of the Directors, forfeit such share or shares, with any amount that shall have been previously paid thereon, if such instalment or instalments shall not be collected from him; and the said Company may in their corporate name, sue any such person who was a Shareholder at the time any call was made upon the stock, for any such call or instalment, in any court having jurisdiction upon contract to such sum, and shall have such remedy for the collection thereof, as is given by such court to persons for other demands within the jurisdiction of such court; and the said forfeited share or shares may be sold by the said Directors, and the sum arising therefrom, together with the amount previously paid thereon, shall be accounted for and applied, in like manner as other moneys of the said Company; Provided always, that the purchaser or purchasers shall pay the said Company the amount of the instalment due thereon, over and above the purchase money of the share or shares so purchased by him, her or them, as aforesaid, immediately after the sale, and before they shall be entitled to the certificate of the transfer of such share so purchased as aforesaid; Provided also, that thirty days' notice of the sale of such

forfeited shares shall be given in any newspaper or newspapers published in the said City, and that the instalments due may be received in redemption of any such forfeited share, at any time before the day appointed for the sale thereof.

XV. And be it enacted, That it shall be the duty of the Directors to make annual dividends of so much of the profits of the said Company as to them, or a majority of them, shall seem desirable, and that once in each year an exact and particular statement shall be rendered of the then actual state of their affairs, debts, credits, profits and losses, such statement to appear on the books, and to be open to the perusal of any Stockholder at any time at his or their reasonable request.

XVI. And be it enacted, That all fines, penalties and forfeitures imposed by any By-law, Rule or Regulation of the said Company, shall and may be recoverable with costs, before any two Justices of the Peace having jurisdiction over the locality where the offence was committed, or fines, penalties or forfeitures incurred, upon the oath of any person or persons, or the confession of the party offending, which oath the said Justices are hereby authorized to administer, and in default of payment the same shall be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal of the said Justices or one of them, before whom such party was convicted; and the said fines and forfeitures, after deducting the reasonable charges of such distress and sale, shall be paid over to and for the use of the said Company, and in case sufficient distress cannot be found whereof to levy such fines, forfeitures and costs, it shall and may be lawful for such Justices or one of them to commit such offender or offenders to the Common Gaol or House of Correction of the County or City, there to remain in safe custody for such time not exceeding three months, as such Justice or Justices may order by warrant under his or their hand or seal, hands or seals, unless such fines, forfeitures and costs shall be sooner paid.

XVII. And be it enacted, That if any action or suit shall be brought against any person or persons for any matter or thing done in pursuance of this Act, such action or suit shall be brought within six calendar months after the fact committed and not afterwards, and the defendant or defendants in such action or suit may plead the general issue and give this Act and the special matter in evidence on the trial.

XVIII. And be it enacted, That this Act shall be deemed and taken to be a Public Act, and as such shall be judicially noticed by all Judges, Justices of the Peace and other persons without being specially pleaded.