

*Laws of Her Majesty's Province of United Canada*, passed in the year 1856. Quebec: Stewart Derbyshire and George Desbarts, 1856.

20 Victoria – Chapter 64

**An Act for the construction of Water Works in the City of Hamilton. Assented to 19th June, 1856.**

Whereas the construction of Water Works and a supply of water would conduce to the health and comfort of the inhabitants of the City of Hamilton: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- I. The persons hereafter to be elected in the manner provided for in this Act, and their successors, shall constitute a Board, to be called and known as the Water Commissioners for the City of Hamilton.
- II. It shall be the duty of the said Commissioners to examine, consider and decide upon all matters relative to supplying the said City of Hamilton with a sufficient quantity of pure and wholesome water for the use of its inhabitants, and the amount of money necessary to effect that object.
- III. The said Commissioners shall have power to employ engineers, surveyors and such other persons as in their opinion may be necessary to enable them to fulfil their duties under this Act.
- IV. It shall and may be lawful for the said Commissioners, their agents, servants and workmen, from time to time, and at such times hereafter as they shall see fit, and they are hereby authorized and empowered to enter into and upon the lands of any person or persons, bodies politic or corporate, in the City of Hamilton, or within twenty miles of the said city, and to survey, set out and ascertain such parts thereof as they may require for the purposes of the said Water Works, and also to divert and appropriate any spring or stream of water thereon, as they shall judge suitable and proper, and to contract with the owners or occupiers of the said lands 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 Commissioners; and in case of any disagreement between the said Commissioners and the owners or occupiers of such lands, or any persons having an interest in the said water or the natural flow thereof, or any such privilege as aforesaid respecting the amount of purchase or value thereof, or as to the damages such appropriation shall cause to them or otherwise; or in case any such owner or occupier shall be an infant, married woman, or insane, or absent from this Province, or in case such lands or water privilege may be mortgaged or pledged to any person or persons, it shall and may be lawful for the Judge of the County Court of the County of Wentworth, on application being made to him, to nominate and appoint three indifferent persons as arbitrators, to award, determine, adjudge and order the respective sums of money which the said Commissioners 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 Commissioners after eight days' notice given for that purpose, by the said Commissioners, 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 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 may be required to attend the said meeting for that purpose, well and truly to assess the value or damages between the parties, to the best of his judgment: Provided always, that any award 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 the 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 the award of a majority of the said arbitrators shall be binding on all parties concerned, subject as aforesaid.

V. The lands and water which shall be ascertained, set out, or appropriated by the said Commissioners for the purposes thereof as aforesaid, shall thereupon and for ever there after be vested in the Mayor, Aldermen and Commonalty of the City of Hamilton, and their successors, and it shall and may be lawful for the said Commissioners, 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 the springs, streams, rivers or lakes, from which the same are procured, 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 Commissioners, their successors and 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, under, and through the highways, railroads and roads of and in the townships of the 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 Commissioners or their successors shall think necessary and proper, for the making and maintaining of the said works, or for taking up, removing, altering or repairing the same, and for distributing water to the inhabitants of the City of Hamilton, or for the uses of the Corporation of the said City, or of the proprietors or occupiers of the lands through or near which the same may pass, 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 Commissioners 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: Provided always, that nothing herein contained shall be construed to authorize the said Commissioners or any person acting under their authority to take for the purposes of the said works, any house, garden, or orchard, without the consent of the owner.

VI. If any person shall wilfully or maliciously hinder or interrupt or cause or procure to be hindered, or interrupted, the said Commissioners or their managers, contractors, 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 said works, or if any person shall throw or deposit any thing or noisome or offensive matter into the said water or water works, or in any way foul the same or commit any wilful damage or injury to the works, pipes, or water, 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, be held guilty of a misdemeanor, and upon conviction thereof before any of the Courts of Criminal Jurisdiction in the County of Wentworth, or a Magistrate of the said County or City, shall be punished by the said Court, by fine and imprisonment or either, at the discretion of the Court as in other misdemeanors at Common Law or by summary conviction.

VII. All materials procured or partially procured under contract with the Commissioners, shall be exempt from execution, but it shall be the duty of the Commissioners to pay the moneys due to such contractor for such materials to the judgment creditor of the contractor under whose execution such materials ought otherwise to have been sold, upon his producing to them due proof that his execution would have so attached, and such payment shall be held as valid payment on the contract.

VIII. The Commissioners shall keep regular books of account and books for recording the whole of their official proceedings, and the said Commissioners and the Clerks employed in their service shall be sworn to the faithful performance of their duties, and all such books shall be open to the examination of any person or persons appointed for that purpose by the Mayor, Aldermen and Commonalty of the City of Hamilton: The Commissioners shall also, on the thirtieth day of June and the thirty-first day of December in each and every year, make a report to the said the Mayor, Aldermen and Commonalty of the City of Hamilton, of the condition of the works under their charge, accompanied by a statement of their receipts and expenditures on account of the same.

IX. The Board of Commissioners for the time being, shall regulate the distribution and use of the water in all places and for all purposes where the same may be required, and from time to time shall fix the prices for the use thereof, and the times of payment, and they may erect such number of public hydrants and in such places they shall see fit, and direct in what manner and for what purposes the same shall be used, all which they may change at their discretion: Provided always, that all hydrants, conduits, or other appliances required and furnished for the purpose of extinguishment of fires shall be placed as the Mayor, Aldermen and Commonalty of the City of Hamilton shall direct, and shall be under their exclusive control and direction.

X. The owner and occupier of any house, tenement or lot, shall each be liable for the payment of the price or rent fixed by the Commissioners for the use of the water by such occupier, and such price or rent so fixed shall be a lien upon the said house, tenement or lot in the same way and

manner as other taxes assessed on real estate in the said City of Hamilton are liens, and shall be collected in like manner, if not previously paid to the Commissioners.

XI. A majority of the said Commissioners shall constitute a quorum for the transaction of any business allowed or required by the powers or duties of their commission, and all contracts and engagements, acts and doings of the said Commissioners within the scope of their duty or authority, shall be obligatory upon and be in law considered as done by the Mayor, Aldermen and Commonalty of the City of Hamilton.

XII. The said Commissioners may prosecute or defend any actions or process at Law or in Equity by the name of the "Water Commissioners of the City of Hamilton," against any person or persons for money due for the use of the water, for the breach of any contract express or implied touching the execution or management of the works or the distribution of the water, or of any promise or contract made to or with them, and also for any injury or trespass or nuisance done or suffered to the water courses, pipes, machinery, or any apparatus belonging to or connected with any part of the works, or for any improper use or waste of the water; and any vacancy or the filling any vacancy in the Board of Commissioners, either before or after any cause of action arises or suit is commenced, shall not change the right of the said Commissioners as a body to commence or maintain such action or process at law or in Equity, but in all such cases they shall be considered from the time of the organisation of the Board as a Corporation.

XIII. The Commissioners and their officers shall have the like protection in the exercise of their respective offices and in the execution of their duties, as Justices of the Peace now have under the Laws of this Province.

XIV. For the purpose of constructing the said Water Works and paying the expenses attended thereon, it shall and may be lawful to and for the Mayor, Aldermen and Commonalty of the City of Hamilton, and they are hereby required from time to time as the amounts may be required by the said Commissioners, to raise by loan upon the credit of the Debentures hereinafter mentioned, from any person or persons, body or bodies corporate, either in this Province, in Great Britain or elsewhere, who may -be willing to lend the same, a sum of money not exceeding the sum of three hundred thousand pounds of lawful money of Canada, and for the Mayor of the said City of Hamilton for the time being, to cause to be issued Debentures or Bonds of the said City under the Corporation Seal, signed by the Mayor and countersigned by the Chamberlain of the said City for the time being, in such sums not exceeding in the whole the said sum of three hundred thousand pounds, authorized to be borrowed under this Act, as the Commissioners shall direct and appoint, and the principal sum secured by the said Debentures shall be payable within twenty years from the issuing thereof, and the interest accruing thereon shall be made payable semi-annually, either in sterling or in currency in this Province, in Great Britain or elsewhere, as the said Council shall deem expedient or necessary.

XV. The said Water Works to be erected and constructed under this Act, and also the Land to be acquired for the purposes thereof, and every matter and thing therewith connected, shall be and they are hereby specially charged, pledged, mortgaged and hypothecated for the re-payment of

any sum or sums which may be borrowed by the said Corporation for the purposes of this Act, as well as for the due and punctual payment of the interest thereupon, and all, each and every of the holders of the Debentures in the last previous section mentioned, shall have a concurrent pledge, mortgage, hypothec or privilege on the said Water Works and property appertaining thereto, for securing the payment of the said Debentures and the interest thereon.

XVI. The funds derived from the negotiation of the Debentures to be issued under this Act, shall, when received, be deposited by the said Commissioners for the time being, in some one or more of the chartered Banks of this Province, on such conditions as the said Commissioners shall from time to time agree upon, and only be withdrawn therefrom as they may from time to time be required for the payment and discharge of the liabilities that may be incurred in carrying out the improvements contemplated by this Act, and every check for the withdrawal of any moneys shall be signed by the Chairman of the said Commissioners and also by the Mayor of the said City for the time being.

XVII. This Act shall not have any force or effect until the Mayor, Aldermen and Commonalty of the City of Hamilton shall pass a By-law authorizing the construction of the said Waterworks, and on the said By-law being passed, it shall be lawful for the Mayor of the said City and he is hereby authorized and required to issue his warrant to the Returning Officer for each Ward in the said City for the then next preceding election for Aldermen and Councillors, requiring the said Returning Officer to proceed to the election of one Water Commissioner for each Ward in the said City, in the same manner in all respects, and giving the same notices as are now required in case of Municipal Elections in the said City, and all persons authorized to vote at such Election for Aldermen and Councillors, shall be entitled to vote for the said Water Commissioner for his Ward, and not otherwise.

XVIII. The said Water Commissioners shall, at their first Meeting after their Election, determine by lot or otherwise the terms during which they shall respectively hold their offices, and these shall be as follows: one of them shall remain in office one year, one two years, one three years, one four years, and one five years, all to be computed from the first Monday in the month of January next preceding.

XIX. At the Municipal Election to be held in the said City in each year after the special Elections hereinbefore authorized to be held for the Election of the said Water Commissioners, there shall be elected in the same manner as the Aldermen and Councillors are elected, and by the persons now authorized to vote at such Election, one Commissioner for the Ward in which a vacancy has occurred by the retirement of the Commissioner whose term of office has expired, who shall hold his office for five years next ensuing such election; and any vacancies that shall occur in the said Commission by death, resignation or otherwise, shall be filled by a person to be named by the Mayor, Aldermen and Commonalty of the City of Hamilton, but the person or persons so appointed to fill such vacancy shall hold his or their offices only for the residue of the term for which he or they may be appointed.

XX. The Chairman of the said Commissioners and the said Commissioners shall be paid for their services as the Mayor, Aldermen and Commonalty of the City of Hamilton shall annually fix, and shall also be paid all reasonable travelling expenses incurred while employed upon or about the works.

XXI. This Act shall be deemed and taken as a Public Act.