

The Legal History of the Militia.

Continued.

The next Act which comes under our notice is 43 Geo. III, cap. 1 (1803). This again was in most respects similar to those that preceded it—the amendments being:

1. The providing for two reviews annually.

2. That the whole militia might be called out when needed for not more than six months at a time, and not to be taken out of the province except to Upper Canada.

3. Provisions were made for balloting for those required for service.

4. A penalty of £5 for neglecting to turn out when ordered, and to be considered a deserter, with imprisonment for six months, if the penalty could not be levied by execution.

5. Pensions were provided for those wounded and for the families of such as might be killed in service.

6. A penalty of £5 for selling or default to return arms or accoutrements.

7. The rules are articles for the Militia (mentioned as as promulgated in 34, Geo. III, but which I have not been able to obtain) were declared to be binding.

8. 1200 men could be ordered out for not more than 28 days annually for drill, for which volunteers were to be accepted up to that number, and if less volunteered the remainder to be obtained by ballot.

9. £2500 yearly allowed for supply of arms, accoutrements, clothing, etc. This act was to expire 1 July, 1807, but was continued by 48 Geo. III, cap. 3, and 51 Geo. III, cap. 9, up to 1812, when another act replaced the former.

By 52 Geo. III, cap. 1 (1812) the following changes were ordered:

1. Every person residing or coming to reside in the province, on attaining the age of 16, was ordered to present himself during the month of April in each year to be enrolled by the captain of the company of the parish, seignior or township.

2. All from the ages of 16 to 50 were ordered to muster on four Sundays or holidays in June, and the other half on four Sundays or holidays in July, for three hours each day, except for Protestants, who could muster on other days.

3. The provision restricting service to six months was repealed and the person administering the government authorized to keep the whole or any part of the Militia under arms when needed during time of war, invasion, insurrection or imminent danger.

4. Instead of 1200 men, 2000 (bachelors 18 to 45) to be called out for training between 1st May and 15th August, but not more than 90 days.

5. If the Province were invaded or in danger, the Governor could call out 2000 men for two years, one half of whom should be replaced by lot at the end of the first year by a like number.

6. No commissioned officer to take as servant one of the 2000.

7. Besides the 2000 the Governor was authorized to accept volunteers and form them into battalions, light companies, companies of artillery and squadrons of cavalry—the volunteers, however, were liable to be taken by ballot into the 2000 of militia.

8. Volunteers were to have same pay as the Militia, and the same advantages to be provided for their issue and children.

9. No one keeping a house of entertainment or selling liquor by retail could be a sergeant, corporal or drummer.

10. The provision allowing substitutes was repealed.

11. £12,000 a year was voted for Militia purposes.

In the same session, 52 Geo. III, cap. 2, passed 19th May, 1812, ordered every Militia man to be enrolled within 10 days.

53 Geo. III, cap. 2 (1813) allows £15,000 for clothing and equipping the militia; £1,000 for hospital purposes; £25,000 in aid of the defense of the Province.

57 Geo. III (1817), cap. 32, revived the act, 43 Geo. III, cap. 1 (the act 52 Geo. III, cap. 1, having expired in the meantime, and continued it in force to 1st May, 1819; and provided that no review should take place excepting by order of the Governor; the £2,500 a year allowed for the Militia was also struck out.

57 Geo. III, cap. 33, provided for payment of the following expenses in connection with the Militia (presumably to replace the £2,500 struck out by the previous Act of the same session) viz.:

Adjutant General's stipend.....	£500
Deputy do.....	300
Assistant do.....	150
A Provincial Aide de Camp.....	400
Contingent expenses and deeds.....	500
	— £1800

By 59 Geo. III, cap. 2 (1819) the Act 43 Geo. III, cap. 1, as amended by the Acts passed in 1817, was continued to 1st May, 1821, with the following changes:

1. Captains were ordered to parade their companies on any day between 20th June and 20th July.

2. The clause allowing of volunteers was repealed.

3. Officers must reside in the parish of the company and must either own or be sons of owners of real estate.

1 Geo. IV, cap. 4, 3 Geo. IV, cap. 28, and 5 Geo. IV, cap. 21, continued the foregoing up to 1st May, 1827, when it appears to have expired.

In 1830, 10 11 Geo. IV, cap. 3, a new Militia Act was passed, embodying much the same provisions, however, the changes being chiefly:

1. Officers to bear the same proportion in number to privates as in regular army.

2. Captains to own real estate producing over £25 per annum, and to be free of debt; subalterns to have or be sure of those having same qualifications; officers over the rank of captain to own land of annual revenue of £50 and to be free of debt.

3. Captains to enrol all liable to serve within the first three weeks of June each year, and to give notice of time and place of the annual muster, which was to be on 29th June, or on some day during the week following if that were Sunday, and make full returns of all in his parish.

4. In case of war, invasion, etc., not more than one fifth of the unmarried men between 18 and 30 years of age were to be drawn by ballot to serve not more than six months, but substitutes were allowed.

5. Provision was made for calling out the Militia in aid of civil authority.

6. All penalties (except in actual service) to be by fine awarded by trial before a Justice of the Peace, and to be paid over to the officer commanding the battalion of the delinquent for its use.

This Act was to expire 1st May, 1832, but was continued by 2 William IV, cap. 55; 4 William IV, cap. 9; and 6 William IV, cap. 43, to 1st May, 1838.

Meantime, by the Act 2 William IV, cap. 42, a Court of Enquiry was provided for to establish the qualification of Militia officers.

During the first year of Queen Victoria's reign the sessions of the Legislature were suspended, and it was replaced by a Special Council appointed under the provisions of the Imperial Act 1 Vict., cap. 9.

This Special Council, by its ordinance 1 Vict., cap. 22, passed 5th May, 1838, enacted a Militia Act similar to 10-11

William IV, cap. 3, above recited, and extended its operation to 1st May, 1840; and it was further continued by 3 Vict., cap. 11, to 1st May, 1842, with the provision of 8 Vict., cap. 26, that the Governor might order the cancelling, any year, of the muster of 29th June.

4-5 Vict., cap. 22, exempted from service any "Quaker, Minnonite or Tankers," on payment of 10s. yearly in time of peace, or £5 if the Militia in his district were called for active service, to be collected with the taxes and paid to the colonel of district or used for roadwork.

8 Vict., cap. 51, revived the former act and extended its operation to 1st May, 1846, when by 9 Vict., cap. 28 (1846) a new act was passed containing the following additions and amendments:

1. The Governor-in-Council was to fix battalion divisions; the colonel of each battalion to divide his district into company divisions.

2. Militia were to be enrolled between 1st and 20th of June, and divided into two classes—1st, those between the ages of 18 to 40 to form the first class, and those between 40 and 60 the second class, the first class were only to be mustered in time of peace, and to assemble for drill 29th June each year; on muster day the captain was to take the names of all of the first class on mustering for service if required; and if more than required to form a company volunteered, he was to select the required number from the volunteers; if less the required number were made up by ballot. In any emergency these were to serve.

3. The quota of militia to be thus raised for the two Provinces of Upper and Lower Canada was fixed at 30,000.

4. A battalion was to consist of not less than four nor more than ten companies; a company not less than 60 nor more than 100 men, exclusive of non-commissioned officers and drummers.

5. For actual service the Governor could call out the whole or any part of the militia.

6. The senior Lieut.-Col. in any district was authorized to call out the militia of his district in an emergency.

7. Provision was made for holding Militia Courts Martial.

8. An adjutant-general and two deputy adjutant-generals were to constitute the staff.

9. Provision was made for billeting troops in time of actual service by justices of the peace.

This act was to continue until the end of the first session after that of 1849.

12 Vict. (1849) cap. 88, again exempted Quakers, etc., and cap. 89 changed the day of muster from 29th to 28th June.

13 14 Vict. (1850) cap. 11, extended the operation of the former act to 10th Aug., 1853, "unless there be then war with the United States, and in that case till the end of the session after peace."

In 1855 the Militia entered upon a new era, making them by the formation of volunteer corps a permanent effective body. It is necessary, therefore, to give the act then passed a more extended notice. The provisions of this act (18 Vict., cap. 17, 1855) were in brief:

1. The Militia was divided into two classes or forces—

1. The Sedentary Military, composed of (a) Service men aged 18 to 40.

(b) Reserve, 40 to 60.

2. The Active Militia or Volunteer Forces, which is now practically the only militia force of the country, the provisions for the Sedentary Militia having fallen into disuse.

The Sedentary Militia were exempted from service or drill in time of peace, but were to be enrolled and to muster yearly in Upper Canada on the Queen's Birthday, in Lower Canada on 29th June, those belonging to the Quaker or any other relig-