

No. 160.

1st Session, 6th Parliament, 21 Victoria, 1858.

BILL.

An Act the better to secure the freedom of election for members to serve in the Legislative Council and Assembly of this Province, by providing for the registration of qualified voters, and enabling them to vote by ballot, and for other purposes.

Received and read, first time, Wednesday, 12th
May, 1858.

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Mr. Ross.

TORONTO :

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An Act the better to secure the freedom of election for Members to serve in the Legislative Council and Assembly of this Province by providing for the registration of qualified voters, and enabling them to vote by ballot, and for other purposes.

WHEREAS it is expedient to ascertain the qualification of voters at elections of members to serve in the Legislative Council and in the Legislative Assembly of the Province of Canada, and to secure the liberty of voters at such election; Therefore Her Majesty, &c., enacts as follows: Preamble.

I. The Clerk of each County Municipality in Upper and Lower Canada, or of each union of Counties for Municipal purposes, and the Clerk of each city, town, or borough in Canada sending members to Parliament, shall, from the assessment roll or other source of information, forthwith make an alphabetical list of all persons within such municipality, city, town, or borough, entitled to vote at the election of a member to serve in the Legislative Council or in the Legislative Assembly of Canada, according to the provisions of law now in force, relating to the qualification of voters at such elections, together with the particulars of such qualification as in the schedule No. 1, to this Act subjoined, indicated, together with the place of residence and profession, or calling of such voters, designating the lot and range in the country parts, and the street in towns, where such voters reside, or have the property on which they qualify respectively; and if any municipality shall be partly in one electoral division, and partly in another, he shall make out one such list for each electoral division; And the Clerk shall certify on oath or affirmation before any Judge or before any two Justices of the Peace to the correctness of the list so by him made out, and he shall keep a duplicate of such list among the records of the municipality, city, town, or borough for which the same has been made, and shall deliver the certified list to the person who shall, either *ex officio* or by appointment, be the Returning Officer for the electoral division returning a member or members to the said Legislative Assembly, on or before the day of _____ in each year; And no person shall be admitted to vote at any election of a member to serve in the Provincial Parliament unless his name shall appear upon the list then last made and certified, not unless he shall have obtained a certificate of his inscription on such list as hereinafter provided; And no question of qualification shall be raised at any such election, except to ascertain whether the person tendering his vote is the same person intended to be designated in the alphabetical list aforesaid.

Clerks of County Municipalities, &c., to prepare Lists of Voters.

And certify them to Returning Officer.

No person to Vote whose name is not on such List.

Clerks of
Local Muni-
cipalities
to furnish
Lists to those
of County Mu-
nicipalities.

II. The Clerk of every Parish or other municipality within such County municipalities, shall be bound upon the requisition and under the direction of the Clerk of the County municipality, within one month after such requisition, to furnish to such Clerk of the County municipality a list of persons resident within such smaller municipality entitled to vote at the election of a member to serve in the Provincial Parliament with all the particulars required in the foregoing section in relation to persons entitled to vote as aforesaid, and shall certify upon oath or affirmation before such Clerk of the County municipality the correctness of such list, and shall deliver the same to such Clerk of the County municipality, who shall keep the same of record, and transfer the same to the general list in one general alphabetical order.

Returning
Officer to no-
tify receipt of
List, and in
what manner.

III. So soon as the Returning Officer, referred to in the foregoing sections, shall have received such list as aforesaid, he shall announce the deposit of the same with him by advertisement in some public newspaper in the English or French language, or both, in the district where the electoral division is situate, or in the nearest district thereto where a newspaper is published, if no newspaper is published in the district where such electoral division is situated, and also by affixing such notice publicly in the nearest Court House and at the church doors of the Parishes within such electoral division: and such notice shall be in the form in the schedule subjoined, No. 2.

Returning
Officer to hear
objections, and
correct the
Lists if neces-
sary.

IV. Such Returning Officer shall be, and he is hereby empowered to hear, try, and determine, as well by written as parole evidence, all objections which may be made before him to the inscription of any name on such list of voters, and any claim which may be made by any person to have his name inscribed as a voter thereon; and such Returning Officer may revise such list, and add to or strike from the same the names of persons objected to, or claiming to vote respectively, but only after such enquiry had as above mentioned; And such Returning Officer shall have power to summon before him the parties interested and their witnesses, and shall proceed in any such controversy in like manner as Justices of the Peace proceed on summary proceedings before them, and he shall have power to administer oaths, and to examine the parties, as well as their witnesses, on oath or affirmation, and he shall succinctly record, in a register to be by him kept for that purpose, the grounds in fact and in law of any decision given by him.

May examine
parties on
Oath, &c.

Parties
aggrieved
may appeal
to a Judge,
whose deci-
sion shall be
final.

V. Any person considering himself aggrieved by any decision as to his right, or that of any other person, to be inscribed on such list of voters, given by such Returning Officer, may appeal therefrom to the Judge of the County Court in Upper Canada, or to the Judge of the Superior Court within the District in Lower Canada, which Judge shall finally determine in appeal; and such Returning Officer shall, upon a requisition in writing, by or on behalf of such aggrieved person, forthwith certify to such Judge in appeal, the statement of the grounds in fact and in law upon which such Returning Officer has based his decision in the premises, together with all proofs, if any there be, in relation thereto, and the parties shall be heard in appeal on such certificate, without any pleadings, by a simple inscription on the roll for hearing, and such Judge in appeal shall confirm the decision appealed from, or order such amendment of the said list as to him shall seem lawful.

VI. The said voters' list, when deposited as aforesaid with the Returning Officer, shall at all times be deemed and taken to be a true and correct list of the voters for the electoral division of which it purports to be such list, notwithstanding the pending of any question relating to the qualification of any person whose name is inscribed, or who claims to have his name inscribed, on such list; and the Returning Officer shall not, after the reception by him of the writ for any election, entertain any application for the amendment of such voters' list, until after the complete close of such election, and except during the period of time last mentioned, such list shall be, at all times, open to public inspection during the usual hours of business, in the presence of such Returning Officer, or some person appointed by him.

List to be valid notwithstanding pending of any objection or appeal.

Not to be altered during an Election.

To be open to the Public.

VII. The Clerk of the Legislative Council and the Clerk of the Legislative Assembly jointly shall cause to be prepared uniform books for the said lists of voters, and furnish them to the several clerks charged with the duties imposed upon such clerks by this Act; and the said books shall be in the form number 1, to this Act subjoined, and shall be accompanied with instructions from the said Clerks of Parliament to the Returning Officers, as to the keeping of the said books, so as to insure uniformity, and safeguard against falsification.

Clerks of the Houses of the Legislature to prepare uniform Books.

VIII. It shall be the duty of every such Returning Officer, so soon as he shall be in possession of the said list of voters, on demand, to grant to any person whose name shall be inscribed on such list a certificate of his right to vote at the election of a member to serve in the Provincial Parliament for such electoral division, and such certificate shall be in the form number 3, to this Act subjoined, and such Returning Officer shall sign such certificate, and cut the same from a book with an ornamented margin thereto, through such margin, and before issuing such certificate he shall be satisfied by proof on oath, or his own personal knowledge, of the identity of the applicant therefor, and he shall record, opposite the applicant's name in the voter's list, the issuing of such certificate; provided that no such certificate shall be issued on the days of polling; Provided always, that no certificate shall be granted within thirty days after the deposit of the said Lists with the Returning Officer.

Certificates to be granted to Voters on such List.

Proviso.

IX. It shall be the duty of the Returning Officer in each Electoral Division to provide ballot boxes suitable for the reception of voting tickets, with a small opening to admit the same, which box shall be secured with three locks of different construction, the keys whereof shall be held, one by the Returning Officer, one by the Mayor of the city, town, borough, or municipality, and one by some Justice of the Peace; and should there be no such Mayor, two of the said keys shall be held by two Justices of the Peace, respectively; and such ballot boxes shall be of the form, pattern, construction, size and material, to be determined by the said Clerks of two Houses of Parliament.

Returning Officers to provide Ballot Boxes.

X. On or before the commencement of any election and balloting, one of such ballot boxes shall be delivered into the custody of each Deputy Returning Officer, having been previously securely locked, and the keys distributed as aforesaid; and shall, by such Deputy Returning Officer, be kept within his view and in his personal custody during the whole time that such election and balloting shall continue; and, im-

One Box to be given to each Deputy Returning Officer: and returned by him.

mediately after the close of such balloting, shall be, by such Deputy Returning Officer, personally delivered to the Returning Officer, and the said Deputy Returning Officer shall then and there take and subscribe before the Returning Officer the oath in form number four, to this Act subjoined.

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Proper Polling places to be provided, &c.

XI. The Deputy Returning Officer shall provide some suitable apartments, where he shall attend on the days of polling and balloting with the said ballot box, and no person shall be admitted into the said room, or be permitted from outside to hear or witness what passes therein, save and except the Returning Officer, Deputy Returning Officer, Ballot Clerk, and the Voter, one only at a time, who claims to vote; the Returning Officer, his deputy, and the said clerk having, before the day of election, taken the oath of secrecy in the form number five to this Act subjoined.

Mode in which Votes shall be given.

XII. Any person, the bearer of the Returning Officer's certificate aforesaid, who shall be desirous of voting at any such election, shall be admitted into the said balloting room, and shall cause his name to be inscribed in a book to be kept by the Ballot Clerk for that purpose; and shall then and there exhibit to the Deputy Returning Officer such certificate, who shall then (being satisfied of the identity of the applicant by personal knowledge or oath of applicant) hand to the voter a card with the names of all the candidates printed thereon, and the signature of such Deputy Returning Officer endorsed thereon; and the said voter shall then strike out, or cause to be struck out by the Ballot Clerk, the names of such of the candidates as the said voter does not intend to vote for; and such card, together with his certificate, enclosed together in an envelope, the said voter shall deposit in the ballot box, in the presence of the Deputy Returning Officer.

Identity of Voter.

Voting Card of Candidates.

Examination of Ballot Boxes at the close of the Election.

XIII. So soon as the Returning Officer shall be in possession of all the ballot boxes, he shall notify the candidates of the time and place at which he will proceed to a scrutiny of the votes; at which scrutiny, the persons in possession of the keys of the ballot boxes shall attend, and the said ballot boxes shall be opened in presence of the candidates or their agents, if they see fit, and the tickets shall first be counted, and if there should be an excess of tickets over the number of voters on the book of the Ballot Clerk, the Returning Officer shall, if he discover any falsified certificate, reject the same; and the Deputy Returning Officer, if he shall discover any falsified ballot ticket, shall reject the same; and if neither the Returning Officer nor his deputy be able to detect such falsification, the number of voting tickets shall be reduced to the number of names recorded as voters by the Ballot Clerks, respectively, by rejecting alternately the requisite number of tickets, in such a way that the number shall be equally reduced as far as practicable for each candidate; and if, on any ticket, more names shall have been left than the voter is entitled to vote for, the Returning Officer shall strike out the excess, commencing in alphabetical order with the names of the candidates alternately; the votes, as exhibited by the voting tickets, shall then be counted, and the scrutiny and its result recorded in writing; and the candidate or candidates having the greater number of such votes shall be, on the day of Proclamation, declared elected: Provided that if there be the same number of votes given in favor of two or more candidates, the Returning Officer shall have a casting vote, and shall give and record the same.

Proviso: casting Vote of Returning Officer.

XIV. Whenever by accident or otherwise any of the ballot boxes shall have been destroyed or lost, or have passed out of the custody of the Deputy Returning Officer, the Returning Officer shall proceed to the scrutiny of the remaining ballot boxes and shall scrutinize and report thereon as hereinbefore provided; in any of such cases the Returning Officer shall not declare any of the candidates elected, but shall make a special return of all facts in relation to the irregularity which prevented his making such declaration, together with the result of such partial scrutiny to the Clerk of the Crown in Chancery, and the said return being submitted to a committee of either House of Parliament respectively, a new ballot, upon the warrant of the Speaker of either House respectively, may be ordered for the locality in which the ballot box may have been lost, or destroyed, or have passed out of the custody of the Deputy Returning Officer, or been otherwise tampered with, and such persons only shall be entitled to vote in such locality as had already voted therein on the said previous election, and such persons shall receive from the Returning Officer renewed certificates of qualification, and such election shall proceed as provided hereinbefore and after such notice as obtains with respect to elections generally.

Provision if one or more of the Ballot Boxes are lost.

XIV. Every Mayor, Justice of the Peace, City Clerk, Clerk of any Municipality or other person employed by them, who shall have neglected to perform any of the duties required of him under this Act, shall be subject to a penalty of not less than *five pounds*, nor more than *fifty pounds* currency; every Deputy Returning Officer who shall willfully allow any person to place more than one ticket in the ballot box, or who shall permit the said ballot box to go out of his custody and possession, or who shall reveal the voting of any person, or shall induce any person to vote for one candidate in preference to another, or shall use any persuasion or threat, shall incur a penalty of not less than pounds or more than *one hundred pounds*.

Penalty on persons failing to perform the duties hereby imposed on them.

XVI. Every person who shall either by fraud or violence carry away out of the possession of the Deputy Returning Officer the ballot box, or be aiding or abetting therein, or shall unlawfully receive or have the same in his possession, or shall put false voting tickets therein or shall put any tickets therein, save in the presence of the Deputy Returning Officer, shall be guilty of a misdemeanour, and on conviction thereof shall be imprisoned in the Common Gaol for any period less than two years, or in the Provincial Penitentiary for a term of not less than two nor more than five years.

Punishment for stealing Ballot Boxes, &c.

XVII. Any person forging the name of the Returning Officer or his Deputy to any document or paper used for the purposes of this Act, shall be deemed guilty of forgery, and as such liable to the punishment awarded to that crime.

Or forging any document.

XVIII. The Returning Officer and each of his Deputies shall have power to administer all oaths required to be received by them under this Act, and all false swearing shall be deemed wilful and corrupt perjury.

Administering Oaths.

XIX. All penalties under this Act may be recovered in any Court of competent jurisdiction, by action at the suit of any informer, who shall be entitled to one-half the penalty.

Recovery of Penalties.

Fees for
making Lists,
&c.

XX. There shall be paid to the clerks employed in making up the voters' lists the sum of *six pence* for every hundred words contained in such lists to be certified by the Returning Officer; and the Returning Officer shall be entitled to demand and have from any person applying to him, to amend such voters' lists; for every summons or subpoena, *one shilling*; for every copy thereof, *sixpence*; for recording his decision, *one shilling* and *three pence*; for certificate of appeal, *five shillings*. 5

Interpretation
of this Act—
and provision
for remedying
omissions in it.

XXI. The Interpretation Act shall apply to this Act, and the words "Clerk of any Municipality," shall be understood to mean the Secretary Treasurer of any municipality, City Clerk, or Town Clerk, or any officer holding corresponding situations in any municipality or corporate place; And this Act shall receive a liberal interpretation, and the omission of any formality herein prescribed, which shall not affect the substantial merits of an election, shall not invalidate the same; and if it should be found that there exists any circumstance which would prevent this Act from being effectively carried out, the Speakers of the two Houses, or of either House in the absence of the other, or in the absence of both then the Clerks of the two Houses, shall make such order as to remove the obstruction, and report the same to Parliament at the next ensuing Session. 10 15 20

Government
may appoint
persons to
carry out this
Act, in case of
need.

XXII. It shall be lawful for the Governor of this Province to nominate and appoint fit and proper persons, where need may be, in case of vacancy, incapacity, or other cause, to perform the duties by this Act imposed upon the Returning Officers and their deputies and the Clerks of the several municipalities aforesaid; and such persons so appointed shall have all the powers hereby conferred upon the said officers above mentioned, respectively. 25

Inconsistent
enactments
repealed.

XXIII. All Acts contrary to this Act shall be and are hereby repealed; but this Act shall be held as forming part of the Elections Act of 1849, twelfth Victoria, chapter twenty-seven. 30

SCHEDULE.

Form number one.

GENERAL ALPHABETICAL LIST of persons within the County (or City, as the case may be,) of _____ entitled to vote at the election of a member to serve in the Legislative Council and Legislative Assembly respectively. (*Parish and Township lists to be headed to suit the several places.*)

No.	Name.	Residence.	Occupation.	Particulars of qualification.	Range and lot or street.	Memorandum of certificates granted.	Date.

Form number two.

PROVINCE OF CANADA.

Notice is hereby given that the voters' list for the County of
 (as the case may be), has been this day deposited in my office at
 , &c., and a duplicate thereof in the office of the Clerk
 of , &c., to which all persons interested can have access
 during office hours, and that I am prepared to entertain any application
 for the amendment of such list from day to day.

Dated at the, &c.

A. B.,

Registrar (or as the case may be) and *ex-officio* Returning Officer.

Form number three.

PROVINCE OF CANADA.

I. Legislative Council :

This is to certify that the bearer is a duly qualified voter for the
 County of (as the case may be), and that he has been duly
 registered as such in the voters' list for such County, closed on the
 day of

A. B.,

Sheriff (or as the case may be) and *ex-officio* Returning Officer.

II. Legislative Assembly :

(Same as the above).

Form number four.

PROVINCE OF CANADA, } County or City.
 (As the case may be.)

C. D., of , a Deputy Returning Officer at the
 election for , held on being duly
 sworn doth depose and say, that the ballot box now in his custody and
 about to be delivered over by him herewith to the Returning Office, hath
 ever continued to be in his custody, control, and power since the same
 was delivered to him by the said Returning Officer before the com-
 mencement of the said election, and that during the time of balloting
 the said ballot box remained within the view of this deponent, and this
 deponent verily believes that no voting ticket has been inserted into the
 said ballot box without the knowledge of this deponent, and that he,
 this deponent, hath not in any way connived at or permitted any ir-
 regular use of the said ballot box contrary to the provisions of the
 statute in such case, and that the said ballot box is now in the same
 condition in which it was at the close of the regular balloting had in
 relation to the said election : and deponent hath signed.

C. D.

Sworn, &c. &c.

Form number five.

PROVINCE OF CANADA.

I, F. G., of _____ Deputy Returning Officer at the election
 for _____, held on _____, being duly sworn, do
 hereby promise and swear that I will not, during the ensuing election
 of _____, nor at any time thereafter, reveal or make known
 the voting of any person in relation to the said election, the knowledge
 of which shall come to me in the balloting room or by means of my
 office : and that I will not make known any circumstance occurring in
 such ballot room, unless I be called upon to do so by one of the Houses
 of Parliament, a committee thereof, or some Court of Justice. So
 help me God.

F. G.

Sworn, &c.

*Same oath as to ballot clerk. These oaths to be severally printed at the
 head of the ballot clerk's book and list, and to be therein subscribed and
 taken before the Returning Officer before the commencement of any
 election.*