MUNICIPAL FINANCE AND ASSESSMENT †

FINANCE

In order to finance the services which the three levels of government in Canada provide, the Federal, Provincial and Municipal Governments, inter alia, have it within their power to impose respectively both direct and indirect taxes, direct taxes, and only certain direct taxes as expressly delegated. Over the past four decades significant changes have occurred both in respect of the absolute number of tax dollars collected by all levels of government and in respect of the relative amounts collected by the Federal, Provincial and Municipal Governments. In 1926 the total number of tax dollars collected by all levels of government amounted to six hundred and twenty-nine million, but in 1965 this figure had increased by almost twenty-one times.

During these decades the Government of Canada has always been the major tax collector. Except in the depression years of the 1930-ies when its share of the total tax dollar declined slightly below the 50% level, the Federal Government has collected between 52% to 80% of the total tax dollars collected in Canada. During the 1920-ies and 1930-ies Municipal Governments generally collected between two to three and one-half times as many tax dollars as were collected by the Provincial Governments. In the 1940-ies and 1950-ies this gap gradually closed until in the 1960-ies Provincial Governments began to collect a significantly greater portion of the total tax dollars than did Municipal Governments. In 1965 the Federal Government, the Provincial Governments and the Municipalities shared the total tax dollars collected in the proportion of 60.87% Federal, 25.46% Provincial, and 13.67% Municipal.

Taxes collected by all governments (Federal, Provincial and Municipal) in 1926 amounted to 12.2% of the gross national product. Except during the decade following the second World War, total taxes collected by all governments have increased as a percentage of the gross national product. By 1965 total taxes collected by all governments represented 25.24% of the gross national product. Although the gross national product in 1965 was slightly greater than ten times that for the year 1926, governments at all levels in 1965 were collecting as taxes slightly more than twice the proportion of the gross national product that was collected as taxes in 1926.

These substantial increases in tax revenue were necessary to finance greatly increased governmental expenditures. Between 1926 and 1945

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Federal Government expenditures increased almost 14 times and between 1945 and 1965 they doubled again; as a percent of total governmental expenditures they increased from 36.6% in 1926 to 44.0% in 1965. In the same interval (1926 to 1945), Provincial Government expenditures increased slightly less than three-fold, while Municipal Government expenditures increased by just slightly more than 20%. Between 1945 and 1965, however, Provincial expenditures increased slightly more than 12 times and Municipal expenditures increased slightly more than 10 times. Provincial expenditures have gradually increased as a percentage of total governmental expenditures from 21.4% in 1926 to 32.0% in 1965. At the same time, although increasing substantially in terms of absolute dollars, Municipal expenditures as a percentage of total governmental expenditures have steadily declined from 42.0% in 1926 to 24.0% in 1965.

Expenditures by all governments have increased as a percentage of gross national product from 16.3% in 1926 to 36.7% in 1965. Federal Government expenditures have increased as a percentage of the gross national product from 6% in 1926 to 16.2% in 1965. Provincial expenditures have increased from 3.5% in 1926 to 11.8% in 1965. Municipal expenditures increased at the slowest rate but these increased from 6.8% in 1926 to 8.8% in 1965.

The raising and sharing of revenue to finance rapidly increasing expenditures has become possibly *the* most urgent matter requiring concerted government action. The revenue sources of Municipal Government are relatively inelastic; it looks to Provincial Government for ever larger revenue transfers or grants to assist it in financing the cost of services for which it is responsible. While the revenue sources of the Provinces are somewhat more elastic, their expenditures too are rapidly out-pacing their revenue resources and they are seeking ever larger revenue transfers from the Federal Government to assist them in financing the services for which they are responsible. Indeed, it is trite to state that Federal-Provincial relations pivot and revolve around this whole question of tax dollars.

The specific types of taxation granted to municipalities by the various Provinces, which, incidentally, seldom provide sufficient revenue to finance the cost of providing those services for which the municipalities are responsible, include the power to tax real property, personal property, business, retail sales, amusement, franchises, utilities and other property, things or persons. In addition to taxation revenue, municipalities obtain revenue through inter-governmental revenue transfers or grants from senior governments, by imposing fees for permits, parking, inspection and other special services, by imposing licences and fines, by imposing

interest and penalties on unpaid taxes, by utilizing utility profits, and revenue available from interest on investments, and other miscellaneous sources.

All Provinces have granted to their municipalities the right to raise revenue by imposing taxation on real property. This has been and remains the main source of taxation revenue at the municipal level. Although revenue derived from this source has increased substantially in terms of absolute dollars during the past decades, its importance relative to the total municipal revenue fund has been slowly declining.

The Provinces of New Brunswick, Nova Scotia, Manitoba and Prince Edward Island have granted their municipalities the right to raise revenue through the taxation of personal property. This form of taxation is used extensively as a revenue source by municipalities in New Brunswick and Nova Scotia. In Prince Edward Island its use is restricted to towns and villages in that province. Municipalities in Manitoba may elect to use business taxation in lieu of personal property taxation.

Authority is granted to municipalities in all provinces except New Brunswick and Nova Scotia to raise revenue through a special tax on business. Even in the provinces of New Brunswick and Nova Scotia, where the general legislation does not provide such authority, several municipalities have obtained, through special legislative enactments, the right to impose a business tax. Presently the raising of revenue by a business tax is mandatory on all municipalities only in the provinces of Saskatchewan and Ontario. Although permissive in the remaining six provinces the more urbanized municipalities in these provinces use this form of taxation extensively as a source of revenue.

All provinces except Alberta and British Columbia have granted their municipalities the right to raise revenue by imposing poll or personal taxes. Revenue from this form of taxation figures quite prominently in the tax structure of municipalities in the Maritime provinces. It represents from 5 to 9% of all revenue raised by local taxation in New Brunswick and slightly less than 4% in the case of Nova Scotia and Newfoundland. Little use is made of personal taxes as a source of municipal revenue in the central and western provinces with the single for the purpose of meeting the share of the cost of regional health services that is borne by municipalities. Manitoba withdrew the right to impose poll taxes from its municipalities in 1965.

Quebec is the only province in Canada that has granted to its municipalities the right to raise revenue by imposing a retail sales tax. Use of the tax is permissive and all municipalities in Quebec do not impose it. The tax is collected by the province along with its own sales

tax and the appropriate share is paid over to the municipalities imposing the tax. Its use is more common in the highly urbanized municipalities of Quebec and the tax has proven to be a productive source of revenue in those municipalities where it is used.

Quebec, Saskatchewan and Newfoundland have granted their municipalities the right to impose a tax on the price of admission to places of amusement. This tax is productive only in those municipalities where there is a relatively dense population patronizing a relatively wide range of entertainment services. Indications are that this tax source is not particularly suited as a source of revenue to municipalities. It is subject to wide fluctuation in productivity and its unpredictability and unreliability does not make it a satisfactory form of tax for purposes of raising municipal revenue.

Individual municipalities in certain provinces, through special legislation, have been granted the right to impose taxes at the consumer level on such items as water, electricity, gas, telephone connections, fuels, and other sundry items as a further means of raising municipal revenue. The tax rates imposed are generally relatively modest and the tax revenue produced is relatively unimportant in terms of the total tax fund.

In addition to the above tax revenue sources many municipalities raise revenue from such non-tax sources as permits and licenses. Some of these are issued pursuant to control measures instituted by municipalities where some form of municipal inspection or supervision is involved. Others are issued primarily for the purpose of raising revenue. Permit and licence fees paid ostensibly for services to be rendered by municipalities seldom cover the basic cost of providing those services and the excess of cost over revenue is usually provided through the general revenue fund of the municipality.

User fees for parking meters or for off-street municipal parking facilities provide another source of non-tax revenue to municipalities. These fees are usually set well beyond the break-even point and yield revenues in excess of the cost of provision of the service. Where this occurs user fees may be regarded as a form of tax revenue.

Many municipalities receive substantial revenues from the sale of electrical power and water produced and distributed by publicly owned facilities and by imposing user charges in respect of sewage disposal facilities. The practice of charging rates for commodities to yield revenues in excess of cost and to transfer the profits thereby obtained to the general revenue fund has become relatively common practice in some municipalities in some provinces. The allocation of profits, however, is often made in an arbitrary manner and where this practice is

followed there is always the danger of the profits being attained at the expense of inadequate provision for depreciation within the useful life of the utility required for the production of the commodity. Reliance upon utility and commodity profits to provide additional revenues for municipal government is fiscally questionable. The practice tends to operate to the advantage of large property owners at the expense of utility and commodity users. It also tends to conceal the real cost of municipal government and tends to impose added burdens on industry and other large users of utility commodities.

Revenue transfers or grants from senior governments are becoming an increasingly important source of revenue to municipal governments. The two types of revenue transfers or grants in common usage may be classed as conditional and unconditional. Unconditional revenue transfers or grants are those that are made between governments without the requirement that the receiving government make specific expenditures to qualify for and be eligible to receive the grant. Conditional revenue transfers or grants are those which require the receiving government to make expenditures for particular purposes in order to qualify and be eligible to receive the revenue transfer.

The Province of Manitoba employs a system of unconditional grants as a means of transferring revenue to municipalities. The grant is made on a per capita basis and in 1969 the Province transferred revenue to its municipalities in the amount of some 7.6 million dollars. There are no strings attached to the unconditional grant and the municipalities may use this revenue windfall for any purposes within their jurisdiction and in accordance with their own priorities. A criticism of the unconditional grants is that in their uniformity they do not take account of needs.

Conditional revenue transfers are generally employed by senior governments to encourage implementation of some policy or priority of that government making the conditional revenue transfer available. Both the Federal and Provincial Governments employ systems of conditional grants extensively. The Province of Manitoba employs conditional grants to encourage municipalities to improve the standards of streets and roads, to upgrade the level of health and welfare services and for a number of other purposes.

Unfortunately, conditional revenue transfers have been effectively used as a subtle system of arm-twisting to encourage, and, indeed, to force acceptance and implementation of the policies and priorities of the government making the grant available. Stripped of all its glory it is a succulent carrot dangled in the hope it will be bitten and consumed. There is, however, a price for each bite and the government

hoping to receive conditional revenue windfalls must invariably make expenditures from its own revenue to be able to participate at the feast.

In 1968 the municipalities of Manitoba raised revenue in the amount of $156,400,617. Some 83% of this revenue was raised through taxation, some 8% by way of grants or revenue transfers, approximately 3% through taxes added, interest and penalties, about 1½% from licences, permits and fines, and some 4½% through rents, services charges and other miscellaneous sources. Of the revenue raised by taxation some 93.4% was raised by way of property tax. The foregoing figures vary, of course, from one municipality to another and particularly between types of municipalities.

Manitoba for many years has classified municipal expenditures into the categories of uncontrollable and controllable. Uncontrollable expenditures are those which must be incurred and over which the council exercises no discretionary power. This class of expenditure includes moneys raised by municipalities to be turned over to other local government units such as school boards, for retirement of debt, and for similar purposes. Controllable expenditures are those over which the council has at least some measure of authority, such as public works, protection of persons and property, health and sanitation, recreation, etc.

Councils in Manitoba in 1968 were faced with uncontrollable expenditures which represented 59.4% of the total expenditures of $153,509,202 incurred by municipalities. Uncontrollable expenditures were the highest in the case of Suburban Municipalities where these expenditures amounted to 69.4% of total municipal expenditure. Some 61.5% of expenditures incurred by Cities were of the uncontrollable types. Towns and Rural Municipalities had the lowest uncontrollable expenditures but in each case these expenditures were slightly in excess of 51% of total municipal expenditures. This means that on the average, municipalities in Manitoba could exercise control over only some 40.6% of the expenditures made at the municipal level.

Expenditures for schools, an uncontrollable item of municipal expenditure, was in 1968, and has been for many years, the largest item of expenditure at the municipal level. It represented 38.9% of the total expenditures of municipalities in that year. This percentage ranged from a low of 35.7 in the case of Towns to a high of 48.2 in the case of Rural Municipalities.

The next major item of expenditure in the case of Cities is that for protection of persons and property. The cost of providing police and fire protection falls into this item of expenditure and it represented 16.5% of the total expenditures of Cities in the year 1968. Other

major items of expenditure in Cities are the Metro levy 13.7% (i.e., for those Cities within the Metropolitan Winnipeg area and for which the Metropolitan Corporation of Greater Winnipeg provides some services), charges for debt servicing 7.8%, recreation and community services 4%, administration 4%, public works 3.6%, health and social services 3.4%, special activities 3.2%, sanitation and waste disposal 3.2%, miscellaneous expenditures 2.5% and appropriation to capital, reserves and other funds 2.3%.

After schools, the next major items of expenditures incurred by Towns are debt servicing 14.7%, protection to persons and property 11.6%, public works 10.7%, administration 9.6%, appropriation to capital, reserves and other funds 6.9%, recreation and community services 4.8%, sanitation and waste removal 2.7%, health and social welfare 2%, and the remaining items of expenditure amount to 1.3% of the total expenditures in these municipalities.

A similar pattern exists in the case of expenditures in Villages. The second major item of expenditure is debt servicing 18%, followed by administration 12.7%, public works 10.4%, protection to persons and property 9.2%, appropriation to capital, reserves, and other funds 6.5%, sanitation and waste removal 2.1%, health and social welfare 1.7%, recreation and community services 1.7%, and the remaining items of expenditure totalling some 0.7%.

Debt servicing at 14.1%, and appropriations to the Metropolitan Corporation of Greater Winnipeg at 14.1% are the next major items to appropriations for schools in Suburban Municipalities (non-city municipalities in the Metropolitan Winnipeg area). These are followed in order by protection to persons and property 9.4%, public works 6.2%, appropriation to capital, reserves and other funds 5.3%, administration 4.2%, sanitation and waste removal 2.2%, recreation and community services 2.1%.

Public works is a major item of expenditure in the case of Rural Municipalities. Some 25.4% of the expenditures in Rural Municipalities is made in respect of public works. Administration in Rural Municipalities accounts for 9.9% of their expenditures. This item is followed by appropriation to capital, reserves, and other funds of 7.5%, and the remaining items of expenditure in Rural Municipalities range in the neighborhood of 2% or less of total municipal expenditures.

This discussion of source of revenue and purpose of expenditure is not to be regarded as a full and complete discussion of the complex subject of municipal finance. No mention is made of the municipal fiscal cycle which involves the areas of planning (budgeting), record-

ing (accounting) or reporting (auditing) or of capital debt, fixed assets, funded reserves, trusts, or of municipally owned utilities. Although time does not permit a full and complete discussion of any of these matters, one further point might well be made respecting the capital debt of the municipalities in the Metropolitan Winnipeg area, where in the years to come much of the growth in Manitoba is bound to take place. While it is true that the amount of the current outstanding debt (debentured and deferred liability) and the ratio of the outstanding debt to the total taxable assessment of property in the area are high, they are not necessarily alarmingly high at present; there is some head-room yet for additional debt. However, the projected estimates of the cost of providing housing, urban transportation, thoroughfares, bridges, sanitation and clean environment facilities are astronomically high, and as well, expenditures for protection to persons and property are likely to increase in all cities because of the growing unrest of peoples subjected to the present type of urban environment. These expenditures may well treble the current debt and then the outstanding debt and debt ratio would be alarmingly high. Each dollar borrowed must be reflected in debt servicing charges. Increased debt charges increase the total tax load but this does not provide any more fiscal head-room for necessary and essential expenditures of the controllable type which also are likely to increase.

There are strong indications that the revenue sources available to cities and other large urban municipalities to finance the cost of the services for which they are responsible simply are not adequate under present conditions. The fiscal patches of the past have worn out and have again been patched and repatched again but still the bare facts are showing. If our large urban communities are to play a meaningful role in the total pattern of government in providing a healthful, decent, and attractive urban environment for our ever increasing urban-oriented society in the decades ahead, the Provincial and Municipal Governments will have to face up to the issues of division of responsibility and allocation of revenue sources commensurate therewith. They will also have to ensure the revenue sources allocated to the large urban communities are effectively and equitably exploited to yield maximum revenue returns and if this revenue is not adequate to finance the cost of providing the services for which large urban centres are responsible, senior governments will have to make ever increasing amounts of revenue available to these municipalities by way of grants or transfers from their revenue sources.

ASSESSMENT

(a) *Generally:*

It may be of interest to review briefly the legislative provisions which, over the years, have provided the basis for making assessments in this province. The members of the first Legislature of the newly created Province of Manitoba were elected in 1870 and the Legislature was called into session early in 1871. One of the early matters of business considered was "An Act Relating to County Assessments".[1]

This Act was administered using the five counties into which the Province had been divided for municipal and registration purposes. The five counties so created were Selkirk, Provencher, Lisgar, Marquette East and Marquette West. The County of Selkirk was divided into Selkirk and La Verendrye subdivisions; the County of Provencher into Provencher, Morris and Arno; the County of Lisgar into Lisgar and Plesius the County of Marquette East into Marquette and Dufferin, and the County of Marquette West into Portage, Westbourne, Norfolk and Mountain subdivisions.

The first assessment of property located in these counties was made in 1871. It was made by assessors appointed by and acting under the general supervision and control of the Supreme Court. The legislation required the assessors to make out a roll of all male persons of the full age of twenty-one years in each county and to place a valuation to "the best of their ability" on all his property both real and personal. The assessors were required to complete their assessment work within a period of thirty days from the date they were sworn into office. There are two interesting features about this legislation providing for the making of the first assessments in the province. The first is the fact that the assessment value to be determined by the assessor was not defined in terms of any value concept. The second was the fact that it made no provision for a property owner to appeal against the assessment valuation placed on his property by the assessor.

The Act Relating to County Assessments was amended in 1872.[2] One of the amendments defined the duties of assessors and assessment value in the following terms:

> "In all assessments to be made in this Province it shall be the duty of the assessor or assessors to assess all property, both real and personal within the County, and such assessments shall be at the actual value of such property."

1. S.M. 1871, c. 34.
2. S.M. 1872, c. 19.

Another amendment provided a right of appeal by a property owner against the assessment evaluation placed on his property by the assessor to the Court of the Queen's Bench. The appeal had to be initiated within two months after the making of the assessment and the Court was required to hear and determine all appeals.

Further amendments were made to the legislation in 1875.[3] One of the amendments of that year provided for the creation of the County Councils which were made responsible for tax base determination within the County and for the appointment of County assessors. Another amendment attempted to clarify the basis upon which asssessments were to be determined. This amendment directed assessors to make an evaluation of all property both real and personal "at the true actual value thereof." A further amendment transferred responsibility for hearing appeals from the Court of Queen's Bench to the Council of the County in which the property was situated. Interestingly, it should be noted that in this period, 1870-75, the responsibility for the appointment of assessors, the making of assessments and the hearing and determination of assessment appeals was transferred from the Courts to the elected representatives of the people, the County Council, and there was no provision made for appeal from the decision of the County Council in respect of property assessments, thus making it a final decision.

The Act Relating to County Assessments was further amended in 1876[4] when a new definition of assessment value was introduced. This amendment defined assessment value as follows:

> "Real and personal property shall be estimated at their actual cash value as they would be appraised in payment of a just debt from a solvent debtor."

This new definition of assessment value gave rise to a great deal of confusion and quickly pointed up the desirability of an appeal procedure, from the decision of the County Council to the Courts. Two years later, in 1878,[5] provision was made in the legislation for such an appeal to the Judge of the County Court.

While numerous changes were made in the legislation respecting the basis for making assessments during the period 1871-85, assessment value of real and personal property throughout this period was always defined in terms of a common value concept.

The common value concept, however, was abandoned in 1886. The Act Relating to County Assessments was repealed and its pro-

3. S.M. 1875, c. 31.
4. S.M. 1876, c. 16.

visions incorporated within The Municipal Act.[6] This new Act provided for a different value concept to be used in determining assessment value for agricultural land than was to be used in determining assessment value for subdivided land and personal property. In the case of agricultural land the new legislation directed the assessor to:

> "assess all lands in municipalities other than cities not subdivided into lots of ten acres or less, according to the value of the land for agricultural purposes in an unimproved state."

No change was made in the value concept to be used in determining assessment value for urban lands (lands subdivided into ten acres or less) or personal property. The assessments of these properties continued to be made on a basis of their actual cash value as they would be appraised in the payment of a just debt from a solvent debtor.

The 1886 provisions respecting the determination of assessment value for agricultural lands were amended in 1887.[7] The amended legislation provided:

> "All lands in rural municipalities improved for farming purposes shall be assessed at the same value as such lands would be assessed if unimproved but in the case of lands improved for other purposes the value of such improvements shall be added to the assessment of such lands."

The question then arose as to whether buildings located on lands improved for farming or gardening purposes were assessable and taxable within the meaning of the Act. Prior to this time farm buildings had always been assessed and taxed. The controversy respecting the assessment and taxation of farm buildings continued until 1894 when legislation was amended to clarify the meaning of this section of the Act.[8] The amendment provided:

> "the original farm residence and buildings upon a piece of land shall be considered as improvements for farming purposes within the meaning of this section."

This amendment granted exemption from taxation to buildings located on lands used for farming and market gardening purposes and, as will be indicated later, it resulted in a whole series of amendments being enacted to clarify the conditions upon which such buildings are to be exempt.

No significant change was made in the legislation in respect of the value concepts to be used in determining assessment value until 1909.[9] In that year an attempt was made to re-establish market value as the

5. S.M. 1878, c. 25.
6. S.M. 1886, c. 52.
7. S.M. 1887, c. 10.
8. SM.. 1894, c. 21. In 1890 the assessment and taxation sections of The Municipal Act were taken out of that Act and put into The Assessment Act, S.M. 1890, c. 53.

basis for determining assessment values. The legislation enacted in that year provided:

> "in villages, towns, cities and rural municipalities all real and personal property may be assessed at less than actual value or in some uniform and equitable proportion of actual value, so that the rate of taxation shall fall equally upon the same. The expression 'actual value' used in this section shall mean the fair market value of such property, regardless of any prospective increase or decrease either probable, remote or near."

This amendment is interesting from the standpoint that it provided for a common value concept to be used in assessment value for all property in both rural and urban municipalities and it introduced for a first time the concept of equity in assessment.

This 1909 amendment was strongly opposed by the owners of farm, garden and personal properties and its application with respect to these classes of property was withdrawn by amendment to the statutes in 1910.[10] This amendment restored the unimproved state value concept as the basis for determining assessment value in respect of farm and garden lands and the previous "just debt" concept in respect of personal property. The market value concept was used as the basis for determining assessment value for urban properties only.

The Assessment Act of 1913[11] clearly set out the value concepts to be used in determining assessment value of the various classes of property. Section 28 of Chapter 134 of these statutes provides as follows:

> "28 (1). All lands in rural municipalities, improved for farming, stock raising or gardening purposes, shall be assessed at the same value as such lands would be assessed if unimproved; but in the case of lands improved for other purposes, the value of such improvements shall be added to the assessment of such lands.
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> "28 (2). The ordinary farm residence and buildings upon any piece of land shall be considered as improvements for farming purposes within the meaning of this section.
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> "28 (3). In cases where lands are improved for purposes of a local industry other than farming or stock ranching, the said lands and the plant, machinery and implements may, if the council so directs, be assessed at not less than one-half of the actual value."

Section 29 set forth the value concept to be used in determining assessment value for property located in cities, towns and villages as follows:

> "29. In cities, towns and villages all real and personal property may be assessed at less than actual value, or in some uniform and equitable proportion of actual value, so that the rate of taxation shall fall equally upon the same. The expression 'actual value' used in this section shall mean the fair market value of such property, regardless of a prospective increase or decrease, either probable, remote or near."

9. S.M. 1909, c. 36.
10. S.M. 1910, c. 44.
11. R.S.M. 1913, c. 134.

Section 33 set out the basis for assessments of personal property as follows:

> "33. Personal property shall be estimated at its actual cash value as it would be appraised in the payment of a just debt."

These sections clearly indicate the conflicting value concepts that assessors were directed to apply in determining assessment value for the classes of property. All of these may have been present within a single taxing jurisdiction, but it would be impossible for the assessor to relate equitably the assessment value of one class with that of another because he was required to use a different value concept in determining assessment value for each class. Equity in assessment was a factor only in the determination of assessment value for urban property. It was not a factor to be considered in determining assessment value for farming, stock raising, or gardening land or for personal property.

The period 1886-1920 is regarded as a period of doldrum insofar as tax base determination and equity in assessment and taxation at the local level in this Province are concerned. Indeed, the situation was so chaotic that, in 1918, the Legislature felt compelled to constitute a Royal Commission "to enquire into and report upon assessment and taxation in the Province of Manitoba."

The Commission tabled its report in the Legislature in 1919. Certain of the comments contained in this report may warrant reproduction here. The Commission stated that:

> "It may be laid down as an incontrovertible dictum that to properly appraise real estate is always a difficult matter, and it must be admitted that if this method of taxation is to be continued, competent persons must be selected to make such appraisals; that laws must be provided for the purpose that are capable of administration; that adequate remuneration be provided to secure the services of capable and energetic men as assessors. This, however, is not all. Means must be forthcoming to secure uniformity and equity in administration."

Reporting on the quality of municipal assessments in existence at the time of its investigation (1918), the Commission stated that:

> "A great need of the day is to replace immature and hastily formed opinions of value by certainty, and to secure practical equality in taxation by substituting, as far as possible, definite and fixed rules of assessment."
>
> "Apparently the prevailing custom has been for the assessors to follow the practice pursued in the past, either by themselves or by their predecessors. The result, therefore, is that all kinds of ratios of value of real property prevail, resulting in gross injustice between individuals and inequities between municipalities."

The Commission recommended the restoration to a market value concept as the basis for determining assessment value for all real property. Amendments to the Act were made in 1920, which provided:

> "In cities, towns and villages, lands shall be assessed at their full value, and buildings at two-thirds of full value."
>
> "Subject to the provisions of the 'Lands Branch Act' all lands in rural municipalities improved for farming, stock raising and gardening purposes shall be assessed at their full value."

These amendments provided for a common value concept to be used in determining assessment value for all real property. They also introduced for a first time, a partial assessment exemption for buildings located in urban communities. Such buildings heretofore had been assessed and taxed at their full value. The amendments did not provide for the market value concept to be extended to the making of assessments for personal property. Such assessments continued to be made on the basis of "actual cash value as it would be appraised in the payment of a just debt" for another three-and-a-half decades.

The term "their full value" subsequently has been deleted and the term "their value" has been substituted therefor. The provisions of the current Act, The Municipal Assessment Act[12] relating to assessment value for land and for buildings provide as follows:

> "29 (1). Lands apart from buildings shall be assessed at their value, and in determining value the assessor shall consider amongst other things the advantages and disadvantages of location, the quality of soil, the annual rental value which in its judgment the lands are reasonably worth for the purposes for which they may be used, the value of any standing timber and such other considerations as the Provincial Municipal Assessor directs."
> "30 (1). Buildings shall be assessed at two-thirds of their value."

The legislation of 1894 granting exemption to farm and market garden buildings has required substantive amendment over the years. The original enactment failed to define a farm or a market garden. Subsequent amendments have attempted to define these in terms of land area and to specify the conditions under which buildings located on farms and market gardens are exempt. These general conditions are set out in subsection (2) of section 30:

> "30 (2). Subject to subsection (3), (4), (5), (6) and (7) buildings situated on a parcel of land of not less than forty contiguous acres improved and used for grain growing or stock raising, and buildings situated on a parcel of land of not less than four contiguous acres improved and used for market gardening purposes, where the income from grain growing, stock raising, or market gardening is the chief source of livelihood of the owner, tenant, lessee, or occupant, are exempt from taxation except as provided in subsection (6), whether the grain, stock, or market produce, is disposed of directly or indirectly or by co-operative, retail, or wholesale; but they shall, nevertheless, be valued by the assessor at two-thirds of their value and set down separately in a column in the assessment roll."
> "30 (3). Where, under this section, buildings are exempt by reason of being situated on land containing the required contiguous acres and used for grain growing, stock raising, or market gardening, but the chief source of livelihood of the owner, tenant, lessee, or occupant is from sources other than grain growing, stock raising, or market gardening, the dwelling shall be assessed and taxed under this Act and all other out buildings used for grain growing, stock raising, or market gardening are exempt."
> "30 (4). In determining whether or not a building is exempt under this section, two or more parcels of land separated by a public road allowance, a railway right-of-way, a power or telephone transmission line, or the land

12. S.M. 1970, c. 33 (C.C.M. 226). The assessment and taxation sections of The Municipal Act were again taken out of that Act by this Act.

acquired by the Crown or a municipality for a right-of-way for a drain as defined in section 268 of The Municipal Act, or for the erection of snow fences, or for the planting of hedges, shrubs, or trees, to prevent snow from drifting on to a highway, shall be deemed to be contiguous."

"30 (5). Where a building, exempted under this section by reason of being situated on land used for grain growing, stock raising, or market gardening, is situated on the land but is used for any purpose other than grain growing, stock raising, or market gardening, the building shall be assessed as taxable under this Act."

"30 (6). Where a building exempted under this section is situated within the boundary of an unincorporated village district or of a local improvement district, it is liable to taxation for unincorporated village district levies under Division IV of Part IX of The Municipal Act and local improvement levies under Part XI of that Act."

"30 (7). The assessor may lower the assessment of a building to less than two-thirds of its value in any case where he is of the opinion that its inappropriateness of location or other circumstances affecting its value fairly justify him in so doing."

In 1906 the concept of towns and villages making business assessments in lieu of personal property assessments was introduced in the general legislation of the province.[13] The Act required each municipality wishing to make a business assessment to pass a by-law for the purpose and to obtain a proclamation from the Lieutenant-Governor-in-Council to the effect that this specific provision of the Act was in force in the municipality.

The basis for the business assessment was the assessed annual rental value of the premises in which the business was being carried on and municipalities were not permitted to charge a business tax in excess of twelve and one-half percent of the assessed annual rental value. This maximum rate of tax applied to all businesses except the businesses of clubs, inns, hotels, saloons or restaurants where wine, beer or spirituous liquors were sold. In respect of these businesses the Act provided a tax schedule in which the amount of business tax increased from fifteen dollars in cases where the assessed annual rental value was not more than three hundred dollars to a tax of one hundred and fifty dollars where the assessed annual rental value of the premises used in connection with the business did not exceed two thousand four hundred dollars.

Authority to use business assessment in lieu of personal property was not granted to rural municipalities until 1914. These municipalities were required to follow the same procedures as towns and villages if they wished to use business assessments in lieu of personal property assessments.

The Assessment Act was repealed and re-enacted in 1945,[14] Division V of this new Act dealt with the making of business assessments

13. S.M. 1906, c. 53.
14. S.M. 1934, c. 49. This Act was consolidated into The Municipal Act R.S.M. 1940, c. 141.

and the levying of business tax. This new Act did not require municipalities to seek a proclamation of the Lieutenant-Governor-in-Council for purposes of making a business assessment and the maximum rate of business tax was increased from twelve and one-half to fifteen percent.

(b) *Appeals Against Assessment:*

Throughout the period 1878-1934 owners could appeal against the assessment of their property to the local council sitting as a Court of Revision and could appeal from the decision of that Court to the County Court Judge whose decision was final. In 1934, the legislation was amended so that municipalities could elect to have appeals against the decision of the local Court of Revision heard by the Manitoba Tax Commission rather than a County Court Judge. As in the case of the County Court Judge, the decision of the Manitoba Tax Commission was final.

The legislation was amended again in 1948.[15] By these amendments the Manitoba Tax Commission was abolished and the Manitoba Municipal Assessment Equilization and Appeal Board was created. This legislation also provided that, except in the case of The City of Winnipeg and The City of St. Boniface all appeals from the decision of the local Court of Revision would be heard by this Board.

The Manitoba Municipal Assessment Equalization and Appeal Board was, in turn, abolished in 1959.[16] Its appeal functions were transferred to The Municipal Board and its assessment equalization functions were transferred to the Provincial Municipal Assessor.

When The Metropolitan Winnipeg Act was enacted in 1960,[17] The Metropolitan Corporation of Greater Winnipeg assumed responsibility for making the assessments in all municipalities in the Metropolitan Winnipeg area including The City of Winnipeg and The City of St. Boniface. Property owners within the Metropolitan Winnipeg area have a right of appeal against the assessment of their property to the Metropolitan Board of Revision and may appeal against the decision of that Board to The Municipal Board. The decision of The Municipal Board in respect of the quantum or amount at which property is assessed is final.

In 1949,[18] provision was made for the Manitoba Municipal Assessment Equalization and Appeal Board to submit in the form of a stated

15. S.M. 1948, c. 69.
16. S.M. 1959, c. 39.
17. S.M. 1960, c. 40.
18. S.M. 1949, c. 74.

case for the opinion of the Court of Queen's Bench any question of law arising in connection with the hearing of an appeal before the Board. Matters respecting the liability of a property to assessment and taxation under The Municipal Act, therefore, were resolved by way of a stated case. Subsequently, in 1966,[19] this provision was repealed and provision was made for appeal directly to the Court of Queen's Bench by way of originating notice of motion in respect of matters involving liability to assessment and taxation.

(c) *Assessment Problems arising from the Legislation:*

Although the legislation dealing with the making of assessments in Manitoba has been amended from time to time, it still contains features which contribute to and result in inequities in assessment and taxation at the local level. Probably the most glaring example of inequity in assessment and taxation of real property centres about the legislative provisions granting exemption to farm and market garden buildings. The crux of the problem lies in the fact that all buildings are assessable and taxable except farm and market garden buildings. The legislation dealing with this specific class of property (buildings) attempts to cover the whole spectrum between buildings being taxable and buildings being fully exempt. It attempts to accomplish this feat by fixing certain conditions that must be satisfied for the buildings to qualify for exemption. These conditions are set forth in the subsections of section 30(3) previously quoted herein. A few examples may serve to illustrate some of the inequitable situations that may and do occur in the assessment of property at or near the limits fixed by these conditions.

To qualify for the building exemption a farm and a market garden have been defined in terms of a minimum number of contiguous acres. If the land area involved is adequate to satisfy the minimum contiguous acreage requirement and all of the other conditions are satisfied the land only is assessable and taxable and the buildings are exempt. On the other hand, if the land area involved meets the minimum acreage requirement but is comprised of two or more parcels of land that are not contiguous, both the land and buildings thereon are assessable and taxable. Thus two owners with equal sized land areas and identical buildings thereon may have taxable assessments that vary substantially from one another if the land area of one owner meets the requirement of contiguity and the land area of the other owner fails to meet that condition. The taxable assessment of the former will be in respect of

19. S.M. 1966, c. 38.

the land only while the taxable assessment of the latter will be in respect of both the land and the buildings thereon.

Two comparable parcels of contiguous land improved with comparable buildings but differing slightly in terms of land area may have taxable assessment values that differ substantially. If one of the parcels contains an area slightly less than the minimum land area required for the building exemption its taxable assessment value will include the value of land and also the value of the buildings thereon. The other parcel, being of sufficient area to qualify for the building exemption will have a taxable assessment value in the amount of the land assessment only.

There are situations beyond the control of individual owners in which application of the minimum land area requirements result in substantial increases in assessment to property owners. If an owner of a parcel of land containing slightly more than the minimum contiguous acres required for the building exemption suffers a loss in acreage, by reason of forceful taking for a highway, drain, or other public work, of such acreage that he no longer qualifies for the building exemption, the taxable assessment value of his property will be increased by the assessed value of the buildings thereon less any decrease in the taxable assessed value of the land by reason of the loss in acreage. The taxable assessed value of his property, therefore, is likely to be substantially greater than it was when the land area was sufficient to qualify him for the building exemption.

A further condition that must be satisfied for farm and market garden buildings to be exempt is that the income from grain growing, stock raising or market gardening must be the chief source of livelihood of the owner, tenant, lessee or occupant of the land. Where the income from sources other than these is the chief source of livelihood of the owner, tenant, lessee or occupant, dwellings located on farm and market garden land are liable to assessment and taxation and all other out buildings used for grain growing, stock raising or market gardening are exempt under the provisions of subsection (3) of section 30.

Income from grain growing, stock raising and market gardening depends upon production, price and sale of product. Income from these sources may vary widely from year to year. It is less predictable than income from wages, salaries, pensions, rentals and investments. The minimum contiguous land acreages required for the building exemption seldom, if ever, constitute economic units for farm and garden purposes. Relatively few owners of land areas approaching in size the minimum acreages required to qualify for the building exemption are

dependent solely for their livelihood on income from grain growing, stock raising, or market gardening. Most depend, at least in part, on income from other sources. Often the difference between income from grain growing, stock raising or market gardening and that from other sources is relatively small. In these instances, even a small difference in source of income determines whether a dwelling located on such land is taxable or exempt. Relatively small reductions in income from grain growing, stock raising or market gardening can result in income from other sources becoming the chief source of livelihood and a dwelling becomes taxable. Indeed, a small loss or shift in source of income may result in a substantial increase in assessment (because both land and dwelling are then taxable) and a substantial increase in taxes. This increased taxation too may well have to be paid from a lesser income.

While the features of contiguity and land area, being physical in character, cause the assessor no great difficulty in determining whether buildings are taxable or exempt, determination of income as the chief source of livelihood is another matter. Although he has authority to inquire into and demand a statement from a property owner as to his income and the sources from which it is derived, he has little means at his disposal for verifying the accuracy and validity of the information and data with which he is provided.

It is questionable if all land owners accurately report to the assessor all income from all sources. Indeed, it is questionable if many land owners keep and maintain for themselves accurate and detailed records of all their income from all sources. The assessor must, however, determine which farm and market garden buildings are taxable and which are exempt on the basis of the best information made available to him by property owners who have a direct pecuniary interest therein. Despite the best intentions and efforts of land owners and assessors, there may be and probably are, instances where buildings are taxed that should be legally exempt and buildings are exempt that should legally be taxable. The legislation has placed upon the assessor an onerous duty in this regard and it is one in which he experiences some difficulty in carrying it out in a fair, just and equitable manner.

Because certain buildings are taxable and other buildings are exempt, the legislation has placed another onerous duty upon the assessor by requiring him to value and assess land and buildings separately. The principal source of data available to the assessor as a guide to value in determining his assessment is the market value of property. The market value data he obtains is always in respect of a unit of property. If the property unit includes no buildings, the market data is in respect of the value of the land only. On the other hand, if the property unit

includes buildings, the market data is in respect of the value of the land as improved by the buildings thereon. In urban communities particularly by far the greatest number of property sales include both land and buildings.

It is through an analysis of all market value data which he has assembled that the assessor arrives at his opinion as to the assessed value of property in making his assessment. But having arrived at his opinion as to the assessed value of a property unit the law then imposes upon him the near insurmountable task of dividing that value between land and buildings so that he may make an assessment of the land at its value and an assessment of the buildings thereon at two-thirds of their value. At best this division of value can be made only on an arbitrary basis by the assessor employing his own best judgment. Clearly his task would be made easier if the legislation permitted a unit of property comprised of both land and buildings to be assessed as a unit and did not require the assessor to find a separate value for each.

Although property taxation has been and remains the chief source of revenue to municipalities, this revenue must be shared by municipalities with other forms of local government. School Boards have long utilized a major portion of such revenues to finance the local share of the cost of providing educational services to the community. As a revenue source property taxation is relatively inelastic. As the demands of all forms of local government for a larger share of property tax revenue increase, property taxation as the major revenue source for local government is becoming progressively less adequate. Municipalities have long complained of being encased in a fiscal straight jacket and are seeking ways and means of making their principal revenue source more productive or alternatively of obtaining new sources of revenue.

There may well be ways of increasing property tax revenues. A careful and systematic review of all properties now enjoying exemption from taxation might well be made. If all buildings were made taxable at value the assessments in most municipalities would be substantially increased. Such action would have a twofold effect. It would provide an expanded tax base and at the same time it would render much of the legislation now pertaining to the assessment and taxation of buildings redundant. Some provinces, like Ontario, are attempting to make property taxation more productive by making more frequent assessment at the current level of property values.

Quite apart from any attempt that may be made to render property taxation a more productive revenue source for local government, the fact remains that if the cost of providing those services for which it is

responsible exceeds its revenue sources local government will continue to operate in a fiscal straight jacket. It is essential that an early evaluation be made of the role of local government within the total scheme of government and that local government be charged with responsibility for provision of those services only which it can most effectively and efficiently provide at an adequate standard with those sources of revenue made available to it for the purpose.

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