

# Preventing Municipal Default

By W. EVERETT MOSELEY

THE financial history of municipalities in the Province of Nova Scotia in relation to the payment of their bonded indebtedness has been uniformly of the highest standard. While there appears to be no evidence at the moment of any default either in principal or interest in this Province, the records of some municipalities in other Canadian provinces have not been so favourable. Cases of serious default have arisen which have been dealt with by revision of both principal and interest of the bonded indebtedness of certain Canadian cities and towns. In order to be prepared for any such situation when, as and if it arose in Nova Scotia the Department of Municipal Affairs introduced legislation which was passed at the last Session of the House and is now found in Part V of the Municipal Affairs (Supervision) Act, 1939. At the same time the whole act was consolidated and certain revisions made.

The objective of preventing default by our municipalities (which term in this article is meant to include both towns and municipalities unless otherwise apparent from the context) is a laudable one—provided always that its attainment be by reasonable measures which do not threaten the rights of other municipalities. A careful study of the means proposed to be used, and the machinery set up, however, discloses that the penalty imposed on defaulting municipalities is too severe, that the powers conferred on the Government appear too wide, and that the democratic rights of every municipality in this Province, defaulting or otherwise, would be endangered if some government should take an arbitrary view of its power.

The Act of 1935 was of course approved by the Union of Nova Scotia Municipalities; but the Act of 1939 was introduced without the prior knowledge of that body which consequently had no opportunity to consider the amendments; no public hearing was granted; at least one of the sections had already been disapproved by the municipalities; and the failure of the department to seek the views and criticisms of the municipalities savors considerably of regimentation.

While this article is intended to cover mainly the provisions relating to default, the other revisions, being the features in which the new act differs from the old, may conveniently be dealt with here. The revisions are as follows:

1. slight alteration in the provisions relating to borrowing powers;
2. slight alteration in the provisions relating to audit, bookkeeping and similar systems and returns;
3. drastic change in the provisions relating to sinking funds;
4. the completely new provisions to deal with cases of default.

## 1.—*Borrowing Powers.*

Borrowing powers have been enlarged by adding to the list of purposes for which money may be borrowed, the clause (i) "generally for any city or town purpose whatsoever" (or in the case of municipalities a similar clause covering "any municipal purpose whatever"). In the case of towns, however, the provisions requiring a vote of ratepayers have been enlarged by making such vote necessary for any borrowing under any other general or special Act of the Legislature of Nova Scotia whether enacted before or after the enactment of this Act: the section excepts current borrowing under Section 134 of the Towns' Incorporation Act. This amendment may prove embarrassing to certain towns,

EDITORIAL NOTE: The writer of this article who is Town Solicitor for Dartmouth, belongs to a group of municipal officers who look at the recently passed Municipal Affairs (Supervision) Act, 1939 with criticism. The article, as all contributions to *Public Affairs*, reflects its author's personal opinion.

The borrowing of \$5,000 a year for water and sewer purposes without a vote of the ratepayers has been changed, and towns are now limited to one-tenth of 1 per cent of their assessment in each year for that purpose.

#### 2.—*Audit, Returns and Bookkeeping Systems.*

This matter is covered under Part IV of the new Act. The powers of the Minister are enlarged to the extent that he can prescribe the forms used by municipalities for estimates, bookkeeping and similar systems. He is also empowered to audit the accounts of any municipality, to prescribe the forms on which returns are to be made, and to require the filing of returns along the lines set out in the Act.

#### 3.—*Sinking Funds.*

The provisions relating to sinking funds of municipalities have undergone drastic amendment. A minor change is found in Section 20, enabling the Minister, when sinking funds are fully paid up prior to the due date of the bond issue, or when they are overpaid, to permit the municipality to stop paying into such sinking fund account. Section 24 (1) (a) enables municipalities to transfer their sinking funds to the Minister. Section 24 (3) enables the Minister to make a charge not to exceed 5% on the income arising from sinking funds held by him. Section 25 enables the Minister to require any municipality or trust company to pay over to him all amounts standing to the credit of any or all sinking funds.

No objection may be voiced to the alterations contained in Section 24, since some municipalities might prefer to have their sinking funds held by a government department. However, it does seem that the provision contained in Section 25 raises issues of a controversial nature. Municipal sinking funds in this Province are in a relatively sound condition; and it is worth noting that the latest figures available show sinking funds of all towns and municipalities and the City of Sydney to the amount of \$7,100,000 as against total bonded debt of only \$19,400,000,

(The City of Halifax is excepted from the provisions of this Act.) In other words, the municipal bonded debt of Nova Scotia is protected by sinking funds to about 36½% of its face value. That condition appears much more favorable if this be compared with the ratio existing between Provincial bonded debt and Provincial sinking funds. Perhaps the Province should be entitled to administer sinking funds which are not being properly administered but no justification is apparent at the present time for claiming the right to manage all sinking funds. The situation of a government having control of \$7,000,000 of municipal sinking funds is filled with dangerous possibilities.

#### 4.—*Default.*

In order to meet the situation arising if a default occurs or is threatened by a municipality, Part V has been enacted. This part comes into operation in any of the following contingencies:

“Where an incorporated town or a municipality of a County or District

- (a) fails, or in the opinion of the Governor-in-Council is about to or may fail, to pay according to the tenour of a debenture the amount due for the principal or any amount due for interest payable thereunder or fails to pay into a sinking fund any amount it is required to pay, or
- (b) fails to pay any of its other debts or liabilities whatsoever when the same are due, or in the opinion of the Governor-in-Council has failed to rate, levy or collect the amount necessary to meet the expenditures required for any year, or
- (c) has passed a resolution requesting the Governor-in-Council so to do” (i.e. to put Part V into operation).

For some reason which does not appear on the surface, this Part does not apply to the City of Sydney.

In such event the Governor-in-Council has power to declare the offices of mayor, (warden) and councillors of such municipality to be vacant and to appoint

persons to fill the offices so vacated. For the purpose of convenience let us refer to the mayor, (warden) and councillors appointed by the Governor-in-Council as the "commission", although that name is not used in the Act. There are to be so appointed a mayor (warden) and not less than three nor more than six councillors. The qualifications and disqualifications provided by The Towns' Incorporation Act and The Municipal Act, for councillors, warden and mayor do not apply to the members of the commission. This commission has all the powers of the regular council together with others. These additional powers may be summarized briefly as follows:—

- (a) to discharge any officers, including those appointed during good behaviour;
- (b) to consolidate and revise the debenture debt of the town or municipality and to vary the terms of the same, including the rate of interest thereon, which powers, however, are only to be exercised with the approval of creditors representing not less than one-half the aggregate indebtedness of the municipality including debenture debt;
- (c) to dispose of any of the assets of a municipality, with the approval mentioned in the preceding paragraph;
- (d) to cancel, increase or decrease the levy of any assessment, rate or tax imposed for the purpose of paying debenture debt, interest or other debt;
- (e) to take complete charge of sinking funds and provide for setting aside portions of the revenue of a municipality for sinking fund and interest;
- (f) to enter into compromises with the creditors including debenture holders;
- (g) to borrow money for current purposes apparently without limit.

When the Governor-in-Council so determines, he shall order an election to

be held, after which the commission shall cease to hold office, and a mayor, (warden) and councillors elected in the usual way shall again have control of the affairs of the municipality. The apparent aim of the legislation is that this commission shall put the accounts of the municipality in order, shall introduce economy into the operation of the municipality, shall prepare proper estimates and collect sufficient taxes to pay the municipality's bills, and shall put it on a sound businesslike foundation. Such an objective cannot be too highly praised.

The machinery set up, however, is open to criticism in the following features:—

1. The members of the Commission require no qualifications and are subject to no disqualifications. If these are necessary in the case of elected representatives, how much more necessary should they be in the case of persons appointed by a government, which must always consider its political supporters, and which for all practical purposes is not answerable at the polls to the residents of the municipality involved.

2. The powers of the Commission are open to abuses. It could, for instance, discharge all existing officials without cause, and make appointments. There is nothing to prevent the members of the Commission from entering into contracts in their personal capacities for supplying goods or services to the municipality at prices and terms to suit themselves. In other words, the Act gives the Commission wide powers but imposes no restrictions. The only consequence of maladministration or of mismanagement is that the individual members may have their appointments revoked.

3. When the Commission is finally replaced by an elected Council, tenure of office of officials becomes as it was previously. This continues in office those persons who were appointed by the Commission. Inasmuch as the rate-payers of the municipality must pay the salaries, it is submitted that they should have some control over who is

to fill such offices after the Commission ceases to exist. Certain officials such as Town Clerks are appointed to hold office during good behaviour; something more than the whim of a political commission should be necessary to discharge them—or in fact to discharge any official who is performing his duty in a capable manner.

4. The Governor-in-Council merely has to determine, for example, that a municipality has failed to estimate enough for its services by even the slightest amount, or has failed to collect sufficient to pay its way by no matter how little, or that it *MAY* fail to pay its debenture interest, in order to put the machinery in motion. This power is unnecessarily wide. The residents of our municipalities have a democratic right to determine who is to govern them and their municipality; this right should not be jeopardized on a mere suspicion—practically all that this Act requires. Even if actual default exists, there should be no possibility of "taxation without representation" except in extreme cases.

The idea behind this scheme has much to commend it if enacted, installed and

operated under proper safeguards. In the drafting of the Act, however, safeguards apparently have not been sufficiently considered. It is not enough to say that care will be taken to prevent abuses—the Act should be drafted so as to ensure that there can be no possibility of abuses. The Minister apparently does not trust the municipalities to attend to their obligations, but the municipalities are required to trust the present and all future Ministers to exercise the rights given by the Act only in a proper case and then only in a wise, judicious and efficient manner. If the machinery is deemed necessary, let it be more strict as to what shall constitute a default, let it contain restrictions as to who shall be members of the Commission, and let it impose much more rigid regulations on the operations of that Commission; for it would seem to be a primary rule of legislation, that laws which encroach on the rights either of persons or of municipalities, should not be wider than absolutely necessary and certainly should not confer more powers than are intended to be exercised.

### Rural Dentistry in Nova Scotia

(Continued from page 192)

es and lectures were given to a large number of adults, as well as to 35,000 children in the schools.

6. Through the above, the knowledge of the importance of mouth hygiene was carried to almost every man, woman and child of school age in each section visited, under excellent auspices.

7. In four towns arrangements are being made to provide dental treatment for needy children through some form of school clinics. In three of these towns the financial responsibility for these clinics is being taken by a men's service club.

Other results of this intensive campaign in Nova Scotia have already begun to

be manifest. Inquiries have been received from many districts for dental services. Plans have already been formulated for meeting the needs in some of these districts. In some instances children will be transported to dental offices in their districts, while for the more outlying sections, an adequately equipped dental trailer, supplied with an operator and nurse will be on the road by early spring of this year. The Nova Scotia Dental Council has not been idle and it is the confident hope of the profession, that in the near future, services will be available through the entire province for those unable to provide mouth health for themselves.