Development of Local Government in Nova Scotia

By G. A. McAllister

THE present local government structure in Nova Scotia came into being much less than a century ago, but its development dates back to a romantic past. Prior to the year 1749, local administration, if it can be so designated, was of a most rudimentary nature. Feudal ideas dominated under the French, but after the capture of Port Royal in 1710, and during most of the uncertain period which followed before the second capture of Louisbourg in 1758, both English and French ideas prevailed. From his seat of government at Annapolis (Port Royal), the Governor controlled his two garrisons, one to overawe the Acadians around Annapolis and the other at Canso to protect the New England fishermen. From there he conducted the civil affairs of his command. Both French deputies and English justices of the peace were employed to mediate between the governed and the Governor and, it is said, the unwillingness of the Acadians to comply with his demands "varied inversely with their distance from the cannons of the fort."

Neither this strange, but very practical, system of local administration, nor the strictly feudal ideas of the French which prevailed at an earlier period, made any lasting impression on the character of the governmental structure which developed subsequently. Whatever the effect might have been, it was dispelled completely when for purely military reasons it was decided to establish a strong fortress between the French of Cape Breton and the people of New England. In the year 1749 Lord Cornwallis arrived at Halifax with a following of 1,176 settlers and their families to establish a fortress and a colony. A garrison alone, it was realized, could not hold the French in check.

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Government by Sessions

In accordance with instructions, Governor Cornwallis erected three courts of justice. The first was a Court of General Sessions, similar in its nature and conformable in its practice to the English court of the same name. From the earliest time, it was both an administrative as well as a judicial body. The system established was not completely satisfactory to many of the inhabitants, especially the fishermen and traders from Cape Cod, who preceded Cornwallis, and the settlers who accepted Governor Lawrence's 1758 invitation to occupy the lands vacated by the Acadians. Strongly imbued with the principles of the chartered governments of Massachusetts Bay, they preferred a greater measure of local autonomy and eventually became the advocates of self-government. But the formative ideas which prevailed for well over a century were those of Cornwallis, although the prominence of the New Englanders resulted in some modifications.

In the Courts of General Session, the sheriff as appointee of the Crown was the chief executive officer; the justices were the guardians of the peace; and the grand jury was the people speaking through a select few. In 1759 the grand jury was given definite administrative power. In a significant paragraph, the Act for Preventing Trespasses provided that it should nominate annually certain officials for the township of Halifax. The administrative needs of other townships were partially provided for in 1761. By another Act of the same year the time and place for holding general quarter sessions of the peace for the Counties of Lunenburg, Kings and Annapolis were regulated, and the Grand Juries were authorized to choose surveyors of highways. By a series of amendments this Act was extended to embrace all township officials appointed prior to 1765. During

the preceding period the central government gradually extended its control over local areas and the transition was completed in 1765. The Acts of 1759 and 1761 had left the choice of township officers to the Grand Juries, but in 1765 this power was limited to nominating two persons for each office. With minor amendments this basic pattern of local administration functioned for nearly a century.

At various times the Sessions were (1) authorized to appoint and define the duties of the parish officials; (2) given charge of jails, lockups, workhouses and village police; (3) required to prevent vice, disorderly driving, Sabbath profanation, nuisances and noises; (4) empowered to make regulations concerning trespass by domestic animals, the marketing of cattle, pounds, dog tax, destruction of mad dogs, noxious weeds, fires, bush burning and trucks; and (5) required to regulate the sale of liquor, circuses and exhibitions. To the Sessional Courts was given also the power to control inland fishing, grazing on the commons, markets and the measuring and inspecting of such commodities as bread, salt, coal, hay, iron and lumber. Control over ferries, streets, wharves, bridges, marshes, timber driving, river banks, and commons was also vested in them.

The preceding imposing array of tasks by no means comprises all of the powers entrusted to the Sessional Courts. On the representation of three or more freeholders, or of their own motion, Grand Jurors were authorized to make presentment of all sums required for the upkeep of the county jail, support of the poor and other related matters. The justices, however, retained the power to determine the portion of the presentment to be borne by each township, and assessment followed upon the warrant of any two justices. It is not known whether some of the jurors proved recalcitrant or not, but, at any rate, this provision was later amended to enable the justices to amerce the county (should the jury fail to make presentment) in such sums as upon proof seemed necessary. It may be observed in passing that a substantially similar provision appears in the present Assessment Act.

The moneys collected were handed to the treasurer, chosen by the grand jury and appointed by the justices in sessions, to whom also the treasurer accounted quarterly and to whom appeals lay from the assessors. Other sources of revenue were derived from rents, fines, forfeitures and licenses. Interestingly enough three-fifths of the license fee (liquor and hawkers) in Halifax went to the commissioner of streets and two-fifths to the police department. The various public officials were accountable to the Sessions for the moneys entrusted to them and the Grand Jurors were entitled to inspect their accounts.

Neither the inquisitorial powers of the Grand Jurors, nor the presence of the justices seem to have made any deep impression upon many of the officials in the discharge of their duties. It is conceivable that even the Sessions were not too diligent in the discharge of their responsibilities. In 1835 Joseph Howe attacked the Halifax County Sessions for unfair assessments and mismanagement of the public accounts. For this he was arrested on a charge of criminal libel, but subsequently acquitted. In its report published shortly before Howe's trial, the grand jury stated that "but £36 of the whole assessment of the year had been collected and that from persons much less able to pay than many who stand in the list of defaulters." Available evidence suggests that the system had many serious defects.

The Dawn of Reform

Local self-government during this period was confined to education and the care of the poor. This was in spite of the fact that following Lawrence's proclamation townships rapidly increased in number. Writing in 1829 Haliburton (more affectionately known as Sam Slick) observed that "the inhabitants have no other power than holding an annual meeting for the purpose of voting money for the support of their poor." This

right had been accorded in 1763 following attacks on the existing system by memorialists who declared that as British subjects they were born to be free. In effect, the concession merely gave the "proprietors" of certain townships the right to meet annually, choose a chairman and appoint assessors who should be empowered to assess the township for the support of the poor. A few years later this Act was extended to all townships and in 1770 they were relieved from the cost of caring for the transient poor.

Many years were to pass before the second measure of local self-government was granted. The School Act of 1811 provided that local school meetings might nominate six trustees from whom the Sessions were to appoint three to office. In the meantime, restrictions were placed on the exercise of local control over the poor—perhaps from their standpoint wisely so. In 1776 the Sessions were authorized to appoint assessors for and amerce any township which failed to provide for its poor. The power of nominating school trustees proved to be a tentative measure which was withdrawn in 1832 and given to district commissioners nominated by the Governor-in-Council. Popular choice was restored in 1859, but neither this privilege, nor the previous concessions resembled the wide privileges enjoyed by the New England townships.

The first serious inroad upon the authority of the justices and jurors at the Sessional Courts was not made until 1841. In that year the inhabitants of the township of Halifax were made a body politic and corporate and all administrative powers previously exercised by the Sessions were vested in the town council. Demands for the incorporation of Halifax, it is interesting to note, were launched at the earliest opportunity —at the very first Session of the Legislative Assembly in 1758. Like subsequent demands they were refused in 1759 when a Bill, which would have provided a President and a Common Council, was vetoed by the Council as being ostensibly "contrary to His Majesty's Instructions."

Soon after the victory for responsible government, the matter of local self-government was revived: the path of reform coincided with the path of political progress. Howe, perhaps because of his New England ancestry, adopted the township as the unit of municipal government in 1850. Halifax County was divided into townships, each township was given the right to elect a council with all the powers "now exercised by the justices of the peace," and the ratepayers were authorized to elect annually all township officers "now appointed by the Sessions, town meeting or others as considered necessary." The legislation was permissive and there is nothing to indicate that it was put into operation.

Five years later, 1855, the Legislature provided for the municipal incorporation of the Counties of Annapolis, Yarmouth, Kings and Queens—the four counties in which New England influence was strongest. The following year the legislation was extended to all counties and also considerably qualified by the Township Act. Without disturbing existing boundaries, counties were to be laid off in townships and immediately thereafter the township inhabitants were to be a body corporate. The reeves of the several townships were to constitute the municipal council and thereafter no elections were to be held, as under the legislation of the previous year, for municipal councillors but only for township reeves. Both the County and the Township Acts were permissive and remained in force until 1879 when a compulsory scheme was adopted.

It is significant that only Yarmouth County took advantage of the two Acts, but, even though noted for its New England predilections, Yarmouth voluntarily returned to the old form of government in 1858. The exact reason for the tardiness in accepting municipal institutions, especially when they embraced features of the New England township, would appear to be a matter of controversy. It is probable that the township form of government no longer held a promise of sufficient local control.

Moreover, the principles of the township had long since lost their potency, principally because the Act of 1765 had refused them any real recognition. Further, even in the townships' one sphere of influence, subsequent events dictated the wisdom of a change. Originally in 1758, when the first Legislative Assembly was convened, townships, in accordance with Lawrence's promise, were accorded representation along with the counties which had been organized as convenient areas for the administration of justice. However, since the townships contained, as Haliburton has said, no definite quantity of land nor assumed any prescribed shape, it soon proved impossible to hold simultaneous elections for the return of representatives. To meet this difficulty the counties were divided into electoral districts in 1847 and ten years later the right of returning representatives was taken from the townships. With the change, their last shred of political importance was lost.

A System of Local Government

It is not surprising, therefore, that the township form of government was discarded in the compulsory 1879 Act for the incorporation of the counties. The administrative functions of the grand jury and the Court of Sessions were vested in an elective municipal council. Township meetings to provide for the support of the poor were abolished and, instead, the municipal council was required to appoint overseers for each poor district. With slight modifications, present day local government in rural areas is based on the principles of the 1879 Act.

The privileges of self-government, particularly that of assessing for local purposes, were much more attractive to the towns. Commencing in 1841 with the Town of Halifax and in 1855 with the Town of Sydney, special acts were passed for their incorporation. A general Towns' Incorporation Act, applicable as well to those previously incorporated, followed in 1888. It provided for incorporation by popular vote and removed the town from the jurisdiction of the municipal council. In addition, the town was made a single school section, poor district and fire district. In general the powers and duties granted to the town council were similar to those exercised under the present Towns' Incorporation Act.

So far no special provision has been made for the incorporation of cities, although the City of Halifax was incorporated in 1851 by charter and the City of Sydney in 1903 by charter and special Act. The basic governmental structure, as it exists to-day, was completed in 1923 with the passing of the Village Supply Act and more recently in 1925 when provision was made for communities

While cities, towns and municipalities constitute the basic units of local government, with villages and communities of lesser importance, a wide variety of governmental organizations perform functions in local areas. Some of these are properly described as units of government, others as types of governmental organization. Still others are merely administrative mechanisms controlled and operated by one or more governmental units. At the present time the law provides for twelve distinct types of governmental organizations or entities for the performance of certain specific or general functions with the power to raise revenue by taxation or incur expenditures against a particular district. Their geographical and political interrelationship is such that the powers of cities and towns are mutually exclusive from those of the municipality, and in some cases county, of which they constitute an integral geographical part. But, while only the council of a city or town has power to raise revenue by taxation within that area, the inhabitants may in certain circumstances be brought within the jurisdictional area of either a Joint School Board or a County Board of Health, or both. Nine distinct types may be established to function within the area of a municipal unit. In addition to the municipal government, the law provides for the compulsory organization of school sections, poor districts, fire districts, health districts and for the permissive organization of villages, com-

munities, a County Health Board and either a municipal or a Joint School Board. While the maximum number which must be organized is four, only three have direct tax raising power—the municipality, the village and the school section.

The Future

It is evident that institutionally at least the local government structure of Nova Scotia is highly organized. Whether it is efficiently organized is another and more important matter. The very recent development of the larger school unit and the County Health Board would seem to indicate that it is not, for these organizations are designed to integrate local areas for a more effective implementation of their respective services. Without enlarging upon this topic, it is clear that the present local government structure is not in keeping with modern economic and social trends. It is likely that an integration and consolidation both of services and areas, as well as a transfer of certain functions to the central government, will be required before local governments can assume their proper, vital responsibility in any general or local program of post-war reconstruction. The process of change will not be easy: it is notoriously difficult to uproot or even modify things existent. Yet, in the clear recognition that the welfare of this and succeeding generations is paramount to that of past generations, however glorious, a change will come.

Issues In American Farm Policy

By Leonard A. Salter, Jr.

THE overruling present and prospective issue in American agricultural policy is an instance of the perennial conflict between the course of expedient maneuver and of enduring social construction. This antithesis has not been a matter of public debate, in part because it has been screened by an impressive network of hurried legislative and administrative activities to render assistance to agriculture. To-day, the strategic elements and directing forces in farm policy are coming into focus under the glare of the inordinate conditions of warfare. Tomorrow, the die will be cast, and the farm policy decisions then made, will help to forge the mold for the world of the future in a degree that can hardly be underestimated.

In national agricultural policy, there is quite often a decided difference between that which is good for agriculture (meaning what makes for a continuing, sound rural economy), and that which is profitable for those who at any moment have a direct financial interest in going farms. This divergence derives, not simply from the possible effects of farm-aid programs themselves, but more fundamentally from the very nature of agriculture in a pecuniary society. Where, as in the United States, the ownership of farms is transferred about once in every fifteen years, where the operatorship of farms changes even more frequently, and where only a fraction of the financial control over farm capital is in the hands of working farmers, there is an unusually wide gap between the direct interests of farmers and farm investors in transitory conditions and the social interest in a stable and healthy agricultural economy.

Over the years, the United States has developed an extensive system of public programs for its agriculture. The greatest expansion of these aids has taken place during the last ten years and on such a scale that one can say that in no comparable period have the legislative and executive branches of the federal government been more generous in their treatment of the farmers of the country.

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