

# METROPOLITAN GOVERNMENT IN A PROVINCIAL CONTEXT: A STUDY OF METROPOLITAN TORONTO

*Stanley Makuch\**

## I. INTRODUCTION

Those advocating local government reform in urban areas tend to take one of two alternative paths to their goal. The first, which involves the enlargement of local municipal units to a size considered optimal for the provision of major local services seems to be less popular as current liberal thought emphasizes the decentralization of government and citizen participation in and control of governmental machinery.<sup>1</sup> The second approach either by-passes or de-emphasizes the problems of the amalgamation or annexation of local governments and looks instead to the creation of a new level of government as an intermediate between existing local authorities and provincial or state governments. The federated or metropolitan government has been seen by many to be a major step toward the solution of urban ills,<sup>2</sup> as it facilitates the provision of services and planning as well as creating a stronger financial base for urban government. The purpose of this paper is not to evaluate the efficacy of such reforms<sup>3</sup> nor is it to analyse the appro-

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\*B.A. (Hons.) 1967, University of Toronto; M.A., 1968, Carleton University, LL.B., 1971, Osgoode Hall Law School; LL.M., 1972, Harvard Law School, Assistant Professor of Law, Faculty of Law, Dalhousie University

<sup>1</sup> One important exception to this statement is the City of Winnipeg Act, Man. Stat. 1971 c. 105 where a number of municipalities were amalgamated into one unifying government. There, however, provisions were made through community governments and citizen advisory groups for citizen participation.

<sup>2</sup> See ADVISORY COMMITTEE ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM, REPORT M-31 (1966) [hereinafter the committee is cited A.C.I.R.]; COMMITTEE FOR ECONOMIC DEVELOPMENT, RESHAPING GOVERNMENT IN METROPOLITAN AREAS [hereinafter cited Committee for Economic Development]; The Montreal Urban Community Act, QUE. REV. STAT. c. 84 (1970); Mayor Kevin White, *Proposal for the Reorganization of Boston*, The Boston Globe, November 3, 1969

<sup>3</sup> For studies on the effectiveness of metropolitan governments, see ROSE, *A Decade of Metropolitan Government in Toronto*, 13 BUFFALO L. REV. 539 (1964); GOLDENBERG, REPORT OF THE ROYAL COMMISSION ON METROPOLITAN TORONTO (1965); Note, *Metropolitan Government: Minnesota's Experiment with a Metropolitan Council*, 53 MINN. L. REV. 122 (1968)

priate division of functions within a federated urban political system.<sup>4</sup> Rather the emphasis here will be to examine the relationship between a metropolitan government and its state or provincial superior. It is this inter-governmental interaction which is perhaps most influential, not only for the creation but more importantly, for the maintenance of a viable metropolitan government.<sup>5</sup> It is this relationship, however, which is probably most neglected in the writings on metropolitan government.<sup>6</sup>

The reasons for this neglect are perhaps obvious; for advocates of metropolitanism are concerned with encouraging small independent and reluctant communities to forsake some of their autonomy for the benefit of the urban community. Metropolitanists, therefore, in some respects, need to minimize the scope of this type of reform and to emphasize its structural aspects and its limited transfer of certain functions. The question of metropolitan reform is thus typically put as follows: "[c]an existing forms of government in metropolitan areas be modified to permit solutions of area-wide problems and at the same time permit local communities to maintain their own identity?"<sup>7</sup>

The problem, when put this way shows the dilemma of the metropolitanist; government structure is to be "modified" to permit coordination of efforts to solve problems within the urban community. The advocate of the new government is thus attempting to allay the fears of substantial change while attempting to ensure change that is sufficient to result in the amelioration of urban problems. The approach is necessarily a conservative one of trying to find the right balance between reform and the *status quo* within the existing urban community.

Moreover, metropolitanists must certainly realize that given present political structures, state or provincial governments will be the major impetus for any change. Reform which concentrates on internal structures and the internal division of responsibilities will be no challenge to present state or provincial jurisdiction or financial integrity. The senior level of government, it is hoped, will therefore not perceive any danger in the creation of a super-urban government, although many legislatures appear to apprehend such a danger in spite of the absence of any such challenge.

A third possible reason for such an approach may be that reformers view the creation of a new political entity as a substantial step towards

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<sup>4</sup> For studies examining the appropriate internal division of functions in a metropolitan government, see. GOLDENBERG, *supra* note 3 and COMMITTEE FOR ECONOMIC DEVELOPMENT, *supra* note 2.

<sup>5</sup> THE COMMITTEE FOR ECONOMIC DEVELOPMENT, at 80, states that "finally without doubt the most important factor in Toronto's success has been the guidance and stimulus provided by the provincial government. Without this catalytic agent it is highly unlikely that the Toronto area would have metropolitan government today."

<sup>6</sup> See. *supra* notes 2 and 3. None of the studies or statutes examine governmental relations between the metropolitan government and the state or provincial government in any detail.

<sup>7</sup> COMMITTEE FOR ECONOMIC DEVELOPMENT at 11.

solving fiscal problems within urban areas. The belief exists that area wide assessment and tax levies will enable all to "share the wealth"<sup>8</sup> and this seems to minimize the need for an examination of fiscal relationships between the new government and provincial or state and federal governments, or at least postpone the examination until the internal reform is complete.

This approach is, it would seem, deficient; any examination of present urban political systems necessitates an analysis of the input of higher levels of government both in terms of financing and provision of services; urban government cannot be viewed in isolation; no matter if it is single tier or federal in nature.

This paper, therefore, will examine the most mature and sophisticated metropolitan government in North America, the Municipality of Metropolitan Toronto, and its relationship with the provincial government of Ontario. An attempt will be made to point out difficulties or problems that are overlooked by those who are eager for metropolitan government and thus neglect this type of relationship. Indeed, an attempt will be made to round out the picture of metropolitan government and to show how it must function not in relation to those governments below it; but rather in relation to those above it, in order to be a viable and worthwhile undertaking.

Metropolitan Toronto will be used as an example to facilitate the development of a more comprehensive picture of metropolitan government and its difficulties. Its financial relationship with the provincial government will be emphasized and analysed so that the function of metropolitan government of ending fiscal disparities can be viewed in a wider context. This will entail a study of the use of the property tax as revenue and provincial grants to supplement that revenue, as well as the province's effect on borrowing by the Municipality of Metropolitan Toronto and provincial control over that borrowing. As metropolitan government is not solely a structure for fiscal reorganization within its boundaries, but a method of functional reorganization; so too the functional division of powers among the metropolitan government, the municipalities surrounding it, and the province should be evaluated. Moreover, these jurisdictional divisions should be examined not only because they are important in themselves, but because they are drawn in many cases as a result of fiscal disparities and geographical difficulties. Here the functions of planning, housing, transportation, and education will be studied in a metropolitan-provincial context. It is then hoped that some conclusion may be drawn with respect to the relationship between the metropolitan federation and its immediate levels of government that will be meaningful and important in any programme to establish a new form of government in urban areas.

An additional note of explanation is perhaps necessary here. Virtually no mention has been made here of the role of the federal government and

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<sup>8</sup> *Id.* at 21. Although the Committee mentions the need for federal and state aid this is not dealt with in detail.

its influence on the functioning of the metropolitan federation. The reason is twofold. Firstly, in Canada and the United States it is the provinces or the states that have primary jurisdiction in this field<sup>9</sup> and whose influence will be most profound. Secondly, although in both countries the federal governments can, through their spending power,<sup>10</sup> influence urban development; in the case of Metropolitan Toronto the federal government's involvement has been minimal. No major federal programme affects Canadian cities directly. Federal monies paid directly to Metropolitan Toronto in 1969, for example, amounted to 4.6 million dollars for payments in lieu of taxes to local municipalities and 68,454 dollars to two local municipalities for special subsidies out of a total revenue of over 656 million dollars for the local and metropolitan governments.<sup>11</sup> In the United States the amounts of direct federal aid to local government is much higher<sup>12</sup> and, while in both countries indirect federal aid through the provinces or states is substantial,<sup>13</sup> neither has a programme specifically directed at encouraging, effecting, or developing metropolitan governments.<sup>14</sup>

## II. THE GOAL OF METROPOLITAN GOVERNMENT

Metropolitan government, as suggested, is viewed as a method of altering the internal structure and functioning of urban areas "in order to handle urban problems more effectively."<sup>15</sup> Its purpose is thus traditionally limited to solving existing problems of planning, servicing, and fiscal disparity which have been enumerated and described so often that repetition is needless.<sup>16</sup>

The important factor it would seem, however, is that the goals and purposes of metropolitan government are the product of this reaction to pressing problems rather than the product of an analysis of the role of such a government vis-à-vis state or provincial authorities. This reactive definition is, thus, narrow in its scope, and without regard to what might be done beyond attempting to solve certain existing problems by government restructuring within urban areas. This approach is unnecessarily limited, however.

<sup>9</sup> In Canada, the B.N.A. Act § 92(8), gives the provinces jurisdiction over municipalities, while in the United States, U.S. CONST. amend. X, gives the states jurisdiction in this field.

<sup>10</sup> In Canada under § 91(3) of the B.N.A. Act and in the United States under U.S. CONST. art. I, § 8.

<sup>11</sup> 1969 SUMMARY OF FINANCIAL REPORTS OF MUNICIPALITIES 3 (Ont. 1970).

<sup>12</sup> BREAK, INTERGOVERNMENTAL FISCAL RELATIONS IN THE UNITED STATES 105, (1967).

<sup>13</sup> *Id.* at chs. 3 and 4 *passim*, and A.C.I.R., IN SEARCH OF BALANCE CANADA'S INTERGOVERNMENTAL EXPERIENCE, REPORT M-68 ch. 2 (1971).

<sup>14</sup> In the United States, however, the federal government encourages regional planning. See Demonstration Cities and Metropolitan Development Act, 42 U.S.C. § 3301 (1970). In Canada the federal government's most direct and important impact is a result of building airports and more recently urban parks.

<sup>15</sup> A.C.I.R., METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM, REPORT M-31 at 85 (1966).

<sup>16</sup> Two examples of works dealing with these problems are *supra* note 15, and THE METROPOLITAN ENIGMA (Wilson ed. 1970).

It assumes that the fundamental difficulty is the inadequacies of boundaries and that as mentioned, once these are adjusted through federation, other problems will be resolved.

Unfortunately this solution largely ignores other key factors involved: the services provided on a metropolitan rather than province-wide basis, and the financing of those government services. If the development of more effective metropolitan governments based on rational physical-economic boundaries is achieved, the rationale of special purpose bodies and provincial or state control in many areas is destroyed and many functions performed by the province or state can be transferred to the metropolitan government. The mistake, therefore, of creating metropolitan governments simply on the basis of existing patterns of local development should not be made.<sup>17</sup>

The other important factor which has not been examined sufficiently is that of the financing of metropolitan services. There is almost universal agreement that the present municipal tax base, the property tax, is inadequate, yet metropolitan reformers largely disregard this. What is important to remember is that, although metropolitan government might well improve the current situation in the assessment and the collection of property taxes, the general financial position of municipalities within metropolitan governments and created by metropolitan reform will not be basically altered. Both metropolitan and local governments would remain in an essentially weak position, very dependent on grants from their senior government.<sup>18</sup>

The horizons of metropolitan reform, then, should be broadened to ensure that the boundaries will include all areas needed for meaningful planning and uniformity of services and to ensure that fiscal integrity and autonomy will be present. It is only if the goal that metropolitan areas be organized with adequate responsibility and revenues to solve metropolitan area problems and meet metropolitan needs is adapted that meaningful reform will occur. It is only this type of reform, rather than the simple tinkering with internal structures, that will create a local government system where political responsibility and accountability for policy and taxing decisions will result. It is only if this type of reform occurs that taxes paid will bear a relationship to services rendered and citizens will understand and be able to judge the role of their various governments. Indeed, it is not extreme to state that it is only if this type of reform occurs that real democracy can exist.

### III. METROPOLITAN TORONTO IN CONTEXT

Against this background and with these purposes in mind the Municipality of Metropolitan Toronto may be examined. A brief sketch

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<sup>17</sup> ONTARIO ECONOMIC COUNCIL, *GOVERNMENT REFORM IN ONTARIO* 23 (1970).

<sup>18</sup> *Id.*

should suffice to describe the municipality. The Committee on Economic Development has described it as follows:

The municipality of Metropolitan Toronto with a population of more than 2,000,000 is the focal point of one of North America's most economically vital regions. Metropolitan Toronto contains almost 10 per cent of Canada's total population, and its 241 square miles contain approximately 11 per cent of all Canadian employment.... The population has grown about 75 per cent in the last 15 years, and increases of nearly 55,000 persons per year represent an annual growth rate of over 4 per cent, one of the highest such rates among metropolitan areas on the continent.<sup>19</sup>

Such a description, however, is inadequate for it neglects the regional and provincial context of the municipality. Metropolitan Toronto with a smaller city (Hamilton) to the west of it forms the core of what some have called the Ontario megalopolis.<sup>20</sup> This area in 1966 had a population 3.6 million, well over half the total population of the province;<sup>21</sup> so that the name "Municipality of Metropolitan Toronto" does not describe an urban metropolitan community, rather a legal entity at the core of such a community. Jurisdiction over that community is factionalized between numerous local governments and the province. Moreover, financial resources available for the development of the various political entities within the region are inequitably divided among developed, developing and agricultural areas. Problems such as housing, transportation, and planning, as well, are universal in this area with no immediate method of alleviating them. In short, a metropolitan region exists without adequate governmental and financial structure to solve its problems. Moreover, there exists at the core of that region a metropolitan government—restricted to the property tax as its major source of revenue; restricted in its jurisdiction over numerous functions, and restricted geographically so that it is not able to cope adequately with its development and other problems.

#### IV. THE SHARING OF AUTHORITY: METROPOLITAN AND PROVINCIAL FUNCTIONS

##### A. *Planning*

When Metropolitan Toronto was first created by the province, the community of interest suggested above and legal entity were perhaps coincidental. Outside the municipality of Metropolitan Toronto new urban development was essentially occurring in small towns and villages in Toronto's agricultural hinterland, but such development was not sufficiently great to identify its growth problems with the federated municipality which had been created to solve similar but more serious problems.<sup>22</sup>

<sup>19</sup> COMMITTEE FOR ECONOMIC DEVELOPMENT, *RESHAPING GOVERNMENT IN METROPOLITAN AREAS* 70 (1970).

<sup>20</sup> LITHWICK, *URBAN CANADA, PROBLEMS AND PROSPECTS* 135 (1970).

<sup>21</sup> *DESIGN FOR DEVELOPMENT: THE TORONTO-CENTRED REGION* (1970).

<sup>22</sup> Metropolitan Toronto Planning Board, *Regional Planning and Government in the Toronto Region: A Position Paper* (Unpublished 1970).

In 1953, however, it was not thought that the differences which separated the metropolitan government and its surrounding area would continue indefinitely or that the reasons for the boundary decision would never change. The Ontario Municipal Board report suggesting metropolitan governments warned against the assumption that boundaries "should be considered the permanent limit of the jurisdiction of the proposed federation...."<sup>23</sup> Moreover, the commission stated that if boundaries were not viewed as temporary and open to expansion there would be a repetition of past errors in the failure to provide the proper framework for urban development.<sup>24</sup>

Since some development was occurring outside and surrounding Metropolitan Toronto, the Cumming Report made recommendations for regional planning. The planning was to be on a cooperative basis between Metropolitan Toronto and surrounding municipalities. Although not tightly controlling growth around Metropolitan Toronto, it has prevented perhaps the worst evils of urban sprawl and was sufficient since the major growth in the area by far occurred within the political jurisdiction of Metropolitan Toronto. Moreover, it was assumed that when Metropolitan Toronto would no longer be capable of accommodating metropolitan development within its borders, it would then be time to reconsider and redraw the borders to control areas where comprehensive planning and control were needed.<sup>25</sup>

This fairly pragmatic concept seemed to be the policy of the government of Ontario - when new needs developed new reforms would occur so that a regional municipality would "be responsible for planning the broad, overall physical and economic framework for regional growth,"<sup>26</sup> so that the boundaries of planning areas would "correspond with the boundaries of the new regional municipality,"<sup>27</sup> and that these boundaries which shaped regional governments would cover "the urban centre and its rural hinterland both of which are, in fact, mutually dependent."<sup>28</sup>

Moreover, these views were in keeping with recommendations of The Ontario Committee on Taxation which were accepted formally by the government of Ontario and drawn up as a design for the development of the various regions of the province through the creation of regional governments.<sup>29</sup> The goal of these limited views on planning in fact were encompassed in a wider goal, adopted by the province, that local government reform in the provinces should attempt to create strong and independent local governments similar to that outlined above.<sup>30</sup> In attempting to create

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<sup>23</sup> CUMMING, DECISIONS AND RECOMMENDATIONS OF THE ONTARIO MUNICIPAL BOARD 86 (1953).

<sup>24</sup> *Id.* at 87.

<sup>25</sup> *Supra* note 22.

<sup>26</sup> *Supra* note 21, at 6.

<sup>27</sup> *Id.* at 13.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> THE ONTARIO COMMITTEE ON TAXATION REPORT (1967)

<sup>30</sup> See ONTARIO BUDGET 1971-65 for a summary of the goals of municipal reform.

such governments, the province enunciated the criteria for the establishment of a regional or metropolitan government. The new jurisdiction should exhibit: a sense of community; a balance of interest; an adequate financial base; a geographical area large enough so that local responsibilities including planning could be performed efficiently; and so that boundaries could make possible maximum cooperation between regions, as well.<sup>31</sup>

A number of attempts have been made to define the "Toronto Region" for numerous purposes. The initial definition in 1953 was the thirteen southern-most municipalities of the County of York,<sup>32</sup> although such a definition obviously cannot fulfil the criteria listed above; those criteria nevertheless limit the potential range of possible definitions of a Metropolitan Toronto Region for the purposes of local government.

From 1953 to the late 1960's the Metropolitan Toronto Region was tentatively defined by the Minister of Planning and Development through the establishment of the Metropolitan Toronto Planning Area composed of Metropolitan Toronto and thirteen municipalities from three surrounding counties. It was not very successful not only because the province failed to give the planning authority any real power,<sup>33</sup> but because the Minister in defining the area failed to include one of the other major growth centres of the Toronto community,<sup>34</sup> which was "contiguous to it and profoundly affecting its amenities and ecology."<sup>35</sup>

Moreover, the Ontario Water Resources Commission, a provincial crown agency, constructed an 88 million dollar sewer line to that centre, in order to facilitate a population increase of 560,000. The agency, thus totally altered the composition, not only of that particular locale, but of the Toronto planning area without any reference to the Toronto Planning Area's desires or plans.<sup>36</sup>

The province, however, has defined the Metropolitan Toronto Region in other ways for other purposes. A useful definition based on watersheds was adopted for the Metropolitan Toronto and Region Conservation Authority,<sup>37</sup> an inter-municipal agency composed of Metropolitan Toronto and numerous surrounding municipalities, who together engage in conservation and recreational projects.<sup>38</sup> The province included under the authority's jurisdiction most of the important watercourses draining the Toronto

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<sup>31</sup> REPORTS, DESIGN FOR DEVELOPMENT: PHASE TWO, A STATEMENT BY THE PRIME MINISTER OF ONTARIO TO THE LEGISLATURE 2 (1968).

<sup>32</sup> Planning Act, ONT. REV. STAT. c. 349 (1970).

<sup>33</sup> *Id.* §§ 12 and 13 allowed for only voluntary planning agreements between the various municipalities.

<sup>34</sup> That area was the Township at Chinguacousy and the Town of Brampton.

<sup>35</sup> Metropolitan Toronto Planning Board, Regional Planning and Government in the Toronto Region: A Position paper 8 (Unpublished 1970).

<sup>36</sup> LITHWICK, URBAN CANADA, PROBLEMS AND PROSPECTS 37 (1970).

<sup>37</sup> Conservation Authority Act, ONT. REV. STAT. c. 78, § 4(3) (1970) defines participating municipalities.

<sup>38</sup> *Id.* § 15 gives the Authority very broad powers.



area into Lake Ontario with one significant exception to the west of Metropolitan Toronto.<sup>39</sup> As a result the entire west side of the Metropolitan Toronto area was deprived the fiscal resources of Metropolitan Toronto which sustain the extensive flood control, conservation and recreational open space programmes of the Metropolitan Toronto and Regional Conservation Authority. The result was a corresponding loss of natural amenities to a major part of the area.<sup>40</sup>

Another provincial definition of the region can be found in the Provincial report, *The Metropolitan Toronto and Region Transportation Study*, which attempts to develop a provincial transportation policy for the region. This plan, however, ignores any commitment to the concept of a sense of community and thus covers an area much too wide to be suited for a metropolitan government.

The province has thus not attempted in any rational way to define Metropolitan Toronto for local government purposes. In maintaining the present structure, it has neglected the interrelations of Metropolitan Toronto with its surrounding area; it has not looked at the direct influence of Metropolitan Toronto on its hinterland; nor has it considered any influence by the latter on the federation. Although no hard and fast rules or detailed tests can be developed to ascertain what exactly should be encompassed in a metropolitan federation, obviously, the use of existing developed municipalities is not sufficient.

The Metropolitan Toronto Planning Board has selected some factors that might be examined to evaluate the interdependency of municipal units and thus the optimum size for a federation. The selection of factors is not meant to be definitive, nor will it lead to a final answer to what should be within a metropolitan region and what without. But it gives factors which may be strong indications of a community of interest and economies of physical interdependence that should be used in creating a municipal federation. Any plan to reform municipal boundaries within metropolitan areas must consider such criteria for the use of senior governments, rather than a simple concentration on internal structural and functional reform.

This situation in Metropolitan Toronto reveals a total lack, on the part of the province, to respond to such standards. The standards suggested are population interaction between the federation and neighbouring municipalities; metropolitan investment in the surrounding areas; physical links between the two areas; and lastly the social, economic and fiscal needs of

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<sup>39</sup> *Id.* § 4(4) excepted the Credit River just west of Toronto from the Authority's jurisdiction.

<sup>40</sup> *Supra* note 35, at 9. For example to the west of Metropolitan Toronto a watercourse, marshes and the wildlife habitat of an area known as Pattroy Estate was reclaimed and developed privately for subdivision purposes. The local governments and conservation authority were too weak to prevent this and the province was unwilling to create a provincial park. In contrast to this, east of Metropolitan Toronto a comparable area was purchased by the Metropolitan and Toronto Region Conservation Authority and the resource preserved.

the core community and its hinterland.<sup>41</sup> Each of these may now be dealt with in detail.

The Metropolitan Toronto Planning Board suggests that population interaction as seen in job location and origins and destination of automobile trips can give at least some indication of how closely areas are bound to each other. A study done in 1964 shows that 58% of the people in the four major municipalities immediately neighbouring Metropolitan Toronto held jobs in Metropolitan Toronto while strong social relationships with the federation were also discerned.<sup>42</sup> A further study also showed strong links between surrounding areas and the federation.<sup>43</sup> Although not absolute, the data does indicate a thorough social integration and economic interdependency between the federation and its immediate neighbours unrecognized by provincially established local government boundaries.

Metropolitan Toronto's investment in the region surrounding its borders can be seen in terms of the Metropolitan Toronto and Region Conservation Authority to which the Municipality of Metropolitan Toronto contributes almost one million dollars annually<sup>44</sup> as its share, and for which it has borrowed over 11 million dollars since 1954.<sup>45</sup> Metropolitan Toronto has invested heavily in the development of "The Waterfront Plan for the Metropolitan Toronto Planning Area,"<sup>46</sup> although only half the waterfront area is within its jurisdiction; while in 1970 it was obliged to pay 1,110,654 dollars<sup>47</sup> to the County of York, immediately to the north of its borders, for a road system which the county alone, because of its inadequate revenue base, could not construct or maintain.

The resources of Metropolitan Toronto have been made available in other ways to overcome provincial failure to make metropolitan government correspond to metropolitan needs. Significant parts of the sanitary sewage of the municipalities northwest of Metropolitan Toronto are being drained through the Metropolitan Toronto system because over-sizing was done within the Metropolitan system at Metropolitan expense for this purpose. This allowed for residential and industrial development that the financially weaker municipality could not have undertaken; similar action has been taken with respect to three other municipalities. A further problem that is developing is that of water supply. Municipalities north of Metropolitan Toronto, cut off from the lake, without aid from "Metro" will find themselves without sufficient water for urban development. Metropolitan Toronto is presently undertaking the development of its northern water servicing and

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<sup>41</sup> *Id.* at 11.

<sup>42</sup> *Id.* at 12.

<sup>43</sup> FIELD & KERR, *GEOGRAPHICAL ASPECTS OF INDUSTRIAL GROWTH IN THE METROPOLITAN TORONTO REGION* (1968).

<sup>44</sup> MUNICIPALITY OF METROPOLITAN TORONTO, *ANNUAL REPORT* 56 (1970).

<sup>45</sup> *Id.*

<sup>46</sup> METROPOLITAN TORONTO PLANNING BOARD, *METROPOLITAN TORONTO WATERFRONT ADVISORY COMMITTEE REPORT* (1967).

<sup>47</sup> *Supra* note 44, at 56.

to best serve the needs of those municipalities it should incorporate them into its system. The financing and legal jurisdiction, however, is not present.<sup>48</sup>

The purpose of this long recitation of geographic problems has been to emphasize the need for functional metropolitan boundaries to be created by state or provincial governments. The federation of existing developed areas for efficiency and fiscal strength is not enough. These problems in the Metropolitan Toronto federation indicate that the social, economic and physical community should be considered.

But this discussion indicates more than a method of drawing boundaries or criterion for an ideal metropolitan community. At issue here really is the survival of a metropolitan federation as a viable solution to urban problems in Toronto. A report of the Metropolitan Planning Board in 1966<sup>49</sup> on the use of land in the Metropolitan Planning Area indicated that in 1966, 77 percent of the total urban acreage of 148,973 acres was developed, and 23 percent was vacant. Between 1963 and 1966, 7868 acres of vacant urban land were developed representing a decline of 18 percent in vacant land.<sup>50</sup> It was then projected that land designated for residential use would be fully developed by 1976, although land for industrial use might be available for development for some time after that date.<sup>51</sup> In the fringe municipalities surrounding the federation 79.1 percent (242,568 acres) of the land was vacant and had development potential.<sup>52</sup>

The results of this survey indicate that urban growth demands generated by Metropolitan Toronto can no longer be completely satisfied within Metropolitan Toronto. There is not sufficient land within Metropolitan Toronto to provide new private family housing beyond 1976, and none to provide any, at a price within reach of much of the population.<sup>53</sup> To satisfy Metropolitan Toronto's needs for 35,000 public housing units, the Ontario Housing Corporation will undoubtedly have to look beyond the federation's boundaries. Metropolitan Toronto, in fact, will depend on the entire Toronto community for its housing needs.<sup>54</sup>

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<sup>48</sup> Metropolitan Toronto Planning Board, *Regional Planning and Government in the Toronto Region: a Position Paper 15* (Unpublished 1970). The report notes metropolitan oversizing and trunks in order to service parts at Mississauga, Vaughan Township, Village of Woodbridge and Markham Township.

<sup>49</sup> METROPOLITAN TORONTO PLANNING BOARD, *METROPOLITAN PLANNING REVIEW REPORT NO. 1 EXISTING LAND USE 1966* (1966).

<sup>50</sup> *Id.* at 2.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *Id.*

<sup>53</sup> "Private new single family housing within Metropolitan Toronto costs \$40,000 (of that, land amounts to \$13,000-\$14,000). This is too expensive for low cost family housing for the Ontario Housing Corporation." Interview with John Bower, Deputy Planning Commissioner of Metropolitan Toronto, by a representative of the Task Force on Low Income Housing of the Central Mortgage and Housing Corporation, in Toronto, June 25, 1971.

<sup>54</sup> Interview with W. Wronski, Planning Commissioner of Metropolitan Toronto, in Toronto, June 23, 1971.

The corollary of an inadequate land supply within Metropolitan Toronto, as approximately 55,000 persons per year migrate to the municipality, is the necessity of new development in surrounding areas. Unless such lands come quickly, the consequences could be serious for the core of the federation, as development pressures are reflected back on Metropolitan Toronto and especially its centre.

Proposals to redevelop the older parts of the City of Toronto to provide such (non-family) housing have become common, and the City of Toronto is repeatedly faced with unpopular zoning applications to permit apartment redevelopment as a means of increasing the housing stock of the region. The disproportionate burden of urban development activity placed in the City of Toronto by the financial inability of municipalities outside Metropolitan Toronto to shoulder their share of the new growth of the region, has frequently tended to lead to the disruption of otherwise stable residential neighbourhoods, community unrest, the deterioration of the residential environment, and the ultimate and inevitable loss through redevelopment of a major portion of the existing stock of older homes, especially in the City's immigrant reception areas. To accommodate these redevelopment pressures, the City of Toronto found it necessary to renew substandard parts of its infrastructure perhaps many years earlier than would otherwise have been required, to make adjustments in its school system, and to defer or extend many desirable programs to make significant improvements in its parks and public open spaces and to rehabilitate the urban environment generally.<sup>55</sup>

As the supply of industrial land within the municipality of Metropolitan Toronto becomes depleted the economic growth of the municipality may also suffer if servicing of industrial lands is not undertaken outside the federation. Yet once again those areas do not have the resources, physical or fiscal, to undertake that task. Moreover, given the present reliance on property taxation as the basis of local government revenue, without a strong industrial base those municipalities will not be able to meet the future needs of their citizenry.<sup>56</sup> Thus, both the federation and the surrounding municipalities will suffer; the federation unable to meet the needs of growing urbanization within its borders, and the fringe municipalities unable to serve as a viable alternative without, as political fragmentation is allowed to continue by the province.

The result of such developments has been in effect a serious challenge to the metropolitan federation and a return to a situation similar to that before the federation was established.<sup>57</sup> In summary, development pressures are putting an end to the usefulness of the original federation while surrounding areas are still relying on it for employment, and the financing of services and environmental protection. But present boundaries drawn by the province preclude the optimum cooperation and efficiency that is needed for the Metropolitan Toronto Region to solve its problems. The region is not structured to govern "major urban centres and surrounding areas which together share social, economic, and physical services"<sup>58</sup> although this is publicized provincial policy.

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<sup>55</sup> *Supra* note 48, at 19.

<sup>56</sup> *Id.* at 20.

<sup>57</sup> The Globe and Mail (Toronto), December 27, 1971.

<sup>58</sup> *Id.*

Provincial response indeed has been to encourage and promote separate governments in the region. A (sub) regional government for the County of York has been created to the north of Metropolitan Toronto, the city of Mississauga to the east, and plans for another regional government to the west are being drawn up.<sup>59</sup> The province, it must be said, however, has developed a plan although not a government for the Toronto Region,<sup>60</sup> by which it hopes to establish other growth centres and ease development pressures centered on the federation but neither the plan nor its status report released one year later has suggested any way by which to accomplish such a task.<sup>61</sup>

Moreover, the programme to establish "regional" governments within the Toronto region has been criticized by the Board of Trade of Metropolitan Toronto.

The Balkanization of Toronto's effective urban region into five or six areas with independent planning and administrative powers will lead to disruptive rivalries and competitive planning, where as the vital need is for coordination and cooperation. Problems of water supply and pollution control, major roads and public transport, large parks and open spaces, the proper designation of land use, etc. cannot be solved except by planning and administration in a truly regional scale. Political considerations are undoubtedly involved, but these should be subservient to the basic physical needs of this vital region of the province.<sup>62</sup>

The problem surprisingly enough is likened to the situation of a central city surrounded by suburbs,<sup>63</sup> although the financial disparities are reversed.

This issue is an important one for those advocating metropolitan reform, for internal restructuring of developed urban areas is not enough for desirable metropolitan governments. If provisions are not made for metropolitan control of the surrounding dependent and interrelated areas at the time of inception, or for the metropolitan federation to annex new areas as needs demand, then urban centres within federated systems may find themselves in precarious positions soon after the utopia of metropolitan government has arrived. The adaptability which is required of senior governments to implement a federated system demands more than unifying mature urban areas. It demands positive criteria as those outlined by the province of Ontario and the Metropolitan Toronto Planning Board; but moreover, it demands faithful and prompt adherence to those criteria. Senior governments seeking local government reform to solve existing problems must look into the future and provide for automatic changes implemented by

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<sup>59</sup> *The Globe and Mail* (Toronto), September 25, 1971

<sup>60</sup> See, *DESIGN FOR DEVELOPMENT: THE TORONTO-CENTRED REGION* (1970).

<sup>61</sup> The proposed development of a new airport and city in Pickering to the east of Metropolitan Toronto has recently been suggested as a method to encourage implementation of the report.

<sup>62</sup> Board of Trade of Metropolitan Toronto, *A Position Paper on Regional Planning, Growth and Government* 19 (Unpublished 1969).

<sup>63</sup> Interview with John Bower, Deputy Planning Commissioner of Metropolitan Toronto, by a representative of the Task Force on Low Income Housing of the Central Mortgage and Housing Corporation, in Toronto, June 25, 1971

themselves or by the metropolitan federations. More specifically, if metropolitan federations are going to carry out planning in any meaningful way, that is, on a regional basis, federation boundaries must conform with planning areas to a large extent. The forces of the market in development are difficult to control by traditional land use methods within government jurisdictions;<sup>64</sup> outside of those jurisdictions control is virtually impossible. Concurrent with this problem is the fact that servicing is the backbone of any development. Without local government jurisdiction corresponding to areas needed for new development, metropolitan federations will not succeed.

## *B. Housing and the Metropolitan Toronto Federation*

### *1. 1953-1964*

Whereas thus far this paper has concentrated on planning and boundaries in Metropolitan Toronto and touched on housing indirectly, an attempt will now be made to deal with housing in some detail. In 1964 an analysis of the Metropolitan Toronto Federation<sup>65</sup> stated one of the major failures of the metropolitan scheme was that of supplying adequate low income housing.<sup>66</sup> Section 217 of the Metropolitan Toronto Act of 1953<sup>67</sup> conferred upon the Metropolitan Corporation all the powers of a municipality under the Housing Development Act,<sup>68</sup> or any other act with respect to housing, building development, housing projects or redevelopment areas, without limiting or interfering with the powers of the local municipalities in these matters.<sup>69</sup> Section 218 authorized Metropolitan Toronto to enter into agreements with a local municipality for sharing or contributing to its cost in the exercise of its powers in the matter of housing.

It is necessary to put the federation's power during this period into a broader context. At this time, although public housing was technically within exclusive provincial jurisdiction<sup>70</sup> "[o]n the whole, provincial governments [had] been, willing to leave to the Federal Parliament the problem of providing a housing supply which [was] socially acceptable and to the municipal government the responsibility of determining the physical limits to which housing should be subject."<sup>71</sup> The federal government, then,

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<sup>64</sup> Discussed in, *Zoning: Problems and Avenues of Reform* (unpublished paper by the author).

<sup>65</sup> Rose, *A Decade of Metropolitan Government in Toronto*, 13 BUFFALO L. REV. 539 (1969).

<sup>66</sup> *Id.* at 548.

<sup>67</sup> Municipality of Metropolitan Toronto Act, Ont. Stat. 1953 c. 260, § 217.

<sup>68</sup> ONT. REV. STAT. c. 213 (1970).

<sup>69</sup> It is beyond the scope of this paper to examine the inter-municipal problems of public housing in Metropolitan Toronto. For an indication of some of the difficulties see Bence, *Thistle-town: An Example of Federal-Provincial Partnership in Land Development*, 9 OSGOODE HALL, L.J. 313, at 322-28 (1971).

<sup>70</sup> B.N.A. Act, § 92(13).

<sup>71</sup> Wilson, *Canadian Housing Legislation (1958-59)*, in 1-2 CANADIAN PUBLIC ADMINISTRATION 214.

through its National Housing Act 1944<sup>72</sup> provided incentive for the provinces to assume an active role. Section 35 of that act provided for the financing of housing projects on a 75:25 federal-provincial cost sharing ratio. The provinces in turn could allocate their part of the financial burden under this programme between themselves and the municipality in which the programme occurred. It was customary in the case of Ontario that the provincial burden be shared on a 70:30 ratio with the municipality, thus providing for a total division of financing as follows; 75 percent federal, 17½ percent provincial and 7½ percent municipal.<sup>73</sup> The municipal share in the case of Metropolitan Toronto was to be carried by the federation.

Under this scheme only 1,578 units of public housing were built prior to 1964 in Metropolitan Toronto. Metropolitan participation was through its agency, the Metropolitan Toronto Housing Authority, which administered the projects on a subsidy basis. It is obvious that the federation failed to make any substantial contribution in this field especially given an estimated need of 30,000 units in 1964.<sup>74</sup> But it is also obvious that the cause of the failure was not the federation.<sup>75</sup> The main impetus for any development had to come from the province; only a province was allowed to be in partnership with the federal government.<sup>76</sup> There was no room for federation initiative, and the failure of the scheme on a nation wide basis can be seen in that no public housing project was approved by a federal-provincial partnership in Canada between 1959 and 1963.<sup>77</sup>

Moreover, Metropolitan Toronto attempted to encourage the senior levels of government to build public housing within its borders. In 1961 when the federal-provincial partnership was going to develop vast acreages assembled ten years earlier for public and moderate income housing purposes, not only was it Metropolitan Toronto which provided external servicing to open the area for development,<sup>78</sup> but it was only at the federation's request for public housing that 15 percent of the lands were devoted to that purpose.<sup>79</sup>

As well, when the federation was independent of the senior governments its "record in the field [was] very good."<sup>80</sup> Under section 16 of the National Housing Act, the Metropolitan Toronto Housing Authority, a non-profit

<sup>72</sup> Can. Stat. 1944 c. 46 as amended Can. Stat. 1949 c. 30, § 9

<sup>73</sup> *Supra* note 69, at 328.

<sup>74</sup> Rose, *A Decade of Metropolitan Government in Toronto*, 13 BUFFALO L. REV., 539, at 550 (1969).

<sup>75</sup> *Id.* and H.C. GOLDENBERG, REPORT OF THE ROYAL COMMISSION ON METROPOLITAN TORONTO 52 (1965).

<sup>76</sup> See *supra* note 72 and accompanying text.

<sup>77</sup> The Globe and Mail (Toronto), Oct. 18, 1968.

<sup>78</sup> Federal-Provincial Land Assembly in Ontario 31. (An unpublished Report for the Task Force on Low Income Housing of the Central Mortgage and Housing Corporation by the author (1971).

<sup>79</sup> *Id.* at 21.

<sup>80</sup> H.C. GOLDENBERG, *supra* note 75.

company wholly owned by the Metropolitan Corporation, borrowed under the limited dividend loan provisions of that section for the construction of housing for the elderly. By 1964, 2000 low rental apartments had been constructed for the elderly and more than 2,000 beds made available in Metropolitan Homes for the aged, a 90 percent increase in accommodation since 1953.

## 2. 1964-1971

In 1964 the National Housing Act was amended<sup>81</sup> to include provisions for financial assistance to a province or municipality in order to acquire or service land for housing purposes to a maximum loan of 90 percent of the total cost repayable within fifteen years. By virtue of section 35(d), the federal government could make loans to a province or municipality "for the reconstruction or acquisition of a public housing project to a maximum loan of 90% payable within fifty years", and lastly the new amendments provided for a federal subsidy for the operating losses of public housing projects up to 50 percent of the annual operating loss.<sup>82</sup> The basis was thus laid for the first time for independent municipal activity in this area.

However, it was in August of 1964 that the Ontario Housing Corporation<sup>83</sup> was formed by the province to replace all municipal activity with respect to public housing. The Municipality of Metropolitan Toronto was left only with the task of providing housing for the elderly. The purpose of establishing the Ontario Housing Corporation was, of course, obvious; the need to centralize and coordinate the housing effort within the province. Moreover, the municipalities, including Metropolitan Toronto, with their revenue bases restricted to property taxation did not have the financial capabilities to be involved in major public housing projects under the federal provisions.

The problems with this provincial approach are also fairly obvious in the case of Metropolitan Toronto. The federation had a housing needs study completed in 1969,<sup>84</sup> and on the basis of that study requested that the Ontario Housing Corporation provide 3,500 public housing units per year from 1971 to 1981. The Ontario Housing Corporation has so far been unable to meet this goal. In 1972 the construction of 2,500 units was projected<sup>85</sup> while the number of families on Ontario Housing Corporation's waiting list for admittance in Metropolitan Toronto seems to stand at approximately 17,000.<sup>86</sup> One of the main problems in developing new projects is the lack

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<sup>81</sup> Can. Stat. 1964-65, c. 15, § 35(c).

<sup>82</sup> *Id.* § 35(e).

<sup>83</sup> Ontario Housing Corporation Act, 1964 Ont. Stat. 1964 c. 76.

<sup>84</sup> METROPOLITAN TORONTO PLANNING BOARD, THE PATERSON STUDY ON HOUSING NEEDS (1969).

<sup>85</sup> The Globe and Mail (Toronto), Oct. 18, 1968.

<sup>86</sup> ONTARIO HOUSING CORPORATION, ANNUAL REPORT 7 (1969).



of suitable land within Metropolitan Toronto.<sup>87</sup> This problem has already been discussed.<sup>88</sup>

Another problem in the development of public housing sites, however, has been local citizen opposition as new high density developments are put into areas on behalf of the Ontario Housing Corporation with no regard for the ability of pre-existing resources within the community to meet public housing needs. Public housing projects are not coordinated or adapted to Metropolitan planning, social or educational services. A recent decision by the Ontario Municipal Board approving a public housing project within Metropolitan Toronto in spite of overcrowded schools is indicative of this problem.<sup>89</sup> The Board noted the existence of such difficulties and suggested co-ordinating efforts between the Ontario Housing Corporation and the Provincial Department of Education. The Board's solution seems far from satisfactory in that the Metropolitan Toronto Planning Board, Metropolitan Toronto Board of Education, and the Metropolitan Toronto Council would be the most obvious bodies to ensure adequate social, recreational and educational facilities.

There is no indication of a bias on the part of the federation against public or low income housing projects. Indeed, the federation recently reorganized its five year capital budget in order to service 1,795 areas of federal-provincial land holdings in the northeastern section of Metropolitan Toronto so that public and low income housing could be provided.<sup>90</sup> Once again the need for Metropolitan participation is shown, for, although the Ontario Housing Corporation (in conjunction with the federal government) will finance internal development of the project, Metropolitan Toronto's capital financing budget was put in disarray to accommodate senior levels of government who suddenly decided they wished to start development.<sup>91</sup>

Moreover, while Metropolitan Toronto was willing to further facilitate development through shouldering the burden of internal storm sewage construction in this development through the Metropolitan Toronto and Region Conservation Authority (when ordinarily this would be paid for by senior governments), the province of Ontario vetoed the scheme for it wished the federal government to bear a heavier proportion of the construction costs. The project was, thus, delayed and has been delayed even more by disagreements between the two senior governments as each tries to elicit political gain from the project.<sup>92</sup> Meanwhile Metropolitan Toronto, desperately in need of more developed land and housing, suffers.

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<sup>87</sup> *Id.*

<sup>88</sup> See note 53 *supra* and accompanying text

<sup>89</sup> *In re Protter*, Ontario Municipal Board R-3118-70, at 3264-70, 3326-70

<sup>90</sup> Federal-Provincial Land Assembly in Ontario 36 (An unpublished Report for the Task Force on Low Income Housing of the Central Mortgage and Housing Corporation by the author 1971).

<sup>91</sup> *Id.* at 41.

<sup>92</sup> *Id.* at 42.

Moreover, in the area of housing for the elderly, Metropolitan Toronto has continued to perform excellently.<sup>93</sup> By 1971 the Metropolitan Toronto Housing Authority had a 51,000,000 dollar housing programme consisting of fifty-four apartment buildings with four more projects under construction and nearly completed. Furthermore, the Metropolitan Federation was paying an 800,000 dollar per year tax subsidy on the buildings to the local municipalities so that the Housing Authority would not have to pay taxes.<sup>94</sup> In November of 1971, after many years of encouragement by the province, this last aspect of Metropolitan Housing was turned over to the Ontario Housing Corporation.<sup>95</sup>

It would seem from the experience of Metropolitan Toronto in terms of providing housing for the elderly, and its willingness to participate voluntarily in public housing schemes, that it has the expertise and willingness to be involved in the housing field. The Ontario Housing Corporation, of course, had great success, not only in building public housing, but also student housing and moderate income housing through its Home Ownership Made Easy Plan,<sup>96</sup> and its condominium developments. Yet, within Metropolitan Toronto its success is limited, not only because of problems of coordinating developments within the local area, but also because it is used in the Canadian context as a tool in provincial-federal rivalry. And most importantly, its success is limited because housing is a vital part of urban development and servicing, and needs to be part of a coordinated effort within a metropolitan region. By effectively preventing any metropolitan participation or control over housing, the province has prevented the attainment of optimum results for its housing efforts. Given adequate financial resources and geographical base, there is little need, it is suggested, for provincial involvement with respect to housing within the metropolitan area.

### C. Transportation

The Metropolitan Corporation assumed jurisdiction over all major roads and established an arterial system of highways. With assumption of the arterial system, the metropolitan government has been able to institute an area wide traffic control system which is one of the most advanced in North America. All public transit (except trains, planes, and taxis) in the metropolitan area is operated by the Toronto Transit Commission, whose members are appointed by the Metropolitan Council. The public transit system comprises an integrated network of subway, street car, and bus lines, which carries over one million passengers an average weekday.<sup>97</sup>

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<sup>93</sup> The Globe and Mail (Toronto), November 19, 1971.

<sup>94</sup> The Globe and Mail (Toronto), June 25, 1971.

<sup>95</sup> *Supra* note 93.

<sup>96</sup> The H.O.M.E. Plan in Ontario consists of renting freehold with a ninety percent mortgage on the dwelling through the Ontario Housing Corporation. Renting can continue in perpetuity although at any time after five years the freehold may be purchased at the original market price. The scheme attempts to reduce land costs through the rent and immediate construction costs through the mortgage.

<sup>97</sup> COMMITTEE FOR ECONOMIC DEVELOPMENT, *RESHAPING GOVERNMENT IN METROPOLITAN AREAS* 75 (1970).

The Committee on Economic Development seems to view Metropolitan Toronto's transportation system as almost ideal, and indeed this was probably the view of most observers until fairly recently. The Metropolitan Toronto area was to be developed according to the Metropolitan Transportation Plan<sup>98</sup> which called for and outlined the proposed development of 175 miles of expressways and 29 miles of rapid transit lines.<sup>99</sup> That plan has now been abandoned with nothing to replace it. The Transportation Committee of Metropolitan Toronto, and the Roads Department and Toronto Transit Commission under it are no longer developing policy. The initiative in the transportation field, both private and public, to a large extent, has been usurped by the province.

Although Metropolitan Toronto assumed jurisdiction over arterial roads within the metropolitan area, and although it established major expressways until 1970 without interference; its jurisdiction to do so was not unfettered, for subsidies of 50 percent of road construction and maintenance were payable by the province upon provincial approval of the project. The Municipality of Metropolitan Toronto Act reads as follows:

69.(1) The Metropolitan Corporation shall submit a by-law concerning the estimated expenditure on metropolitan roads for the calendar year to the Department [of Highways] for the Minister's approval....

(3) No subsidy shall be granted by the Department for work undertaken by the Metropolitan Corporation that has not been provided for by a by-law duly approved by the Minister.

The act further provides:

73. Every road constructed or repaired as part of the metropolitan road system shall be so constructed and repaired in accordance with the requirements of the Minister.<sup>100</sup>

Thus, the province always had the right to make ultimate decisions regarding roads and highways although it remained mainly in the background.<sup>101</sup> This situation changed in 1971 with what in Toronto is now the famous "Spadina Decision". A little background is necessary. In accordance with the Metropolitan Transportation Plan, the federation had undertaken the construction of an expressway and rapid transit line. The Corporation had already spent 75,500,000 dollars on the project and one major inter-change and a few miles of expressway had been completed.<sup>102</sup> As a result of borrowing requirements imposed on the municipality, it was obliged to seek authorization from a provincially appointed agency, The Ontario Municipal Board. The Ontario Municipal Board Act<sup>103</sup> requires approval of any municipal debt in the following way:

<sup>98</sup> METROPOLITAN TORONTO PLANNING BOARD, THE METROPOLITAN TRANSPORTATION PLAN (1964).

<sup>99</sup> *Id.*

<sup>100</sup> Municipality of Metropolitan Toronto Act, ONT. REV. STAT. c. 295 (1970)

<sup>101</sup> The Globe and Mail (Toronto), June 4, 1971

<sup>102</sup> The Globe and Mail (Toronto), September 9, 1970

<sup>103</sup> ONT. REV. STAT. c. 323 (1970)

64.(1) Notwithstanding the provisions of any general or special Act, a municipality shall not,

- (a) authorize; or
- (b) exercise any of its powers to proceed with; or
- (c) provide any moneys for,

[any undertaking, work, project, scheme, or matter or thing, the cost or any portion of the cost of which is to be,]

- (d) raised in a subsequent year or years; or
- (e) provided by the issue of debentures,

[until the approval of the Board has first been obtained.]

The scope of the inquiry that the board may undertake is found in section 62 of the same act.

The Board . . . shall . . . make such inquiry into the nature of the power sought to be exercised or undertaking that is proposed to be or has been proceeded with, the necessity or expediency of the same, the financial position and obligations of the municipality, the burden of taxation upon the ratepayers and into all other relative matters, as in the opinion of the Board may appear to be necessary or expedient.

The Board in simple terms has a "carte blanche" to examine every project that requires long term financing on its merits, or on the financial ability of the municipality, or indeed on any issue it wishes. Although the necessity and expediency of the Spadina Expressway had been discussed, and borrowing for the first 75,500,000 dollars expenditure had been approved, the Board reopened the entire issue when Metropolitan Toronto asked in 1970 for approval of additional borrowing, and the Board rejected the argument that only the fiscal capacity of Metropolitan Toronto should be examined. Indeed the financial ability of the federation to pay for the project was doubted by few. At any rate, the Board approved the project and the decision was appealed to the Provincial Cabinet under section 92 of the Ontario Municipal Board Act.

The cabinet then reversed the decision of the Board, denied the federation the authorization to build the expressway and negated the Metropolitan Transportation Plan with this first active participation in controlling transportation in Metropolitan Toronto. This step was taken after encouraging highway transportation through a 50 percent subsidy for construction and maintenance as opposed to a 21 percent subsidy of the capital costs and no subsidy of the operating costs of rapid transit.<sup>104</sup> The change came suddenly, and was a shock to metropolitan planners and politicians who felt that the very foundations of the municipality's authority had been shaken,<sup>105</sup> as its ability to plan on any rational basis, even within its own territorial jurisdiction, was in jeopardy.

The extent to which the province is increasingly usurping transportation planning within Metropolitan Toronto can be seen by new provincial involvement in the area. The province announced a new and

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<sup>104</sup>The Globe and Mail (Toronto), June 29, 1971.

<sup>105</sup>The Globe and Mail (Toronto), November 21, 1971.

increased subsidy for rapid transit construction and operation. The province is to pay one half the cost of construction and equipment costs of public rapid transit and is to subsidize one half of the operating losses. Moreover, 14,000,000 dollars was allocated immediately to aid the financing of the subway currently under construction, with more aid promised. The senior government, however, made all subsidies contingent on an examination of the rapid transit system by the Minister of Transportation and Communication. Thus, rather than an unconditional per capita grant for operating subsidies, it made payments conditional upon provincial involvement, interference and control.<sup>106</sup> Indeed, as plans are being developed, for a new subway route, and to revise the Metropolitan Transportation Plan, half of the members on the committee set up to draft the plans represent the province.<sup>107</sup>

The goal of a responsive and accountable local government seems to shrink further and further into the background, as the same province which announced the goal involves itself in shaping policy for the internal development of the Metropolitan Federation. Surely the existence of such provincial organizations as the Ontario Municipal Board are enough to cast serious doubt on such a goal; the active participation by the province, however, strongly questions the validity of Metropolitan Toronto as a meaningful local government.<sup>108</sup>

#### D. Education

J. Stefan Dupré states that education in Ontario today is marked by at least three important characteristics.<sup>109</sup> The most important of these is, perhaps, the characteristic of a shared responsibility for education by the two levels of government, provincial and local. A partial list of those aspects of education which are a provincial responsibility might include: curriculum, textbooks, length of the school year and day, compulsory attendance, teacher training, and qualifications, and overall organization of the school system. The ordinary school board, for its part, is important in hiring teachers, determining the size of classes, constructing and maintaining buildings, and within provincial limits, setting standards for salaries and special classes.

When Metropolitan Toronto was first formed in 1953, the Metropolitan School Board's task was providing the local boards with maintenance payments. This has since been altered to provide them, through a Metropolitan wide tax levy, with the funds necessary for a basic metropolitan-wide education programme. The Metropolitan Board is responsible for receiving,

<sup>106</sup> *Supra* note 104

<sup>107</sup> *The Globe and Mail* (Toronto), October 5, 1971

<sup>108</sup> This point would seem valid regardless of the merits of expressways within urban centres and Metropolitan Toronto's views on the merits

<sup>109</sup> DUPRÉ, *INTERGOVERNMENTAL FINANCE IN ONTARIO: A PROVINCIAL-LOCAL PERSPECTIVE* 111 (1967) (a study prepared for the Ontario Committee on Taxation). This report concentrates mainly on provincial-municipal relations excluding Metropolitan Toronto

altering, approving, or rejecting the operating budgets of the local boards, and for receiving and distributing all provincial grants for school purposes. In essence then, the Metropolitan Board shares with the province the financing of education within the federation.

Although Dupré may view this dual financial input as a sharing of financial responsibility, the province is certainly the senior of the two partners and exercises considerable control over education within the Metropolitan area, not only through its traditional authority over curriculum etc., mentioned above, but also through its grant structure.

The provincial grants to the Metropolitan Board consists of two parts: a grant for ordinary (operating) expenditures and a grant for extraordinary (capital) expenditures.

A grant for ordinary expenditures is calculated in the following way. Ordinary expenditure up to a certain ceiling is termed recognized ordinary expenditure and is eligible for a grant at the board's ordinary expenditure grant rate. The ceiling is established by the province. The recognized ordinary expenditure concept seems to have its origins in the 1940's when the province introduced the concept of "approved costs" into its grant structure. Those costs were defined as "the cost of operating the school or schools for the preceeding calendar year as determined by the board, and approved by the Minister."<sup>110</sup> This system meant in fact that the province was free to establish maximum costs for grant purposes. The items varied within the education structure, *i.e.*, between types of schools but not between municipal areas. The recognized ordinary expenditure, thus, is the maximum cost established by the province for all schools across the province for the purposes of establishing provincial grants.

That ceiling in 1971 was the lesser of 545 dollars for elementary schools, and \$1060 for secondary schools per pupil, or the 1970 recognized ordinary expenditure per pupil increased by \$75 for elementary and secondary schools.<sup>111</sup> This then is the foundation or basic grant available to all municipalities including Metropolitan Toronto.

There, then, is added to this an equalizing formula so that a board of average wealth will receive a grant equal to 60 percent of its recognized ordinary expenditures from the province, while a board of below average wealth will receive more than a 60 percent grant, and one of above average wealth will receive less. The equalization formula to determine the ordinary percentage grant for 1971 was as follows:

$$100 - \left( 40 \times \frac{\text{B.E.A.P.}}{\text{P.E.A.P.}} \right)$$

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<sup>110</sup> *Id.* at 118.

<sup>111</sup> DEPT. OF MUNICIPAL AFFAIRS, PROVINCIAL ASSISTANCE TO MUNICIPALITIES, BOARDS AND COMMISSIONS 13 (1971). The discussion here relies mainly on information from this work.

B.E.A.P. (Board's equalized assessment per weighted pupil) means the quotient obtained by dividing the assessment from which a board received support in the preceding year, adjusted by the assessment equalization factor (which is the result of a complex arrangement whereby local assessments are placed on a provincial scale so that they may be rationally compared and used), by its weighted enrolment<sup>112</sup> on the last school day of September of the preceding year. P.E.A.P. (provincial equalized assessment per weighted pupil) on the other hand, means the quotient obtained by dividing the total equalized assessment in the province, upon which taxes are levied for school purposes in the preceding year by the weighted average daily enrolment of all pupils on the last school day of September of the preceding year. For 1971, the P.E.A.P. for an elementary school pupil was 44,500 dollars and for a secondary school pupil was 144,250 dollars.

As pointed out earlier, for a board of average wealth where the B.E.A.P. equals the P.E.A.P., the rate is 60 percent. Such a board must raise through taxation 40 percent of its recognized ordinary expenditure. But the provincial grant system goes even further with grants for extraordinary expenditures, which consists of expenditures for transportation, capital from revenue, debt charges, and public accommodation charges included in tuition fees payable by a board to send a student to a school outside its area. The portions of the first three items approved by the Minister for grant purposes and all the last item are called recognized extraordinary expenditure. The grant is the excess of the recognized extraordinary expenditure over the yield of the Board's capital mill rate on the equalized assessment from which it receives support. The formulae for determining capital mill rates are as follows:

$$(a) \text{ Elementary Schools} = \frac{.36 \times \text{R.E.E.P. up to } \$55 + .06 \times (\text{R.E.E.P.} - \$55)}{55}$$

$$(b) \text{ Secondary Schools} = \frac{.20 \times \text{R.E.E.P. up to } \$85 + .04 \times (\text{R.E.E.P.} - \$85)}{85}$$

R.E.E.P. (recognized extraordinary expenditure per weighted pupil) means the recognized extraordinary expenditure for the current year divided by the weighted enrolment of resident pupils on September 30 of the previous year. The result then is a system in which the major factor, the extraordinary expenditures (costs of transportation, debt charges and capital revenue) are supported in part by a provincial grant. The basis of this support, as with support for operating expenditures, is what the province decides the basic grant to be. This basic grant then, like the grant of ordinary expenditures, is not the product of a formula itself; rather it is a pre-determined figure seemingly taking into account the average cost of educating students and the available provincial funds.

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<sup>112</sup>Weighted enrollment is the process by which the number of pupils can be increased for computation purposes because of special need. For example, one handicapped child may be weighted to equal two pupils.

Under this grant structure the Metropolitan Toronto Board of Education received approximately 34 percent of its current revenues in 1970, and 1971.<sup>113</sup> Thus, although the extraordinary expenditure grant was included in the grant system to aid boards with rapidly increasing enrolment and, thus, high capital costs (as in Metropolitan Toronto) the federation's Board of Education is still well below the provincial average in terms of percentage of revenue for educational purposes from provincial sources.

The main reason for this, of course, is that the federation has created a much higher per capita equalized assessment in Metropolitan Toronto. The per capita equalized assessment within the federation is 10,281 dollars as compared to a provincial average of 8,151 dollars.<sup>114</sup> Moreover, the concentration of assessable wealth within Metropolitan Toronto can be seen more clearly in that the average per capita equalized provincial assessment excluding Metropolitan Toronto's contribution is only 6,289 dollars.<sup>115</sup>

In summary then, it can be seen that two aspects of the grant structure with respect to Metropolitan Toronto stand out. Firstly, the basic grants are not given automatically on a formula basis, but are the result of provincial analysis of need and available funds; and secondly, that the Metropolitan Toronto School Board probably relies on these less than any other board in the province. The former characteristic would seemingly facilitate provincial interference in board financing since amounts can be changed or frozen at will; while the latter characteristic would seem to facilitate Metropolitan independence.

Recent events show that in spite of the federation's wider tax base and lower proportionate reliance on provincial grants, that the province indeed has considerable power to interfere with education within the federation. In December 1971, the province, in efforts to control the rising costs of education, placed a ceiling on total municipal expenditures for education starting in the 1972 year.<sup>116</sup> It should be noted that this ceiling was upon the ordinary expenditures of all boards rather than the recognized ordinary expenditure which the province would contribute.<sup>117</sup> Thus, the federa-

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<sup>113</sup>MUNICIPALITY OF METROPOLITAN TORONTO, ANNUAL REPORT 62 (1970). In 1970 the provincial grant totalled 103,212,688 million dollars. In 1971 it was estimated at 135,200,000 million dollars.

<sup>114</sup>I SUMMARY OF FINANCIAL REPORTS OF MUNICIPALITIES XXVI (1970). The computations by the author from statistics given in this report.

<sup>115</sup>*Id.*

<sup>116</sup>*Supra* note 111, at 16. The Globe and Mail (Toronto), December 8, 1971.

<sup>117</sup>*Id.* Ordinary Expenditure per pupil in 1972 was not to exceed the amount determined by the following formula:

$$1972 \text{ R.O.E.} + \frac{67}{100} \text{ of } \frac{(1971 \text{ O.E.} - 1971 \text{ R.O.E.}) \times 100\% \text{ of } 1971 \text{ R.O.E.}}{1971 \text{ R.O.E.}}$$

Where R.O.E. = recognized ordinary expenditure (that portion of operating expenses supported by a grant), and where O.E. = ordinary expenditures or total expenditures by the municipality. The formula, thus, limits new total expenditure by reference to the percentage by which total ordinary expenditure exceeded recognized ordinary expenditure in the previous year.



tion could not circumvent the ceiling by raising revenue through its own levy. The result of this limitation on school board expenditure in Metropolitan Toronto was that 9.3 million dollars had to be cut from existing 1972 school programmes; this was from a total projected budget of 373 million dollars.<sup>118</sup> It is anticipated that in 1973 the cut back will be even greater, that is, in the neighbourhood of 24.3 million dollars. The limit set on expenditures in Metropolitan Toronto was 776 dollars per elementary pupil in 1972 and 759 dollars in 1973, while the secondary schools' limits are to be 1,272 dollars per pupil in 1972 and 1,249 dollars in 1973. One of the major problems in conforming with the provincial guidelines is that operating expenses increased in 1972 by 13 million dollars because of rising costs, such as wage increases, while the budget itself is only allowed to increase by 8 million dollars.<sup>119</sup>

If the Metropolitan School Board did not conform with the budget, then all provincial aid would be lost. There was no contemplation by the Board of risking such a fate and it desperately reduced its budget. The federation, thus, although fiscally much stronger than any other municipality within the province, could not withstand such pressure. The need for provincial monies to supplement municipal educational property taxes is too great and specialized programmes needed in this urban region will thus have to be abandoned.<sup>120</sup> Moreover, the obvious point that the province has caused turmoil and interference within the traditionally local area of education is clear.

H. Carl Goldenberg stated that one of the major achievements of Metropolitan Toronto's government had been in education and referred to briefs which stated that as a result of federation, Metropolitan Toronto's record with respect to education has been among the best in North America;<sup>121</sup> other descriptions used the word "exceptional."<sup>122</sup> To be sure the use of a metropolitan system has brought benefits; it has produced a strong property base for education revenue and it has distributed the burden of education equally throughout its jurisdiction. However, this is not enough, for surely given the present involvement by the province, and its real control over the raising of local revenues for education, the system is in jeopardy. The relationship between the senior level of government and the metropolitan area is thus crucial. The province has forced the federation to rely on the inadequate property tax for education, created grants to supplement that revenue, and used the grants to control total Metropolitan educational expenditure.

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<sup>118</sup>The Globe and Mail (Toronto), December 8, 1971

<sup>119</sup>*Id.*

<sup>120</sup>As of the writing of this paper, the Metropolitan Toronto School Board has not decided what programmes will be abandoned to ensure compliance with provincial requirements.

<sup>121</sup>H.E. GOLDENBERG, REPORT OF THE ROYAL COMMISSION ON METROPOLITAN TORONTO 143 (1965).

<sup>122</sup>*Id.*

## V. METROPOLITAN TORONTO AND THE FINANCING OF GENERAL GOVERNMENT

### *A. Sources of Revenue and Expenditure*

Thus far, various functions of metropolitan government have been examined. That examination has concentrated on the financial aspects of the functions of planning, housing, transportation and education, where the financial problem was present and indeed often paramount. An attempt will be made now to examine the financing of governmental functions in general. The list of such functions is long and varied, but it includes such activities as protection to property and persons, public works, sanitation and waste removal, health services, social and family services, recreation and community services, community planning and development and education.<sup>123</sup> Such activities are probably universal for urban governments in North America. The purpose here will not be to examine any one of those functions in detail, but rather it will be to examine the capacity of the metropolitan government to meet its own financial needs, and once more to examine the involvement of the province in facilitating that capability. In this way a further indication of the effectiveness of metropolitan government reform can be determined.

Like other unfederated urban governments, the Municipality of Metropolitan Toronto's major internal source of funds is the property tax, and this accounts for 75.5 percent of the revenue of the municipality.<sup>124</sup>

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<sup>123</sup>A breakdown of activities and expenditures in 1969 under these headings can be made as follows:

<i>Protection to Persons and Property:</i>	
Police	\$ 43,172,191
Street Lighting	171,671
Unclassified	2,494,691
<i>Public Works:</i>	
Sidewalks and Roadways	25,454,225
Traffic Control	3,517,591
Drainage	396,773
Unclassified	961,585
<i>Sanitation and Waste Removal:</i>	
Sanitary Sewers	12,335,704
Garbage Collection and Disposal	5,685,101
<i>Conservation of Health:</i>	
Public Health	2,031,719
Hospital Fees	2,444,954
<i>Social and Family Service:</i>	
General Welfare Assistance	29,188,086
Child and Day Nurseries	5,251,868
Aged Persons	10,756,748
<i>Recreation and Community Services:</i>	9,347,978
<i>Community Planning and Development:</i>	1,082,340
<i>Education:</i>	268,365,365

Taken from 1 SUMMARY OF FINANCIAL REPORTS OF MUNICIPALITIES 5-6 (1970).

<sup>124</sup>*Id.* at xiv. This percentage does not include provincial grants for education.

This may seem high when compared to United States' jurisdictions<sup>125</sup> but in comparison to other Ontario municipalities this percentage is not abnormal, for the average percentage of revenue raised from property taxes in the cities of the province is 76.9 percent while the entire provincial average for municipalities is 73.6 percent.<sup>126</sup>

Other internal sources of funds account for approximately 7 percent of the federation's revenues. These sources are licences and permits, rents, concessions and franchises, fines, penalties and interest on taxes, service charges and income from investments. Here again Metropolitan Toronto does not differ widely from other municipalities in the province with respect to reliance on these sources, although it should be noted that Metropolitan Toronto has the highest percentage of revenue from such sources, while the provincial average is 5.7 percent and the average for cities in the province is 4.5 percent. The last main source of revenue that should be mentioned is contributions from senior levels of government. Although the federal government does make some contribution, it is minimal, and thus the figure almost totally represents provincial subsidies. Metropolitan Toronto has the lowest percentage of its revenue from this source when compared to other municipalities within the province. Only 17.5 percent of the federation's revenue is from such transfers while the provincial average for municipalities is 20.8 percent.<sup>127</sup>

It would seem, then, that the existence of the metropolitan system in Toronto has not dramatically altered the revenue structure. Property tax is still by far the most important contributor, although slightly less important than in other Ontario cities; other internal revenues mainly from service charges and investments seem to make up for the difference in this percentage, as well as for the lower percentage for provincial subsidy.

Moreover, Metropolitan Toronto has the highest per capita taxation in the province, 259 dollars per person, compared to a provincial average of 187 dollars and a city average of 188 dollars. This most probably reflects the fact that Metropolitan Toronto has the highest expenditure on a per capita basis of 345 dollars again compared to a provincial average of 268 dollars and an average for cities of 245 dollars; and the fact that the federation, as well, has the highest per capital equalized assessment—approximately 10,000 dollars compared to an average 7,500 dollars for other cities.<sup>128</sup>

It would seem, then, that on an internal revenue basis the federation has not received the benefits that so many say will follow metropolitan government. Property taxation accounts for a major share of revenue as with

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<sup>125</sup>BREAK. INTERGOVERNMENTAL FISCAL RELATIONS IN THE UNITED STATES 170 (1967) states that in 1962 only fifty percent of urban revenue in the United States came from property taxation.

<sup>126</sup>*Supra* note 123, at xiv.

<sup>127</sup>*Id.* This does not include funds for education

<sup>128</sup>*Id.*

other urban governments; the per capita property tax is the highest in the province, while government expenditures are in the same position. Federation, in other words, has not brought nirvana, rather it has continued high property taxation and high municipal borrowing with no special provincial aid to alleviate these problems. The result is that municipal property taxes doubled from 1957 to 1967,<sup>129</sup> and debt charges in 1969 represented over 20 percent of Metropolitan Toronto revenues.<sup>130</sup>

### B. Unconditional Provincial Grants

The provincial government has introduced two schemes to lessen the plight of the residential property taxpayer. These schemes are not restricted to Metropolitan Toronto although in some respects are the result of the intolerable property tax burden in that municipality.<sup>131</sup>

The first of these schemes is essentially an unconditional per capita grant to all municipalities in the province. It was begun originally under the Municipal Unconditional Grant Act.<sup>132</sup> In 1970 a new act, The Regional Municipal Grants Act,<sup>133</sup> placed all regional municipalities in the province under a new schedule for unconditional payments. The purpose of this new act, it would seem, was not only to aid financially beleaguered regional governments "in recognition of the larger per capita expenditures accruing to municipalities with large populations,"<sup>134</sup> but also to aid residential taxpayers as well, for a precondition for eligibility is a residential tax rate that is 85 percent of the commercial tax rate. The grant is payable to the regional government (or the Metropolitan Government). The Metropolitan Corporation must credit each area municipality with an amount that bears the same proportion to the total amount paid to the Metropolitan Corporation, as the population of the area municipality bears to the total population of the metropolitan area.<sup>135</sup>

Each regional municipality is paid 7.50 dollars per capita plus 1.50 dollars per capita if it maintains a police force, plus a certain amount per capita to compensate low density regional municipalities. Metropolitan Toronto recovers nothing under the latter provision and thus is awarded 9.00 dollars per capita per annum,<sup>136</sup> to be distributed to area municipalities on a population basis to reduce municipal taxes. The grant is, therefore, distributed before the metropolitan tax is levied against the area municipalities in order to determine by how much each area's levy will be reduced due to the grant.

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<sup>129</sup>The Globe and Mail (Toronto), March 17, 1967.

<sup>130</sup>*Supra* note 123, at xx.

<sup>131</sup>The Globe and Mail (Toronto), December 6, 1967.

<sup>132</sup>ONT. REV. STAT. c. 259 (1960).

<sup>133</sup>Ont. Stat. 1970 c. 15.

<sup>134</sup>DEPT. OF MUNICIPAL AFFAIRS, PROVINCIAL ASSISTANCE TO MUNICIPALITIES BOARDS AND COMMISSIONS 53 (1971)

<sup>135</sup>MUNICIPALITY OF METROPOLITAN TORONTO ESTIMATES, 11 (1971).

<sup>136</sup>Ont. Stat. 1970 c. 15, § 2.

The thrust of the grant, therefore, is not to give municipalities greater fiscal capacity as such, nor to equalize disparities between municipalities with the federation; rather the purpose is mainly to shore up an inadequate distribution of taxing powers between province and metropolitan governments by ensuring that property taxes do not reach intolerable levels. The system it appears has no rational basis; the basic grant seems to be increased when political pressure demands. Moreover, although the use of a grant tied to population may be rational to the extent that local government expenses increase as population increases, the relationship between the two has not been established<sup>137</sup> and needs or level of services are not considered.

Two important methods stand out with respect to general intergovernmental fiscal transfers. Firstly a fiscal need grants system and secondly, revenue equalization grants. The provincial payments under the Regional Municipal Grants Act consider neither.

The former, it is suggested, concerns itself with payments to political units on the basis of the capacity of those units to raise revenue from their own taxpayers, in order to provide a certain level of services without having to impose unduly high rates of taxation. This grant system is, thus more sophisticated to the extent it considers the need for services, the cost of services and the overburdening of services in a given governmental unit. The obvious benefits of such a system are to those political units which have relatively low revenue raising capacities, or relatively high costs of needs for public services. The second fiscal transfer system, revenue equalization, bases payments on the ability of the political unit to raise revenue from its own taxpayers. It attempts only to equalize the revenues of similar governmental units, regardless of fiscal need, expenditures, costs or services within those units. The fiscal needs grant concept is superior for this reason.<sup>138</sup>

Both these systems require more subtleties than a flat per capita payment to a regional municipality or any other governmental unit for that matter. The Regional Municipal Grants Act has no such subtleties. It does not attempt to equalize the revenues of the various regional governments. It gives all government units 7.50 dollars per capita and encourages higher commercial assessment. Indeed, this might be unfair to other regional governments, in view of Metropolitan Toronto's high per capita assessment.<sup>139</sup> Most importantly, however, the Regional Unconditional Grant Act neglects to consider the fiscal needs of a centre like Metropolitan Toronto. No allowance is made for such variables as escalating costs and needs for physical and social services in the municipality, the result of its being one of the most highly urbanized centres in Canada.

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<sup>137</sup>DUPRÉ, *INTERGOVERNMENTAL FINANCE IN ONTARIO: A PROVINCIAL-LOCAL PERSPECTIVE* 110 (1967) (a study prepared for the Ontario Committee on Taxation)

<sup>138</sup>Clark, *Fiscal Needs and Equalisation Grants*, 49 CAN. TAX PAPERS 4 (1969)

<sup>139</sup>See text accompanying note 128 *supra*

It might be argued that such a criticism of the fiscal transfers in Ontario is unfair, since the difficulty of evaluating needs and costs is an immensely complex problem.<sup>140</sup> The truth of this cannot be challenged, yet methods of evaluating expenditure needs have been suggested.<sup>141</sup> In making such an evaluation there are three steps suggested: (a) the services to be supported must be selected, (b) a decision has to be made concerning the given standard to which services will be supported, and (c) uniform estimates must be made of the cost of providing these services at a given standard in the municipality.<sup>142</sup> Further criteria can be postulated in order to implement these steps in a meaningful way.<sup>143</sup>

These suggestions and criteria, however, give no absolute solution to the problem and their vagueness makes them difficult to apply so that other more simplified methods have been suggested. In this respect, the present grants to regional governments could be improved by a weighted population formula whereby special weights would be attributed to working age population, school age population, unemployment population, immigrant population, low income population etc. This solution, as well, is not the ultimate resolution of the problem, and great difficulties lie in trying to assess appropriate weights for the various factors involved.<sup>144</sup> But it is interesting to note that the United Kingdom has such a system for the allocation of general unconditional grants to local authorities.<sup>145</sup>

The purpose of this discussion is not to develop a new system of grant structures, rather it is an effort to emphasize the unsophisticated and irrational grant pattern in Ontario with respect to regional governments and Metropolitan Toronto in particular. Again it is obvious that internal metropolitan reform does not solve these problems for it neglects an evaluation

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<sup>140</sup>*Supra* note 138, at 37. Given the need for local boundary reform, Clark questions whether we can have such grants. It should be pointed out, however, that we are dealing with a municipality that had boundary reform twenty years ago, while the regional government program in Ontario has been developed and instituted for a number of years.

<sup>141</sup>*Id.* at 19. Clark goes on to suggest how this can best be done to account for differences between provinces. It is suggested that the same process can be applied to municipalities.

<sup>142</sup>*Id.* at 19.

<sup>143</sup>*Id.* at 21.

<sup>144</sup>*Id.* at 22.

<sup>145</sup>*See*, Local Government Act 1966, c. 42, Sched. 1. The Schedule provides for supplementary compensation for the following:

1. Number of persons under age 15 (§ 2(h));
2. Number of persons under age 5 (§ 3);
3. Number of "education units" per 1,000 of population in excess of prescribed number (§ 5);
4. Number of persons over age 65 (§ 4);
5. Number of persons per acre in excess of prescribed density (re: high population density) (§ 6);
6. Number of miles per road per 1,000 population in excess of a prescribed number (re: low population density) (§ 7);
7. Number of persons by which total population has declined in excess of a prescribed percentage over a prescribed period (§ 9);
8. Number of persons within metropolitan districts (§ 10).

of how to best achieve intergovernmental fiscal transfers, and reorganize municipal revenue generally.

In 1967 the provincial government introduced its second scheme in an effort to hold down skyrocketing property taxation. This programme provided for a provincial rebate of part of residential property taxes paid to local municipal governments. As well the province took over the administration of justice (except the police) in Metropolitan Toronto.<sup>146</sup> The rebate scheme provided originally for a rebate of the first 2000 dollars of an owner's assessment,<sup>147</sup> but this has been changed so that there is now a 30 dollars flat rebate on the taxes paid plus a rebate of 10 percent of the rest of the tax bill.<sup>148</sup> Metropolitan Toronto officials dubbed the scheme a "stop-gap" measure that would not be enough over a long period of time as long as the federation was tied to the property tax.<sup>149</sup> And indeed in the year after the scheme was introduced taxes went up on the average of 20 to 25 dollars per 5,000 dollars of assessment, and the Metropolitan Commissioner of Finance pointed out the relief provided was only temporary and would be lost as taxes were constantly rising. Moreover, with 60,000 people per year pouring into the federation, it was impossible to cut services.<sup>150</sup>

This provincial scheme, thus, was not the answer either. Not only did it place relatively increased burdens on commercial and industrial properties, it also increased fiscal disparities between the various boroughs of the Metropolitan federation. The scheme paid a rebate only on local municipal taxes (not taxes payable to the metropolitan governments). The poorer boroughs of the federation, containing middle and lower middle class detached dwellings, such as the Borough of York, paid the lowest municipal tax rate, thus their rebate was accordingly lower. But these people also paid the highest metropolitan rate (because of the small population of the borough), for which no relief was given. The rebate, moreover, was not tied to ability to pay, or income. The poorer the family and dwelling, the lower the rebate, with the result being a regressive and inefficient system.<sup>151</sup>

In March of 1972, the province proposed the elimination of the Residential Property Tax Reduction Act and the replacement of it by a property credit scheme.<sup>152</sup> Under this new proposal taxpayers are allowed to credit a certain portion of their property tax in paying provincial income taxes. The scheme applies to homeowners and tenants and provides a formula, whereby an amount of up to 250 dollars may be credited.

This approach solves the two problems mentioned above with respect to the Residential Property Tax Reduction Act, for the amount of tax credit

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<sup>146</sup>The Globe and Mail (Toronto), December 6, 1967; Residential Property Tax Reduction Act, ONT. REV. STAT. c. 414.

<sup>147</sup>Ont. Stat. 1968 c. 118, § 2.

<sup>148</sup>Ont. Stat. 1970 c. 11, § 2.

<sup>149</sup>The Globe and Mail (Toronto), September 2, 1967

<sup>150</sup>The Globe and Mail (Toronto), November 2, 1968

<sup>151</sup>The Globe and Mail (Toronto), May 20, 1971

<sup>152</sup>ONTARIO BUDGET 1972 77. This was enacted by the Income Tax Amendment Act 1972 (Bill 149, assented to and in force June 30, 1972)

varies according to income, family size, and the level of property tax.<sup>153</sup> Furthermore, the act defines municipal taxes for which credit is given as "taxes imposed in Ontario for municipal and school purposes in respect of real property assessed as residential or farm property and include local improvements and other special rates,"<sup>154</sup> and thus resolves the inequality of not including metropolitan taxes.

Unfortunately, the solution of these two difficulties by this new legislation is of little benefit to the municipality of Metropolitan Toronto or its members. There seems little doubt in the long term that the new system is the best way to give relief to individual taxpayers. But whether it provides any substantial relief to individual municipalities is dubious. Loss of the tax property rebate will average 50 dollars to 70 dollars per single family residential property owner in 1972; at the same time civic taxes are expected to rise 20 dollars to 30 dollars. The result is an average increase in civic taxes of 75 dollars to 100 dollars per single family residential owner in 1972.<sup>155</sup>

Although relief will be forthcoming under the new amendment to the lower and middle income taxpayer, that relief in the eyes of municipal taxpayers will have little connection with the property tax. Taxpayers will view property taxes separately from income tax and property taxes will still be seen by the taxpayers to be a great burden. It is perhaps the effect of this separation that is most important for the municipalities. As Banfield has pointed out, the revenue crisis in American cities is not that raising taxes will necessarily force some taxpayers into poverty, rather that cities cannot raise the money even if they are willing to force some of their taxpayers into poverty.<sup>156</sup> This is certainly true of Metropolitan Toronto as well, and the burden on the individual taxpayer is of itself not of great consequence, especially, since the taxpayer will indeed be provided with fair relief under the new system.

What must not be forgotten, however, is the political impact of that burden and the increasing of that impact by divorcing property tax relief from property taxation without any fundamental reform in the municipal taxation system. Municipal citizens view property taxes as being high and oppose further increases, so that, because the province has left property taxation as the principle source of municipal revenue, "municipal governments are required to make spending decisions not on the basis of whether the decision relates to a real need in the social or physical area of the urban environment, but largely in terms of a political assessment of its effects on property taxation."<sup>157</sup> It would seem that the greater the increase of property taxation, (in reality or in the minds of the taxpayer) the more

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<sup>153</sup>ONTARIO BUDGET 1972 80.

<sup>154</sup>Income Tax Amendment Act, 1972, § 4.

<sup>155</sup>The Globe and Mail (Toronto), March 29, 1972.

<sup>156</sup>E.C. BANFIELD, *THE UNHEAVENLY CITY* 9 (1970).

<sup>157</sup>PLUNKETT, *THE FINANCIAL STRUCTURE AND THE DECISION-MAKING PROCESS OF CANADIAN MUNICIPAL GOVERNMENT* 61 (1972).



profound this effect will be on municipalities. Metropolitan Toronto it would seem, suffers from such consequences. The chairman of the Metropolitan Council and Mayor of the City of Toronto rejected with hostility the proposed changes. Not because of their opposition to some sort of tax relief, but rather because of the separation of the relief from the actual property taxation and the ultimate political consequences of that separation.<sup>158</sup>

Once again, although the federation had originally been intended to remedy fiscal problems, and although internal organization had been revamped in keeping with the Goldenberg Report to alleviate certain difficulties, provincial control of all financial resources, including forced municipal reliance on the property tax, has prevented the elimination of those problems. Furthermore, although metropolitan governments are urged to create fiscally viable urban governments, this cannot be done with the property tax alone as a source of revenue. The introduction of these provincial grant schemes, at least, attest to that. Moreover, the failure to create adequate financial resources in one government has resulted in a confusing situation where responsibility for property taxation is not allocated clearly or precisely.

### C. Conditional Grants

While these unconditional grants are a major source of provincial revenue, there is a vast array of conditional grants also paid to the federation besides those previously discussed under transportation and education. This aid may be passed on directly to the Metropolitan Government, or be paid to special purpose bodies.

The *Metropolitan Toronto Annual Report, 1970*, lists nine direct and and routine provincial grants to Metropolitan Toronto itself, besides those for transportation and education. The vast bulk of this transfer is for services in the social service field. Grants are given for: general welfare assistance,<sup>159</sup> homes for the aged,<sup>160</sup> nurseries and day care centres,<sup>161</sup> homemakers and nurses services,<sup>162</sup> the administration of welfare services<sup>163</sup> and the hospitalization of indigents.<sup>164</sup> With reference to the protection of persons and property, direct payments are made under the Liquor License

<sup>158</sup>*Supra* note 155.

<sup>159</sup>The General Welfare Assistance Act, ONT REV STAT c 192 (1970). The province pays eighty percent of the cost of welfare under regulations made pursuant to § 7 of this Act.

<sup>160</sup>The Homes for the Aged and Rest Homes Act, ONT REV STAT c 206 (1970). A grant of up to fifty percent under § 27 of this act is paid for capital costs.

<sup>161</sup>The Day Nurseries Act, ONT REV STAT c 104 (1970). Section 3 of this act provides a grant of eighty percent for operating expenses.

<sup>162</sup>The Homemakers and Nurses Services Act, ONT REV STAT c. 203 (1970). Regulations passed pursuant to § 11 of the Act provide for an eighty percent operating grant for expenses incurred under § 9 of the Act. See ONT REV REG 436, § 6(2) (1970).

<sup>163</sup>*Supra* note 159, § 7(2).

<sup>164</sup>The Public Hospitals Act, ONT REV STAT c 378, § 22 (1970), see ONT REV REG 728 (1970).

Act,<sup>165</sup> for the cost to the municipality of enforcing the Liquor Licence Act of Ontario, and under the Emergency Measures Act,<sup>166</sup> for the operation and maintenance of a civil defence organization. Major payments to special purpose bodies are to the Children's Aid Societies, responsible for the care and protection of children made wards of the crown,<sup>167</sup> and to the Metropolitan Toronto and Region Conservation Authority.<sup>168</sup>

This mélange of grants seems to have two distinct objectives. The grants for general welfare assistance and emergency measures organizations originate with the federal government,<sup>169</sup> and the purpose is not only a provincial but a national minimum standard in these areas. Federal and provincial control is thus necessary and desirable, it would seem. With reference to the other grants, however, the objective once more seems to be to financially aid municipalities, and particularly Metropolitan Toronto, in functions which have traditionally been under local control. The rationale of the conditional grant to ensure minimum services, to control policy or daily administration, or to encourage specific programmes simply does not apply. Initiative under all these programmes is left with the municipal governments, where historically it had always laid. The province's role with respect to most of these programmes, thus, has been passive in responding to municipal needs or wishes in providing financing rather than positive in proposing and promoting new programmes and plans.

Such a role would seem more appropriate in the context of a relationship between a metropolitan and provincial government for certainly the rationale for the incorporation of a metropolitan government demands that policy initiative should lie with such a municipal government. Indeed, since that rationale suggests the creation of metropolitan governments to supplant provincial or senior levels of government wherever services can be adequately supplied by the regional or metropolitan level, it would seem nominal provincial interference through conditional grants is really unnecessary. The problems of inefficiency, corruption or poor administration cannot be seen to exist as relevant considerations at the metropolitan level, as they might on the smaller municipal scene.

Conditional grants, therefore, seem to exist in the context of the metropolitan-provincial relationship solely because of the inadequate financial resources of the federated municipality. Jurisdiction seems need-

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<sup>165</sup>ONT. REV. STAT. c. 250 (1970). Under § 88 20 percent of the revenue from license fees collected by the province can by agreement be paid to the municipality for the cost of enforcement. See ONT. REV. REG. 563, Form 20 (1970).

<sup>166</sup>ONT. REV. STAT. c. 145 (1970). Under § 8 grants are made by agreement between the province and municipality.

<sup>167</sup>The Child Welfare Act, ONT. REV. STAT. c. 64 (1970). Under § 12 the province pays sixty percent of operating and maintenance costs of children not born out of wedlock and one hundred percent of those born out of wedlock.

<sup>168</sup>The Conservation Authorities Act, ONT. REV. STAT. c. 78 (1970). Section 39 authorizes the provincial government to make such grants.

<sup>169</sup>Canada Assistance Plan, CAN. REV. STAT. c. C-1 (1970); National Defence Act, CAN. REV. STAT. c. N-4 (1970).

lessly divided because financial capabilities have not been tailored to match metropolitan tasks.

#### *D. Municipal Debt*

While the matter of these conditional grants is perhaps not of major importance or even a major problem in the financial relations between the province and the metropolitan municipality, as long as the province does not increase its role in this area, it is suggestive of the financial shortcomings of the reform carried out in Ontario. Even more indicative of the financial problems is, however, the continuously growing debt of the metropolitan federation which has been of major concern throughout the municipality's history.

Here, however, the problem of an inadequate financial base has not stood out clearly either, for certainly one of the major contributions of metropolitan government was the creation of a new base for the collecting of taxes for operating and capital expenses, and also the creation of a strong base for the issuance of bonds to raise funds for capital expenditures. "Not only has the metropolitan system supplied vast flows of capital funds, but it has maintained the highest possible rating on Wall Street for foreign municipal bonds."<sup>170</sup>

In spite of this great achievement, within three years of the incorporation of Metropolitan Toronto, problems had arisen with respect to the financing of capital projects. Indeed, programmes had to be curtailed because of the federation's inability to raise enough revenue for capital expenses.<sup>171</sup> By January of 1957, the Chairman of the federation proposed a special levy to finance capital works as it was felt that, not only could Metropolitan Toronto not raise enough funds in the private market, and still maintain its strong rating,<sup>172</sup> but it might even have difficulty in having buyers for the bonds it would be required to sell for its projected development.<sup>173</sup> In February of that same year, the special levy was passed while the Metropolitan Council embarked on futile negotiations with the province for increased taxing powers to remedy the situation, so that the federation would no longer be the third highest public borrower in Canada.<sup>174</sup>

Although the problem was relieved some by provincial aid and lending, the problem has not been remedied by any means. In 1967, when Metropolitan Toronto sought approval for borrowing for its 236,000,000 dollars capital spending program from the Ontario Municipal Board,<sup>175</sup> the Board warned the federation that it would have to bring its capital

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<sup>170</sup>COMMITTEE FOR ECONOMIC DEVELOPMENT, *RESHAPING GOVERNMENT IN METROPOLITAN AREAS* 80 (1970).

<sup>171</sup>The Globe and Mail (Toronto), March 28, 1956

<sup>172</sup>The Globe and Mail (Toronto), January 16, 1957

<sup>173</sup>The Globe and Mail (Toronto), February 1, 1957

<sup>174</sup>The Globe and Mail (Toronto), February 25, 1957

<sup>175</sup>See The Globe and Mail (Toronto), June 29, 1971, and text accompanying note 103 on the need of the Ontario Municipal Board's approval for all borrowing.

expenditures in line with revenue as 32 percent of its operating budget was going to repay debt charges on its long term capital spending. Moreover, the corporation had an 800,000,000 dollars debt in 1967 with a projected capital spending programme of 672,000,000 dollars for the next five years.<sup>176</sup> In 1968 the Board delayed its approval again, while deletions were made in the capital spending programme to ensure its passage.<sup>177</sup> In 1971, the Finance Commissioner of the federation recommended a 20—30,000,000 dollars reduction in the capital budget in order to decrease long term borrowing, as the proposed budget of 227,000,000 dollars was based on a 113,000,000 dollars borrowing programme. It was suggested that borrowing be kept to between 80—90,000,000 dollars to maintain investors' confidence in the bonds of Metropolitan Toronto.<sup>178</sup> As a result of this, water, sewer, parks, and police projects were cut; and specifically a programme of metropolitan subsidies to local municipalities for the construction of storm and sanitary sewers was abandoned.<sup>179</sup>

The history of the corporation's involvement in debt financing has not been as notable as the Committee on Economic Development seems to suggest when examined in this way. In comparison to what might have existed without the federation, of course, this situation is much improved, but that alone is not the proper measurement. In terms of what the federation concept is capable of with a wider financial base, much more could be done. The federation's potential is restricted because, in spite of the great amount of development occurring within the municipality, the costs of providing urban services is still rising faster than the growth of taxable assessment.<sup>180</sup> Assessment is rising in Metropolitan Toronto faster than anywhere else in the world, but the municipality is still increasingly caught in a squeeze of expenditures rising faster than revenue, despite a rapidly increasing property tax and increased grants from the provincial government.<sup>181</sup> To federate, while maintaining a primary reliance on the property tax and conventional and conditional grants, to a metropolitan government is not enough.

## VI. CONCLUSION

The Metropolitan Toronto civic federation is entering a year (1972) of troubling urban problems with its self-confidence shaken badly by its confrontation with the province . . . unless Metro Council's power to govern is restored, Metro may well revert to the fragmentation and parochial attitudes that plagued it before the city-suburban federation was formed eighteen years ago.<sup>182</sup>

The basic concept of federation as a solution to urban problems is not being challenged here; indeed the fact that Metropolitan Toronto can finance

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<sup>176</sup>The Globe and Mail (Toronto), May 2, 1967.

<sup>177</sup>The Globe and Mail (Toronto), December 28, 1968.

<sup>178</sup>The Globe and Mail (Toronto), February 2, 1971.

<sup>179</sup>The Globe and Mail (Toronto), February 6, 1971.

<sup>180</sup>The Globe and Mail (Toronto), January 19, 1971 (statement by J. Eakin, Metropolitan Toronto Commissioner of Finance).

<sup>181</sup>*Id.*

<sup>182</sup>The Globe and Mail (Toronto), December 27, 1971.

75 percent of its operations with the property tax is indicative of the strength of such a structure. Rather it is suggested that the new level of government created, which brings with it the cost of further divisions of government responsibility and administration, must be given adequate authority, jurisdiction and financing to enable it to meet its own needs and set its own policies.

Metropolitan Toronto has been used as the example of the most advanced urban federation, and yet, its unsolved problems are still so very numerous. In short, federation does not solve all. In many ways it is becoming the central city ringed by suburban municipalities and soon may be consumed by the vast numbers that flock to it yearly. It cannot adequately deal with its housing, transportation, or educational requirements; not only because of financing, but because of a lack of integration of provincial and municipal policies. It cannot adequately finance itself to maintain and improve the urban environment that has made it the envy of many.

Perhaps all of these problems could be satisfied by more coordination and more grants, conditional or unconditional, but this alone is not a solution, for values that transcend administrative adaption require more than that.

Determination of goals and setting priorities is the politicians' job. The political process should be so organized that the electorate controls the formulation of goals and priorities . . . . Because most of the basic services provided by government relate to people in a regional community and because the individual is the most effective interpreter and most efficient manager of his personal resources, that community should be the basis of our political system. Some public services must, of course, by their very nature be provided on a national or provincial basis. But the bulk of public services provided to individuals and groups are best provided through the individual community.

Local government should be the focal point of the political action—not an after thought to be assigned a few local functions.<sup>183</sup>

It is beyond the scope of this paper to detail how local governments should be remodelled to perform this task. Various suggestions have been made with reference to Metropolitan Toronto. New taxing powers have been suggested for sales taxes, and automobile taxes and income taxes.<sup>184</sup> A greater and unconditionally guaranteed share of provincial income tax is another alternative put forward,<sup>185</sup> to replace the existing grant structure. The purpose of such reform would be to rationalize government taxation and policy formulation, and prevent the passing of jurisdiction from the government that can be most efficient and closest to the people. It is clear, however, that municipal reform which concentrates on federation and inter-municipal jurisdiction is as short-sighted as reform which ignores such possibilities and looks only to financial realignments. The optimum resolution of the problems of large urban areas demands both.

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<sup>183</sup>ONTARIO ECONOMIC COUNCIL, *MUNICIPAL REFORMS: A PROPOSAL FOR THE FUTURE* 30 (1971).

<sup>184</sup>*Supra* note 179.

<sup>185</sup>*Id.*