

In the Privy Council

NO. OF 1939

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO,
CANADA

BETWEEN:

**EDGAR F. LADORE, BURLEY W. BENNETT,
HORACE W. CUNNINGHAM AND HARRIE R. DINGWALL**

suing on behalf of themselves and all other ratepayers of the Corporation of the Town of Walkerville; and suing on behalf of themselves and all other holders of debentures of the Town of Walkerville; and suing on behalf of themselves and all other holders of debentures of the Walkerville-East Windsor Water Commission; and suing on behalf of themselves and all other holders of debentures of the Essex Border Utilities Commission; and suing on behalf of themselves and all other holders of debentures of the Walkerville-Hydro-Electric Commission; and suing on behalf of themselves and all other holders of Local Improvement Debentures issued by the Town of Walkerville; and suing on behalf of themselves and all other holders of debentures issued by the Essex Border Utilities Commission and chargeable against the ratepayers of the Town of Walkerville.

(Plaintiffs in the Supreme Court and Appellants in the Court of Appeal).

APPELLANTS

—and—

**GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR,
RUSSELL A. FARROW**

The Corporation of the Town of Walkerville; the Corporation of the City of East Windsor; the Corporation of the City of Windsor; the Corporation of the Town of Sandwich; the Essex Border Utilities Commission; the Walkerville-East Windsor Water Commission; the Water Commissioners of the City of Windsor; the Board of Water Commissioners of the Town of Sandwich; the Hydro-Electric Commission of the City of East Windsor; the Hydro-Electric Commission of the City of Windsor; the Hydro-Electric Commission of the Town of Walkerville; the Hydro-Electric Commission of the Town of Sandwich; the Corporation of the City of Windsor, and The Windsor Utilities Commission, bodies alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1935, Chapter 74, being the City of Windsor (Amalgamation) Act, 1935; and the ATTORNEY-GENERAL OF THE PROVINCE OF ONTARIO.

(Defendants in the Supreme Court and Respondents in The Court of Appeal)

RESPONDENTS

Record of Proceedings

**Sale, Sale & Bowman,
303 Bartlet Bldg.,
Windsor, Ontario.**

**Lee & Pembertons,
44 Lincoln's Inn Fields,
London, W. C. 2.**

For the Appellants.

**L. Z. MacPherson,
City Hall,
Windsor, Ontario.**

**Blake & Redden,
17 Victoria Street,
Westminster, S. W. 1.**

**J. H. Rodd,
Canada Building,
Windsor, Ontario.**

**McRuer, Mason, Cameron & Brewin
373 Bay Street,
Toronto, Ontario.**

For the Respondents.

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Documents	Date	Page
PART 1			
PLEADINGS			
1.	Amended Statement of Claim.....	July 3, 1936	1
2.	Statement of Defence of the Attorney-General for Ontario...	July 20, 1936	8
3.	Amended Statement of Defence of George Bennett, the Corporation of the City of Windsor, and the Windsor Utilities Commission.....	July 23, 1936	9
4.	Amended Statement of Defence of Harry J. Mero, W. Donald McGregor and Russell A. Farrow.....	July 23, 1936	12
5.	Joinder of Issue.....	Aug. 4, 1936	13
PROCEEDINGS AT TRIAL			
6.	Opening of Case, not printed by consent.....	Sept. 28, 1936	
PLAINTIFFS' EVIDENCE			
7.	Edgar F. Ladore, Examination.....		14
	Cross-Examination.....		24
8.	Albert Edward Cock, Examination.....		28
	Cross-Examination.....		37
	Re-Examination.....		41
9.	Herbert A. Hackney, Examination.....		42
10.	His Honour J. J. Coughlin, Examination.....		46
11.	Angus W. MacMillan, omitted by consent.		
12.	Charles D. Brown, Examination.....		48
	Cross-Examination.....		52
13.	Ross Braid, Examination.....		53
	Cross-Examination.....		56

No.	Description of Documents	Date	Page
14.	Oliver M. Perry, Examination.....		58
	Cross-Examination.....		61
	Re-Examination.....		61
15.	Basil S. MacPherson, omitted by consent.		
16.	Charles D. Brown (recalled), Examination.....		61
	Cross-Examination.....		62

DEFENDANTS' EVIDENCE

17.	J. Clark Keith, Examination.....		63
	Cross-Examination.....		66
18.	Harry A. Webster, Examination.....		66
	Cross-Examination.....		68
19.	J. Clark Keith (recalled), Examination.....		69
	Cross-Examination.....		70
	Re-Examination.....		73

JUDGMENTS AND NOTICE OF APPEAL

20.	Reasons for Judgment of Trial Judge, Mr. Justice Hogg.....	July	26, 1937	75
21.	Judgment of Mr. Justice Hogg, at Trial.....	July	26, 1937	90
22.	Notice of Appeal.....	July	31, 1937	90
23.	Reasons for Judgment of Mr. Justice Henderson in the Court of Appeal for Ontario.....	May	17, 1938	94
24.	Order of the Court of Appeal.....	May	17, 1938	101
25.	Order approving security and admitting Appeal.....	July	22, 1938	102

PART II
EXHIBITSExhibits
No.

- 1 Volume of Relevant Statutes Printed in Part in
 Appendix of Statutes, Remainder omitted by
 Consent.

No.	Description of Documents	Date	Page
Exhibit No.			
2 (a)	1. Bylaw No. 808 of the Town of Walkerville.....	Aug. 10, 1920	103
	2. Debenture No. 96 issued under Bylaw No. 808.....	March 22, 1921	105
	3. List of other debentures held by E. F. Ladore.....		106
	4. Bylaw No. 852 of the Town of Walkerville, not printed by consent.....		106
	5. Debenture No. 81 issued under Bylaw No. 852. Not printed by consent.....		106
	6. Bylaw No. 853 of the Town of Walkerville. Not printed by consent.....		107
	7. Debenture No. 58 issued under Bylaw No. 853. Not printed by consent.....		107
	8. Bylaw No. 903 of the Town of Walkerville.....	March 15, 1922	107
	9. Debenture No. 118 issued under Bylaw No. 903.....	Dec. 14, 1921	110
	10. List of other debentures owned by E. F. Ladore.....		111
	11. Bylaw No. 701 of the Town of Walkerville. Not printed by consent.....		111
	12. Bylaw No. 979 of the Town of Walkerville.....	Dec. 26, 1923	111
	13. Debenture No. 28 issued under Bylaw No. 979.....	Dec. 27, 1923	114
	14. List of other debentures owned by E. F. Ladore.....		114
	15. Bylaw No. 913 of the Town of Walkerville. Not printed by consent.....		114
	16. Debenture No. 56 issued under Bylaw No. 913. Not printed by consent.....		115
	17. List of other debentures owned by E. F. Ladore.....		115
	18. Bylaw No. 1137 of the Town of Walkerville.....	April 14, 1926	115
	19. Debenture No. 133 issued under Bylaw No. 1137.....	April 14, 1926	117
	20. Bylaw No. 1300 of the Town of Walkerville. Not printed by consent.....		118
	21. Debenture No. 109 issued under Bylaw No. 1300. Not printed by consent.....		118
	22. Bylaw No. 738 of the Town of Walkerville. Not printed by consent.....		118

No.	Description of Documents	Date	Page
Exhibit No.			
2 (a) 23.	Bylaw No. 1378 of the Town of Walkerville. Not printed by consent.....		118
24.	Debenture No. 154 issued under Bylaw No. 1378. Not printed by consent.....		118
25.	List of Debentures owned by E. F. Ladore.....		118
26.	Report of Auditors for 1934 for Town of Walkerville. Not printed by consent.....		119
27.	Auditors' Report for 1935 for Towns of Walkerville and Sandwich, Cities of Windsor and East Windsor. Not printed by consent.....		119
28.	Order of the Ontario Railway and Municipal Board erecting the Town of Ford City into the City of East Windsor. Not printed by consent.....		119
29.	Order of the Ontario Municipal Board, May 4, 1932, making The City of East Windsor subject to Part 6 of "Municipal Board Act, 1932." Objected to by the Attorney-General.....		119
30.	Notice published in "The Ontario Gazette." Objected to by the Attorney-General.....	May 4, 1932	120
31.	Auditors' Report for 1934 for the City of East Windsor. Not printed by consent.....		121
37.	Order of the Ontario Municipal Board making the City of Windsor subject to part 6 of the Municipal Board Act. Objected to by the Attorney-General.....	Nov. 23, 1932	121
38.	Notice published in "The Ontario Gazette." Objected to by the Attorney-General.....	Nov. 23, 1932	122
39.	Auditors' Report for 1934 for the City of Windsor. Not printed by consent.....		122
40.	Order of the Ontario Municipal Board making the Town of Sandwich subject to Part 6 of The Ontario Municipal Board Act, 1932. Objected to by the Attorney-General.....	May 4, 1932	123
41.	Notice published in The Ontario Gazette. Objected to by the Attorney-General.....	May 4, 1932	124

No.	Description of Documents	Date	Page
Exhibit No.			
2 (a) 42.	Auditors' Report for 1934 for the Town of Sandwich. Not printed by consent.....		124
43.	Bylaw No. 34 of The Essex Border Utilities Commission.....	April 2, 1924	124
44.	Debenture No. 58 issued under Bylaw No. 34.....	Feb. 2, 1925	130
45.	List of Debentures owned by E. F. Ladore.....		130
46.	Order of The Ontario Municipal Board, making the Essex Border Utilities Commission subject to Part VI of The Municipal Board Act, 1932. Objected to by the Attorney-General.....	May 23, 1932	131
47.	Order appointing supervisors for The Essex Border Utilities Commission. Not printed by consent.		132
48.	Auditors' Report for 1934 for The Essex Border Utilities Commission. Not printed by consent.		132
49.	Auditors' Report for 1935 for The Essex Border Utilities Commission. Not printed by consent.		132
50.	Letters Patent incorporating the Walkerville Water Company, Limited, November 1st, 1902. Not printed by consent.....		132
51.	Letters Patent incorporating the Walkerville Construction Company, Limited, November 11, 1916. Not printed by consent.....		132
52.	Bylaw No. 3 of the Walkerville-East Windsor Water Commission.....	June 24, 1930	133
53.	Debenture No. 255 issued under Bylaw No. 3.....	June 30, 1930	135
54.	List of other debentures held by E. F. Ladore.....		136
55.	Auditors' Report for 1935 for The Walkerville-East Windsor Water Commission. Not printed by consent.....		136
56.	Auditors' Report for 1935 for the Water Commissioners of the City of Windsor. Not printed by consent.....		136
57.	Bylaw No. 144 of the Town of Sandwich creating the Board of Water Commissioners of Sandwich. Not printed by consent.....		136

No.	Description of Documents	Date	Page
Exhibit No.			
2 (a) 58.	Bylaw No. 436 of the Town of Sandwich creating the Board of Water Commissioners of Sandwich. Not printed by consent.....		136
59.	Auditors' Report for 1935 for the Board of Water Commissioners of Sandwich. Not printed by consent.....		136
60.	Minutes of Town Council of Ford City. Not printed by consent.....		136
61.	Bylaw No. 906 of the City of East Windsor changing name of Hydro Commission. Not printed by consent.....		136
62.	Auditors' Report for 1934 for Hydro-Electric Commission of East Windsor. Not printed by consent.....		137
63.	Auditors' Report for 1935 for Hydro-Electric Commission of East Windsor. Not printed by consent.....		137
64.	Bylaw No. 506 of Walkerville constituting the Walkerville Hydro-Electric Commission. Not printed by consent.....		137
65.	Auditors' Report for 1935 for the Walkerville Hydro-Electric Commission. Not printed by consent.....		137
66.	Bylaw No. 1654½ constituting The Windsor Hydro-Electric System. Not printed by consent.....		137
67.	Auditors' Report for 1935 for The Windsor Hydro-Electric Commission. Not printed by consent.....		137
68.	Minutes of a Meeting of the Sandwich Town Council. Dec. 3rd, 1923. Not printed by consent.....		137
69.	Auditors' Report for 1934 for Sandwich Hydro-Electric Commission. Not printed by consent.....		137
70.	Auditors' Report for 1935 for Sandwich Hydro-Electric Commission. Not printed by consent.....		137
71.	Order-in-Council appointing the Windsor Finance Commission.....	May 1, 1935	137
72.	Notice in "The Ontario Gazette".....	June 13, 1936	138

No.	Description of Documents	Date	Page
Exhibit			
No.			
2 (a) 73.	Scheme of Funding and Refunding the debts of the Amalgamated Municipalities of East Windsor, Walkerville, Windsor and Sandwich. Objected to by the Defendants other than the Attorney-General for Ontario (See note as to extracts).....		139
74.	Proclamation bringing into effect The City of Windsor (Amalgamation) Amendment Act, 1936.....	Aug. 6, 1936	187
2 (b)	Volume of Auditors' Reports for 1934 and 1935 for several of the Defendant Corporations. Not printed by consent.....		188
2. (c)	Volume of Auditors' Reports for 1935 for several of the Defendant Corporations. Not printed by consent.....		188
3	Copy of Letter to Attorney-General for Canada, Sept. 4, 1936, and reply of Acting Deputy Minister of Justice. Sept. 10, 1936. Not printed by consent.....		188
4	Admission by counsel, headed "Statement of Default.".....		200
5	Annual Report of Municipal Statistics for 1934, Department of Municipal Affairs for Ontario. See note referring to extracts.....		201
6	Report of the Superintendent of Insurance for Canada, 1934. Life Insurance Companies. Not printed by consent.....		203
7	Extract from Exhibit No. 6 of Extra-provincial Life Insurance Companies owning debentures issued by any of the Defendants.....	Dec. 31, 1934	203
8	List of non-resident registered holders of Windsor, Walkerville, and East Windsor debentures.....		205
9	List of non-resident registered holders of Sandwich debentures.....		206
10	Report of the Royal Commission on Border Cities Amalgamation. Objected to by Defendants. (See note referring to extracts).....	April 10, 1935	188
11	Bankruptcy petition against Walkerville-East Windsor Water Commission. Objected to by Defendants. (See note referring to extracts).....	Sept. 11, 1936	208

No.	Description of Documents	Date	Page
Exhibit No.			
12	Statement of Assessments. Objected to by the Plaintiffs.....		209
13	List of East Windsor debentures. Payable outside of Ontario.....		207
14	List of Walkerville debentures payable outside of Ontario.....		207
15	Notice published in Windsor Daily Star, June 13, 1936. Not printed by consent.....		138
A.	Order of the Ontario Municipal Board Funding and Refunding the debts of the Amalgamated Municipalities of East Windsor, Walkerville, Windsor and Sandwich. (See note referring to extracts)....	June 15, 1937	160

APPENDIX OF STATUTES.

1.	The British North America Act, 30-31, Vict. (Imperial) cap. 3.....	212
2.	The Bankruptcy Act, Revised Statutes of Canada, 1927, cap. 11.....	215
3.	The Local Improvement Act, Revised Statutes of Ontario, 1927, cap. 235.....	215
4.	The Public Parks Act, Revised Statutes of Ontario, 1927, cap. 248.....	215
5.	The Public Utilities Act, Revised Statutes of Ontario, 1927, cap. 249.....	216
6.	Statutes of Ontario, 1930, 20 Geo. V. cap. 107.....	216
7.	Statutes of Ontario, 1932, 22 Geo. V. cap. 27.....	217
8.	Statutes of Ontario, 1934, 24 Geo. V. cap. 39.....	225
9.	Statutes of Ontario, 1935, 25 Geo. V. cap. 16.....	229
10.	Statutes of Ontario, 1935, 25 Geo. V. cap. 51.....	229
11.	Statutes of Ontario, 1935, 25 Geo. V. cap. 74.....	237
12.	Statutes of Ontario, 1936, 1 Edw. VIII, cap. 15.....	236
13.	Statutes of Ontario, 1936, 1 Edw. VIII, cap. 66.....	243
14.	Statutes of Canada, 1927, R.S.C., 1927, cap. 102.....	245

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO
BETWEEN:

In the Supreme
Court of Ontario
No. 1
Amended
Statement of
Claim, July 9,
1936.

EDGAR F. LADORE, BURLEY W. BENNETT, HORACE W. CUN-
NINGHAM and HARRIE R. DINGWALL,

Suing on behalf of themselves and all other ratepayers of the Corporation of
the Town of Walkerville;

And suing on behalf of themselves and all other holders of debentures of the
Town of Walkerville;

10 And suing on behalf of themselves and all other holders of debentures of the
Walkerville-East Windsor Water Commission;

And suing on behalf of themselves and all other holders of debentures of the
Essex Border Utilities Commission;

And suing on behalf of themselves and all other holders of debentures of the
Walkerville-Hydro-Electric Commission;

And suing on behalf of themselves and all other holders of Local Improvement
Debentures issued by the Town of Walkerville;

20 And suing on behalf of themselves and all other holders of debentures issued
by the Essex Border Utilities Commission and chargeable against the
ratepayers of the Town of Walkerville;

Plaintiffs.

—And—

GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR,
RUSSELL A. FARROW:

THE CORPORATION OF THE TOWN OF WALKERVILLE;

THE CORPORATION OF THE CITY OF EAST WINDSOR;

THE CORPORATION OF THE CITY OF WINDSOR;

THE CORPORATION OF THE TOWN OF SANDWICH;

THE ESSEX BORDER UTILITIES COMMISSION;

30 THE WALKERVILLE-EAST WINDSOR WATER COMMISSION;

THE WATER COMMISSIONERS OF THE CITY OF WINDSOR;

THE BOARD OF WATER COMMISSIONERS OF THE TOWN OF
SANDWICH;

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF EAST
WINDSOR;

THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF WALKER-
VILLE;

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF WINDSOR;

40 THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF SAND-
WICH;

THE CORPORATION OF THE CITY OF WINDSOR, and

THE WINDSOR UTILITIES COMMISSION, bodies alleged to have been
incorporated pursuant to the provisions of Statutes of Ontario, 1935,
Chapter 74, being the City of Windsor (Amalgamation) Act, 1935; and

THE ATTORNEY-GENERAL OF THE PROVINCE OF ONTARIO,

Defendants.

AMENDED STATEMENT OF CLAIM

(Writ issued April 29th, 1936)

In the Supreme
Court of Ontario
No. 1
Amended
Statement of
Claim, July 9,
1936.

Continued

1. (a) The Plaintiff, Edgar F. Ladore, is a manufacturer, residing in the Town of Walkerville, and is a ratepayer of the Town of Walkerville.

(b) The Plaintiff, Harrie R. Dingwall, is a gentleman, residing in the City of Detroit, in the State of Michigan, one of the United States of America.

(c) The Plaintiff, Burley W. Bennett, is a railway employee, residing in the Town of Walkerville and is a ratepayer of the said Town.

(d) The Plaintiff, Horace W. Cunningham, is a manufacturer, residing in the Town of Walkerville and is a ratepayer of the said Town. 10

2. (a) The Plaintiff, Edgar F. Ladore, is the holder of the following debentures:

Debentures of the par value of \$4,000.00 issued by the Town of Walkerville pursuant to bylaw number 903.

(2) Debentures of the par value of \$196.39 issued by the Town of Walkerville pursuant to bylaw number 1137.

(3) Debentures of the par value of \$1,000.00 issued by the Town of Walkerville pursuant to bylaw number 1300.

(4) Debentures of the par value of \$5,000.00 issued by the Town of Walkerville pursuant to bylaw number 1378. 20

(5) Debentures of the par value of \$2,000.00 issued by the Walkerville-East Windsor Water Commission pursuant to bylaw of the Commission.

(b) The Plaintiff, Edgar F. Ladore, is the holder as trustee of the following debentures:

(6) Debentures of the par value of \$10,000.00 issued by the Town of Walkerville pursuant to bylaw number 808.

(7) Debentures of the par value of \$2,000.00 issued by the Town of Walkerville pursuant to bylaw number 903.

(8) Debentures of the par value of \$8,000.00 issued by the Town of Walkerville pursuant to bylaw number 979. 30

(9) Debentures of the par value of \$11,000.00 issued by the Essex Border Utilities Commission. pursuant to bylaw of the Commission.

(c) The Plaintiff, Harrie R. Dingwall, is the holder of the following debentures:

(10) Debentures of the par value of \$1,000.00 issued by the Town of Walkerville pursuant to bylaw number 852.

(11) Debentures of the par value of \$1,000.00 issued by the Town of Walkerville pursuant to bylaw number 853.

3. (a) The bylaws authorizing debentures issued by the Town of Walkerville referred to in paragraphs (1), (2), (3), (4), (6), (7) (8), (10) and (11) were submitted to the Ontario Railway and Municipal Board under Section 304, of the Municipal Act, being R. S. O. 1927, Chapter 233, and bear a certificate issued by the Ontario Railway and Municipal Board in the following form or to the like effect: 40

"In pursuance of the Municipal Act, the Railway and Municipal Board hereby certifies that the within debenture is valid and binding and that its validity is not open to be questioned in any court on any ground whatsoever.

Dated

Chairman."

In the Supreme
Court of Ontario
No. 1
Amended
Statement of
Claim, July 9,
1936.

Continued

3. (b) The said debentures were issued pursuant to R. S. O., 1927, Chapter 235, Sections 21 and 45, ss. 5, which provide respectively as follows:

10 "21. Except as in this Act is otherwise expressly provided, the entire cost of a work undertaken shall be specially assessed upon the lots abutting directly on the work according to the extent of their respective frontages thereon, by an equal special rate per foot of such frontage sufficient to defray such costs."

"45. (5) The special rates imposed for the owners' portion of the cost shall form a special fund for the payment of the debentures issued under the authority of sub-section 2 and the interest thereon and shall not be applicable to or be applied for any other purpose."

4. The debentures referred to in sub-paragraphs (5) and (9) were issued by the Walkerville-East Windsor Water Commission and are specially charged on the undertaking and system of the said Commission pursuant to Statutes of 20 Ontario, 1930, Chapter 107, Section 7, sub-section 13, (1) and (2) and Section 20, which are respectively as follows:

"7. (1) The Commission . . . may issue debentures for the sums so borrowed or required and the debts so incurred and the debentures so issued shall be a direct liability of Walkerville and East Windsor to the lender of such sums and to the holder of any such debentures, and shall be specially charged upon the system."

30 "20. All sums borrowed and debentures issued under the authority of this Act shall be binding on the Commission, Walkerville, East Windsor and the ratepayers thereof and shall be a special charge upon the system."

5. The defendants, Harry J. Mero, W. Donald McGregor, and Russell A. Farrow, are members of an alleged Windsor Finance Commission and claim to be appointed by the Lieutenant-Governor-in-Council of Ontario by Order-in-Council dated the 1st day of May, 1935.

6. The defendant, George W. Bennett, is Mayor of the City of Windsor, a corporation which is alleged to have been constituted by 1935, Statutes of Ontario, Chapter 74, being the City of Windsor (Amalgamation) Act, 1935, and as such claims to be a member of the aforesaid Windsor Finance Commission.

40 7. The Corporation of the Town of Walkerville was incorporated by 1890, Statutes of Ontario, Chapter 108.

8. The Corporation of the City of East Windsor was erected into a city on the 1st day of June, 1929, by an Order of the Ontario Railway and Municipal Board, dated the 5th day of March, 1929, and on the 14th day of May, 1932, a notice was published in the Ontario Gazette declaring that the said Corporation had become subject to Part VI of the Ontario Municipal Board Act, 1932.

Continued

9. The Corporation of the City of Windsor was incorporated as a City by 1892, Statutes of Ontario, Chapter 92, and on the 26th day of November, 1932, a notice was published in the Ontario Gazette declaring that the said Corporation had become subject to Part VI of the Ontario Municipal Board Act, 1932.

10. The Corporation of the Town of Sandwich was incorporated by 1857, Statutes of Upper Canada, Chapter 94, and on the 14th day of May, 1932, a notice was published in the Ontario Gazette declaring that the said Corporation had become subject to Part VI of the Ontario Municipal Board Act, 1932.

11. The defendant, the Essex Border Utilities Commission, was incorporated by 1916, Statutes of Ontario, Chapter 98, and by 1933, Statutes of Ontario, Chapter 77, Section 6 (1), Part VI of the Ontario Municipal Board Act, 1932, was declared to apply to the said defendant from and after the 1st day of February, 1933.

12. The defendant, the Walkerville-East Windsor Water Commission was incorporated by 1930, Statutes of Ontario, Chapter 107.

13. The defendant, the Water Commissioners of the City of Windsor, was incorporated by 1874, Statutes of Ontario, Chapter 79 under the name of The Water Commissioners of the Town of Windsor.

14. The defendant, The Board of Water Commissioners of the Town of Sandwich was created by bylaw number 144 of the Council of the Town of Sandwich passed on the 23rd day of December, 1892, and the said defendant was by 1913, Statutes of Ontario, Chapter 120, declared to be a body corporate.

15. The defendant, the Hydro-Electric Commission of the City of East Windsor was incorporated by bylaw of the Council of the Town of Ford City on or about the 30th day of May, 1922.

16. The defendant, the Hydro-Electric Commission of the Town of Walkerville, was incorporated by bylaw number 506 of the Council of the Town of Walkerville passed on the 22nd day of December, 1913.

17. The defendant, the Hydro-Electric Commission of the City of Windsor was incorporated by bylaw number 1654½ of the Council of the City of Windsor passed on the 29th day of December, 1931.

18. The defendant, the Hydro-Electric Commission of the Town of Sandwich was incorporated by bylaw number 1216 of the Council of the Town of Sandwich, passed on the 3rd day of December, 1923.

19. The Corporation of the City of East Windsor, prior to the institution of this action, issued debentures on various dates and there remained outstanding on the 31st day of December, 1935, debentures of the par value of \$3,059,458.21 issued for general and local improvement purposes, \$113,029.18 on behalf of the Hydro-Electric Commission of the City of East Windsor and \$892,216.86 on behalf of The East Windsor Public School Board, and in the year 1931 ceased to meet its liabilities generally as they became due by failing to pay, among other debts, the principal and interest falling due in December, 1931, on all the aforesaid debentures and has continued in default in the payment of all interest and principal due on the said debentures up to the institution of this action.

20. The Corporation of the Town of Walkerville, prior to the institution of this action, issued debentures on various dates and there remained outstanding on the 31st day of December, 1935, debentures of the par value of

\$1,508,242.70 issued for general and local improvement purposes, \$137,772.89 issued on behalf of the Hydro-Electric Commission of the Town of Walkerville, \$690,635.05 for Collegiate and Vocational School purposes and \$346,198.43 for public school purposes, and in the years 1935 and 1936 ceased to meet its liabilities generally as they became due by failing to pay, among other debts, the principal of the said debentures that fell due in 1935 and 1936 and by failing to pay the interest falling due on all the aforesaid debentures in 1936 and such default has continued.

In the Supreme
Court of Ontario
No. 1
Amended
Statement of
Claim, July 9,
1936.

Continued

21. The Corporation of the City of Windsor prior to the institution
10 of this action issued or assumed the payment of debentures on various dates and there remained outstanding on the 31st day of December, 1935, debentures of the par value of \$8,533,052.94 for general and local improvement purposes and on behalf of the Water Commissioners of the City of Windsor and the Hydro-Electric Commission of the City of Windsor, \$1,819,311.60 for Collegiate and Vocational School purposes and \$2,417,605.58 for public school purposes, and in the year 1932 ceased to meet its liabilities generally as they fell due by failing to pay, among other debts, the interest due thereon in December, 1932, and in 1933 and subsequently the interest and principal falling
dure thereon and such default has continued.

22. The Corporation of the Town of Sandwich prior to the institution
20 of this action issued or assumed the payment of debentures on various dates and there remained outstanding on the 31st day of December, 1935, debentures of the par value of \$2,097,195.29 for general and local improvement purposes, \$110,403.20 issued on behalf of the Hydro-Electric Commission of the Town of Sandwich, \$39,641.64 issued on behalf of the Board of Water Commissioners of the Town of Sandwich, \$229,618.10 assumed for High School purposes and \$524,541.45 issued for public school purposes and in March, 1932, ceased to meet its liabilities generally as they fell due by failing to pay, among
other debts, the principal and interest falling due on such debentures and such
30 default has continued.

23. The Essex Border Utilities Commission, prior to the institution of
this action, issued debentures on various dates and there remained outstanding on the 31st day of December, 1935, debentures of the par value in excess of \$1,421,449.36 of which the said sum of \$1,421,449.36 was the liability of the Corporation of the City of East Windsor, the Corporation of the Town of Walkerville, the Corporation of the City of Windsor and the Corporation of the Town of Sandwich therefor and in 1933 ceased to meet its liabilities generally as they fell due by failing to pay, among other debts, the principal and interest falling due on such debentures and such default has continued.

24. The Walkerville-East Windsor Water Commission prior to the institution
40 of this action issued debentures on various dates and there remained outstanding on the 31st day of December, 1935, debentures of the par value of \$753,500.10 and since the institution of this action ceased to meet its liabilities generally as they fell due by failing to pay the interest due thereon on the 30th day of June, 1936, and such default has continued.

25. The Plaintiffs make the general allegation that at the time of the passing of the Ontario Municipal Board Act in 1932, the aforesaid municipal corporations were known to be insolvent and bankrupt and unable to pay their debts in full as they matured and the said municipal corporations so continued

Continued

to be insolvent and the series of Acts of the Legislature respecting the control, management and operating of defaulting municipalities down to the time of the City of Windsor (Amalgamation) Act, 1935, were passed solely for the purpose of arranging the liabilities of the said municipal corporations and the priorities thereof and of finding a way to avoid a public acknowledgment of bankruptcy and are therefore ultra vires of the Legislature as insolvency bankruptcy legislation.

26. The Statutes of Ontario, 1935, Chapter 74, as amended by Statutes of Ontario, 1936, Chapter 66, cited as the City of Windsor (Amalgamation) Act, 1935, provided that the defendant corporations should be amalgamated and form one corporation to be known as the Corporation of the City of Windsor and directed that there should be constituted a Finance Commission which, amongst other things, should undertake to prepare and submit a plan for funding and refunding the debts of the defendant corporations. 10

27. The Plaintiffs allege, and the fact is, that the said Statutes and amendments, together with such portions of the 1935 Statutes of Ontario, Chapter 16, being an Act in respect of the Department of Municipal Affairs, 1935, which refer to municipalities or the local boards or commissions which are bankrupt and insolvent, are ultra vires of the Legislature of the Province of Ontario as bankruptcy legislation and that the Legislature of the Province of Ontario has no power to amalgamate the said municipalities or interfere with the legal rights of the holders of debentures. 20

28. In the alternative, the Plaintiffs say that, if the said Acts are intra vires of the Legislature of the Province of Ontario, which they do not admit but deny, the debentures held by the Plaintiffs form a lien and charge on the assets of the former corporations of the Walkerville-East Windsor Water Commission and the Hydro-Electric Commission of the Town of Walkerville and in case of the Local Improvement Act, form a lien and charge on the lands specially charged with costs of the work.

28-A. The individual defendants, purporting to act as the Finance Commission of the City of Windsor have prepared and submitted to the Municipal Board a plan for funding and refunding the debts of the alleged amalgamated Municipalities, to which plan for greater certainty the Plaintiffs crave leave to refer at the trial of this action, but the said plan is inequitable and unjust and does not comply with the provisions of Statutes of Ontario, 1935, Chapter 16, being The Department of Municipal Affairs Act, 1935, and the alleged Commissioners have no authority to prepare the said plan and the Ontario Municipal Board is not authorized to approve of the same and the plan is ultra vires, unlawful and unenforceable. (Amended pursuant to rule 127, this 17th July, 1936, D'Arcy Hinds, Registrar, S. C. O.) 30

29. The Plaintiffs further allege, and the fact is, that under Statutes of Ontario, 1935, Chapter 16, Section 31, being the Department of Municipal Affairs Act, 1935, the said Finance Commission and the Department of Municipal Affairs had no authority to interfere with or prejudice the lien, hypothec and charge contained in the said debentures or to interfere with the remedies which the Plaintiffs are entitled to enforce to obtain payment of the principal and interest due thereon. 40

30. The Plaintiffs further allege and the fact is that the plan for funding and refunding the debts of the amalgamated municipalities is inequitable and unjust and fails to take into consideration the differences between the assets and liabilities of the said municipalities and compels the plaintiffs, Ladore and Dingwall, to relinquish and waive the priorities, lien, hypothec and charge to which they are entitled under the provisions of the said debentures.

In the Supreme
Court of Ontario
No. 1
Amended
Statement of
Claim, July 9,
1936.

Continued

31. The Plaintiffs further allege, and the fact is that, if the City of Windsor is a valid and subsisting corporation, which they do not admit but deny, that the officers of the said City have, with notice, taken possession of certain 10 moneys standing to the credit of the Walkerville-East Windsor Water Commission; certain moneys standing to the credit of the Hydro-Electric Commission of the Town of Walkerville; and certain moneys standing to the credit of the Corporation of the Town of Walkerville, and is from time to time collecting the moneys and rates due to the said corporations and has threatened to apply the same in accordance with the aforesaid scheme of funding and refunding to the prejudice of the plaintiffs.

THE PLAINTIFFS THEREFORE CLAIM:

1. A declaration that Statutes of Ontario, 1935, Chapter 74 and Statutes of Ontario, 1936, Chapter 66, being the City of Windsor (Amalgamation) Act, 20 1935, is ultra vires and that the defendant, the Corporation of the City of Windsor and the Windsor Utilities Commission, bodies alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1935, Chapter 74, being the City of Windsor (Amalgamation) Act, 1935, are not valid and subsisting corporations and the assets of their co-defendants, other than George Bennett, Harry J. Mero, W. Donald McGregor, Russell A. Farrow and the Attorney-General for Ontario are not vested in the said Corporations.

2. A declaration that Section 8 and Part 6 of the Ontario Municipal Board Act, 1932, being Statutes of Ontario, 1932, Chapter 27, and Part III of the Department of Municipal Affairs Act, 1935, Chapter 16, and amend- 30 ments thereto are ultra vires. (Amendment allowed at the trial by the Hon. Mr. Justice Hogg, Sept. 28, 1936. A. A. MacKinnon, L. R. E.)

3. A declaration that all proceedings taken and had under the provisions of the City of Windsor (Amalgamation) Act, 1935, are void as against the plaintiffs and those on whose behalf they sue.

4. In the alternative a declaration that the proposed plan for funding and refunding the debts of the amalgamated municipalities of East Windsor, Walkerville, Windsor and Sandwich is not within the powers of the Municipalities or of the Windsor Finance Commission and that the Ontario Municipal Board has no authority to approve of the same.

40 5. A declaration that the Plaintiffs and all other holders of the debentures referred to in Paragraph 2 hereof are entitled to a lien, charge or hypothec on

In the Supreme
Court of Ontario
No. 1
Amended
Statement of
Claim, July 9,
1936.

Continued

the assets and revenues of the Corporations by whom or on whose behalf the said debentures were issued.

6. An accounting.
7. A receiver.

8. Such further and other relief as the nature of the case may require or this Honourable Court may deem meet.

The Plaintiffs propose that this action be tried at the City of Windsor, in the County of Essex.

DELIVERED this 9th day of July, 1936, by Messrs. Sale and Sale, 303 Bartlet Building, Windsor, Ontario, Solicitors for the Plaintiffs.

10

In the Supreme
Court of Ontario
No. 2
Statement of
Defence of The
Attorney-General
or Ontario
July 20th, 1936

STATEMENT OF DEFENCE OF THE ATTORNEY-GENERAL FOR THE PROVINCE OF ONTARIO

1. This defendant says that he is not properly joined as a Defendant in this action, and he asks that this action be dismissed as against him with costs.

2. An action does not lie against the Defendant at the instance of the Plaintiffs to declare an act, or any part thereof, of the Legislature of the Province of Ontario to be ultra vires; and in particular, such an action does not lie against this Defendant for such a declaration in respect to The City of Windsor (Amalgamation) Act, 1935; The City of Windsor (Amalgamation) Amendment, Act, 1936; part three of the Department of Municipal Affairs Act, 1935; part six of The Ontario Municipal Board Act, 1932; and amendments thereto; or any part of such statutes.

3. This Defendant is not a party to any of the proceedings referred to in the Statement of Claim, nor is the Crown a party thereto; nor is any property or right of the Crown in question in this action, incidentally or otherwise.

4. Without waiving any of his objections that this action is not maintainable against him, this Defendant says that the Acts of the Legislature of the Province of Ontario referred to in the Statement of Claim, are intra vires of the said Legislature.

DELIVERED this 20th day of July, 1936, by I. A. Humphries, Solicitor for the Attorney-General of the Province of Ontario.

30

AMENDED STATEMENT OF DEFENCE OF GEORGE BENNETT,
THE CORPORATION OF THE CITY OF WINDSOR and THE WIND-
SOR UTILITIES COMMISSION.

In the Supreme
Court of Ontario
No. 3
Amended State-
ment of Defence
of George Bennett,
The City of
Windsor and The
Windsor Utilities
Commission.

1. These Defendants say that this action should be summarily dis-
missed with costs as against them, and will so move at the opening of the trial
of this action, upon the following grounds:

- 10 (a) That this action was instituted and is being continued by the Plain-
tiffs without first obtaining the leave of the Ontario Municipal
Board as required by the provisions of The City of Windsor (Amalga-
mation) Act, 1935, and the Department of Municipal Affairs Act,
1935, and these Defendants plead the said statutes.
- (b) That the Plaintiffs' statement of claim discloses no cause of action
as against these Defendants.
- (c) The Defendant George Bennett has been sued in his personal capa-
city and no cause of action has been disclosed in the statement of
claim as against him in such capacity.

2. These Defendants further say that all the Defendant municipal
corporations, commissions and boards named in the style of cause, other than
these Defendants, should be struck out as Defendants in this action, and these
20 Defendants will so move at the opening of the trial of this action upon the
following grounds:

- (a) That by virtue of The City of Windsor (Amalgamation) Act, 1935,
the said municipal corporations, commissions and boards were dis-
solved and no longer exist, and that all their functions, powers,
duties and assets have been transferred to and vested in the De-
fendants the present Corporation of the City of Windsor and The
Windsor Utilities Commission.

3. In direct and more particular reply to the Statement of Claim these
Defendants repeat the allegations contained in paragraphs 1 and 2 hereof and
30 without prejudice to the rights and claims therein asserted, in addition reply
to the allegations contained in the statement of claim as follows.

4. These Defendants admit the allegations contained in paragraph 1
of the Statement of Claim, save that certain of the Plaintiffs are ratepayers
of the Town of Walkerville, but admit that the said Plaintiffs were, prior to
the 1st day of July, 1935, ratepayers of the Town of Walkerville

5. These Defendants neither affirm nor deny the allegations contained
in paragraphs 2, 3 and 4 of the Statement of Claim and say that they have no
knowledge of the facts therein stated and put the Plaintiffs to the strict proof
thereof.

40 6. In answer to paragraph 5 of the Statement of Claim these Defendants
admit that the Defendants Mero, McGregor and Farrow are members of The
Windsor Finance Commission and were appointed to such commission as
alleged, and pursuant to the statutory authority in that behalf.

Continued

7. In answer to the paragraph 6 of the Statement of Claim these Defendants say that the Defendant Bennett is Mayor of the City of Windsor, having been duly elected to such office under the provisions of The City of Windsor (Amalgamation) Act, 1935, and that he has performed the functions and duties of such office since the 1st day of July, 1935. As such mayor he is *ex officio* a member of The Windsor Finance Commission.

8. In answer to paragraphs 7 to 18 inclusive of the Statement of Claim, these Defendants state that the several municipal corporations, commissions and boards referred to therein, except as hereinafter mentioned were constituted as alleged in the aforesaid paragraphs, but repeat that all such municipal corporations, commissions and boards were dissolved and are no longer in existence. These Defendants, however, say that the Defendant The Water Commissioners of the City of Windsor, were incorporated under their present name and carried on under the added powers conferred by the statute passed in 1898, i.e., 61 Vic. chapter 58. These Defendants further say that the Defendant The Board of Water Commissioners of the Town of Sandwich was created under the authority of the Municipal Water Works Act, R. S. O. 1897, Chapter 255, and by a by-law of the former Corporation of the Town of Sandwich numbered 436 and finally passed on the 11th day of March, 1912, but that such corporations were likewise dissolved and no longer exist.

9. In answer to paragraphs 19 to 24 inclusive of the Statement of Claim, these Defendants deny the accuracy of the allegations therein contained. In further answer to the said paragraphs these Defendants state that the former Corporations of the City of East Windsor, the Town of Walkerville, the City of Windsor and the Town of Sandwich and the former Walkerville-East Windsor Water Commission did not cease to meet their respective liabilities generally as they fell due as therein alleged.

10. In answer to paragraph 25 of the Statement of Claim these Defendants deny the allegations therein contained and put the Plaintiffs to the strict proof thereof. In any event in further answer to paragraph 25 these Defendants say that the bankruptcy legislation which is to be found under The Bankruptcy Act, R.S.C., 1927, Chapter 11, has no application whatever to municipal corporations or any statutory body formed under any Act of the Legislature of the Province of Ontario respecting municipal corporations or any statutory bodies functioning for or on behalf of municipalities or municipal corporations, that no act of bankruptcy is shown and that the legislation referred to is *intra vires*.

11. These Defendants admit the allegations in paragraph 26 of the Statement of Claim.

12. In answer to paragraph 27 of the Statement of Claim these Defendants repeat the allegations contained in paragraph 10 hereof and deny that the Act of the Provincial Legislature referred to therein is insolvency bankruptcy legislation and say that the Legislature of the Province of Ontario had the power to amalgamate the said municipalities and to deal generally with the legal rights of the holders of any debentures.

13. Subject to the objections taken herein that The Windsor Finance Commission is not properly before the Court, which said objections will be

insisted upon at the trial, these Defendants in reply to paragraphs 28, 28A, 29 and 30 of the Statement of Claim, admit that The Windsor Finance Commission has prepared and submitted to The Ontario Municipal Board a plan for funding and refunding the debts of the amalgamated municipalities and say that such plan is equitable and just and complies with all statutes passed in that behalf, and that The Windsor Finance Commission had full power and authority to prepare the said plan, and the Ontario Municipal Board is authorized to approve the said plan. These Defendants further say, however, that in any event the said plan has not been passed upon or approved
 10 by The Ontario Municipal Board and that the Plaintiffs action accordingly, in attacking it, is premature.

In the Supreme Court of Ontario
 No. 3
 Amended Statement of Defence of George Bennett, The City of Windsor and The Windsor Utilities Commission.

Continued

14. In answer to paragraph 31 of the Statement of Claim these Defendants say that if the officers of the Defendant Corporation of the City of Windsor have acted as alleged, such acts were legal and valid and performed under statutory authority.

15. The Defendant George Bennett pleads the provisions of the Public Authorities Protection Act, being Chapter 120 of the Revised Statutes of Ontario, 1927, and amendments thereto, and particularly section 13 thereof. (Amendment allowed at the trial before the Hon. Mr. Justice Hogg, Sept.
 20 28, 1936. A. A. MacKinnon, L.R.E.)

16. These Defendants plead the provisions of The City of Windsor (Amalgamation) Amendment Act, 1936, being Chapter 66 of the Statutes of Ontario passed in the year 1936 and proclaimed by the Lieutenant-Governor of Ontario on the 8th day of August, 1936, and particularly section 2 sub-section 7 thereof. (Amendment allowed at trial before the Hon. Mr. Justice Hogg, Sept. 28, 1937. A. A. MacKinnon, L.R.E.)

The Defendants therefore submit that this action should be dismissed as against them with costs.

DELIVERED this 23rd day of July, 1936, by BRUCE J. S. MAC-
 30 DONALD, City Hall, Windsor, Solicitor for the Defendants George Bennett, The Corporation of the City of Windsor and The Windsor Utilities Commission.

AMENDED STATEMENT OF DEFENCE OF THE DEFENDANTS
 HARRY J. MERO, W. DONALD MCGREGOR and RUSSELL A.
 FARROW

1. At the outset these defendants say that this action should be dismissed with costs as against them upon any one of the following grounds:

- (a) No leave has been obtained by the plaintiffs from the Ontario Municipal Board for the bringing of this action as required by Statute, and these defendants hereby plead the City of Windsor (Amalgamation) Act, 1935, and particularly Section 6 (1) thereof and Part III of The Department of Municipal Affairs Act, 1935, and particularly Sections 8 (1) and 30 (1) thereof;
- (b) These defendants are by the writ of summons named as defendants in their personal and individual capacity and not as members of The Windsor Finance Commission, a body incorporated under the provisions of The City of Windsor (Amalgamation) Act, 1935, and there is nothing whatever set up in the statement of claim against these defendants in their individual and personal capacity and no claim made against them as such;
- (c) Assuming all the acts of these defendants set up in the statement of claim to be true and the plaintiffs entitled to plead them, there is nothing set up which would entitle the plaintiffs to judgment against them even in their official capacity. 20
 And the defendants will so move at the opening of the trial of this action, and all that is hereinafter further pleaded is put forward subject to the above claims and without prejudice to their rights therein.

2. These defendants admit the allegations contained in Paragraph 1 of the Statement of Claim.

3. With reference to Paragraphs 2, 3 and 4 of the Statement of Claim, these defendants say they know nothing about the matters therein referred to, and neither admit nor deny the allegations therein contained. 30

4. With reference to Paragraph 5, these defendants say they were duly appointed members of the said The Windsor Finance Commission, and object only to some of the language in which the paragraph is couched.

5. With reference to Paragraph 6, these defendants simply refer to Section 5 of the Amalgamation Act.

6. These defendants neither affirm nor deny the statements contained in Paragraphs 7 to 18 inclusive of the statement of claim.

7. These defendants know nothing of the matters referred to in Paragraphs 19 to 24 inclusive, and neither affirm nor deny the same. 40

8. Assuming, however, the allegations in these paragraphs to be true, they form no sufficient foundation for the conclusions arrived at and the

claims set up in Paragraphs 25 and 27 of the Statement of Claim, as no act of bankruptcy is shown, but on the contrary the legislation complained of was clearly intended to avoid this result and the legislation referred to is under the circumstances in no sense ultra vires.

9. In answer to Paragraphs 28, 28A, 29 and 30 of the Statement of Claim, these defendants say that the plaintiffs seem to have misconceived the effect of the acts of The Windsor Finance Commission and the legislation therein referred to, and the allegations therein made do not constitute a basis of complaint in favour of the plaintiffs.

10 10. In answer to Paragraph 31 of the Plaintiffs' Statement of Claim, these defendants say that whatever has been done by the officers of the City of Windsor with respect to the matters therein referred to have been done under authority given them by Statute.

11. These defendants plead as a defence to the Plaintiff's Claim Section 13 of the Public Authorities Protection Act, (1927) R.S.O. cap. 120, and amendments thereto. (Amendment allowed at the trial before the Hon. Mr. Justice Hogg, Sept. 28, 1936).

12. These defendants also plead as a defence to the Plaintiffs' Claim the City of Windsor (Amalgamation) Amendment Act (1936), Statutes of Ontario, cap. 66, and particularly sub-section 7 of section 2 thereof. (Amendment allowed at the trial before the Hon. Mr. Justice Hogg, Sept. 28th, 1936).

These defendants, therefore, submit that upon all grounds this action should be dismissed with costs.

DELIVERED this twenty-third day of July, 1936, by J. H. Rodd, Esq., K.C., of Rodd, Wigle, Whiteside & Jaspersen, Barristers, Windsor, Solicitors for Harry J. Mero, W. Donald McGregor and Russell A. Farrow, three of the above named Defendants.

JOINDER OF ISSUE

The Plaintiffs join issue with the several Defendants herein.

30 DATED this 4th day of August, A. D., 1936.

SALE AND SALE,

303 Bartlet Building,
Windsor, Ontario.

Solicitors for the Plaintiffs.

In the Supreme
Court of Ontario
No. 4
Amended State-
ment of Defence
of Harry J. Mero,
W. Donald Mc-
Gregor and
Russell A. Farrow.
Continued

In the Supreme
Court of Ontario
No. 5
Joinder of Issue

In the Supreme
Court of Ontario
No. 7
Plaintiffs'
Evidence, Edgar
F. Ladore,
Examination.

TRIAL

Before the Honourable Mr. Justice Hogg, at Windsor, Ontario, September 28, 29 and 30, 1936.

JOHN SALE, K.C.
M. L. GORDON, K.C.
CHARLES SALE

Counsel for the Plaintiffs.

J. H. RODD, K.C.
B. J. S. MacDONALD

Counsel for the Defendants The Cor- 10
poration of the City of Windsor and the
Windsor Utilities Commission.

R. S. RODD, K.C.

Counsel for the Defendants Harry J.
Meio, W. Donald McGregor and Rus-
sel A. Farrow.

B. J. S. MacDONALD

Counsel for all other Defendants ex-
cept the Attorney-General of the Prov- 20
ince of Ontario.

I. A. HUMPHRIES, K.C.

Counsel for the Attorney-General of the
Province of Ontario.

EDGAR F. LADORE, Sworn.

EXAMINED BY MR. GORDON:

Q. Mr. Ladore, I believe you are a ratepayer of the old City of Walkerville? A. I am.

Q. Are you the holder of any debentures issued by Walkerville or its Public Utilities Commission? A. I do.

Q. Will you produce debenture number 96 issued by the Town of 30
Walkerville for \$1,000? They are in that envelope, are they not? A. Yes.

Q. I think there are ten debentures; will you produce the whole ten?
A. Very well.

HIS LORDSHIP: You have only spoken of one; what numbers are they?

MR. GORDON: They are all issued under By-Law 808, my Lord.

WITNESS: 96 to 100, your Lordship.

HIS LORDSHIP: \$1,000 each.

MR. GORDON: Q. \$1,000 each? A. Yes.

MR. GORDON: I thought your Lordship would allow Mr. Ladore to take them back with him, because there is quite a lot of money involved.

HIS LORDSHIP: Yes.

MR. GORDON: If your Lordship will look at page 10 of Exhibit 2-A, the first formal document is the by-law under which that debenture was issued. The next document is a photostatic copy of the debenture. The third document is a list of the numbers that Mr. Ladore owns, issued under that by-law, on page 16.

10 HIS LORDSHIP: And 15 is the photostatic copy.

MR. GORDON: Yes, my Lord.

Q. Might I have one of those debentures, Mr. Ladore?

A. Yes; give it back, though.

Q. Oh, I will give it back.

I call your Lordship's attention to the certificate on the back of that debenture:

"In pursuance of The Municipal Act, the Ontario Railway and Municipal Board hereby certifies that the within Debenture is valid and binding, and that its validity is not open to be questioned in any court on any ground
20 "whatever.

"Dated the 3rd day of May, 1921."

D. M. McIntyre I think was the Chairman at that time. Perhaps your Lordship will just examine the original.

HIS LORDSHIP: Well, there is no doubt about this being a correct copy?

MR. J. H. RODD: None whatever.

MR. GORDON: If you will put those in a separate pile, Mr. Ladore, we won't mix them up.

Then the next is a debenture of the Town of Walkerville for \$1,000.

HIS LORDSHIP: In the same series?

30 MR. GORDON: No, my Lord, under another bylaw.

HIS LORDSHIP: There is a debenture on page 21.

MR. GORDON: Yes, page 21 is \$1,000, and it is number 81; it is dated December, 1935.

HIS LORDSHIP: How many of those were there?

MR. GORDON: I think there was just one, my Lord.

HIS LORDSHIP: That is debenture 81, page 21, of this book. The bylaw is on page 23. Is that right, Mr. Gordon?

MR. GORDON: Yes, my Lord.

40 Q. Have you a list, Mr. Ladore? A. How would it do if I call them off and check it with the list? It is difficult to find there just the one you want.

MR. GORDON: My difficulty, my Lord, is that in the list Mr. Ladore has produced there is no debenture 81.

HIS LORDSHIP: Well, there is a photograph of debenture 81 here.

MR. GORDON: Oh, there is no doubt he has it.

HIS LORDSHIP: It is numbered 81 at the top of the debenture, and also on the back of it, 14th of December, 1935, for \$1,000, six per cent. The bylaw authorizes \$60,000.

MR. GORDON: Might we just pass that one for the minute, my Lord? It is not on the list, and I think it will be found when we have dealt with the others.

Q. Mr. Ladore, will you just eliminate that for a minute, and let me have the debentures issued under bylaw 853? A. How many?

Q. Just one, for \$1,000.

My Lord, I beg your pardon; the next debenture, page 23, belongs to the other defendant, Mr. Dingwall. My friends are prepared to admit—

HIS LORDSHIP: Wait, Mr. Gordon. There is something wrong here. The debenture is page 21; the bylaw is 23. 10

MR. GORDON: Yes, my Lord. Well, that debenture belongs to Mr. Dingwall.

HIS LORDSHIP: Number 81 is not this gentleman's at all?

MR. GORDON: No, my Lord.

HIS LORDSHIP: Where is Mr. Ladore's?

MR. GORDON: My friends admit that Mr. Dingwall is a non-resident, and that he is the owner of that debenture.

HIS LORDSHIP: Mr. Dingwall owns debenture 81 on page 21 of this Exhibit 2-A, and he is a non-resident; that is admitted.

MR. GORDON: And there is the same admission, my Lord, with regard 20 to the next debenture, on page 27.

HIS LORDSHIP: That is Mr. Dingwall's, too.

MR. GORDON: That is Mr. Dingwall's, too.

HIS LORDSHIP: That is number 58.

MR. GORDON: Yes, my Lord.

Q. Then, Mr. Ladore, the next series of debentures are \$6,000, issued by the Town of Walkerville, commencing at 118?

HIS LORDSHIP: That is page 33.

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: Debenture 118. Is there a series there? 30

MR. GORDON: Yes, my Lord, there is \$6,000.

HIS LORDSHIP: 118 to what?

MR. GORDON: 116 to 121, my Lord. The list is at page 35.

HIS LORDSHIP: Then they are not in order, and there is no copy of 116. 118 is the first one I have in this book. 116 to 121, you say, \$1,000 each.

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: This list seems to be incomplete, Mr. Gordon. All that are shown here are 116, 117, 119, 120 and 121.

MR. GORDON: I do not think they are complete, my Lord. The reason 118 is not there is because the copy is given. 40

HIS LORDSHIP: It would have been much better to put it in. It adds up to \$5,000, and as a matter of fact it is \$6,000.

MR. GORDON: Q. Have you got them there, Mr. Ladore? A. Yes, I have 116, 117, 118, 119, 120 and 121.

HIS LORDSHIP: Then the bylaw is here that authorizes those.

MR. GORDON: Yes.

Q. Then, Mr. Ladore, there is debenture number 28, you have \$8,000 of those?

HIS LORDSHIP: That is page 42.

MR. GORDON: There is always a thousand more than the number in the list, my Lord.

HIS LORDSHIP: \$8,000.

WITNESS: This lot, your Lordship, starts with 30, 32, 33, 35, 36, 38, 39.

MR. GORDON: Then there is 11,000 of the Town of Walkerville, numbers 57, 58 and so on, page 50.

HIS LORDSHIP: Page 48 is the copy.

MR. GORDON: Yes, my Lord.

10 HIS LORDSHIP: That is number 56.

WITNESS: Did you say 56?

MR. GORDON: Yes, 56 to 67.

HIS LORDSHIP: Q. You have from 56? A. 57, 58, 59, 60, 62, 63, 64, 65, 66 and 67

HIS LORDSHIP: Making in all \$11,000. You do not hold 61.

MR. GORDON: Then there is debenture 133 of the Town of Walkerville, \$196.39.

HIS LORDSHIP: That is page 54.

20 MR. GORDON: Q. Have you got that, Mr. Ladore? A. Yes, I have it.

HIS LORDSHIP: Is there only the one?

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: Just the one. That is \$1,000?

WITNESS: No, that is \$196.39.

MR. GORDON: If your Lordship would care to look at the Local Improvement Act, which is page 13 of the statutes, you will see why we claim that we have a lien to protect that.

HIS LORDSHIP: With respect to this alone?

MR. GORDON: Well, there is \$20,000 in the same position.

30 HIS LORDSHIP: Well, wait till we get them all, and then refer to it. Where do you find the list of those?

MR. GORDON: The next one is 109.

HIS LORDSHIP: Do you say that this debenture 133 and some following ones are—

MR. GORDON: Are protected by liens on the property.

HIS LORDSHIP: Pursuant to the Local Improvement Act?

MR. GORDON: Pursuant to the Local Improvements Act.

HIS LORDSHIP: Not the former ones?

MR. GORDON: This is the first one.

40 HIS LORDSHIP: 133; and 109 as well, and so on.

MR. GORDON: Yes, my Lord. I will mention to your Lordship when I claim the lien. I think there is only a thousand of that 109. I omitted to point out to your Lordship that debenture 133 has a certificate on it.

HIS LORDSHIP: Well, all these debentures have so far.

MR. GORDON: No; just one, my Lord.

HIS LORDSHIP: I have seen that certificate on a number of others, it strikes me. The same certificate is on the former ones; it is on them all, is it not?

MR. GORDON: I think there are just two that have those certificates, my Lord.

HIS LORDSHIP: Well, now we have got to 109, and 133. 109 is \$1,000.

MR. GORDON: Yes, my Lord, that is a Local Improvement debenture, too.

HIS LORDSHIP: That is page 62.

MR. GORDON: Then the next one is one of the Housing Commission.

HIS LORDSHIP: Is that subject to the Local Improvements Act? That does not come under the Local Improvements Act. 10

MR. GORDON: I do not think that has a lien.

HIS LORDSHIP: Just these two.

MR. GORDON: Yes, but there are a great many other Local Improvement ones as we come along.

HIS LORDSHIP: Now you are getting to the next one, 154.

MR. GORDON: There is \$5,000 of that issue.

HIS LORDSHIP: Are there five like that? Yes. Page 68. Debentures 150, 151, 152 and 153, in all \$5,000.

MR. GORDON: Then the next debentures are of the Essex Border Utilities Commission, and the bylaw for that starts at page 83, my Lord. 20

HIS LORDSHIP: Is number 58 one of those?

MR. GORDON: Yes, and we have \$11,000 of those.

HIS LORDSHIP: Bylaw on page 83.

MR. GORDON: And we claim that under the section of the Act that we have a lien on the system for the payment of that money.

HIS LORDSHIP: Page 91. How many more of those?

MR. GORDON: \$11,000.

HIS LORDSHIP: 53, 54, 55, 56, 59, 60, 61, 62, 63, 64—\$11,000. And you claim what, Mr. Gordon?

MR. GORDON: We claim that those are a lien on the system under the 30 terms of the Act.

HIS LORDSHIP: Under what Act?

MR. GORDON: The Essex Border Utilities Act; it is at page 170, I think, of the book of statutes.

Then the next one is some bonds of the Walkerville Water Commission, number 255. We have \$2,000 of that.

HIS LORDSHIP: Q. You have 255 and 099; is that right. A. Correct.

MR. GORDON: We claim, my Lord, that those debentures are liens on the system, and that is found at page 110. 40

HIS LORDSHIP: You have got also bond 99—two thousand in all.

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: You say there is a lien.

MR. GORDON: Under the statute appearing at page 198.

HIS LORDSHIP: Does that exhaust them all?

MR. GORDON: That is all, my Lord.

HIS LORDSHIP: Q. What amount does that make in all, Mr. Ladore? You hold how many?

MR. GORDON: \$53,000, I think, my Lord.

WITNESS: Fifty-two or three thousand.

HIS LORDSHIP: Well, there is a hundred and ninety-eight dollars and some cents? A. Yes.

Q. What do you make it in all? A. I think it is either fifty-two or fifty-three, is it not? It is on the list there.

Q. Is there a list in full? A. They have the list.

MR. GORDON: I think it is \$53,196.39.

WITNESS: Yes.

10 HIS LORDSHIP: All of the Town of Walkerville.

MR. GORDON: And the Utilities.

WITNESS: And the Utilities and the Water Commission.

HIS LORDSHIP: Q. Yes, but the Water Commission ones, are they—
A. There are only two of them.

HIS LORDSHIP: The Walkerville-East Windsor Water Commission.

MR. GORDON: Q. Mr. Ladore, how long have you been investing in these bonds? A. Oh, I imagine about the last eight or ten years.

Q. They were not bought for the purpose of this lawsuit or anything like that? A. No, sir.

20 HIS LORDSHIP: What?

MR. GORDON: I just wanted the witness to say that he has had them for a number of years.

HIS LORDSHIP: He did not buy them for the purposes of this action, you mean.

MR. GORDON: Yes, my Lord—rather a large investment.

Would your Lordship at this point just like to see those sections of the Local Improvements Act?

HIS LORDSHIP: Yes.

30 MR. GORDON: The first is at page 13, my Lord, of the book, the Local Improvements Act.

HIS LORDSHIP: Q. Had them for ten years, eight or ten years? A. Well, yes, I would say back that far.

HIS LORDSHIP: What are you referring me to, Mr. Gordon? Where is it?

MR. GORDON: Page 13, my Lord, the Local Improvements Act, the last paragraph but one:

40 "The special rates imposed for the owners' portion of the cost shall form a special fund for the payment of the debentures issued under the authority of sub-section 2 and the interest thereon and shall not be applicable to or be applied for any other purpose."

HIS LORDSHIP: That is section 45 (5), is it?

MR. GORDON: Yes, my Lord.

Then the Windsor Waterworks Act is at page 170; The Consolidated Essex Border Utilities Act, 1929; the Act starts at page 160.

HIS LORDSHIP: Page 170 is the amendment. What are you referring to?

MR. GORDON: Sub-section 9 at page 170, my Lord.

HIS LORDSHIP: Sub-section 9 of 10?

MR. GORDON: Yes, my Lord.

"Any plant or works and land acquired for the purposes of a work and the property appertaining thereto, shall be specially charged with the re-
"payment of any sum borrowed by the Commission for the purposes of such
"work or plant and for any debentures issued therefor, and the holders of such
"debentures shall have a preferential charge on such plant, works and land
"for securing the payment of the debentures issued in respect thereof, and the
"interest thereon."

We say that gives us a lien.

10

HIS LORDSHIP: That gives you a lien on the plant.

MR. GORDON: Yes, my Lord.

Then in regard to the Walkerville Water Commission, the statute is at page 197; the statute starts at page 189, and the particular section is at 197.

HIS LORDSHIP: That is the Walkerville Water Commission Act.

MR. GORDON: May I read the section to your Lordship?

HIS LORDSHIP: Yes.

MR. GORDON: Section 20:

"All sums borrowed and debentures issued under the authority of this Act shall be binding on the Commission, Walkerville, East Windsor and the
"ratepayers thereof, and shall be a special charge upon the system."

Then there were a small quantity of those debentures that were issued under the Public Parks Act, and those are also a lien. The Act starts at page 216, and the section is at page 218, the last page in the book.

HIS LORDSHIP: It is in typewriting.

MR. GORDON: Yes, my Lord. Section 8—

HIS LORDSHIP: Section 17?

MR. GORDON: Section 8, my Lord.

HIS LORDSHIP: I have section 17 here—Public Parks Act, section 17.

MR. GORDON: Oh, yes, sub-section 8;

30

"Debentures issued under the authority of this Act, shall form a lien and charge upon all land which is by this Act declared to be subject to the
"control and management of the board."

Would your Lordship care to compare the wording of those sections with 13 of the Department of Municipal Affairs Act?

HIS LORDSHIP: Yes.

MR. GORDON: That is section 31 of the Department of Municipal Affairs Act.

HIS LORDSHIP: That is chapter 75, is it?

MR. GORDON: The same section is in both the two Acts, my Lord, 40 the Act of the Ontario Municipal Board and the Department of Municipal Affairs. I think the Municipal Board Act is 75.

HIS LORDSHIP: No, that is the Amalgamation Act. Well, where are these?

MR. GORDON: The Act to establish the Department of Municipal Affairs is page 106, and the section to which I am referring is section 31. I refer your Lordship to page 114, section 31;

"Nothing in this Part contained shall take away any lien, hypothec or other charge, if any, in existence and subsisting at the time this Part comes into force with respect to any municipality upon or against any revenue or other asset of the municipality and the same shall continue to exist until it is satisfied and discharged."

In the Supreme
Court of Ontario
No. 7
Plaintiffs'
Evidence, Edgar
F. Ladore,
Examination.

Continued

And there is a section saying "municipality" shall include public utilities.

HIS LORDSHIP: What about the Municipal Board?

MR. GORDON: The Municipal Board Act is at page 66, my Lord.

HIS LORDSHIP: It is 45, 92, 103 and 105, according to the index.

10 There is no page such as you say. That is where they start.

MR. GORDON: Yes, it starts at 45, my Lord.

HIS LORDSHIP: That is the Act of 1932.

MR. GORDON: Yes, my Lord, and the special section is 96, on page 66;

"Nothing in this Part contained shall take away any lien, hypothec or other charge, if any, in existence and subsisting at the time this Part comes into force with respect to any municipality upon or against any revenue or other asset of the municipality and the same shall continue to exist until it is satisfied and discharged."

20 Q. Were those coupons on those debentures paid, Mr. Ladore? A. I didn't quite get that question.

Q. I say was the interest on those debentures paid? Has it been paid?

A. Up to a certain period, yes.

Q. Well, when was the last period that you got it?

A. When was the last?

Q. Yes?

HIS LORDSHIP: The last payment.

WITNESS: On Walkerville bonds, last December.

HIS LORDSHIP: Q. Well, have there been any due since then? A. Not on these particular bonds.

30 MR. GORDON: Q. Weren't they due in June? Wasn't the interest due in June? A. Those are water bonds.

HIS LORDSHIP: We are dealing with the municipal bonds.

WITNESS: The Town of Walkerville bonds—

HIS LORDSHIP: Q. The Town of Walkerville, you say the interest was paid in December last? A. That is the last I received.

Q. Is there any due since then. A. There is some due in July, yes, my Lord.

HIS LORDSHIP: Where are those bonds? Are these the ones? Town of Walkerville?

40 MR. CHARLES SALE: That is part of them.

HIS LORDSHIP: It is December and June and December—not July; June and December, these are.

WITNESS: Those are a different class of debenture; they are for the Housing Commission.

HIS LORDSHIP: You had better take them separately.

MR. GORDON: Yes, I think you had.

WITNESS: The ones I had I think are practically all—

Continued

HIS LORDSHIP: These are June and December.

MR. GORDON: I am calling the Secretary to prove default. We have to deal with each one, my Lord.

HIS LORDSHIP: Very well, go ahead.

WITNESS: This one is payable yearly.

HIS LORDSHIP: I think you should prove from this gentleman when he got his last interest, if there is anything in that point.

MR. GORDON: Q. Mr. Ladore, taking the first bond, number 96, issued by the Town of Walkerville, for \$1,000, under bylaw number 808, you hold \$10,000 of those bonds; when did you get your last payment of interest? 10

A. The last payment of interest on any Walkerville bonds was received in December last.

Q. I am talking about the Town of Walkerville bonds? A. Yes.

Q. And under that list there, was default made in June? No, that is a yearly bond, isn't it? A. Yes.

Q. That is a yearly bond. A. I don't think I have any bonds the interest on which were due in July, except water bonds.

Q. All the Walkerville bonds, interest has been paid, has it, up to date? A. No.

Q. Well, which ones have not been? A. Oh, pardon me, yes. 20

Q. Of the Town of Walkerville? A. Up to last December.

Q. Up to last December; and there is nothing due till next December? A. Not that I know of. I have not gone through them carefully, but—

Q. Now, take the next total—

HIS LORDSHIP: Perhaps it would be easier this way:

Q. Have you received any interest or have any coupons been due since December? A. Yes, on the water bonds.

HIS LORDSHIP: If there is anything in this point you had better get it, Mr. Gordon.

MR. GORDON: Q. When did you get your last payment of interest 30 on the water bonds? A. I would have to look at one of them just to find the due date. They are payable on June 30th.

Q. And were they paid?

HIS LORDSHIP: These are what?

MR. GORDON: These are the Water Commission bonds.

HIS LORDSHIP: He is not quite correct about the Town of Walkerville bonds, because I have some before me here in which the interest is payable in June and December. He said they were payable yearly. These yellow ones are June and December.

WITNESS: I was rather segregating them in groups, the Housing and 40 the Town of Walkerville and the Water—

MR. GORDON: Q. The Water Commission bonds, when did you get your last payment of interest? A. The 31st of December.

Q. When? A. Of last year.

Q. Did another payment of interest fall due in June? A. June 30th.

Q. Was it paid? A. No.

Q. Are those yellow bonds Housing bonds? A. So I believe.

Q. Were they issued by the Town of Walkerville? A. Yes.

Q. When did you get your last payment of interest? A. I would say in December, 1935.

Q. Is the interest due at the end of the further period of six months? A. 14th day of June.

Q. Did you get that interest? A. No.

HIS LORDSHIP: Q. Did you make any attempt to get it, ask for it? A. I enquired at the bank if they were in a position to pay, and I was told they were instructed not to pay.

10 MR. GORDON: Q. Then with regard to the Essex Border Utilities, you have quite a lot of securities of that Commission; when did you get your last payment of interest? A. I believe that would be in February, 1933.

Q. That was the last payment of interest? A. Yes.

Q. Has any interest been paid since then? A. Not that I am aware of.

Q. Has any principal fallen due? I see some of the bonds are due in February, 1934; has that principal been paid, Mr. Ladore? A. Yes.

Q. Bonds 53 to 64, the principal was due on the 1st of February, 1934; did you get it? A. No.

20 HIS LORDSHIP: Q. Are those coupon bonds? Are those bearer bonds? A. Yes, sir.

Q. Did you endeavour to cash coupons since 1933? A. I don't think that I have actually presented them; I merely found out whether they were paying them or not.

Q. And somebody told you they were not paying? A. Yes, that is correct.

MR. GORDON: Q. Well, who told you, Mr. Ladore? Did you enquire at the bank?

HIS LORDSHIP: I do not suppose what he was told is evidence.

30 MR. GORDON: Q. I say did you enquire at the bank where the bonds were payable to see if you could get it? A. Yes.

Q. Then, Mr. Ladore, I see the Town of Walkerville debentures—are any of them overdue as to principal? A. Yes.

Q. Has the principal been paid by the Town of Walkerville? A. Not that I know of.

Q. Have you got it? A. I haven't any bond the principal of which was due in July, so all I know is that—

Q. I see here one, bond number — that is Mr. Dingwall's bond.

HIS LORDSHIP: He says he has none that are overdue.

Q. Is that correct, Mr. Ladore? A. Oh, I wouldn't say that.

40 HIS LORDSHIP: I am trying to shorten it up if I can.

WITNESS: Here is one here that was due on the 14th day of December, 1934.

HIS LORDSHIP: Q. Well, that is long overdue? A. That is long overdue.

Q. Then would it be correct to say that some of the bonds held by you of the Town of Walkerville are overdue and have not been paid? A. Quite correct.

MR. GORDON: Take the witness.

CROSS-EXAMINED

By MR. J. H. RODD:

Q. Do I understand you to say that you have been paid certain moneys by way of interest on your debentures since the 1st of July, 1935? A. I think the last payment was made in December, 1935; that is my recollection.

Q. What was that? A. The last payment of interest was made in December, 1935.

Q. By whom were you paid? A. Canadian Bank of Commerce.

Q. Yes, I know, but by what warrant? A. Just—I am afraid I don't— 10

Q. Was that a debenture issued by the Walkerville-East Windsor Water Commission? A. Well, that would be on the Town of Walkerville bond, and also the Water bonds too, but not exactly on the same date; they are not due on the same date.

Q. That was paid by the present organization? A. Yes.

Q. You were and have been a resident—you were a resident of Walkerville in 1935, 1936? A. Yes.

Q. And I suppose exercised your franchise in the election of members of the City Council in January, 1936? A. I did.

Q. Even though the Act was iniquitous? A. I am still living in Walker- 20
ville.

HIS LORDSHIP: It was not iniquitous enough to drive him out of Walkerville.

MR. GORDON: That is all, Mr. Ladore.

(Witness retires).

MR. GORDON: Then, my Lord, I propose to call four witnesses from the banks, who are the fiscal agents of the various municipalities to pay these bonds, to prove definitely before your Lordship default of principal and interest, but my friends have agreed to an admission, which will save the examination and cross-examination of four witnesses. 30

HIS LORDSHIP: That is admitted by all parties; is that right?

MR. GORDON: Yes, my Lord; if I might give your Lordship a copy of the admission.

HIS LORDSHIP: That will be Exhibit 4.

EXHIBIT 4: Admission, headed "Statement of Default."

HIS LORDSHIP: Now, what it is, Mr. Gordon? Evidence of default, evidence given by the banks?

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: What bank? Bank of Commerce?

MR. GORDON: The first bank is in East Windsor, the Bank of Mon- 40
treal, my Lord. Might I read the statement to your Lordship?

HIS LORDSHIP: I do not think it would help us to read it, Mr. Gordon. If you will give me the names of the banks, it is going in as an exhibit.

MR. GORDON: East Windsor, the bank is the Bank of Montreal; in the Town of Walkerville, Canadian Bank of Commerce, the Walkerville

Branch; City of Windsor, Canadian Bank of Commerce, the Windsor Branch; and in the Town of Sandwich, the Imperial Bank of Canada; the Walkerville-East Windsor Water Commission, the Canadian Bank of Commerce at Walkerville; and the Essex Border Utilities Commission, the Canadian Bank of Commerce at Windsor.

In the Supreme
Court of Ontario
No. 7
Plaintiffs'
Evidence
Introduction of
Exhibits 4, 5, 6, 7.
Continued

HIS LORDSHIP: The Bank of Montreal, the Bank of Commerce and the Imperial Bank.

MR. CHARLES SALE: Yes, they are the three banks.

10 HIS LORDSHIP: The evidence is admitted from these banks that default is made.

MR. GORDON: Not only in the payment of principal and interest on these debentures, but in a great many other very large and serious claims.

HIS LORDSHIP: Well, that is all covered by this statement, is it?

MR. GORDON: Yes. This admission is not intended to be any evidence that the municipalities did not go on and pay their current bills.

HIS LORDSHIP: This is an admission, as I understand it, to save calling certain of these bank officials to prove that the interest coupons on certain bonds were not paid when due.

MR. GORDON: Yes, my Lord, but it goes a little further than that—

20 HIS LORDSHIP: And other indebtedness was not.

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: Well, whatever is set out in it—Mr. Rodd, you have read it, have you?—is it admitted?

Mr. J. H. RODD: Well, my learned friend has amplified this—

HIS LORDSHIP: Anything that is not set out in it is not covered by it

MR. J. H. RODD: No.

HIS LORDSHIP: It won't affect me if I cannot see it in it.

MR. GORDON: The next exhibit I want to put in is the Annual Report of the Bureau of Municipal Statistics, prepared by the Department of Municipal Affairs.

30 HIS LORDSHIP: Is that agreed to without calling a witness?

MR. J. H. RODD: No, my Lord. I cannot imagine what that has to do with this action.

HIS LORDSHIP: Well, I do not know, Mr. Rodd, as well as you do at this stage, but it may have something to do with it. I do not like to exclude anything until I know really something about the action, or a little more about it.

MR. GORDON: It is a public document prepared by Act of Parliament.

40 MR. J. H. RODD: It seems so foreign that they should put in the statement by somebody in Toronto about Windsor.

HIS LORDSHIP: Well, this is a Government office.

MR. J. H. RODD: Yes, but even so.

HIS LORDSHIP: Well, I suppose the Government is supposed to have all the municipalities under their paternal care, aren't they?

MR. J. H. RODD: It must have some relevance, my Lord, I submit.

HIS LORDSHIP: Oh, yes. Well, if it is not relevant, I will reject it, but at present, will receive it subject to your objection, That will be Exhibit 5.

EXHIBIT 5: Dept. of Municipal Affairs—Annual Report of Municipal Statistics for the Year 1934.

MR. GORDON: I am putting this report, Exhibit 5, in, my Lord, to show the very large and extended scope of the Act respecting the Department of Municipal Affairs and the Ontario Municipal Board. At page 9 of the summary it states that the total indebtedness of Ontario municipalities as of 1935 was \$483,934,700. I want to show to your Lordship, this is an Act not of a private and local nature.

HIS LORDSHIP: Those two Acts, you mean.

MR. GORDON: Yes, my Lord.

The next document I want to put before your Lordship is the Report of the Superintendent of Insurance, which is also a public document prepared by Act of Parliament, and therefore is prima facie evidence of their contents.

MR. J. H. RODD: That is objected to.

HIS LORDSHIP: The same objection from Mr. Rodd. What year is that?

MR. GORDON: 1934. It is the last volume printed. They print in 1935 an interim report, which I have got, but I have to return it to the officer who gave it to me.

HIS LORDSHIP: Well, if this shows your point as well as the other, use this.

MR. GORDON: If I may.

HIS LORDSHIP: If it is of any material consequence in the action. It is subject to Mr. Rodd's objection.

EXHIBIT 6: Report of the Superintendent of Insurance of the Dominion of Canada for the year ended December 31, 1934, vol. II, Life Insurance Companies.

MR. GORDON: My Lord, what I want to prove from this report is this, that at page 642 it shows that the Sun Life was incorporated in the Province of Quebec, its Head Office in Montreal; that company holds \$2,228,995.19 of the debentures in question.

HIS LORDSHIP: I do not suppose there is any dispute as to the amount of these debentures issued, and that they are scattered all over the country.

MR. GORDON: I beg your Lordship's pardon—

HIS LORDSHIP: I do not suppose there is any dispute about how many debentures have been issued and how widely they are spread.

MR. GORDON: The object of the evidence is to show that this Act deals with creditors both in other Provinces of Canada, in England, and in foreign countries.

HIS LORDSHIP: You mean with anyone who may hold debentures anywhere.

MR. GORDON: Yes. It is not of a private and local nature.

HIS LORDSHIP: Well, I do not just see that it proves that. The fact that these debentures are held all over the world, how does that prove the Act is not of a private and local nature?

MR. GORDON: Because of the Act cuts those debentures in half, it deals with the rights of people who are—

HIS LORDSHIP: Who are beyond the jurisdiction.

MR. GORDON: Yes, my Lord.

I made a mistake, my Lord, for which I am very sorry; I said that the Sun Life held two million of Windsor debentures. It is two million of Ontario Municipal Debentures. They hold about three hundred thousand of the debentures in question. The London and Scottish—

HIS LORDSHIP: Mr. Gordon, just what is the basis of this argument of yours as to the wide-spread holdings of these bonds?

MR. GORDON: I would think that I would have a much more difficult
10 task if the debentures were all held by the City of Windsor; than I think it might be declared an Act of a private nature.

HIS LORDSHIP: You think that that would make some distinction as to whether the Act is ultra vires or intra vires, do you?

MR. GORDON: I think so. There are two cases in the Supreme Court which say that the Court is not only permitted but bound to look at not only the history but the effect. I can refer your Lordship to those in a minute if you like.

HIS LORDSHIP: Yes, you might cite them now, or tell me where they are to be found.

MR. J. H. RODD: The Court interprets, does not make, laws. The
20 Court cannot change the effect of the statute.

MR. GORDON: Page 87 and 88, my Lord.

HIS LORDSHIP: That is Regina v. Grattan?

MR. GORDON: "We are not only entitled but bound to consider the "history of the subject matter dealt with and by the light derived from such "source to put ourselves as far as possible in the position of the Legislature."

Mr. Justice Nesbitt:

"The general rule which is applicable to the construction of documents is "equally applicable to all statutes—"

HIS LORDSHIP: Well, that is the general rule, Mr. Gordon. That is
30 applicable to all endeavours to interpret a statute.

MR. GORDON: Mr. Justice Cannon in the case that was just decided last month says he must look at the pith and substance—

HIS LORDSHIP: Well, that has been said by others before Mr. Justice Cannon quite often.

MR. GORDON: I am not going to take very much of your Lordship's time. but I—

HIS LORDSHIP: Oh, no, I think you can give me credit for my taking that in without your pressing it on me any further.

MR. GORDON: I have a little statement I might put in as a result of
40 calculations.

HIS LORDSHIP: Of holders of bonds?

MR. GORDON: Of holders of bonds.

HIS LORDSHIP: Exhibit 7, subject to Mr. Rodd's objection. That is a statement of the holders of bonds?

MR. GORDON: A statement showing the very important holdings

In the Supreme
Court of Ontario
No. 7
Plaintiffs'
Evidence
Introduction of
Exhibits 4, 5, 6, 7.

outside this Province, of Ontario Municipal bonds, and particularly Windsor bonds.

EXHIBIT 7: Statement of bonds held outside of Ontario.

HIS LORDSHIP: It is one o'clock, Mr. Gordon: I think we should adjourn now.

(Adjourned at 1.00 p.m. until 2.30 p.m.)

(On resuming at 2.30 p.m.):

ALBERT EDWARD COCK, Sworn

In the Supreme
Court of Ontario
No. 8
Plaintiffs'
Evidence, Albert
Edward Cock,
Examination.

EXAMINED BY MR. GORDON:

Q. Mr. Cock, what is your position? A. Treasurer of the City of Windsor. 10

Q. Can you tell me the total indebtedness of that municipality? A. What was the question, please?

Q. The total indebtedness of that municipality? A. Somewhere in the neighborhood of \$40,000,000.

Q. That is partly represented by debentures, I believe? A. Yes.

Q. I asked you to get a list of the debentures registered in the names of non-residents? A. As far as I have been able to ascertain, those are of the former Town of Walkerville, the former—

Q. Just wait a minute. The debentures held by residents— A. I 20 have given you the wrong one. This is it.

Q. The debenture register of the Town of Walkerville shows that non-residents held debentures to the value of \$15,955.83; is that right? A. Registered owners, yes.

Q. And there would also be bearer bonds, which you would not know—

HIS LORDSHIP: That shows what, Mr. Gordon?

MR. GORDON: That non-residents hold debentures to the value of \$15,955.83. Of course no one can tell, my Lord, who holds bearer debentures.

WITNESS: This is the list of the City of Windsor, the former City of Windsor. 30

MR. GORDON: Q. The debenture register of the former City of Windsor shows that non-residents hold debentures to the value of \$132,526.83? A. That is correct. The former City of East Windsor.

Q. You have not added that up, have you? Will you please do that? A. Approximately \$135,000.

HIS LORDSHIP: What is that?

MR. GORDON: Q. The debenture register of the former City of East Windsor shows that non-residents held debentures of the approximate value of \$135,000? A. Yes, sir.

Q. Now can you tell me about Walkerville? You did tell me Walkerville. What about Sandwich? A. I have not the information with regard to Sandwich.

Q. Can you tell me anything about the debentures held by the various Public Utility Commissions? A. No.

MR. GORDON: Might I put these three statements in?

HIS LORDSHIP: Yes.

MR. GORDON: Q. These three statements set out correct names and addresses and amounts of foreign debenture holders? A. Yes.

10 HIS LORDSHIP: List of non-resident debenture holders of Windsor, Walkerville and East Windsor; is that right, Mr. Gordon?

MR. GORDON: Yes, my Lord; but your Lordship understands that that is only part of them that Mr. Cock can tell about. The Utility Commissions I shall have to prove in addition.

HIS LORDSHIP: Yes.

EXHIBIT 8: List of non-resident debenture holders of Windsor, Walkerville and East Windsor.

MR. GORDON: Q. Then, Mr. Cock, prior to becoming Treasurer of the new City of Windsor you were Treasurer of Walkerville, weren't you?

20 A. I was previously Treasurer of Walkerville.

Q. Has Walkerville made default in payment of either the principal or interest on their debentures? A. There were two years when principal payments were not made.

Q. Can you tell me the total indebtedness of the new City of Windsor to the Ontario Government? A. No.

Q. I have asked you to find that out? A. I have no means of finding it out here.

HIS LORDSHIP: You say that for two years Walkerville did not make payments on account of principal; is that what he said?

30 MR. GORDON: Yes, my Lord.

HIS LORDSHIP: Q. That is, the past two years?

MR. GORDON: Q. Is that the past two years?

HIS LORDSHIP: Q. You said, Mr. Cock, that Walkerville for the past two years—or for two years; you did not say the past two years, but for two years—did not make payments on account of principal of their bonded indebtedness? A. That is right.

Q. Do you mean the past two years? A. 1934 and 1935.

MR. GORDON: Q. Have any payments been made in 1936? A. No.

40 Q. I want the 1935 auditor's report that was put in. Can you identify that, Mr. Cock, as the auditor's report for the year 1935, City of Windsor? A. Yes.

Q. And is it correct to the best of your knowledge? A. To the best of my knowledge, yes.

Q. Will you look up there and tell me what the City of Windsor owes to the Government on the Sandwich, Windsor & Amherstburg Railway guarantee? First, tell me what it is for the Province of Ontario under the Housing Act? A. \$18,000, account payable for paving on highways.

Q. Then under the Housing Act how much do they owe? A. Under the Housing Act \$695,183, not matured debentures, and \$8,764 matured.

Q. Then on the Sandwich, Windsor & Amherstburg Railway guarantee?
A. A total of \$6,762,986.65.

HIS LORDSHIP: Are you putting in a statement containing this?

MR. GORDON: No, my Lord, but I will.

HIS LORDSHIP: Well, I want to get these figures if they are material.

MR. GORDON: Q. And on the relief account? A. There is no indebtedness that I know of.

Q. And those figures which you have just mentioned to his Lordship 10
are amounts which would be dealt with in this proposed plan which is being
considered by the Ontario Municipal Board? A. Not the highways account,
no.

Q. But the Amherstburg? A. The Amherstburg Railway, yes.

Q. All the other items would be? A. Yes.

Q. That is, the Province are interested to the extent of considerably
over \$7,000,000? A. Yes.

Q. Now will you tell me, before amalgamation, how much money was
on hand to the credit of the Walkerville Hydro Commission? Can you take
that from the 1934 auditor's statement? A. In the funds of the Hydro 20
Commission?

Q. Yes. A. I have no knowledge of that.

HIS LORDSHIP: What is the question?

MR. GORDON: I asked him how much money was on hand to the
credit of the Walkerville Hydro Commission.

MR. J. H. RODD: At what date?

MR. GORDON: At the date of the amalgamation.

Q. This, Mr. Cock, is a brief containing—

MR. J. H. RODD: I don't think my learned friend should lead his 30
witness.

MR. GORDON: Well, he is not assisting me in any way, is he?

HIS LORDSHIP: I think possibly, Mr. Rodd, that, these being specific
figures, the leading is not so material as if he were suggesting something that
was not down in black and white. I know it is possibly leading, but I do not
think there is very much harm being done.

MR. J. H. RODD: He asked a moment or two ago—I did not object to
it—directly if so-and-so was not taken into consideration in the finance plan.

HIS LORDSHIP: Possibly, too, the affliction of the witness, being
rather deaf, makes it harder to get the evidence.

You were asking the amount on hand to the credit of the Walkerville 40
Hydro Commission at the date of the amalgamation; did he answer that?

MR. GORDON: No, my Lord; he said he could not say, but I have the
item here in the auditor's report.

Q. Could you tell me what the documents contained in that brief are?

A. They are evidently auditors' reports for the various units of the city.

Q. And they were obtained from your office, were they not?

HIS LORDSHIP: Well, has his office custody of such things?

MR. GORDON: Q. Has your office custody of those reports? A. I have not had access to them. I presume they are in the office, but I have never seen them before.

Q. Well, you were asked to be here to identify them, were you not?

MR. J. H. RODD: Might I suggest that my learned friend has all of these documents in, and he is asking the witness to repeat what is in as evidence?

In the Supreme
Court of Ontario
No. 8
Plaintiffs'
Evidence, Albert
Edward Cock,
Examination.

Continued

HIS LORDSHIP: Are these documents in this book in as exhibits?

MR. GORDON: Yes, my Lord.

10 HIS LORDSHIP: They have all been admitted.

MR. GORDON: Then I won't prove them further.

HIS LORDSHIP: They are all admitted with the exception of one.

MR. J. H. RODD: Yes; so there is no necessity for this.

HIS LORDSHIP: If they are in now—I did not know what was in it; I have not had time to go through these yet—If they are in, Mr. Gordon, they need not be put in again.

MR. GORDON: Yes, I think I was taking up time unnecessarily.

Q. Will you look at page 364, Mr. Cock, and tell me how much money was on hand to the credit of the Walkerville Hydro Commission?

20 HIS LORDSHIP: Page 364 of what, Mr. Gordon?

MR. GORDON: Of this brief No. 2, my Lord.

HIS LORDSHIP: When you speak of "brief," you mean a volume of exhibits?

MR. GORDON: A volume of exhibits.

WITNESS: According to this statement, there was no cash on hand.

MR. GORDON: Q. Well, would you read this item here—bank and cash balance, securities and investments—how much did they come to? A. The way that reads there, \$31,981.30.

30 Q. Then will you turn up the auditor's report of the Walkerville-East Windsor Water Commission and tell me how much money it shows to be on hand? There is an index there, if you have any difficulty in finding it. That is page 326 of volume 2, the item I want to ask you about. A. \$131,383.50.

Q. Then will you look at the Park Board and tell me how much they should have on hand?

HIS LORDSHIP: Where is that?

MR. GORDON: The Parks Board is not in there.

40 Q. That would be under Windsor, wouldn't it? It would be in the other exhibit, would it not, Mr. Cock, showing what they have on hand for local improvements? Would you look at the 1935 report and tell me how much money is on hand to the credit of local improvements?

HIS LORDSHIP: Can that be found in this volume?

MR. GORDON: The other volume will do, my Lord, if the witness will just tell me.

HIS LORDSHIP: I want to make a note of it.

MR. GORDON: It would not be in that volume, my Lord.

HIS LORDSHIP: Well, what volume is it in? Volume 2?

MR. GORDON: Just as soon as we can find it I will tell your Lordship.

Continued

WITNESS: I cannot tell from this statement.

MR. GORDON: Q. Well, Mr. Cock, is it not a fact that there is no money on hand to the credit of local improvements?

HIS LORDSHIP: That is rather leading, Mr. Gordon.

WITNESS: No, there is money on hand.

MR. GORDON: Q. Now will you find out where it is and tell me how much? A. In the area of East Windsor there is \$6,644.65.

Q. Well, in the other areas? A. The amount in the other areas I believe is included in with the general deposits.

Q. The moneys which were raised by local improvements in the other 10 areas, I understand you to say, are mixed with the general fund? A. If I remember rightly, yes; that is, the actual cash.

Q. Is there any way of finding out how much there should be there? A. Not from this report, no.

Q. On whose instructions was that done? A. That would not be possible for me to say. It was put there prior to my taking office.

Q. Well, now, when did you take office? A. I took active control on the first of 1936.

Q. The first of January, 1936? A. 1936.

Q. What has been done with the money raised by the local improvement 20 tax since the time you took office? A. It has gone into the general funds of the town—of the city.

Q. On whose instructions? A. I don't believe there was any—

MR. J. H. RODD: I wish the witness would speak up a little, my Lord; I don't hear him.

HIS LORDSHIP: Speak up a little louder, Mr. Cock.

WITNESS: There was no specific instructions given.

MR. GORDON: Q. The City of Windsor has an interest in the Sandwich, Windsor & Amherstburg Railway, has it? A. Yes.

Q. What is the extent of that interest? A. I presume the amount that 30 I quoted a few minutes ago, six millions—\$6,762,986.65.

Q. I wanted to know, rather, what percentage of ownership do they have in that railway?

HIS LORDSHIP: That is his answer.

WITNESS: I have not that information.

MR. GORDON: Well, he has told me how much they have invested, but I was wondering—

HIS LORDSHIP: In answer to the question as to what interest Windsor has in it, he says six million dollars odd.

MR. GORDON: I was asking what proportion of the whole that would 40 be, my Lord, but I don't know that it is very important.

Q. What does that railway do? Where does it operate? A. It operates from the Town of Tecumseh and Sandwich East through along the border down as far as Amherstburg.

Q. How many miles is that? A. In the neighbourhood of thirty miles.

Q. And then when it comes to the City of Windsor what does it do? A. The tracks are laid over various streets throughout the area.

Q. Is it operating a street railway in Windsor? A. Street railway.

Q. Does that railway have any other activities except carrying passengers? A. Has it any other—

Q. Activities except carrying passengers? A. I could not say from my own knowledge.

Q. Does it sell equipment or power or anything like that? A. I could not say from my own knowledge.

HIS LORDSHIP: Mr. Gordon, just let me interrupt for a moment. I have to admit I am not very familiar with the case yet or with the ramifications of it, but just what bearing has this on it?

MR. GORDON: I want to show to your Lordship that these municipalities are carrying on business very extensively, far more extensively than I had any idea of when I entered the case, and I think the fact—

HIS LORDSHIP: Just what bearing has that, as to the extent of their activities?

MR. GORDON: I think the fact that they are carrying on business, the same as any other commercial concern might carry on, is a very important fact in finding out whether this is bankruptcy legislation.

MR. J. H. RODD: I think my friend should tell your Lordship that the Sandwich, Windsor & Amherstburg Railway Company is being operated by a distinct corporate body created by statute.

HIS LORDSHIP: Not by the municipality.

MR. J. H. RODD: Not at all.

HIS LORDSHIP: What do you say as to that, Mr. Gordon? How can you connect a separate body with the bankruptcy or not of the municipality?

MR. GORDON: I think it is one item, that they are a partner or a heavy shareholder in a concern of that description.

HIS LORDSHIP: That the City is?

MR. GORDON: That the City is; but there are a great many other things I think your Lordship will find interesting.

Q. Then what about the hospital? A. About what?

Q. What about the hospital? A. The hospital?

Q. Yes; what interest has the City in the hospital?

MR. J. H. RODD: None; it is operated by a distinct corporation too.

MR. GORDON: Q. Who operates the hospital, if I might put it that way? A. The former Essex Border Utilities Commission operate it.

Q. Do you know anything about the hospital? A. Not about the operation, no.

Q. Do the patients pay there, or are they free patients?

HIS LORDSHIP: What you are getting at is that the City of Windsor has an interest in the hospital?

MR. GORDON: Yes, my Lord.

Q. Do you say you know about that? A. I didn't get your question.

Q. I say do you know about the interest in the hospital? A. The four municipalities pay—were interested by an issue of debentures, the payment of the debentures of the Utilities Commission.

Continued

Q. And the Utilities Commission owns the hospital, do they? A. For the City, yes.

HIS LORDSHIP: The four municipalities have—

MR. GORDON: Guaranteed the debentures, I think the witness said, and they operated for the City.

Q. Then what interest have they in the Detroit-Windsor Tunnel? A. None that I know of.

Q. Haven't they some right to take it over at a specified period? A. I know of no interest of the City in the Tunnel.

Q. Then have they any interest in the market, in the Windsor market? 10
A. The City owns it.

Q. What do they do in the market to raise revenue? A. What was the question?

Q. I say what do they do at the market to raise revenue? A. There are stalls that are rented and fees charged to the farmers on market days.

Q. And what about the parks? Do they make any revenue from those?
A. Not of any material amount.

Q. Well, do they make any revenue? A. There is some slight revenue from them, yes.

Q. In what way? A. From the sale of concessions. 20

Q. Then how much land does the City of Windsor own in the area covered by the City, approximately in value? A. In the neighborhood of 10,000 acres.

Q. And how many houses do they own? A. I have not that information.

Q. Well, do they own any? A. Does the City own any? There have been some registered in the name of the City, yes.

HIS LORDSHIP: The City owns 10,000 acres itself?

MR. GORDON: Yes.

Q. And what do you do with these houses of which you take possession? What does the City do with the houses when they get possession of them? A. 30
They are renting some of them and trying to dispose of the others.

Q. And have you any idea of the number? A. I believe it is about 900.

Q. They have about 900 houses. And in order to be able to rent and sell them, do they renovate them and effect repairs and that sort of thing?
A. Yes.

MR. J. H. RODD: That is quite leading, my Lord.

HIS LORDSHIP: Yes.

MR. GORDON: Well, I do beg your pardon, your Lordship, but owing to the infirmities of the witness—

HIS LORDSHIP: I know it is difficult, Mr. Gordon, but— 40

MR. GORDON: May I put the question this way: Q. What do they do to keep the—

MR. J. H. RODD: Do they do anything?

MR. GORDON: Q. —houses in proper condition?

HIS LORDSHIP: Do they do anything?

MR. GORDON: Q. Do they do anything to keep the houses in proper condition? A. As far as we are able to, yes.

Q. In what way? A. By making repairs and carrying out the usual upkeep on properties.

Q. To what department is the management of these houses entrusted?

A. What department?

Q. Yes? A. There is a special department called the Property Department.

Q. And what are the activities of that department? A. The general management of the properties.

Q. Buying and selling and renting? A. Not buying, no; selling and
10 renting.

Q. And repairing? A. And repairing.

Q. Now, I understand that in December, 1934, the voters of the Town of Walkerville considered the question of amalgamation?

MR. J. H. RODD: I don't think that is evidence.

HIS LORDSHIP: That was all consummated in the agreements and statutes, wasn't it?

MR. GORDON: No, my Lord.

HIS LORDSHIP: What do you want to get?

MR. GORDON: I mentioned in opening that I would prove before your
20 Lordship that there was a vote and that it was defeated four to one; I thought I should ask this witness, who was Clerk at the time—

HIS LORDSHIP: He has not said what he was.

MR. GORDON: He said he was Clerk of Walkerville before he was Treasurer of Windsor.

HIS LORDSHIP: I did not hear him say that.

MR. GORDON: Q. Before you were Treasurer of Windsor, Mr. Cock, what position did you occupy? A. Clerk and Treasurer of the Town of Walkerville.

MR. GORDON: Now, my Lord, may I ask him?

30 HIS LORDSHIP: All right.

MR. GORDON: Q. Was the question of amalgamation submitted to the ratepayers of Walkerville? A. It was, yes.

Q. What was the result of the vote?

HIS LORDSHIP: Perhaps he does not know. There is another way to prove a vote, I suppose, if that is of importance.

WITNESS: I don't believe I can recall the wording of the question at the present time.

MR. GORDON: Q. But I am saying, how many voted against the by-law and how many— A. How many voters—

40 Q. Yes, how many were for the bylaw? Was the bylaw carried? A. In 1934, no.

Q. Can you tell me the majority against it? A. It has been up so many times, I am confused as to what the result was. I believe it was four to one.

Q. Against it? A. Against it.

HIS LORDSHIP: That is a vote of the ratepayers?

MR. GORDON: Yes.

Q. Your were talking about certain defaults having been made in the

In the Supreme
Court of Ontario
No. 8
Plaintiffs'
Evidence, Albert
Edward Cock,
Examination.
Continued

payment of the principal and interest on these bonds; are those matters still in default? A. Yes.

Q. Mr. Cock, you told me when I was discussing the fact that the taxes raised for local improvements were mixed in the general fund, that you had no instructions about how they were to be disposed of? A. No definite instructions.

Q. Now, did the fact that the local improvement taxes were being mixed up with the general fund come to the notice of the Finance Commission? A. To the notice of the City?

Q. Of the Finance Commissioners? A. I don't know that it did 10 specifically, no.

Q. Well, did it come specifically or unspecifically? A. I presume they knew that the funds were going into the general funds of the City.

Q. What knowledge would the Finance Commission have of the moneys you were collecting? A. The handling of them?

Q. What was done with them, the amounts collected, and how they were—
HIS LORDSHIP: Speak a little louder, please.

WITNESS: The only control they had over it was to approve of payments out of the fund.

MR. GORDON: Q. Had they knowledge of what was coming in? 20
A. Of the amounts that were received?

Q. Yes. A. Yes.

HIS LORDSHIP: Do I take his evidence to be that the Finance Commission knew that the local improvement funds were going into the general funds? He said he presumed they knew. I don't know whether he says they knew or they didn't, and how would he have that knowledge? I suppose as Treasurer of the City he would have. The evidence is so indefinite, I don't know whether it is of any value or not.

MR. GORDON: Q. What do the Finance Commission know about the mixing of the local improvement taxes in the general fund? A. The 30 only knowledge they would have would be the fact that I through my office collected so much taxes from all sources and that they were deposited in the general funds. As to how much of that was local improvement or otherwise, they would have no knowledge.

Q. Did you make annual or monthly or weekly reports to them? A. Monthly reports.

Q. And did that situation continue between the 9th of April and the 8th of August of this year? A. Between the 9th of April—yes.

MR. GORDON: Take the witness.

HIS LORDSHIP: Just a moment. There are one or two places here, 40 Mr. Gordon, where you said you would refer to some of these volumes of evidence or exhibits, and I have not got the reference.

MR. GORDON: May I give your Lordship the reference?

HIS LORDSHIP: You were speaking about the Amherstburg Railway and another account, seven million dollars, in which you said the Province was interested. I did not get the references to that.

MR. CHARLES SALE: On page 18 of volume 3, my Lord, there is consolidated balance sheet of the four municipalities.

HIS LORDSHIP: That shows seven million, does it?

MR. CHARLES SALE: It show \$6,762,000 odd, my Lord.

In the Supreme
Court of Ontario
No. 8
Plaintiffs'
Evidence, Albert
Edward Cock
Cross-Examina-
tion

CROSS-EXAMINED

BY MR. J. H. RODD:

Q. Without referring to those accounts about which you have just been speaking, I understand that there is a system set up in the City by which each of these accounts is kept separate? A. (No answer).

Q. When I say these accounts, I mean the Walkerville-East Windsor Water Commission account, for example? A. That they are kept separate?

10 Q. In the books, yes? A. Not the 1936 taxes, no.

Q. Isn't there an account kept for local improvements, for example?
A. No.

Q. No separate account? A. No separate account.

Q. You are quite sure of that? A. Yes.

Q. And prior to 1936 was there a separate account kept for these individual components? A. You mean each individual bylaw?

Q. No, not each individual bylaw, but each individual body, corporate body, such as the—. A. The accounts of each individual body were carried on until the end of 1936—1935, rather.

20 Q. Till the end of 1935? A. Yes.

HIS LORDSHIP: Q. Prior to 1936, then, there were separate accounts, were there? Prior to 1936 these separate entities had separate accounts, had they? A. That is right, yes.

Q. In your system of bookkeeping? A. Yes.

MR. J. H. RODD: Q. And what you say is that you have not followed that for the present year? A. On account of the levying of the tax rate, it was not possible to—and the budget operation, it was not possible to do it.

Q. You received taxes for the year 1936? A. (No answer).

30 Q. Take for example each local improvement bylaw; don't you show somewhere what you have received under a certain bylaw, for example?
A. No.

Q. Are you not keeping books which will show the total amount received for local improvements? A. Not separate from the general tax.

Q. Do you disregard the bylaw so far as local improvements are concerned, which says that so much shall be levied against certain lands for the local improvement? A. As far as keeping the individual collections separate, yes.

Q. You do keep them separate? A. We do not keep them separate.

Q. Well, do you keep the totals?

40 HIS LORDSHIP: I gather from him he does not; rather extraordinary, it seems to me.

MR. J. H. RODD: Yes, it is extraordinary.

WITNESS: No, we do not keep any of the local improvements separate from the general tax collections.

Continued

MR. J. H. RODD: Q. What does that mean? That you pay the local improvement debentures out of general funds?

HIS LORDSHIP: Q. No sinking fund set aside? A. If there is not enough money collected from local improvements to do that—

MR. J. H. RODD: Q. Well, that is what I am trying to get at. How do you know whether there would be enough collected from the lands? A. It is not possible to know it without making a complete survey of the books.

Q. But is the information in the books? A. It could be ascertained, yes, from the books.

Q. It could be ascertained from the books? A. Yes. 10

HIS LORDSHIP: Q. How could it be? How could you ascertain it from the books? A. By taking each piece of property and apportioning out the payment made on that property between the general taxes and the local improvement tax.

Q. You would have to do that with each individual piece of property? A. You would have to do that with each individual piece of property.

Q. But when the money is paid there is not so much allocated in one account for local improvements and in another for the general tax? A. No.

Q. It all goes into one account? A. It all goes into one account. The principle involved there would be that if the debentures and interest were paid, as long as they were paid it would not make any difference where the money came from. 20

Q. So that you might be paying debentures not issued on account of local improvements out of local improvement money, moneys that the taxpayers had paid on account of the local improvement? A. If there was sufficient there for that purpose, yes, that you could say that was done.

Q. Well, there would be something there.

I do not just get the system, Mr. Rodd.

A. I think possibly, my Lord, if I explain that only twenty-five per cent. of the local improvement tax was put on the roll, that might simplify it. 30

Q. You just wiped out the rest? A. No, it was deferred, deferred collection.

Q. Well, that is the same thing—wiped out for the present, anyway.

MR. J. H. RODD: Q. Why did you change your system, Mr. Cock, in 1936? A. When did we change it?

Q. Why did you change the system? You changed it in 1936, you told us. Do you get what I say? A. I don't just understand the question, of changing the system.

Q. Up to 1935 you have told His Lordship that you kept these matters separate, all the individual— A. The municipalities separate. 40

Q. Yes, and the bodies, other bodies, separate? A. Yes.

MR. GORDON: I don't think he said that.

MR. J. H. RODD: Q. Is that correct? A. That is correct.

Q. But you do not do that now? A. That is right.

Q. You changed it, then, on the 1st of January, 1936? A. Yes.

Q. I was asking you why you changed it?

HIS LORDSHIP: He started to give an explanation which I did not just catch.

MR. J. H. RODD: Q. Why?

HIS LORDSHIP: He said they had separate accounts—

WITNESS: The operation of the City was to be carried on as one unit from that time on, under the Amalgamation Act.

MR. J. H. RODD: Q. Yes; but there were other units besides the City of Windsor? A. I am referring to the new City of Windsor.

Q. That is your reason, at any rate? A. The budget for the new City of Windsor was set up as an operating budget for the whole of the area.

Q. Quite so. A. And under that system it was not possible to—under that budget it was not possible to allocate portions of it to the different former units.

Q. Then in giving your evidence, in giving me your answer just now, when you were speaking of units, did you intend to refer simply to the four municipalities? A. That is right.

Q. Well, you also collect the moneys for the Board of Education, for example? A. Yes.

Q. And for the Water Board, for the Windsor Utilities Commission?
20 A. No.

Q. You don't do anything with that; that is separate. Well, do you keep a separate tax account for school rates? A. For schools?

Q. Yes? A. No.

Q. You don't even do that; I see. A. The principle there is that the funds for school purposes are paid over to the School Board.

Q. Yes, but if you don't keep any account of them how would you know how much to pay over? A. I am afraid if we only—

HIS LORDSHIP: Q. If you put all the school rates into one pot how do you know how much you get from the school, on account of schools—

30 A. The full amount of the requirement for the schools is paid over to them whether it is collected or not.

Q. I see; you just divide up your money as you get it, no matter where it comes from? A. In order to carry on the operations of the City, yes.

MR. J. H. RODD: Q. You collect the rates for the Separate School?
A. Yes.

Q. Well, do you keep a separate account for that? A. No.

Q. You don't even do that. It goes into one pot, and you pay out what is allocated to them in the budget? A. That is right.

Q. Now, referring to those houses that have been discussed by my
40 learned friend, you refer to houses that have been taken over for taxes, do you not? A. Yes.

Q. That is to say, properties that have been registered? A. Some that have been taken over for taxes and others erected by the Housing Commission that have been repossessed.

Q. Well, registered; they are registered? A. No; some of them taken over by cancellation of the contract.

Continued

Q. By contracts? A. Cancellation of the Housing Commission contracts.

Q. You mean under the old plan that was set up for construction of houses? A. Under the Housing Commission Act, if a purchaser did not carry out his contract the Housing Commission had the right to cancel his contract and take possession of the property, and it is under that plan that I am referring to.

Q. That is, some you have? A. We have some that way, yes.

Q. The great bulk, I assume, are registered for nonpayment of taxes? A. Most of them are registered, yes. 10

Q. Under the Act of 1932? A. Yes.

Q. And they are held by the City until they can be sold; I suppose that is it? A. That is the principle, yes.

Q. And you try to keep them in some decent repair during that period? A. Yes.

Q. The Sandwich, Windsor & Amherstburg Railway was originally purchased by eleven or twelve municipalities, was it not? A. Somewhere around that number, yes.

Q. Extending from Amherstburg to Tecumseh? A. To Tecumseh.

Q. Amherstburg, LaSalle, Ojibway, Sandwich, Windsor, Walkerville, 20 Ford City—East Windsor, rather—Riverside,—then Ford City—Riverside and the Townships of Sandwich East and Sandwich West; is that the lot? A. I believe Anderton was interested in it.

Q. You are quite right, Anderton also. And for a time these municipalities ran the road under a commission or a committee? A. They are running it that way—that is the way it is being run now.

Q. What's that? A. That is the way it is being run now.

Q. That is what you think? A. Prior to that time it was run by the Ontario Hydro-Electric Power Commission.

Q. Yes, but prior to the Ontario Hydro, all of these municipalities owned 30 the road; isn't that correct? A. Not prior to the time that the Hydro operated it, no.

Q. No, no, but these municipalities entered into a contract with the Hydro to run it for them; that is correct, isn't it? A. That is right—when it was first taken over.

Q. When it was first taken over. And then the new company was formed and took it over from the Hydro, took the management—took the title? A. That is right.

Q. By the Statutes of 1930? A. Yes.

Q. So that it is run now and operated now by the Sandwich, Windsor & 40 Amherstburg Railway Company? A. Yes.

Q. Is there not an account showing the amount which was taken over in cash from the Walkerville-East Windsor Water Commission, for example? A. I have no knowledge of that. I have nothing to do with the operation of the Water Commission.

Q. But when the funds were vested in the new City by the Amalgama-

tion Act, was there not an account set up showing the amount which came over?

HIS LORDSHIP: From where?

MR. J. H. RODD: From the Walkerville-East Windsor Water Commission.

WITNESS: Not in the City books, no.

MR. J. H. RODD: Q. Well, in any books? A. Not that I know of. I have no knowledge of the operation of the Utilities Commission.

Q. You have no knowledge of that? A. No.

10 HIS LORDSHIP: Q. There may have been an account, Mr. Cock, there may have been such an account, but you have no knowledge of it; is that right? A. That is right, yes.

MR. J. H. RODD: Q. Did you set up books of account under the instructions of the Windsor Finance Commission—books of account, did you set them up under instructions from the Finance Commission, the Windsor Finance Commission? A. I had instruction to set them up, yes.

HIS LORDSHIP: Q. Well, did you do so?

MR. J. H. RODD: Q. And the kind of accounts that you were to set up, too? A. No.

20 Q. The system, then? A. They did not specify what accounts were to be set up, no.

Q. Well, we will have to go to them for that.

HIS LORDSHIP: By what, Mr. Rodd? By the new Commission?

MR. RODD: With the Windsor Finance Commission.

That is all, I think

HIS LORDSHIP: Q. You were not told, Mr. Cock, what accounts to open; you were not told what accounts to open; that was left to you, was it? A. Yes.

RE-EXAMINED

30 BY MR. GORDON:

Q. This budget that you were talking about, Mr. Cock, who prepared that? A. Who prepared it?

Q. Yes? A. Myself in conjunction with the auditors.

Q. Then who approved of it? A. I don't know that they were approved by any person.

Q. Did it ever come before the Windsor Finance Commission? A. Not that I know of.

Q. I am talking about the budget. A. The budget?

HIS LORDSHIP: The budget must have been approved by somebody.

40 WITNESS: The budget was before the Windsor Finance Commission, yes.

MR. GORDON: Q. And they gave you instructions? A. In connection with the budget, yes.

Q. That is all, thank you.

In the Supreme
Court of Ontario
No. 8
Plaintiffs'
Evidence, Albert
Edward Cock
Cross-Examina-
tion

Concluded

In the Supreme
Court of Ontario
No. 8
Plaintiffs'
Evidence Albert
Edward Cock
Re-Examination

HERBERT A. HACKNEY, Sworn

EXAMINED BY MR. GORDON:

Q. Mr. Hackney, did you hold any office in the Town of Sandwich?
A. Treasurer of the Town prior to amalgamation.

Q. For how long? A. About six years.

Q. Now, can you tell me what liabilities on debentures of all kinds, how many debentures they had issued?

HIS LORDSHIP: Mr. Gordon, if this has already been admitted in this group of exhibits—

MR. GORDON: I think it would be in the auditors' reports, my Lord. 10

HIS LORDSHIP: They why go over it again, except to point out where it is? I should like to know where it is in these exhibits. If there is anything you wish to ask the witness in explanation of it—

MR. GORDON: I do want to ask him something, but I need not ask him the amount.

HIS LORDSHIP: I do not want to shut you off from adducing any evidence, Mr. Gordon, but if it can be shortened I should be glad if you would do so.

MR. GORDON: Q. Could you tell me, Mr. Hackney, where the liability of the Town of Sandwich to their debenture holders is shown in the auditors' 20 report, which is in volume 2, shown at page 264? The total liability is shown, \$3,591,374.89. Can you tell me how many of those debentures were held by non-residents? A. Yes, sir.

HIS LORDSHIP: The total was three million odd?

MR. GORDON: \$3,591,000 odd, my Lord.

WITNESS: Debentures registered in the name of the trustees of the sinking fund of the City of Edmonton, Alberta, November 26, 1931, in the amount of \$227,751.16.

HIS LORDSHIP: They were held by non-residents?

MR. GORDON: Yes, my Lord; they were all held by the City of 30 Edmonton.

HIS LORDSHIP: Did you not put in a list before, Mr. Gordon, of non-resident debenture holders?

MR. GORDON: Yes, but that witness could not deal with Sandwich.

HIS LORDSHIP: I know; but you propose to put this list in too?

MR. GORDON: I put in East Windsor, Windsor and Walkerville; now I am putting in the Sandwich one.

EXHIBIT 9: List of non-resident debenture holders of the Town of Sandwich.

HIS LORDSHIP: Exhibit 9 is a list of non-resident debenture holders 40 of Sandwich.

MR. GORDON: Q. Could you tell me if the Town of Sandwich has made default in payment of either the principal or interest on those debentures, and if so when the default began? A. The Town first defaulted March 1st, 1932.

Q. And has anything been paid since? A. No, sir.

Q. Either principal or interest? A. No, sir.

Q. Now, since 1932 has any levy been made to collect the necessary moneys to pay the principal and interest on those debentures? A. They were levied in 1932.

Q. Well, after that? A. But not since that time.

Q. What was the reason?

HIS LORDSHIP: What do you mean by a levy?

MR. GORDON: Well, usually on the tax roll an amount is put in to cover the principal and interest on the debentures. Since 1932 that was not—

HIS LORDSHIP: You mean there was nothing provided—

10 MR. GORDON: Nothing provided.

HIS LORDSHIP: —out of taxes to pay these.

MR. GORDON: No attempt was made to collect taxes to pay them.

Q. What was the reason for that, Mr. Hackney?

MR. J. H. RODD: I suppose he cannot express the will of the Council.

HIS LORDSHIP: That would be for the Council. I suppose it was a matter of policy with them.

MR. GORDON: I think the Treasurer can tell you why they could not collect them.

MR. J. H. RODD: Could he tell what the Council said;?

20 HIS LORDSHIP: Well, he might know, Mr. Rodd—perhaps this is an easier way of getting in what he could prove otherwise; I do not know just what significance it has.

MR. GORDON: Q. Do you know why provision was not made for the payment of this interest and principal? A. The only reason I could give was, it was thought the maturities would not be met.

HIS LORDSHIP: Q. That is your own opinion? A. Yes, sir.

MR. GORDON: Q. Did you attend before the Ontario Railway Board when an order was made declaring Sandwich was in default? A. I was in attendance at the meeting.

30 Q. Did you give evidence before the Board? A. No, sir.

Q. I see the—

MR. J. H. RODD: I object to this. Surely he cannot put in his evidence given before another tribunal. He can ask certain questions, of course.

MR. GORDON: What I am attempting to do is this, my Lord: Amongst the exhibits on page 80 is an order of the Board which, without dealing with the special language, says that this municipality is unable to pay—

HIS LORDSHIP: Are you putting in the order?

40 MR. GORDON: The order is in, but I cannot find anything in the Act that that order has any effect. The Act says that the order shall be final, but it never says it is evidence in any other court or anything like that.

MR. J. H. RODD: This witness, I submit, could not make it final.

HIS LORDSHIP: He could not make it final. I do not just grasp that, Mr. Gordon. The order must be for some purpose and have some effect, or else it is utterly useless to obtain it.

MR. GORDON: The order is an order—

HIS LORDSHIP: Directing something to be done or accomplished. I do not know what it is.

MR. GORDON: Vesting the control of the municipality in supervisors. That can only be done under certain circumstances, and the order contains recitals that those circumstances are the facts. Now, I wanted to read to the witness these recitals.

HIS LORDSHIP: In the order?

MR. GORDON: In the order; and ask him if as Treasurer of the municipality those recitals are true.

HIS LORDSHIP: That are made in this order?

MR. GORDON: Yes.

HIS LORDSHIP: This order was drawn up by the Municipal Board. 10

MR. GORDON: I suppose so.

MR. J. H. RODD: My friend must not slander his own—

HIS LORDSHIP: I do not just see the weight of this evidence. Suppose this witness says they are not true, isn't somebody bound by the order until it is upset?

MR. GORDON: I cannot find anything in the Act that says so.

HIS LORDSHIP: That says what?

MR. GORDON: That the order shall be binding on anybody.

HIS LORDSHIP: Is there nothing in the Act to show why it is to be got or made? There must be some reason for the order. I do not know the 20 Act; I do not know this section.

MR. GORDON: Might I read the order to your Lordship?

HIS LORDSHIP: Yes.

MR. GORDON: This is an order of the Ontario Railway and Municipal Board, dated the 4th day of May, 1932:

"UPON THE APPLICATION of the Corporation of the Town of Sandwich, made this day at the Town of Sandwich, in the County of Essex, for an "Order under Part VI of 'The Ontario Municipal Board Act,' vesting in "supervisors control and charge over the administration of all of the affairs of "the said Municipality, and to declare that it shall be subject to the provisions 30 "of said Part VI of the Act, in the presence of Counsel for the said Municipality, "no one appearing to oppose the said application, although due notice thereof "was given by advertisement appearing in the 'Border Cities Star' on the 21st "and 28th days of April, 1932, as directed by this Board, and upon inquiry it "appearing that the said Municipality has failed to meet and pay its debenture indebtedness and interest thereon and other obligations as the same "became due and after payment thereof had been duly demanded and it also "appearing that the default in payment has been occasioned from financial "difficulties affecting the said Municipality and that it is so financially involved and embarrassed in meeting its obligations that further defaults 40 "herein may ensue.

"THIS BOARD DOTH ORDER."

I thought your Lordship would allow me to ask the witness, who was Treasurer of the municipality, if those recitals are correct, had the municipality done such and such a thing.

HIS LORDSHIP: That it is recited here as their having done?

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: Are you not in effect asking this witness to more or less upset the order of the Municipal Board?

MR. J. H. RODD: And the Act, the Ontario Municipal Board Act, giving it effect.

HIS LORDSHIP: It is recited that Sandwich applies for an order vesting in supervisors control over the administration, and it is declared that it shall be subject to the provisions of part 6 of the Act, because the municipality has failed to meet and pay its debenture indebtedness. This witness has already said that they had failed to meet their debenture indebtedness from March 10 31st, 1932. This order is not made till the 4th of May, 1932.

MR. GORDON: Yes, my Lord.

HIS LORDSHIP: So it appears that recital is correct.

MR. GORDON: Yes, I think so. Then I should like to ask him if they failed to meet other obligations.

HIS LORDSHIP: "It appearing that the said Municipality has failed "to meet and pay its debenture indebtedness and interest thereon and other obligations as the same became due."

That is all that is troubling you.

MR. GORDON: Yes, my Lord.

20 HIS LORDSHIP: Another obligation.

MR. GORDON: I want to affirm this order. I thought your Lordship would feel under the Act that it was not sufficiently authentic to be accepted as evidence of what the order contained.

HIS LORDSHIP: Oh, I think the order must be accepted for what it contains. If it goes in at all it goes in as a whole, not as a part.

MR. GORDON: Well, if your Lordship takes that view, I need not labour it further.

HIS LORDSHIP: Well, I cannot say part of it is in and part is not in.

MR. GORDON: Well, I want your Lordship to accept it as a whole.

30 HIS LORDSHIP: It is going in as a whole; it is in as a whole.

MR. GORDON: Then I don't think I need bother about this.

HIS LORDSHIP: No. It is there for what it says; it has been admitted, and there it is.

MR. GORDON: Then I need not bother this witness further.

Q. Mr. Hackney, can you tell me what proportion of the bonds issued by Sandwich are payable outside the Province? A. The records do not disclose that any are payable outside.

HIS LORDSHIP: Q. What was that, Mr. Hackney? A. The records disclose that all the debenture maturities are payable in the town.

40 Q. There are no bonds held by outsiders, non-residents?

MR. GORDON: Q. I understand they are all payable in the town, Mr. Hackney, but they are usually payable at other places? A. No, there is no record of such so far as I know.

Q. Is there any way you could find that out?—because I understand that the statement you have made is not correct, that some of them are payable outside.

HIS LORDSHIP: The bonds themselves say where they are to be paid.

MR. GORDON: We have not got any Sandwich bonds.

Q. Is there any place where specimens of those bonds could be obtained?

A. We have searched the debenture registers, and there is nothing disclosed in the registers as to that, I am quite sure.

HIS LORDSHIP: Q. They are all payable within the town? A. Yes, your Lordship.

Q. Although a number of them are held by outsiders? A. Yes.

MR. GORDON: Q. Is there any way we could get copies of the bylaws issuing these debentures? A. Copies of the bylaws would be available; I would say it would be available.

Q. Are they under your charge now? A. No, sir.

Q. Under whose charge are they? A. The City Treasurer.

Q. Thank you.

Take the witness.

MR. J. H. RODD: No questions.

10

HIS HONOUR JUDGE J. J. COUGHLIN, Sworn.

EXAMINED BY MR. GORDON:

Q. Your Honour, were you appointed a Chairman of the Royal Commission which investigated the condition of the Border Cities? A. I was. Yes, I was Chairman.

Q. And what investigation did the Commission make? A. Well, we made a very prolonged investigation extending over some months of time, I think, Perhaps by referring to a copy of the report I may be able to answer that more definitely. I may say I have not perused the report for very many months, but apparently we concluded our investigation on the 10th of April, 1935, and we commenced around about the first of January.

HIS LORDSHIP: Q. Commenced in January, and ended— A. Ended in April.

MR. GORDON: Q. How many sittings did you have during that time?

HIS LORDSHIP: Is that material, Mr. Gordon, whether they sat fifty times or a hundred?

MR. GORDON: No, my Lord, I don't think it is.

Q. Then I have here, your Honour, a copy of your report; can you identify that as a copy? A. I have no doubt that this is a copy. It appears to be—

HIS LORDSHIP: Q. Is it published by the King's Printer? A. It is published by the King's Printer, and I think it was compared by some members of the Commission, which I—

HIS LORDSHIP: The fact that it is published by the King's Printer makes it evidence, doesn't it?

MR. J. H. RODD: No, I do not think it goes that far.

HIS LORDSHIP: Doesn't it go that far—without proof that it is an exact copy of the original report?

MR. J. H. RODD: That does not make it evidence, though.

40

HIS LORDSHIP: No, that does not make it evidence.

MR. J. H. RODD: I am not objecting to it not being a copy, but I do object to the admission of the document as evidence in this case.

HIS LORDSHIP: I thought the Act admitted it.

MR. GORDON: Any document—

HIS LORDSHIP: The Evidence Act—any document printed by the King's Printer, with his sign on it.

MR. GORDON: Section 21, my Lord.

MR. J. H. RODD: It must be relevant, of course.

10 HIS LORDSHIP: Oh, well, that is another point.

MR. GORDON: "Copies of statutes, official gazettes, ordinances, regulations, proclamation, journals, orders, appointments to office, notices thereof and other public documents purporting to be printed by or under the authority of the Parliament of Great Britain and Ireland or of the Imperial Government or by or under the authority of any legislative body of any Dominion, Commonwealth, State, Province, Colony, Territory or Possession within the King's dominions, shall be admitted in evidence to prove the contents thereof."

MR. J. H. RODD: If it is relevant.

20 HIS LORDSHIP: Yes. Prima facie is it evidence. I suppose this may be relevant; I cannot tell. You object to it.

MR. J. H. RODD: Yes, my Lord.

HIS LORDSHIP: I will let it in subject to the objection.

MR. J. H. RODD: I think I should also object on the ground that it is not a public document; but the other is the main ground, that it is not relevant.

MR. GORDON: I feel strongly, my Lord, that this is evidence.

HIS LORDSHIP: Mr. Rodd objects to it as having nothing to do with the issues in this case, and also he objects that it is not evidence anyway.

30 MR. GORDON: Well, my Lord, I will show the relevancy later on, but if there is any question about the facts in it I was going to ask his Honour if the facts—

HIS LORDSHIP: Mr. Rodd, I gathered from what you said that you do not dispute the accuracy of it.

MR. J. H. RODD: Oh, not at all, not at all.

HIS LORDSHIP: You are objecting on the main ground that it is not relevant to the issues.

MR. J. H. RODD: Not relevant to the issue, yes, that is all.

HIS LORDSHIP: That is the only ground there would be, I should think.

40 MR. J. H. RODD: Oh, I quite take it as a copy of his Honour's findings.

MR. GORDON: Q. Your Honour, after this prolonged investigation that you made, did you come to the conclusion that these municipalities were—

MR. J. H. RODD: I think the document must speak for itself.

HIS LORDSHIP: Oh, yes.

MR. J. H. RODD: He is asking his Honour now to perhaps repeat what is in it, or express some other opinion.

HIS LORDSHIP: No, I suppose his Honour can repeat what is in it

without harm, but I do not think he can express some other opinion as to it.

MR. GORDON: It is just as your Lordship says.

HIS LORDSHIP: The document there speaks for itself.

MR. GORDON: I thought I had qualified his Honour as an expert, and I might, subject to your Lordship's approval, ask him if he thought these municipalities were solvent or insolvent.

HIS LORDSHIP: Oh, no; that has been reported on.

MR. GORDON: Yes, my Lord. I am quite satisfied to stand or fall on this document. That will be the next exhibit.

EXHIBIT 10: Report of the Royal Commission on Border Cities' 10
Amalgamation.

CHARLES D. BROWN, Sworn.

EXAMINED BY MR. GORDON:

Q. Mr. Brown, what is your position? A. I am Office Manager of the Water Division of the Windsor Utility Commission.

Q. And before the amalgamation what position did you hold? A. I was Secretary-Treasurer and Manager of the Walkerville-East Windsor Water Commission.

HIS LORDSHIP: Q. You are the Manager of the Water Division of what? A. The Windsor Utility Commission. 20

MR. GORDON: Q. And before that you managed the Walkerville-East Windsor Water Commission? A. Yes.

Q. Mr. Brown, before you joined the Public Utility Commission what was your occupation? A. I have just said that I was Secretary-Treasurer and Manager of the Walkerville-East Windsor Water Commission.

Q. But I say before that? A. I was Secretary-Treasurer and Manager of the Walkerville Water Company, Limited.

MR. GORDON: The charter of that company, my Lord, is found at page 98.

HIS LORDSHIP: Q. The Walkerville Water Company, Limited? 30
A. Yes.

MR. GORDON: Q. What was the nature of that first company, the Walkerville Water Company? A. We served the municipalities of Walkerville and Sandwich East Township with water.

Q. Was it a profit-making concern?

MR. J. H. RODD: I submit that is best determined by the—I think that the character—

MR. GORDON: Well, I won't press that question.

HIS LORDSHIP: If it is material, I think it is evidence that might—

MR. J. H. RODD: This is not the way to prove the objects of the corporation, as your Lordship will see. 40

HIS LORDSHIP: This gentleman was the Secretary-Treasurer.

MR. J. H. RODD: That is all; but what its objects were must be set out in the charter.

HIS LORDSHIP: They are set out in the charter; but he was asked whether it made any profit or not.

MR. GORDON: Well, I think that is a proper question.

HIS LORDSHIP: He is the only man who could tell that; he was the Secretary-Treasurer.

MR. GORDON: Did it make a profit?

MR. J. H. RODD: He asked just before that what it was incorporated
10 for.

HIS LORDSHIP: Oh, no. That would be set out in the charter; that speaks for itself; it is a very short charter.

MR. GORDON: Q. Did it make— A. It operated at a profit.

Q. Who held the stock? A. Do you want to know the names of the people?

Q. Yes, I would like them.

HIS LORDSHIP: It served Walkerville and what?

MR. RODD: Walkerville and East Windsor.

WITNESS: And the Township of Sandwich East.

HIS LORDSHIP: Q. Walkerville and East Windsor, they are separate
20 municipalities? A. Yes.

Q. And Sandwich East? A. Sandwich East is the township in which these municipalities are located.

MR. GORDON: Q. Who were the principal shareholders? A. Walkers, the firm of E. C. Walker & Brothers.

HIS LORDSHIP: How does that affect the question?

MR. GORDON: Q. How did the Walkerville Water Commission, which was a public utility company, come into being? A. Private.

Q. Private Act? A. Private utility company.

Q. When this company, the Walkerville Water Company, went out of
30 business, who carried on? A. The Walkerville-East Windsor Water Commission.

Q. An how were they incorporated? A. By Act, 1930.

Q. And what did they do? A. They continued to distribute water in the same territory as was distributed by the Walkerville Water Company, Limited.

Q. Well, how did they get the plant and assets to do that? A. It was purchased from the Water Company.

Q. Now, besides distributing water to the area you have mentioned,
40 what else did the Water Commission do? A. We carried on a certain amount of repairs:

Q. In what manner? A. Naturally a waterworks has repairs going on at all times, and we had an organization for doing that work, and we carried on in a small way for other companies or private individuals.

HIS LORDSHIP: Q. Do you mean just fixing the water mains in the streets, or did you go in the houses and do plumbing? A. No, not in the houses, just on the streets.

MR. GORDON: Q. Why do you say you did it—were you paid for doing that? A. Oh, yes.

HIS LORDSHIP: They were fixing their own plant in the streets.

MR. GORDON: That is not the evidence the witness wants to give your Lordship.

HIS LORDSHIP: Well, that is what he says; they did not go into the houses and do it, but they fixed their own mains.

WITNESS: It was all underground work that we did.

HIS LORDSHIP: Q. That was your own property you did? A. Not entirely. 10

Q. Well, what property? A. Under arrangement with a private individual we would go in and make repairs to his underground.

MR. GORDON: Q. How do you get your water, Mr. Brown? A. At the present time? Or at the time of the Walkerville-East Windsor Water Commission?

Q. Yes? A. It was by gravity from the Essex-Border Utility Commission filtration plant to the pumping station of the Hiram Walker & Sons, Limited.

Q. Who does the pumping of your water? A. Hiram Walker & Sons, Limited. 20

Q. Who pays them for doing it?

HIS LORDSHIP: You are speaking of when the Commission—

MR. GORDON: The Commission which it is just claimed to be dissolved did not pump the water themselves.

HIS LORDSHIP: That is the body we are speaking of now.

MR. GORDON: Yes.

WITNESS: It is all in the past, sir.

MR. GORDON: Q. Who paid the Hiram Walker for pumping? A. The Walkerville-East Windsor Water Commission.

Q. Who paid for the water? Was any charge made for the water? A. 30 The Essex Border Utility Commission made a charge, and the payment went direct to them.

HIS LORDSHIP: A very complicated system up in this part of the Province, it seems to me.

MR. GORDON: Yes, my Lord.

Q. Did you own any property apart from your waterworks? A. Yes.

Q. What property did you own? A. A house and lot at Walker Road, and about three-quarters of an acre of land, and a warehouse opposite the dwelling.

Q. Now, did you get any revenue from those properties? A. We did 40 from the house.

Q. What did you do with that? A. It went into the general fund.

Q. You supply water to this area, you said, but did you ever supply water on a different basis? A. We have one wholesale account.

Q. What is the purpose of that? A. A section of the Township of Sandwich East served by a wholesale meter.

Q. You sell that municipality water? A. Yes; that is only a section of Sandwich East.

HIS LORDSHIP: Q. A section of the Township you supply them for a lump sum? A. And another section we serve at retail.

Q. That is, you charge each individual? A. Yes, my Lord.

Q. And that is the way you do with all your customers except this one? A. That is right.

MR. GORDON: Q. Then what about fire protection? Any charges made for that? A. Yes. Sandwich East—not Sandwich East; Walkerville, 10 East Windsor and Riverside, fire protection, it is public fire protection I am speaking about.

Q. How are you paid for that service? A. At that time it was based on the number of hydrants in service.

Q. And do you make any charges to industries or private houses for that service? A. For the public fire protection?

Q. Yes, or private fire protection? A. For about two or three years, in Riverside only; the others paid in the general tax rate.

Q. How many customers did you have who paid specially? A. About one thousand.

20 Q. Who paid individually for fire protection? A. It was on their water bill, charged for fire protection.

Q. Now, what did you do about raising money—

HIS LORDSHIP: Q. Private fire protection? A. No, public.

Q. But these thousand? A. That is public fire protection. I will have to explain that again.

Q. I understand you gave public fire protection to the municipalities to which you served water? A. That is right.

Q. And they paid you for that service? A. The Town of Riverside got in financial difficulty, and they were unable to pay. The Commission had no 30 alternative but to add it on the consumers' bill.

Q. I see; you added it to a thousand consumers? A. That is right.

MR. GORDON: Q. Will you explain the private fire protection, apart from the incident you have just mentioned? A. Private fire protection is that service that is given to large manufacturers usually, for what is known as a sprinkler system. We maintain a pressure in their line at all times, three hundred and sixty-five days in the year, and there is a charge made for that service. It does not include water actually used in the extinguishing of a fire.

HIS LORDSHIP: Q. Do you have a special pipe serving them with a higher pressure? A. The same pressure, sir.

40 Q. So you do not supply water, but you just let the water remain in their pipe; they do not use it unless there is a fire? A. That is it. They are not supposed to use it for any purpose except extinguishing fires.

Q. If there is a fire, then the water comes out automatically, and they do not pay any more for it then? A. They do not pay for it at all if it is for extinguishing a fire. They pay for the service of maintaining the pressure.

MR. GORDON: Q. Can you indicate to his Lordship any difference between the sort of business you carried on after the sale to the Water Com-

mission than before the sale when the business was being conducted by a private company?

MR. J. H. RODD: That is objected to.

HIS LORDSHIP: I did not catch the objection.

MR. J. H. RODD: He is asking whether this public corporation carried on the same business as the private corporation.

HIS LORDSHIP: Business of the nature, I suppose he means.

MR. J. H. RODD: Yes, I suppose. What possible relation it could have to this—

HIS LORDSHIP: Well, I do not know yet just what the bearing of these questions is, Mr. Rodd, but I gather that Mr. Gordon has some reason which he will disclose later. 10

MR. GORDON: Q. Would you answer the question, then, witness?

A. Practically the same business, sir.

Q. Then, Mr. Brown, who looked after your clerical and other staff? Who engaged and managed them? A. The staff was practically the same staff that operated for the Walkerville Water Company, Limited. The organization was taken over when the plant was purchased.

HIS LORDSHIP: Everything just went on the same way, only a different name. 20

MR. GORDON: Q. Did the city have any— A. No.

Q. —say in regard to your staff? A. The Walkerville-East Windsor Water Commission has a special Act in which we issue our own bonds, employ our own staff, an entirely separate unit.

HIS LORDSHIP: Q. They did not control you in any way? A. Any more than the two mayors were members of our Commission.

MR. GORDON: Take the witness.

CROSS-EXAMINED

BY MR. J. H. RODD:

Q. You said you made an operating profit? A. Yes. 30

Q. What became of that? A. It went back into plants.

Q. Went back to the town?

HIS LORDSHIP: It went back into the plant.

WITNESS: No, went back into—

MR. J. H. RODD: Q. Oh, it went back into the plant? A. That is the Water Company, Limited.

MR. J. H. RODD: I suppose the Act will show what it was for. I need not ask this witness.

HIS LORDSHIP: I do not think you need to.

MR. J. H. RODD: The Act will tell that. 40

HIS LORDSHIP: Yes, and the charter.

ROSS BRAID, Sworn

In the Supreme
Court of Ontario
No. 13
Plaintiffs'
Evidence, Ross
Braid, Examina-
tion

EXAMINED BY MR. GORDON:

Q. Mr. Braid, what is your occupation? A. Secretary-Treasurer of the Windsor Utilities Commission.

MR. GORDON: Might I just keep the matter in order, my Lord, and put in the bankruptcy petition against Walkerville-East Windsor?

HIS LORDSHIP: Yes. Is that in the book?

MR. GORDON: No, my Lord.

HIS LORDSHIP: What are you putting in now?

10 MR. GORDON: I am putting in the original bankruptcy petition signed by the Registrar.

HIS LORDSHIP: Of what?

MR. GORDON: Of the Bankruptcy Court.

HIS LORDSHIP: Against whom?

MR. GORDON: Against the Walkerville-East Windsor Water Commission.

EXHIBIT 11: Bankruptcy petition against Walkerville-East Windsor Water Commission, Sept. 11, 1936.

20 MR. GORDON: Q. What is your present occupation, Mr. Braid? A. Secretary-Treasurer of the Windsor Utilities Commission.

Q. Now, will you tell me what concerns that Utility Commission is in charge of? A. I do not understand your question.

Q. What have they got to do with the hospital, for instance? A. Statutorily, nothing.

HIS LORDSHIP: What is your question?

MR. GORDON: I asked the witness what concerns they were operating.

HIS LORDSHIP: Were under their control.

MR. GORDON: Yes.

30 Q. What matters do you have under your control? Take the hospital first. A. Statutorily, they have no jurisdiction over the hospital.

Q. Well, what actually do they do with the hospital? A. They have no part in the management or the control of the hospital whatever.

Q. Well, who manages the hospital, because I understood that you did? A. Under the statutes the local Board of Health is the governing body of the Metropolitan Hospital.

Q. Your Commission has nothing to do with it? A. No.

Q. Now, actually what are the Commission doing? A. They have the control and management of the water—.

40 Q. No, but in regard to the hospital? A. Well, I will qualify that statement to the extent of saying that by order of the Department of Municipal Affairs the general management of the Utilities Commission signs the cheques for the Metropolitan Hospital

Q. That is, the Commission pays the bills for the hospital? A. No, I wouldn't say that.

Q. Well, on what account are those cheques drawn? A. They are drawn on the account of the Essex Border Utilities Commission.

Continued

Q. And the receipts from the hospital, on what account are they credited?
A. The same account.

HIS LORDSHIP: The Windsor Utilities Commission and the Essex Border Utilities Commission are entirely separate things, are they not? They are two different commissions; is that not right?

MR. CHARLES SALE: The Windsor Utilities Commission under the Amalgamation Act absorbed the Essex Border Utilities Commission.

HIS LORDSHIP: If that is so, then how can the cheques have anything to do with the old Commission that is gone? This witness says that the general manager of the Windsor Utilities Commission signs the cheques for the hospital against the account of the Essex Border Utilities Commission, which has disappeared. I do not understand it. 10

MR. GORDON: Q. Now, witness, before the amalgamation what connection had the Essex Border Utilities Commission with the hospital?
A. They had the full management of it.

Q. They had the full management of it? A. Yes.

Q. How does the hospital obtain its revenue? A. By direct accounts, revenue from patients.

Q. Yes? A. Revenue from the City of Windsor and other municipalities for the indigent patients, and a per diem grant from the Provincial Government. 20

Q. Anything else? Do they sell supplies or things like that? A. No.

Q. That is the sole source of their revenue? A. I should possibly add that the difference between operating and revenue, in other words the deficit, is paid by the former constituent municipalities of the Essex Border Utilities Commission.

HIS LORDSHIP: Q. Deficit paid by whom? A. The former constituent municipalities of the Essex Border Utilities Commission.

MR. J. H. RODD: I think your Lordship might let me interject this: your Lordship wants a true picture, I am quite sure, and if my learned friend had referred to section 15 of the Amalgamation Act he would have seen that the Windsor Utilities Commission appointed a local Board of Health—that is section 15—and by sub-section 2 the local Board of Health has the management and control of the hospital. That is the Amalgamation, chapter 74 of 1935. That, I think, will clear it up. 30

MR. GORDON: Q. Then, Mr. Braid, in regard to Hydro matters, had the old Essex Border Utilities Commission anything to do with the Hydro Commission? A. They had not the slightest connection with the Hydro.

HIS LORDSHIP: Have you left the hospital now?

MR. GORDON: Yes, my Lord. 40

HIS LORDSHIP: It is not very clear. He says that any deficit is paid by the former constituent municipalities that were in the Essex Border Utilities Commission, which is dissolved, and all these municipalities now are in Windsor, I understand, and they are gone, so how can they exist to pay deficits of the hospital?

MR. GORDON: I suppose the City of Windsor pays that deficit now.

HIS LORDSHIP: That is what he means, isn't it?

WITNESS: No, my Lord; there were other municipalities besides those now merged in the new City of Windsor.

HIS LORDSHIP: Q. Any deficit was paid by them? A. Yes.

Q. And not by any of the merged municipalities or by Windsor itself?

A. Oh, yes.

MR. GORDON: Q. The deficit is paid in proportion, isn't it, witness?

A. I beg your pardon?

Q. The deficit on the hospital is paid in proportion by the various municipalities? A. Yes.

10 HIS LORDSHIP: Q. That is, Windsor and any others that take advantage of it? A. Those who were partners in the original establishment.

Q. Some of them not being in the amalgamated— A. That is the idea.

Q. I see.

MR. GORDON: Q. Then what do you do, witness, in regard to water? What do they do, rather? A. They were what you might describe as wholesalers of water to the two distributing systems at the time.

20 Q. Where did they get their water? A. From the Detroit River, pumped to the joint filtration plant, from which it was distributed to the pumping station of the Walkerville-East Windsor Water Commission, by that means to the consumers of all the district.

Q. And they were paid for it, I presume? A. Yes.

HIS LORDSHIP: Q. Your Commission distributes the water? A. We did not at the time, Mr. Gordon—at the time Mr. Gordon is talking about now, jurisdiction under the old regime.

Q. But I mean now? A. We do now, yes.

Q. Now you get the water and distribute it? A. Yes; we have the full supply, right to the point of consumption.

30 MR. GORDON: Q. Then, Mr. Braid, did they do any other work, did the old Essex Border Utilities Commission do any other work except what you have mentioned? A. Yes; the system of intercepting sewers, which function is still carried on by the Windsor Utilities Commission.

Q. How did they get paid for that service? A. Requisitions were made upon the municipalities benefited, the non-merged as well as the merged municipalities, on the basis of the estimated annual cost of maintaining the pumping stations and the sewers.

40 Q. What else did this Essex Border Utilities do? A. They had—we were vested with the powers of the several town-planning commissions which Windsor and the other municipalities were authorized to appoint under the Town Planning Development Act.

Q. And did you carry out any activities under that Act? A. Yes; all subdivision plans—and there were a great many of them up till 1929—throughout a defined district surrounding the border, had to be approved by the Utilities Commission.

Q. And how were you paid for those services? A. We charged a fee on a sliding scale which was collected from the owner of the lands being subdivided.

Concluded

Q. In regard to your staff, who appointed and dismissed the staff?
A. You are speaking of the old Essex Border Utilities Commission?

Q. Yes. A. The Commission did.

Q. The Commission? A. Yes.

Q. And about borrowing money for the purpose—

HIS LORDSHIP: Mr. Gordon, I suppose this Commission did all the works which it was authorized to do, and the statute incorporating it will show that, or were there certain things that it had power to do that it never did?

MR. GORDON: I fancy there were some things, my Lord.

WITNESS: Only one, my Lord. We had power to establish and main- 10
tain metropolitan parks; never functioned in that respect.

HIS LORDSHIP: Q. Then would it be fair to say that the old Com-
mission carried out all its functions except to establish parks? A. Yes.

MR. GORDON: Take the witness.

CROSS-EXAMINED

BY MR. J. H. RODD:

Q. All these things were done under the supervision of the Finance
Commission to start with, the Windsor Finance Commission? A. Yes, at
the finish.

Q. And since the Windsor Finance Commission ceased to operate, or 20
was dissolved, it is now under a supervisor from the Department of Municipal
Affairs? A. That is correct.

Q. And managed as a part of the City organizations? A. Yes.

Q. That is all.

(Witness retires).

MR. J. H. RODD: I did not notice what my learned friend was offer-
ing, your Lordship, in Exhibit 11.

HIS LORDSHIP: It is now under Windsor.

MR. J. H. RODD: Yes. I did not notice what my learned friend was
offering your Lordship at the moment in Exhibit 11. This is a petition in 30
bankruptcy, if you please—

HIS LORDSHIP: Yes; it was the original petition.

MR. J. H. RODD: Asking to put into bankruptcy a corporation that
does not exist.

HIS LORDSHIP: That did not exist at the time?

MR. J. H. RODD: At the time. This was only a few days ago. It is
a sort of flourish my learned friend is trying to put on his case. The petition
is dated the 11th day of September, 1936, if you please. It came before his
Lordship in Toronto on Thursday, and no one could be instructed by a dead
body, and— 40

MR. GORDON: They appeared by counsel just the same.

MR. J. H. RODD: They did not appear by counsel. My learned
friend Mr. Macdonald was there as a sort of amicus curiae, but took no parti-
cular part. There could not be any instruction. How could the Court
possibly act upon a document of that kind?

HIS LORDSHIP: What does it mean?

MR. GORDON: It means this, my Lord, that I say that that Commission is subsisting, owes a lot of money, and is subject to the bankruptcy—

HIS LORDSHIP: You say what Commission is subsisting?

MR. J. H. RODD: The Walkerville-East Windsor—

HIS LORDSHIP: The Essex Border Utilities Commission?

MR. GORDON: It is the other one, my Lord, the Walkerville-East Windsor Water Commission.

MR. J. H. RODD: Specifically dissolved by statute.

10 HIS LORDSHIP: Mr. Gordon says it was never dissolved by statute, because the statute was no good.

MR. J. H. RODD: But the statute is existing.

HIS LORDSHIP: You say it is there till it is wiped out.

MR. J. H. RODD: It is there till it is declared ultra vires.

HIS LORDSHIP: If it is ultra vires the old Commission comes to life automatically.

MR. J. H. RODD: It will come to life, but not until.

HIS LORDSHIP: But in the meantime it is dead and buried.

20 MR. J. H. RODD: But in the meantime it is dead and buried. It may be brought to life; then my learned friend may make all the applications he likes, but there is nothing to apply it to, so I ask your Lordship to strike that one off. It is so absurd. I think the representative of the Attorney-General is in agreement with me on that.

MR. HUMPHRIES: Yes, I am, your Lordship.

HIS LORDSHIP: The weight of it may be very infinitesimal, but just why is it not admissible for whatever it is worth?

MR. HUMPHRIES: Well, it may be admissible for what it is worth; it might be a matter of argument later on, but does seem—

30 HIS LORDSHIP: For what it is worth, Mr. Rodd, it seems to me Mr. Gordon has a right to put in this petition. It is a petition; whether it went anywhere or what it did is another matter, or whether it is of any value.

MR. J. H. RODD: Yes, but your Lordship I suggest should not clutter up the record with exhibits of that sort.

HIS LORDSHIP: I know we have a great many, but I hesitate very much to strike out anything which may add the slightest weight to either side of this dispute.

MR. J. H. RODD: If it had the slightest, I would not be objecting strenuously.

40 HIS LORDSHIP: Well, I allow it in subject to your objection, and subject to whether I think it has any weight or not. I cannot see at present just now it adds.

MR. HUMPHRIES: It might add a little to my friend's bankruptcy argument—I do not know—and if your Lordship wants to let him have that to use if necessary, he may need it.

HIS LORDSHIP: Well, there may be some very forcible argument arise out of that that I would like to hear. It will stay in in the meantime.

I propose to sit until five o'clock, if that is convenient, and in the meantime I think I will adjourn now for ten minutes.

(Interval from 4.20 p.m. until 4.30 p.m.)

OLIVER M. PERRY, Sworn.

EXAMINED BY MR. JOHN SALE:

Q. What is your occupation, Mr. Perry? A. I am Manager of the Hydro Division of the Windsor Utilities Commission.

Q. How long have you been with that Commission? A. Since July, 1935.

Q. And what was your occupation before that? A. I was Manager 10 of the Windsor Hydro-Electric System.

Q. The Windsor Hydro-Electric System? A. Yes.

Q. And what name was that conducted under? A. The Windsor Hydro-Electric System.

Q. And what became of that? A. It passed out of existence last year.

Q. Did it fall into anybody's hands? A. No.

Q. Did it go to the Windsor Public Utilities Commission? A. The Windsor Utilities Commission.

Q. The Windsor Utilities Commission; they absorbed the former Com- 20 mission? A. Yes.

Q. And the business? A. Yes.

Q. And all its assets? A. Yes.

Q. And took over its debts? A. Yes.

Q. How long were you with the original Commission? A. Since November, 1913.

Q. You would be familiar, then, with the business it carried on? A. Yes.

Q. Did it carry on more than one kind of business? A. The chief business was the sale of electricity, and to promote that, merchandising.

HIS LORDSHIP: Q. That is the Windsor Hydro-Electric Com- 30 mission? A. Yes.

MR. JOHN SALE: Q. You are speaking of the original Commission? A. Yes.

Q. You say it dealt in electric power? A. Yes, sir.

Q. And also merchandising? A. Yes.

Q. Then how did you get your power? A. Supplied by the Hydro-Electric Power Commission of Ontario.

Q. And what did you do with it? A. Transformed it and distributed it.

Q. Transformed the voltage and distributed it? A. Yes.

Q. Did you distribute it to consumers or to intermediate bodies? A. To 40 consumers.

Q. It was a retail business, then? A. Yes.

Q. And what area did you cover? A. The old City of Windsor.

Q. Just the City of Windsor? A. Formerly the Town of Sandwich,
but they later took on their own system.

Q. And what time would that be? A. 1924.

Q. You sold the power to the consumers? A. Yes.

Q. Did you deal wholesale in supplies? A. No.

Q. You dealt retail in supplies; is that it? A. Yes.

Q. What kind of supplies were those? A. Are you referring to mer-
10 chandising?

Q. Yes. A. Electric ranges, water heaters, and all current-consuming
devices.

Q. Refrigerators? A. Refrigerators.

Q. All such—toasters? A. Anything that would use electricity.

Q. And all repair parts? A. Yes.

Q. For all electrical undertakings? A. Yes, with the exception of
industrial motors. We did not go into the industrial plants to repair any-
thing. We repaired chiefly the household appliances.

Q. You would go into the houses and repair anything that it would be
20 necessary to repair? A. That is right.

Q. And charge the consumers for them? A. No charge for labour, no.

Q. For the articles? A. We would charge for any parts that were
out of the guarantee period.

HIS LORDSHIP: Q. Under what authority was this old Commission,
the Windsor Hydro-Electric, established? Was that by statute or by charter
or by what? A. I would say by statute, that governed all—

HIS LORDSHIP: What is the statute?

MR. JOHN SALE: The Power Commission Act. The two Acts dove-
tail together, my Lord, the Power Commission Act and the Public Utilities
30 Act. Your Lordship will remember that under the Public Utilities Act any
utility that is operated by a municipality can be turned over to a separate
body as its agent, and it becomes known as a public utility commission of that
municipality. That is the statute law.

HIS LORDSHIP: Just what are the statutes?

MR. JOHN SALE: The Public Utilities Act—

HIS LORDSHIP: I am speaking of the old Commission now.

MR. JOHN SALE: Yes, my Lord, I am speaking entirely at present of
the old Commission.

HIS LORDSHIP: The Public Utilities Act and—

40 MR. JOHN SALE: And the Power Commission Act authorizes the
supply of power to the individual commissions, to the local commissions.

HIS LORDSHIP: The Public Utilities Act is in your volume here?

MR. JOHN SALE: I am afraid it is not in that volume, my Lord, but
we will give you the sections, my Lord.

HIS LORDSHIP: Well, go on while that is being obtained, Mr. Sale.

MR. JOHN SALE: Q. And you operated stores, did you, for the pur-
poses of merchandising? A. Yes.

Continued

Q. Where were they? A. 111 Chatham Street West.

Q. Is that the only one? A. That is the only one.

Q. That is the only one, under the old system? A. Yes.

Q. Then you became attached to the Windsor Public Utilities Commission, I understand? A. Yes.

Q. And you are in charge of all the business carried on by that Commission? A. The Hydro Division.

Q. The Hydro Division. And what other Commissions were absorbed by that Commission? A. The four Hydro Commissions of the four municipalities—Sandwich, Windsor, Walkerville and East Windsor. 10

Q. Each Hydro Commission became merged in yours? A. Yes.

Q. And what businesses in these did you find when you took them over—you did take them over? A. Yes.

Q. What businesses did you find that these Commissions carried on? A. I don't believe I understand your question, Mr. Sale.

Q. Well, you took over the businesses carried on by these four Commissions? A. Yes.

Q. And naturally you know what you took over? A. Yes.

Q. What business, then, did the Walkerville Hydro Commission carry on when you took it over? A. The same as the old City of Windsor. 20

Q. The same? A. Yes.

Q. Just as extensive? A. Yes.

Q. And take the others, the Commission for instance—take Sandwich next; what became of that? A. That became merged with the new Utilities Commission.

Q. In the same way? A. In the same way.

Q. And you are carrying on that business? A. Yes.

Q. In the same way? A. In the same way.

Q. Then was there any other? A. East Windsor.

HIS LORDSHIP: Q. All of them? A. Yes. 30

Q. That applies to the whole four Hydro Commissions in the four municipalities, does it? A. That is right.

MR. JOHN SALE: Q. And those businesses you are continuing in the same way? A. Yes.

Q. Do you know anything of the debentures issued by the Hydro Commission? A. I am only familiar with those with the old Windsor—

Q. You were responsible, I suppose, for the reports upon which those funds were raised? A. That is right.

Q. And then the necessary authority would be obtained and the bonds issued; is that right? A. Yes. 40

Q. Do you know whether any of those bonds are payable outside of the Province? A. I would not have knowledge of that.

Q. You would not have? A. No.

Q. You would have no record of that? A. No.

Q. Do you keep the record of the bonds at all? A. Just the payments of principal and interest as they come due.

Q. But you do not keep any record of the bonds themselves? A. Not the actual bonds.

Q. You do not have a bond register? A. They are not in our possession at all.

Q. Whose possession are they in? A. The City Treasurer, I believe.

Q. Of Windsor? A. Yes.

In the Supreme Court of Ontario No. 14 Plaintiffs' Evidence, O. M. Perry, Examination
Concluded

CROSS-EXAMINED

BY MR. MACDONALD:

10 Q. Mr. Perry, you and your fellow employees in the Hydro Division of the Utilities Commission carry on, I understand, under the supervision now of the Department of Municipal Affairs, do you not? A. I believe so, yes.

Q. And formerly under the supervision of the Finance Commission? A. That is right.

Q. That is, the Windsor Finance Commission? A. Yes.

Q. You made some reference in reply to a question of my learned friend with respect to the Windsor Utilities Commission taking over the debts of the former Hydro Division; you were referring, I suppose, to your knowledge of the Amalgamation Act, were you? A. Yes.

20 A. Q. You were not professing to express any expert opinion on that? A. Oh, no, no.

Q. Is your division, that is, the Hydro Division of the Utilities Commission, operated for profit, or is the principle to sell power and energy at cost? A. Nearly at cost.

Q. The principle is to sell it at cost? A. Yes.

Q. Could you tell us under what authority the Hydro Division sells merchandise? A. With the permission of the Hydro-Electric Power Commission of Ontario.

Q. And for what purpose is the merchandise sold? A. To increase the use of electricity.

In the Supreme Court of Ontario No. 14 Plaintiffs' Evidence, O. M. Perry, Cross-Examination

30 RE-EXAMINED

BY MR. JOHN SALE:

Q. The accounts you took over were the current accounts for merchandise and power? A. Yes.

Q. And when you sell stoves and refrigerators and supplies do you charge a profit? A. Yes.

HIS LORDSHIP: Q. You charge a profit on the goods? A. Yes, sir.

MR. JOHN SALE: That is all.

In the Supreme Court of Ontario No. 14 Plaintiffs' Evidence, O. M. Perry, Re-Examination

CHARLES D. BROWN, Recalled.

EXAMINED BY MR. GORDON:

40 Q. Mr. Brown, I see that bylaw number 3 of the Walkerville-East Windsor Water Commission provides for the issue of debentures aggregating

In the Supreme Court of Ontario No. 16 Plaintiffs' Evidence, C. D. Brown (recalled) Examination

\$750,000; could you tell his Lordship how many of those were issued? A. The whole issue.

HIS LORDSHIP: Q. They were all issued? A. All issued.

MR. GORDON: That is all, thank you.

CROSS-EXAMINED

BY MR. J. H. RODD:

Q. After the amalgamation, Mr. Brown, what part did you have in connection with the accounts?

HIS LORDSHIP: Is that before the amalgamation? Are you asking him before? 10

MR. J. H. RODD: No, after, after the amalgamation.

WITNESS: I would say I would have all to do with the accounts of the Water Division.

Q. None but the Water Division? A. That is all.

Q. When you say Water Division, what do you mean? A. The Division of Water Supply as compared with the Electric Division.

Q. That is, the Water Division of the Windsor Utilities Commission? A. Yes.

Q. That is it, is it? A. That is right.

Q. And before that you were doing what? A. I was with the Walkerville-East Windsor Water Commission. 20

Q. Do you know how the accounts have been carried since in connection with the Walkerville-East Windsor Water Commission? A. Yes.

Q. Have they been kept separate in the books? A. We have them separate.

Q. You have them separate? A. Yes; we are supposed to be one unit, but everything is kept separate.

Q. Everything is kept separate? A. Yes.

Q. And is that true of all the other services? A. I can only speak for the water service. 30

Q. You can only speak for that one? A. Yes.

Q. But that is so as to that? A. Yes.

HIS LORDSHIP: Q. That is the Walkerville-East Windsor? A. That is—

MR. J. H. RODD: Q. And you do not know as to the Walkerville account, for example, nor the— A. You mean the Town of Walkerville?

Q. Yes. A. Oh, no; nothing whatever to do with the Town.

Q. I mean the moneys that were taken over from the Town of Walkerville after the amalgamation, you do not know as to that? A. I know nothing whatever as to that. 40

HIS LORDSHIP: As I understand it, the old accounts are still carried on separately.

MR. J. H. RODD: Yes.

HIS LORDSHIP: Q. Is that right? A. That is right. We have four municipalities.

Q. And they are all separate? A. We keep them separate, yes, sir.

Q. That is, so far as water is concerned? A. Yes.

(Witness retires).

MR. GORDON: That, my Lord—

HIS LORDSHIP: That is the case?

MR. GORDON: As I began to say to your Lordship, I have proved, I think, now that the bonds of the Water Commission were payable outside.

10 HIS LORDSHIP: Yes.

MR. GORDON: I wanted to submit to your Lordship a statement showing all these bonds, because there are eight or nine different corporations we are dealing with. Your Lordship said you were going to adjourn at five o'clock; I might be able to get that statement in by to-morrow morning.

HIS LORDSHIP: Well, it is not five yet; it is ten minutes to five.

MR. GORDON: I do not know whether Mr. Cock can give that statement or not; I would like to call him and ask him.

HIS LORDSHIP: Well, call him.

20 MR. GORDON: My friend, Mr. Sale, says that although he was asked for it—

HIS LORDSHIP: Well, perhaps he can bring it to-morrow.

MR. GORDON: He was asked for it on the 25th of September. Of course, Mr. Cock has been very busy with the information he had to get for the—

HIS LORDSHIP: Yes, and he seems to be handicapped a great deal by his infirmity.

MR. GORDON: Perhaps we could arrange to have it by the morning. Otherwise, that is the case.

HIS LORDSHIP: Apart from that, your case is closed?

30 MR. GORDON: Yes. I am sorry I have not got that here, my Lord; I wrote for it, and I thought it would be here.

HIS LORDSHIP: Well, you may be able to get it.

Well, Mr. Rodd.

MR. J. H. RODD: What time is your Lordship going to adjourn?

HIS LORDSHIP: Well, at five o'clock.

MR. J. H. RODD: I just wanted to call one witness, very short.

HIS LORDSHIP: All right.

DEFENCE

J. CLARK KEITH, Sworn.

40 MR. J. H. RODD: Your Lordship is reserving the motions, of course, until all the evidence is in?

HIS LORDSHIP: Yes.

MR. J. H. RODD: Yes, that is as I understood it.

In the Supreme
Court of Ontario
No. 16
Plaintiffs'
Evidence, C. D.
Brown (recalled)
Cross-Examina-
tion

Concluded

In the Supreme
Court of Ontario
No. 17
Defendants'
Evidence, J. C.
Keith,
Examination

EXAMINED BY MR. J. H. RODD:

Q. Mr. Keith, what is your position? A. General Manager of the Windsor Utilities Commission.

Q. How long have you been in that position? A. Since the 1st of July, 1935.

Q. And with that did you concurrently hold any other position? A. Yes, I was City Comptroller.

Q. City Comptroller? A. Comptroller, yes.

Q. When was that? A. From early in May until—from early in May until August, 1936. 10

Q. Appointed how? A. By the Windsor Finance Commission.

Q. Under the Amalgamation Act, which provides for a Comptroller? A. Yes.

Q. Were you associated with them in connection with the management of the finances of the new City? A. Throughout their tenure of office.

HIS LORDSHIP: Q. How long were they in charge? A. From May, 1935, until August, 1936.

Q. The Finance Commission? A. The Windsor Finance Commission.

Q. From May to August? A. May, 1935, to August, 1936.

Q. May, 1935, to August, 1936, a little over a year? A. Yes. 20

Q. But you were, I think you said, Comptroller from May, 1936, to August, 1936? A. From May, 1935, to August, 1936.

Q. The same time? A. Yes.

MR. J. H. RODD: Q. You have heard it stated that certain moneys were taken over from Walkerville, Windsor and Sandwich and East Windsor at the time of the amalgamation? A. I did.

Q. By the new City? A. Yes.

Q. How were those accounts kept? A. There were separate bank accounts kept until the end of 1935.

Q. Kept in a separate bank account? A. They were kept in separate 30 bank accounts.

Q. Then during 1936 how? A. I have only Mr. Cock's statement as to how they are kept since 1936.

Q. Then I won't ask you as to that. Are you speaking of the moneys or the accounts? A. I know that the moneys, the number of bank accounts was reduced in 1936. That should not prevent the records from being kept separately.

HIS LORDSHIP: Q. But you do not know as to that? A. I do not know.

MR. J. H. RODD: Q. You do not know as to that? A. I know that fact pertains to the Windsor Utilities Commission; the bank accounts were 40 consolidated but the records were kept separately.

Q. The records are kept separately? A. They are, throughout, both the Water and Hydro Commission.

Q. Can you say whether that is true of the others or not? A. I cannot.

HIS LORDSHIP: Just let me understand that, Mr. Rodd. The Windsor Utilities Commission—that is the governing body, isn't it?

MR. J. H. RODD: Yes, and other services, Hydro and—

HIS LORDSHIP: Well, that has control over all these others.

MR. J. H. RODD: Yes.

HIS LORDSHIP: Other Commissions which were absorbed.

MR. J. H. RODD: Yes.

HIS LORDSHIP: Or takes the place of them, was substituted for them.

MR. J. H. RODD: Yes.

HIS LORDSHIP: This witness says that their accounts are kept separate, as I understand it.

10 WITNESS: Yes, as distinct from those accounts that are controlled by the Council.

HIS LORDSHIP: Q. But the Council has control of everything, has it not? A. No control over the affairs of the Windsor Utilities Commission.

Q. Well, I have not got that yet. What is the Council? I have had no evidence about the Council so far at all. A. I believe Mr. Cock was giving evidence with respect to the moneys controlled by the Council.

HIS LORDSHIP: I have not heard the word "Council" mentioned yet, except by somebody saying he was an alderman.

20 MR. J. H. RODD: Q. I was anxious to get from you, Mr. Keith, if you could, what record if any has been kept with reference to the surplus moneys taken over from say Walkerville, for instance? A. I don't think there is any question as to the record that is available with respect to those moneys. It should be available to-day.

Q. Well, what would the record be? What is the record? A. It would be a record—

Q. How did you as a Commission, Finance Commission, Windsor Finance Commission, handle it as to bookkeeping? A. We had bank statements rendered monthly—

30 MR. GORDON: My Lord, I think I must object to my friend Mr. Rodd leading. I think he is not only trying to get the witness to say something he does not know about, but something that is not within his jurisdiction. Mr. Cock told us there was no record.

MR. J. H. RODD: I want the fact, whatever it is; I want to know how the account was kept with reference to the money—

HIS LORDSHIP: I want to know, too, Mr. Rodd. I should like to know, because this witness has confused me now as to who has control or charge of all this business.

40 MR. J. H. RODD: Q. As Comptroller under the Finance Commission I am asking you now how accounts were kept, and I am pointing out a specific instance so that we may get the proper method.

HIS LORDSHIP: He says the record of moneys taken over by the absorbed municipalities are kept separately, as I understand him.

WITNESS: Yes, and that record should be available to-day.

MR. J. H. RODD: Q. Of each municipality? A. Of each municipality, yes.

HIS LORDSHIP: Q. That is, taken over from the absorbed municipalities? A. Yes.

Q The moneys they had on hand at the time? A. Yes, or the sums which have been collected since amalgamation.

MR. J. H. RODD: That is what I wanted to get at.

HIS LORDSHIP: Q. That should be in a separate record? A. That should be a matter of record.

Q. But that is not within your jurisdiction? A. I cannot speak of it at the present time.

CROSS-EXAMINED

BY MR. GORDON:

Q. Mr. Keith, can you tell me if it is possible to obtain a statement of the bonds issued by the various municipalities and commissions which are now liabilities of the City of Windsor which are payable outside of the Province? A. Only from the bond registers which might be kept by each of the municipalities, any or all of them. 10

Q. Who have them now? A. The Windsor Utilities Commission has the bond record for the Walkerville-East Windsor Water Commission. I know nothing of the bond registers which were formerly kept by the four entities now comprising the City of Windsor.

Q. Well, who would know? A. The City Treasurer.

Q. Mr. Cock? A. Yes. 20

HIS LORDSHIP: Well, they must have gone somewhere, Mr. Gordon. Somebody must have taken charge of all the records, papers and documents, securities and everything else, of these separate municipalities. They did not just vanish into the air somewhere.

MR. GORDON: Q. Can you tell me— A. The records of the former municipalities were moved to the City Hall in Windsor.

Q. And Mr. Cock should have them? A. He should have them. They should be in the City Hall in Windsor.

HIS LORDSHIP: Q. He is the City Treasurer? A. He is the City Treasurer. 30

MR. J. H. RODD: That is all.

Perhaps I may trespass a little more, my Lord, by calling Mr. Webster for just about two or three words.

HIS LORDSHIP: Yes.

HARRY A. WEBSTER, Sworn.

EXAMINED BY MR. MACONDALD:

Q. What is your full name, Mr. Webster? A. Harry A. Webster.

Q. And what is your position? A. Assessment Commissioner.

Q. Of what? A. City of Windsor.

Q. The present City of Windsor? A. The present City of Windsor. 40

Q. Were you the Assessment Commissioner for the old City of Windsor as well? A. I was.

Q. Have you prepared a statement of the assessments of the present City of Windsor, and also the assessments of each of the four former municipalities for the past few years? A. I have.

Q. For what years is that statement? A. Assessment made in 1931 up to and including 1936.

Q. Now, when you are saying the years 1931 and 1936—do you mean the assessments made in that year for taxable purposes in the following year?

10 A. That is correct.

Q. So that you have not only 1931 tax assessment, but you have the assessment made in this current year? A. Correct.

Q. What is the taxable assessment of the present City of Windsor in the year 1936? A. Well, I will have to give it to you, Mr. Macdonald, by separate municipalities, because I did not get word until eleven o'clock, and I had Court of Revision on, and I did not have time to total it, but I can give you separate—

HIS LORDSHIP: He had better put in the statement.

MR. MACDONALD: Yes, put that in as Exhibit 12.

20 WITNESS: This is the total rateable property—

HIS LORDSHIP: Q. There will be four for each year; is that it?

A. I have only one copy, my Lord, of each—

Q. But you said there were four municipalities? A. Four municipalities shown here.

Q. But they are all on one statement? A. No; they are all separate for each year.

MR. MACDONALD: Q. Have you any more copies? A. I haven't got them here, no.

30 MR. MACDONALD: We will undertake to get some more for counsel in the morning, my Lord; they should have been here. We will put those in as one exhibit, my Lord?

HIS LORDSHIP: I think so, yes.

Q. There is a red mark opposite— A. I have put a red mark—

Q. There is a red mark in these statements opposite "Total Assessment Liable for All Taxes." Just explain, Mr. Webster, what "Total Assessment Liable for All Taxes" means as compared with "Total of All Assessments"?

A. Well, "Total of All Assessments," my Lord, includes the exempted property. This here is land and buildings, which is the total—

40 Q. I know what the others are, but where you say "Total of All Assessments for the year 1931" it includes in that total assessment liable for taxes plus the properties exempted? A. That is correct.

HIS LORDSHIP: It gives you the whole picture.

EXHIBIT 12: Statement showing assessment figures.

HIS LORDSHIP: That is a statement of assessments, Windsor, made in the years 1931 to 1936 inclusive.

CROSS-EXAMINED

BY MR. CHARLES SALE:

Q. In 1934, Mr. Webster, registered property not liable for taxes, is that included in the previous total above, total of all assessments except exempted by statute, or is it deducted? A. No, that is deducted.

Q. That is deducted That is all.

(Witness retires).

HIS LORDSHIP: Is there any other witness who has to hurry away?

MR. J. H. RODD: No, my Lord.

HIS LORDSHIP: Well, we will adjourn now. What do you say as to 10
the length of this case, gentlemen? Can it be finished to-morrow, or will it
take another day? It depends on how long a time each argument will be.

MR. J. H. RODD: We will get through this to-morrow.

HIS LORDSHIP: You will get through the evidence to-morrow?

MR. J. H. RODD: Oh, I have very little evidence, my Lord.

HIS LORDSHIP: Well, Mr. Gordon's argument and yours and Mr.
Humphries'—I doubt that we can finish to-morrow.

MR. J. H. RODD: I think so. I think I can be quite sure that I will
be through in twenty minutes to-morrow morning.

HIS LORDSHIP: Well, say we double that; that makes forty minutes. 20

MR. J. H. RODD: After consulting with my associates, that is my
present view, that I will be a very few minutes.

HIS LORDSHIP: I was merely asking that in order to fix some time to
commence in the morning. If we could finish to-morrow I might make it a
little earlier; if we cannot finish to-morrow I won't make it so early. I think
possibly we had better just start as usual and trust it will be through, and
not try to hurry, and go on into the next day if necessary.

(Adjourned at 5.10 p.m., Monday, September 29, 1936, until 10.30 a.m.,
Tuesday, September 29, 1936).

(On resuming at 10.30 a.m., Tuesday, September 29, 1936):

30

HIS LORDSHIP: Where did we leave off, Mr. Rodd?

MR. J. H. RODD: My learned friend has something to mention, my
Lord.

MR. GORDON: I have here, my Lord, two statements prepared by
Mr. Cock. The first statement shows a partial list of debentures of the City
of East Windsor, that \$2,926,675.73 are payable outside the Province. Mr.
Cock has just marked it as a partial list, and the amount is material, but I
do not suppose the exact figures make any difference to your Lordship. Then
he has handed me another statement re the Town of Walkerville, showing
that the debentures under bylaw 681, amounting to \$20,218.58, are payable 40
in Detroit and Walkerville. The City of East Windsor were payable in
Montreal and New York. Might I put those in as exhibits?

HIS LORDSHIP: Exhibits 13 and 14.

MR. GORDON: Detroit and Walkerville for the Town of Walkerville, and Montreal and New York for the Town of East Windsor.

EXHIBIT 13: Statement of East Windsor debentures payable outside of Ontario.

EXHIBIT 14: Statement of Walkerville debentures payable outside of Ontario.

MR. GORDON: That is all the evidence, my Lord.

MR. J. H. RODD: At page 82 of Exhibit 1 my learned friend incorporated the notice which was published in the Ontario Gazette respecting the bringing under control of the Department of Municipal Affairs the new City of Windsor. My learned friends agree that the same notice was published in the Windsor Daily Star on the same date, and I have a clipping from the Star which I may as well put in, with my learned friends' consent. The Windsor Daily Star is a newspaper published in the municipality. That will be Exhibit 15.

EXHIBIT 15: Notice by Ontario Municipal Board, from Windsor Daily Star of June 13, 1936.

MR. J. H. RODD: Then, with your Lordship's permission, we wish to call Mr. Keith for a moment.

J. CLARK KEITH, Recalled.

EXAMINED BY MR. MACDONALD:

Q. You were sworn yesterday, Mr. Keith, as a witness? A. Yes.

Q. You were until the proclamation of the 1936 Act the Finance Comptroller of the City of Windsor? A. Yes.

Q. Mr. Keith, would you tell his Lordship, so that we may be clear on this point, the manner in which school taxes are collected and paid to the Board of Education for school purposes? A. The budget of the Board of Education is fixed by themselves, they would normally be fixed by themselves if the City were not under supervision, and the City Council is obligated to turn over to the Board of Education the full amount of their budget, so whether the taxes are collected as school rates or not it is immaterial whether they are kept separately. The full amount of the budget has to be turned over to the Board of Education. There is no necessity for keeping them separately.

Q. And does the same position apply to the Separate School Board? A. Separate School Board.

Q. Now, with regard to local improvement rates that may have been imposed on any of the amalgamated municipalities, what is the normal method of handling those collections? A. Well, of course, they are put on the tax roll separately, but there is no necessity for keeping them separately after they are collected, because the area becomes liable for the total local improvement rate whether it is collected against the individual property or not, so they are simply lumped together.

In the Supreme
Court of Ontario
No. 18
Plaintiffs'
Evidence,
Introducing
Exhibits

In the Supreme
Court of Ontario
No. 19
Defendants'
Evidence, J. C.
Keith (recalled)
Examination

Q. You mean by the total area the municipality as a whole? A. The municipality as a whole is liable.

Q. Which issues debentures? A. That is right.

Q. Is the local improvement rate shown in the general tax bill which is sent each year to taxpayers? A. No—oh, yes, the amount to be collected, but not as a rate, but as a specific charge.

Q. And it is included as one of the items, is it not—I might lead to that extent, perhaps—in the general tax bill which is sent out to the municipal taxpayers? A. Yes, it is.

HIS LORDSHIP: Q. The amount payable by the individual taxpayer is shown? A. Is shown on his tax bill, yes. 10

MR. MACDONALD: Q. Would you tell his Lordship whether it would be possible by an examination of the records to-day to determine whether a person had paid his local improvement rates or not? A. If they were paid—if only a portion of the taxes were paid it would be difficult to determine whether the percentage of local improvements had been paid or not unless one just pro-rated the total amount paid as compared with the ratio as between local improvement taxes and the general taxes.

HIS LORDSHIP: Q. What is that? A. If taxes were paid in whole, then it would be known that the local improvement tax was paid in full. If a payment only were paid on taxes, then the proportion that would be credited to local improvements could be determined in the ratio that the local improvements bore to the total tax bill. 20

MR. MACDONALD: Q. Has any separate account been kept, Mr. Keith, of the assets realized from each of the four former municipalities? A. You mean in disposing of the assets? I don't understand the question.

Q. No; in connection with, for instance, the collection of arrears of taxes with respect to each of the four former municipalities, has a separate record been kept of each of those items? A. Yes, it has.

Q. And where are those moneys that have been collected in that manner and taken over by the present Corporation of the City of Windsor? A. They are on deposit in the bank. 30

CROSS-EXAMINED

BY MR. J. SALE:

Q. You were under the direction of the Windsor Finance Commission during the time that it was in existence? A. I was.

Q. All the acts that were done by the officials, including yourself, were approved in some way by the Windsor Finance Commission? A. I would not like to say that.

Q. Did you not report to the Windsor Finance Commission from time to time as to what was being done? A. I just had a general knowledge of what was being done; I did not have a detailed knowledge of what was being done in all the departments. 40

Q. Did you know the amounts that were being paid out by the councils and on the cheques of the councils? A. Yes.

Q. Those payments out were all carefully scrutinized by the Windsor Finance Commission? A. They had to be approved by the Windsor Finance Commission.

HIS LORDSHIP: That is, of the four municipalities?

MR. J. SALE: Q. Of whatever municipalities were in existence during the time of the Windsor Finance Commission; isn't that right? A. Yes, the accounts had to be approved.

Q. And of course, since that date the approval is done by the Supervisor, Mr. Moore, under the direction of the Department of Municipal Affairs?

10 A. I cannot speak for what Mr. Moore is doing.

Q. Is there any approval being given? A. I can only say that I understand supervision is being exercised.

Q. Well, you are still an official, are you not? A. Of the City?

Q. Of the City? A. Yes.

Q. And you have knowledge of the moneys? A. I have knowledge of the matters relating to the Windsor Utilities Commission only.

Q. You are only prepared to speak of them as of late? A. That is all I can speak of.

20 Q. Then speaking of the cash that comes in, Mr. Keith, would you say that the cash has been kept separate for the various special funds? A. I would say that the cash has been put together since the first of January of this year.

Q. Have you since the first of January put together a local improvement special fund? A. Have I personally?

Q. No. You are the Comptroller or were the Comptroller down to the 8th of August, were you not? A. Yes.

Q. Well, did you have any local improvement moneys put into a special fund during that time? A. I have not any knowledge of it.

Q. Not to your knowledge? A. Not to my knowledge.

30 Q. Well, you would know whether there was any special fund for local improvements? A. No, not necessarily.

Q. You don't know that? A. No, I don't.

Q. But you spoke of them being separated out; how did you know that these were separated out if you don't know whether there was any fund? A. I didn't say they were separated out.

Q. Oh, you didn't say? A. No.

Q. You say they were not separated? A. I didn't say there were separated.

Q. You don't know at all; is that it? A. I don't know.

40 Q. You do know, though, that as Comptroller it was your duty to see that a special fund was kept for local improvements? A. No, I do not know that it was my duty as Comptroller.

Q. You do not think that is part of your duty? A. No.

Q. You never gave any direction to that effect? A. No, I did not.

Q. And you did not see to that at all? A. No.

Q. As to the school taxes, when they are paid in are they kept in a special fund, when the school taxes— A. Not for school purposes only, no.

Continued

Q. They go into the general account? A. Go into the general account.

Q. Now, last year, I believe, and the year before, you have had deficits in your operating expenses, haven't you, at the end of the year? A. There was not a deficit in the operation of the School Board last year.

Q. I am speaking of the funds of the new City of Windsor; was there not a deficit at the end of the year, so that you had difficulty getting money to carry on the City? A. No, I don't think there was.

Q. Was there not talk of closing down the schools? A. The schools did close.

Q. Yes, earlier, to save money? A. To live within their budget. 10

Q. Yes, that is it. The Finance Commission sets up the budget?

A. They did not set the budget for 1935.

HIS LORDSHIP: Q. Well, was or was there not a deficit? A. In the School Board operation, no, my Lord, there was not.

Q. In connection with the City of Windsor?

MR. JOHN SALE: If I might put it the other way, my Lord:

Q. Were your budgets exceeded in any particular year, '34 or '35?

A. I cannot speak of '34.

Q. You don't know that? A. No, I don't.

Q. And you don't know for 1935? A. I think the City lived within 20 its budget substantially in 1935.

Q. You are speaking of the new City? A. No, the old City. They lived within their individual budgets. The Cities' budgets for 1935 were not thrown into the common use of the new City; only the funds which were available in the four separate entities were available for the operation of the new City last year.

Q. And do you know whether the budgets were exceeded or not? A. It is my belief that they were not exceeded.

HIS LORDSHIP: Q. That is in 1935? A. In 1935.

MR. JOHN SALE: Q. Did you not, as Comptroller, in your dealings 30 with the City money, consider that the operating expenses, the necessary operating expenses of the City, had a prior claim on the moneys that came in?

A. I had nothing to do with setting up the operating budget for 1935.

Q. Any moneys that came in, were they not first used for operating expenses? A. Only within the limitation of the budget.

Q. But the moneys that did come in first were all used for operating expenses; isn't that right? A. Yes.

Q. So that you had nothing left over? A. Oh, yes, there were moneys left over.

Q. What amounts were left over in 1935? A. I haven't the figures 40 available; they would be a matter of record.

Q. Then you say that there was some money left over, you suppose?

A. If you refer to the difference between tax collections and the expenditures on budget account, there were moneys left over.

Q. That is the total of the tax collections? A. Total of the tax collections.

Q. Then is it not a fact that the Windsor Finance Commission or your-

self as Comptroller gave priority to payments on the salaries and absolutely necessary operating expenses? Did you not do that? A. Are you referring to 1935 or 1936?

Q. Well, in any year, isn't that the principle which was laid down, that the City must be carried on, the necessary operating expenses must be paid? Isn't that the principle? A. That is the basis on which it operated last year.

Q. Then, that being so, how did you fix any ratio for the local improvement moneys that came in? A. I said that the amount that was paid on any specific account could be determined. If the taxes were paid in full, then the local improvements could be determined from that particular tax bill, and the amount that was collected on local improvements could be determined from any individual tax bill if they were paid in full.

Q. But that would be subject to the fact that it might be needed for operating expenses? A. Yes; I would say that if the total tax collections were just the same as the budget that they would be used for the budget.

HIS LORDSHIP: Q. That is, including local improvements? A. Including local improvements. I think it might be stated that each of the four municipalities had a considerable surplus in their tax collections over their operating expenses last year.

MR. JOHN SALE: Q. In 1935? A. In 1935.

HIS LORDSHIP: Q. When you say would be used for the budget, would that mean they would not be used for the purpose for which they were collected, that is, to apply on these local improvements, or were the local improvements included? A. It is difficult to say, my Lord. If the local improvements were included in the budget—a certain amount, of course, was included in the budget, and whether it would be derived from general tax collections or local improvements would have to be determined later.

Q. As I understand it, the money was all put together, the local improvements and the general tax? A. Yes, my Lord.

Q. And then I understood you to say that if the total tax collections did not exceed the amount estimated in your budget, then the whole of the money was used for those expenses set out in the budget? A. Yes, that would be the case if it had occurred, but it did not occur.

Q. If that were so, then there would be no moneys for the local improvement? A. That would be the case.

HIS LORDSHIP: Is that what you are getting at?

MR. JOHN SALE: Yes, my Lord.

Q. Your surplus, if you had any, never exceeded the amount of twenty-five per cent. of the local improvements; that is what you levied, is it? A. You are assuming that local improvements have been levied in every year, are you not?

Q. No, just for that year? A. I cannot answer that question.

RE-EXAMINED

BY MR. MACDONALD:

Q. Mr. Keith, if the local improvement rates were not collected in 1935, taking Mr. Sale's hypothetical question of a situation which never did

In the Supreme
Court of Ontario
No. 19
Defendants'
Evidence, J. C.
Keith (recalled)
Cross-Examina-
tion

Concluded

exist, I suppose those local improvement rates would eventually be collected, would they, in some form?

HIS LORDSHIP: Well, can he answer that? He does not know what will happen in the future, I suppose.

MR. MACDONALD: Q. What is the normal situation, then, Mr. Keith, if local improvement rates are not collected in the current year in which the taxes are imposed or levied? A. If they are not collected—do you mean over the municipality at large or on an individual piece of property?

Q. On individual pieces of property? A. I would think some effort would be made to collect them in subsequent years. 10

Q. And then over the municipality as a whole if sufficient was not realized in the current year for local improvement rates to pay off the amounts necessary to retire those debentures that year, would there eventually be any realization? A. There could be; they could be extended into the future and ultimately be collected from the property.

MR. J. H. RODD: That is all, thank you.
(Witness retires).

MR. J. H. RODD: That, my Lord, closes the defence.

HIS LORDSHIP: That is the defence, Mr. Rodd?

MR. J. H. RODD: Yes, my Lord. 20

HIS LORDSHIP: Mr. Humphries, have you any evidence?

MR. HUMPHRIES: I have no evidence, my Lord.

HIS LORDSHIP: So that now the case is finished so far as evidence is concerned?

MR. GORDON: There is no reply, my Lord.

JUDGMENT RESERVED

Certified,

R. N. DICKSON, C.S.R.,
Official Reporter, S. C. O.

COPY OF REASONS FOR JUDGMENT OF
THE HONOURABLE MR. JUSTICE HOGG

Delivered July 26, 1937

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937.

This action is instituted by the plaintiffs as ratepayers of the Town of Walkerville in the Province of Ontario and as holders of certain debentures issued by the said Town and by certain Public Utility Commissions of the said town and adjoining municipalities.

10 The Plaintiffs bring the action on behalf of themselves and all other ratepayers and holders of debentures as set out in the style of cause in the action, against Harry J. Mero, W. Donald McGregor, Russell A. Farrow and George Bennett, who formerly constituted the members of a body known as The Windsor Finance Commission, created by an Act of the Province of Ontario, entitled The City of Windsor (Amalgamation) Act, 1935, 25 Geo. V. ch. 74. The remaining Defendants, apart from the Attorney-General of Ontario, were incorporated as municipal corporations by various statutes of the Province of Ontario or as public utility commissions by statute, or by bylaws of the various municipal corporations, as set out in the Plaintiffs' statement of claim.

20 The Plaintiff Ladore is the holder in his own right and also as trustee, of debentures for a substantial amount of various dates of issue, of the former town of Walkerville and of the former Walkerville-East Windsor Water Commission and the Essex Border Utilities Commission.

The Plaintiff Harrie R. Dingwall, who is a resident of the City of Detroit, in the United States of America, holds debentures of the par value of \$2,000, issued by the Town of Walkerville.

30 The financial position of the group of municipalities known as the City of Windsor, the municipality of East Windsor, the Town of Walkerville and the Town of Sandwich, was, from the year 1931, in an unsatisfactory condition. The City of Windsor had been in default of interest since the year 1932, and was, as well, in default in the repayment of large sums advanced to it by the Canadian Bank of Commerce and for sums due in respect of other indebtedness.

The municipal corporation formerly known as East Windsor had been in default with respect to the payments due under its debentures since the year 1931, and further indebtedness to a large amount remained unpaid.

40 The municipality formerly known as the Town of Walkerville defaulted in the payments due upon its debentures in the year 1934 and also with respect to other indebtedness, and such default has continued; and the Town of Sandwich made default in its debenture payments in the year 1932, as well as being indebted in other amounts. Default was made in June, 1936, by the Walkerville-East Windsor Water Commission in the payment of interest due on debentures issued by that Commission, and in the year 1933, the Essex Border Utilities Commission defaulted in the payments due on its debentures.

Certain of the debentures issued by the above named municipalities, or by some of them, are held by persons residing outside of the Province of Ontario, and certain debentures are payable outside of Ontario.

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

By section 3 of the said The City of Windsor (Amalgamation) Act, 1935, East Windsor, Walkerville, Windsor and Sandwich, all incorporated municipalities, were amalgamated into one municipal corporation under the name of the Corporation of the City of Windsor. Sec. 4 of this statute provides that such amalgamation shall come into effect at a time not later than the 1st January, 1936, and Sec. 4 was proclaimed as coming into force on 1st July, 1935. Secs. 5, 6 and 7 of the Act, although subsequently repealed by The City of Windsor (Amalgamation) Act, 1936, are the subject of contention in this action.

Sec. 5 (1) provides that:

10

"Forthwith after the passing of this Act there shall be constituted a finance commission to be known as 'The Windsor Finance Commission,' to be composed and to have and exercise the functions, powers and duties hereinafter provided."

By sub-sec. 2 of this section, the Finance Commission is to be composed of three persons, and sub-sec. 5 provides that the Mayor of the new city shall be a member of the Finance Commission, *ex-officio*, in place of one of the three original members. Sec. 6 gives the Finance Commission certain general powers, and sub-sec. 1 of sec. 6, reads as follows:

"The Finance Commission with respect to the amalgamated municipalities and each of them and to their local boards, and to the new city shall have and exercise the same rights, authorities, powers and duties as by the provisions of Part III of The Department of Municipal Affairs Act, 1935, are conferred upon the said Department and the provisions of the said Part III shall apply to the said amalgamated municipalities and to the new city and to the said local boards, and the Finance Commission shall also have the rights, powers and duties conferred upon it by this Act." 20

Sec. 7, defines certain duties to be undertaken by the Commission forthwith after the members take office, among them, under sub-sec. (c), the Commission shall: 30

"undertake the preparation and submission of a plan for funding and refunding the debts of the amalgamated municipalities, upon the general basis that the debt of each of the amalgamated municipalities shall be discharged by the imposition of rates upon the rateable property in that area of the new city which formerly comprised such municipality."

Certain other duties were cast upon the Finance Commission by this section with respect to the preparation of assessment rolls, voters' lists and other duties which are not material to the issue to be decided in this action.

In 1932, the Ontario Municipal Board Act, 1932, 22 Geo. V., ch. 27, was passed by the Legislature of the Province of Ontario. By the terms of this statute, the Ontario Railway and Municipal Board is continued as formerly constituted, but it is to be hereafter known as The Ontario Municipal Board. Sec. 8 of the Act provides that the board shall be composed of three members appointed by the Lieutenant-Governor in Council. Part VI of this statute is headed: "Special Jurisdiction over defaulting Municipalities"; but in 1935 the whole of Part VI of The Ontario Municipal Board Act, 1932, was repealed by 40

25 Geo. V. cap. 51, sec 5, and at the same session of the Legislature The Department of Municipal Affairs Act, 1935, 25 Geo. V. cap. 16, was passed. By virtue of this Act, a Department of Municipal Affairs was created over which a Minister of the Crown to be known as the Minister of Municipal Affairs should preside, and by sec. 4 (3):

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continue

10 "The Department shall exercise general oversight over municipal institutions and their administration and such special oversight and powers in relation thereto as may be provided in or under the authority of this or any other general or special Act; provided that nothing herein contained shall be deemed to divest the board of any jurisdiction or powers conferred on it by this or any other Act."

The board referred to is The Ontario Municipal Board. Part III of this statute is headed "Special Jurisdiction over defaulting Municipalities," and this part is, with certain differences, similar to Part VI of The Ontario Municipal Board Act 1932, having apparently been designed to replace Part VI of the earlier statute.

The following sections of The Department of Municipal Affairs Act, 1935, are found in Part III of the Act:

20 By sec. 25 (1) as amended by The Department of Municipal Affairs Act, 1936, 1 Ed. VIII, cap. 15, sec. 5, the Ontario Municipal Board:

"shall have and may exercise the special jurisdiction and powers conferred by this Part, whenever, upon request of the department or of a municipality, expressed by resolution of its council, or upon request of the creditors of a municipality having claims representing not less than twenty per centum of its indebtedness, including debenture debt, it is satisfied upon inquiry that the municipality has."

"(a) Failed to meet and pay any of its debentures or interest thereon as the same became due and after payment thereof has been duly demanded; or

30 "(b) Failed to meet and pay any of its other debts or liabilities when due and default in payment is occasioned from financial difficulties affecting the municipality; or

"(c) Become so financially involved or embarrassed that default or unusual difficulty in meeting debts or obligations, or in providing, adequate funds to meet current expenditures may ensue, or had failed to levy the necessary rates to meet current expenditures."

40 By sec. 26, after inquiry provided for by sec. 25, the board may vest control of the administration of the affairs of a municipality in The Department of Municipal Affairs. These sections are obviously enacted to take the place of sections 90 and 91 of The Ontario Municipal Board Act.

Sec. 27 gives to the Department authority to exercise the powers given to it by the Act and by order of the Board or under any agreement, and the powers of the Department shall extend not only to the control over the affairs of a municipal corporation but shall extend over all local boards of such corporation.

Sec. 29 provides for the publication of a notice in the Ontario Gazette at such time as a municipality has become subject to the provisions of the Act, and sec. 30, to which I shall hereafter refer, prohibits actions or proceedings or levy under a writ of execution against a municipality, to be proceeded with or to be commenced without leave of the board.

Sec. 32 of the Statute, sets out the nature of the control which the department shall have over a municipality and every local board thereof. These powers are similar in almost all respects to the powers given to supervisors by sec. 97 of the Ontario Municipal Board Act already referred to. Among the powers which may be exercised, municipal officers may be appointed and dismissed, revenues collected, the system of accounting and audit determined, and the assets of the municipalities sold and disposed of. 10

By sec. 33 of The Department of Municipal Affairs Act, the board is given certain powers with reference to the debentures and debenture debts of a municipality which have become subject to Part III of this statute, and these powers are similar, in almost all respects, to those given to the board by sec. 98 of the Ontario Municipal Board Act. Included in the various powers given, is the right to issue new debentures and to substitute such new debentures for those existing, and compulsory acceptance of such debentures for those existing, and compulsory acceptance of such debentures may be ordered. 20 The existing debenture debt may be retired and cancelled upon the issue of new debentures to cover the same or exchanged therefor. Authority is given to the board by this section to administer in the broadest way the indebtedness of a municipality.

I have deemed it expedient to refer to these various statutes at some length in order that the allegations of the Plaintiffs and their claim for relief may be the more readily understood and discussed.

The Plaintiffs allege that in the year 1932, the City of Windsor, the Town of Walkerville, the Town of Sandwich the municipality of East Windsor, the Essex Border Utilities Commission and the East Windsor Water Commission, 30 were insolvent as they were unable to pay their debts in full as such debts matured, and that these corporations continued to be insolvent. The Plaintiffs also allege that the Ontario Municipal Board Act, the Department of Municipal Affairs Act and the City of Windsor (Amalgamation) Act, were passed solely for the purpose of arranging the liabilities of the said municipal corporations and to find a way to avoid a public declaration of bankruptcy. It is further alleged by the Plaintiffs, and it is admitted by counsel for the Defendant corporation of the City of Windsor and the Windsor Utilities Commission, that a plan was prepared by the Finance Commission constituted as above mentioned under sec. 5 of the Windsor (Amalgamation) Act, in pursuance of the duty placed upon this commission by sec. 7 for funding and refunding the debts of the amalgamated municipalities. The Plaintiffs say that this plan is inequitable and unjust, and that it is prejudicial to, and takes away, 40 vested rights of the Plaintiffs as holders of the debentures referred to, and the Plaintiffs claim that the Windsor (Amalgamation) Act, 1935, Part VI of The Ontario Municipal Board Act and Part III of The Department of Municipal Affairs Act, are ultra vires of the Province of Ontario as being legislation in

reference to the subject of bankruptcy. The Plaintiffs claim that, as a consequence, all proceedings taken under and by virtue of the said City of Windsor (Amalgamation) Act, are void as against the Plaintiffs and those on whose behalf the Plaintiffs bring this action. The Plaintiffs seek a declaration of the Court to this effect and that the enumerated statutes, or those parts of such statutes as have been mentioned, are ultra vires of the Provincial Legislature. In brief, the Plaintiffs base their claim for the relief sought, on the ground that as ratepayers and debenture holders of certain of the municipal corporations which were brought together or amalgamated to form the new City of Windsor and as holders of debentures of certain of the Utilities Commissions purporting to be dissolved by the City of Windsor (Amalgamation) Act, the legislation attacked and the plan or scheme prepared in pursuance of such legislation purports to deal with these debentures in a way which is harmful to the legal rights of the Plaintiffs, and that such proceedings with respect to the debentures in question are not lawful or authorized, because the legislation purporting to give authority to the Finance Commission to prepare the said plan reconstituting the financial position of the amalgamated municipalities and the legislation creating the board or to pass and approve of such plan and giving such department or board the power to deal with the indebtedness of the municipalities in question, is legislation respecting the subject of bankruptcy and as such is not within the field of legislation given to the Province by the British North America Act,

The Plaintiffs claim in addition to a declaratory judgment upon the validity of this legislation, an accounting and a receiver as against the Defendants.

As a first line of defence, the Corporation of the City of Windsor, the Windsor Utilities Commission and the Defendants Bennett, Mero, McGregor and Farrow, say that the Plaintiffs are precluded from bringing action for the reason that leave was not obtained to institute the action from the Ontario Municipal Board as required by the Department of Municipal Affairs Act.

Sections 29 and 30 of The Department of Municipal Affairs Act have already been mentioned. The notice required by sec 29 was published with respect to the municipalities amalgamated by the City of Windsor (Amalgamation) Act.

Sec. 30 (1) of The Department of Municipal Affairs Act, reads:

“When notice has been published in the Ontario Gazette that a municipality is subject to this Part, such publication shall operate as a stay of all actions or proceedings pending against the municipality and as a stay or execution as the case may be, and thereafter no action or other proceeding against the municipality shall be commenced or continued nor shall a levy be made under a writ or execution against the municipality, without leave of the board.”

Sub-sec. (2) reads in part:

“Where the commencement or continuance of any action or proceeding or the making of any levy under a writ of execution is prevented or stayed under this section, the time during which such prevention or stay continues” etc.

I am unable to agree with counsel for the above named Defendants and for the Attorney-General of Ontario, that the leave of the board was a condition precedent to the institution of this action, having regard to the nature of the action and the relief claimed by the Plaintiffs.

Many years ago it was established, and except by way of introduction it is unnecessary to state, that under our Federal system, a Provincial Legislature when acting within the powers given to it by the British North America Act, has plenary powers of legislation as large as, and of the same nature as, the Imperial Parliament. *The Queen v. Burah*, (1878) 3 A.C. 889; *Hodge v. The Queen*, (1883) 9 A.C. 117.

It has also long since been held that it must not be assumed without the clearest language, that Parliament intended to destroy the common law rights of His Majesty's subjects; *Rendall v. Blair*, 45 Ch. D. 139. Such legislation must be construed with strictness. It is to be noted that the said section 30, deals with a stay of actions and a stay of executions, pending against municipalities, and prohibits, unless leave is obtained, the bringing of an action or the making of a levy under writ of execution. It is true that our courts have upheld the right of the Provincial legislatures to prohibit and to take away a right of action; *Florence Mining Company, Ltd. v. Cobalt Lake Mining Company, Ltd.*, 18, O.L.R. 275; *Smith v. The City of London*, 20 O.L.R. 133; but precise and clear language must be employed by the Legislature in the particular statute which purports to take away a right at Common Law.

In *Pringle v. The City of Stratford*, 20 O.L.R. 246, Osler J. A., cited with approval, the proposition enunciated in *Maxwell on Statutes* and in the case of *Minet v. Leman*, (1855) 20 Beav. 269, 278, where it is said that: "The general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched This principle of construction, as a general proposition, cannot be disputed."

The Common Law rights of the subject are not affected by a statute unless it is so expressed in clear language or must follow by necessary implication and then only to such extent as may be necessary to give effect to the intention of the Legislature thus clearly manifest.

In the appeal of the *Hydro-Electric Power Commission v. The County of Grey*, 55 O.L.R. 339, this principle was approved by Masten, J. A., at p. 345, where the learned Judge cited the authorities upon which the principle is based.

In *Rendall v. Blair* (*supra*) Lord Justice Bowen, in discussing the language of a statute prohibiting, without leave of a Charity Board, a right of action, 40 said:

"Such a construction would be to place the Charity Board in the remarkable position of a Court without appeal, upon the subject of Common Law rights—so that a man who had a claim against a charity which he could only enforce, or the apt relief in respect of which was an injunction from the Court of Chancery in regard to a threatened wrong, would find himself absolutely at the mercy of an irresponsible board.

Such legislation is possible but I think we ought not to assume without the clearest language that Parliament intended to destroy Common Law rights of Her Majesty's subjects by placing them at the mercy of an irresponsible tribunal or irresponsible department of the State."

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

The nature and character of the action or proceeding contemplated by the section under consideration, is in my opinion, an action or proceeding in which, upon judgment being rendered, a writ of execution may be issued. This interpretation placed upon the language of sec. 30 is consistent with the principles of construction laid down by the authorities which I have cited.

10 Upon this ground, I am of opinion that the language of sec. 30, does not bar the institution of an action such as the one before the Court, in which a declaration is required as to the power of the legislature to enact the very statute which purports to take away the right of action, and in which the validity of the Act is in issue.

There is the further consideration upon this subject, which in my view, prevents the defendants from succeeding in establishing the contention that the right of action of the plaintiffs has been taken away in the present instance, and this principle was one of the main subjects discussed and considered by the Court of Appeal for Ontario, very recently in the case of Ot-
20 tawa Valley Power Company v. The Attorney-General of Ontario (not yet reported).

Under our system of Government, the field for the exercise of the functions of Government, both legislative and executive, is divided between the Dominion and the Provinces. As was said by Clement in his work on the Canadian Constitution, p. 11, in discussing the legislative powers of Parliament:

30 "But under both the British and the United States systems—systems of Government according to law—the Courts charged with the enforcement of law must decline to recognize the validity, the lawfulness, of any governmental Act done by any person or body of persons beyond the limits to which they are legally subject."

Because of the division of the field of legislation under our constitution, there is the additional duty necessarily cast upon the courts of deciding the validity or invalidity of legislative enactments of Parliament and of the legislatures of the Provinces.

The very spirit and essence of the Federal system of government is, that to the courts is delegated the authority to decide whether the central or the Provincial Legislatures, have overstepped the boundaries of their respective fields of legislation and to determine, at the suit of a subject who alleges that
40 his rights, for which he claims some consequential relief have been affected by an enactment of the Dominion or of a province which he contends is *ultra vires*, whether such legislation is or is not within the scope of the powers of legislation given by the British North America Act to the legislature which passed such Act.

I consider that the language of Masten, J. A., upon this point, in his reasons for judgment, in the case of The Ottawa Valley Power Company (*supra*), is wholly applicable to the issue, as to whether the action now be-

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

fore me is barred by this section 30 of The Department of Municipal Affairs Act. The learned Judge was of opinion "that the Legislature cannot destroy, usurp or derogate from substantive rights over which it has by the Canadian Constitution no jurisdiction and then protect its action in that regard by enacting that no action can be brought in the courts of the Province to inquire into the validity of its legislation, thus indirectly destroying the division of powers set forth in the British North America Act." I would also refer to the words of Riddell, J. A., in *Smith v. The City of London*, (*supra*), at p. 136, where, in discussing the statute there under consideration, he said:

"This is a very stringent section, if the legislation is not *ultra vires* 10
it would seem impossible for the plaintiff to continue this action."

It is the fact that in the present instance the action involves the validity of the statute containing that section which the defendants claim, bars the plaintiffs from bringing such action.

My conclusion is that the plaintiffs were entitled to bring this action and that it is properly before the Court.

The defendants, the Corporation of the City of Windsor, the Windsor Utilities Commission and the defendants Bennett, Mero, McGregor and Farrow, deny that The City of Windsor (Amalgamation) Act and the various other statutes which are attacked are *ultra vires* of the Legislature of Ontario 20
as alleged by the plaintiffs and these defendants further allege that the statement of claim disclosed no cause of action against these defendants and that the plaintiffs have been premature in bring the action.

Sec. 92 (8) of The British North America Act gives to the Provincial Legislatures the exclusive power to make laws with relation to municipal institutions. Provincial Legislatures alone can create municipalities, establish an organization therein for the proper functioning of legislative machinery, a staff for the administration of local affairs and assign to it its powers, but always within the limits of the powers of the Legislature. There is no question, therefore, but that the Provincial Legislature may create a municipal corpora- 30
tion or may destroy or dissolve such corporation. Nor is it open to question that the Provincial Legislature may amalgamate or unite various separate municipalities into one municipal corporation. The Province may also dissolve or abolish a corporation of the nature of a public utility commission which in the first instance has been created by it or by bylaw of a municipality.

The plaintiffs say that The City of Windsor (Amalgamation) Act is *ultra vires* of the Ontario Legislature because it is in the nature of bankruptcy legislation in that it purports to interfere with the rights of holders of debentures of the municipalities which were united or amalgamated by the statute, by dealing with the indebtedness of the municipalities in question as in 40
bankruptcy proceedings. And it is furthermore contended that for the reason that Part III of The Department of Municipal Affairs Act, 1935, is in effect legislation respecting bankruptcy and because by sec. 6 (1) of The City of Windsor (Amalgamation) Act, 1935, the Finance Commission is given the same authority as has the Department under the Municipal Affairs Act, and because therefore this latter Act applies to the amalgamated municipi-

palities, the Amalgamation Act is *ultra vires* of the Province because Part III of The Department of Municipal Affairs Act, is *ultra vires*.

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937

Continued

10 But assuming that the sections of the Amalgamation Act dealing with the Finance Commission, and applying Part III of The Department of Municipal Affairs Act, are not valid, can it be successfully contended that the remainder of The Windsor (Amalgamation) Act is *ultra vires* of the Provincial Legislature? Such a conclusion cannot be accepted. Not only is it within the power of the Legislature to amalgamate the former municipal corporations into the new City, but it is within its power to bring to an end the former municipal corporations and those other public utility commissions appertaining to the former municipalities and created either by statute or by bylaw of such municipal corporations. It is also within the power of the Province to provide administrative machinery for the new City and to vest the assets of the former municipalities in the newly created City.

20 Sec. 20 of the Amalgamation Act provides that upon and from the final incorporation of the new City, all the assets of the amalgamated municipalities shall be vested in such new City; and by sec. 12 a commission called "The Windsor Utilities Commission" is created in the place and stead of The Essex Border Utilities Commission which is dissolved as of the 1st July, 1935, or at a later date by proclamation, and the new commission is to have all the powers of the former commission.

By sec. 14, the management, control and operation of the undertakings of the Essex Border Utilities Commission and of waterworks systems and hydro electric systems of the amalgamated municipalities shall be vested in The Windsor Utilities Commission, and all of these various commissions, including the Walkerville-East Windsor Commission, are dissolved; and by sec. 21 the assets of the former commissions are vested in The Windsor Utilities Commission.

30 It was within the power of the Legislature to dissolve the various commissions and corporations serving the former municipalities, and these former commissions and water and hydro-electric corporations before the commencement of this action had ceased to exist.

40 It was moved by counsel on behalf of the defendants George Bennett, the Corporation of The City of Windsor, and The Windsor Utilities Commission, at the beginning of this trial, that all the defendants named in the action, consisting of the amalgamated municipalities, the former commission, the water and hydro-electric commissions, other than the said defendants George Bennett, the Corporation of the City of Windsor and The Windsor Utilities Commission and the defendants Mero, McGregor and Farrow, as such defendants were not in existence, should be struck out and dismissed from the action, and this motion is allowed.

In pursuance of the provision of sec. 5 (1) of The City of Windsor (Amalgamation) Act, a finance commission was appointed consisting of the defendants Mero, McGregor and Farrow. The defendant Bennett, as duly elected Mayor of the new City of Windsor, was, under the terms of sub-sec. 5 of the said section, also a member of this commission, in the place of one of the former members.

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

The defendants allege that no cause of action has been disclosed against these defendants and that they are named as defendants in their personal and individual capacity and not as members of The Windsor Finance Commission which the defendants allege was a body incorporated under the provisions of The City of Windsor (Amalgamation) Act. It is further alleged that, assuming that all the acts of the defendants set up in the statement of claim were established, there is nothing pleaded which would entitle the plaintiffs to judgment against these defendants even in their official capacity, and counsel for the defendants moved at the trial that the action be dismissed on the above grounds.

10

Before entering into a consideration of this defence, I am of the opinion that in order to give due consideration to the argument advanced by the plaintiffs and to their claims in the action, the functions and the acts of the finance commission should be briefly noted.

By sec. 7 of The Windsor (Amalgamation) Act, the Finance Commission was directed forthwith after taking office, to undertake the duties set forth in this section, and it is that part of their duties set out in clause (c) of this section which, substantially, is the basis of the plaintiffs claim for relief. By virtue of said clause (c), which has been already set out in full, the Finance Commission was directed to undertake the preparation and submission of a plan for funding and refunding the debts of the amalgamated municipalities, upon the general basis that the debt of each of the amalgamated municipalities shall be discharged by the imposition of rates upon rateable property in that area of the new City which formerly comprised such municipality.

20

My understanding of the plaintiff's contention is, that the refunding plan or scheme so prepared and submitted was based on the right given to the Commission by sec. 6 (1); that it shall have and exercise the powers given by Part III of The Department of Municipal Affairs Act which the plaintiff's claim is bankruptcy legislation and beyond the power of the Province to enact and that such plan is illegal and of no effect so far as the plaintiffs are concerned.

30

The defence set up to this plea is in effect that this legislation is not in relation to bankruptcy, but that, apart from the question of whether the plan is a step in bankruptcy proceedings or not, the plaintiffs have no legal or substantial right or rights which have been affected, curtailed or prejudiced, by the preparation of the plan, and the issue raised by the plaintiffs, that the various statutes, or parts of them, are bankruptcy legislation, is extraneous to a decision upon the claims of the plaintiffs in this action. The defendants also say in defence that no part of the relief claimed could be granted to the plaintiffs.

40

The plan in question, was submitted as evidence for the plaintiffs, and its admission was objected to by counsel for the defendants. I have admitted the plan as it may be that in future, before another tribunal, it may be concluded that such plan should be considered, but I have not found it necessary to look at this plan or to consider it in reaching a conclusion upon the matters in issue.

In considering clause (c) of sec. 7, of The City of Windsor (Amalgamation)

Act, nothing is found in this section or in the whole Act, nor in any of the other material statutes, which gives any effect to the plan that the Commission prepared and which it has submitted. No result affecting adversely, a legal right of the plaintiffs or of any other person, or persons, up to the date of the commencement of the action, flows from the preparation or submission of this plan. There is no evidence that the plan has ever been considered or accepted or adopted by the Ontario Municipal Board or by any other person or body. It may be noted that there is no direct provision as to whom this plan was to be submitted, but that the plan was to be submitted to The Ontario Municipal Board or to The Department of Municipal Affairs appears evidence according to secs. 53 and 54 (1) of The Department of Municipal Affairs Act.

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

I am of opinion, that the mere preparation and submission of the plan in question by The Windsor Finance Commission in itself results in no legal consequences upon which the plaintiffs can found a right of action.

The plaintiffs claim an accounting against the defendants and the appointment of a receiver. The defendants Mero, McGregor, Farrow and Bennett, or such of them as comprised the Finance Commission at the time, having prepared and submitted the plan, their duty, so far as this matter was concerned, was at an end, and after the proclamation of the amending Act on the 8th August, 1936, the Finance Commission ceased to exist, as this Commission was there by dissolved, and all acts done were ratified and declared to be legal. These defendants have no control or management over the financial affairs of the new City of Windsor. There is nothing upon which could be founded a judgment for receivership or an accounting, against these defendants.

With respect to the defendants The Corporation of the City of Windsor and The Windsor Utilities Commission, these bodies were not entrusted by the Amalgamation Act with the duty of dealing with the financial situation in which they found themselves nor had they the function of dealing with the bonded indebtedness but this obligation was placed wholly in the hands of the Finance Commission. These defendants had no part in preparing the scheme or plan for funding and refunding the debts of the amalgamated municipalities. The collection and application of the revenues of the amalgamated municipalities was not a function of the new City, for the reason, that Part III of The Department of Municipal Affairs relieved the municipality of this duty. I am of opinion that neither the relief of an injunction, a receivership nor an accounting can be given as against these defendants to the action.

If, then, no consequential or substantive relief can be awarded to the plaintiffs against the defendants, have the plaintiffs the right to request, or has the Court the right to declare, that the statutes attacked are ultra vires of the Province of Ontario?

In *Smith v. Attorney-General of Ontario*, (1924) S. C. R., 331, where the plaintiff alleged that he might in certain eventualities, be liable to prosecution by the Crown, and claimed a declaration as to the effect of certain pro-

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

vincial statutes; it was held that the plaintiff had no status to maintain the action. The Chief Justice of Canada used the following language, (p. 337):

“An individual, for example, has no status to maintain an action restraining a wrongful violation of a public right unless he is exceptionally prejudiced by the wrongful act.”

But the Chief Justice adds that the question before the Court is an arguable one.

It is true, that in addition to the claim for a declaration as to the validity of the statutes in question, the plaintiffs claim the relief of a receivership and an accounting, and a declaration that a certain lien is protected. Does the fact that these additional claims are made—though in my opinion they cannot be upheld and that there is no foundation for the relief requested—take the case out of the principle discussed in *Smith v. The Attorney-General of Ontario*? It is not necessary to reply upon this principle in the decision of the case at bar except that it may be said that the plaintiffs here, in my opinion, have had no legal right invaded by the preparation of the plan by the Finance Commission complained of, and the question as to whether their rights as debenture holders are prejudiced would not be ascertained until action was taken by The Ontario Municipal Board with respect to such plan. 10

The plaintiffs plead in the alternative for a declaration that the proposed plan for funding and refunding the debts of the amalgamated municipalities is not within the power of these municipalities or the Finance Commission, and that The Ontario Municipal Board has no power to approve of the said plan. My understanding of this plea is that it is merely an alternative means of presenting the former claim of the plaintiffs, namely, that the legislature had not power to give authority to these bodies to deal with the debts of the municipalities, in other words, that the legislation conferring such power has invaded the field of bankruptcy legislation. The answer to this plea must be that already stated; that there has been no determination with respect to, or adoption of, a plan to fund or refund these debts. It might be conceived as possible that the plan submitted to The Ontario Municipal Board, might not be adopted and that the debentures of these municipalities would not be interfered with but would be preserved intact, upon the final determination by The Ontario Municipal Board. This suggestion leads back to the statement that as yet no legal consequences detrimental to the plaintiffs have so far resulted from what has been done. 20 30

If The Ontario Municipal Board is an incorporated body, could action be brought against it for relief against an alleged wrongful act? If The Ontario Municipal Board is an agent, or department, or servant of the Crown, could a petition of right be instituted and a fiat requested from the Crown? These are questions which I am not called upon to decide. 40

With reference to that portion of the debentures of the amalgamated municipalities, held by persons outside of the Province, and to those debentures payable outside of Ontario, the argument was advanced, which has since been dealt with by the Court of Appeal in the *Ottawa Valley* case, that the rights of such debenture holders cannot be interfered with or derogated from by an Act of the Province. As to whether this principle would be

applicable in the present case need not, in my opinion, receive consideration, for the reason which I have already given, namely, that there has as yet been no interference with the rights of debenture holders.

Certain of the debentures held by the plaintiffs were constituted a charge upon the assets of the corporations or commissions issuing them, and the plaintiffs request a declaration in this action that they are entitled to a lien charge or hypothec on the assets and revenues of the corporations upon whose behalf the debentures were issued. The same answer must be made to this plea: that no lien or charge has been taken away by any final or determinate
 10 action on the part of the Finance Commission or of The Ontario Municipal Board. In addition it is to be noted that in Part III, by sec. 31 of The Municipal Affairs Act, there is preserved existing liens and charges on or against any revenue or other assets of any municipality.

Counsel for the Attorney-General of Ontario moved during the course of the trial that the action be dismissed as against the Attorney-General of Ontario upon the ground that action does not lie against Attorney-General at the instance of the plaintiffs to declare an Act of the Legislature of the Province of Ontario to be ultra vires and that the Crown is not a party to any proceedings referred to in the statement of claim nor is any property or right
 20 of the Crown, in question in this action, incidentally or otherwise. I held, when the motion was made, that this contention on the part of the Attorney-General was sound and that the Attorney-General was not a proper party to the action. No right of the Crown is affected by any claim of the plaintiffs in this action. In my opinion the judgment of the Judicial Committee of the Privy Council, in *The Esquimalt and Nanaimo Railway Company v. Wilson* (1920) A. C., p. 358, is in point in this issue. The Privy Council held that unless the rights of the Crown are affected, a mere declaratory order against the Crown would be of no value.

Although I granted this motion on behalf of the Attorney-General of
 30 Ontario, Mr. Humphries agreed to continue in the action to the conclusion of the trial and to take part in the argument, and I have had the benefit and assistance of his skill and experience in relation to the various issues raised.

Although I have reached a conclusion adverse to the claims of the plaintiffs for the reasons already set forth, I have done so upon grounds other than those relating to the main basis of the plaintiffs' case.

I do not think that I should omit to state that the elaborate argument which Mr. Gordon presented on behalf of the plaintiffs attacking the legisla-
 40 tion as being in relation to the matter of Bankruptcy and Insolvency, was very carefully prepared and ably presented. I think, therefore, that I should give consideration to and discuss to some extent, this issue raised by the plaintiffs.

In my opinion, the legislation claimed to be invalid is within the legisla-
 tive field of the Province, and is not legislation of such nature that it must be declared to fall within sub-section 21 of sec. 91 of The British North America Act.

The whole purpose and intention shown by Part III of the Municipal Affairs Act, is, to avoid a condition which might be equivalent to one of bank-
 ruptcy in its wider sense, on the part of the defaulting municipal corporations.

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

The plaintiffs say that many of the provisions of secs. 32 and 33 of the Municipal Affairs Act, are similar, at least in their effect, to the provisions of the Dominion Bankruptcy Act and that the essential feature of bankruptcy legislation, namely, the distribution of the debtor's assets amongst his creditors, is provided for by the power of sale or other distribution of the assets of the municipalities given by the statute to the board.

It was submitted by counsel for the plaintiffs, and I agree with his opinion, that the Bankruptcy Act does not apply to a municipal corporation.

The Province is dealing, in the attacked legislation, with bodies of its own creation, and the legislation in question deals with and attempts to remedy the financial difficulties into which certain municipalities have fallen. 10

The presumption is in favour of the validity of an impugned Act: *Valin v. Langlois*, 5 App. Cas. 115.

As long as the year 1880, the Judicial Committee of the Privy Council held in *Cushing v. Dupuy*, 5 App. Cas. 415, that the Dominion has legislative power in bankruptcy to interfere with property and civil rights and procedure within the provinces so far as a general law relating to those subjects may affect them.

The legislation in question in this action, is applicable only to municipal corporations and to subsidiary corporations connected therewith, that is to say, it is concerned only with matters of a local nature. 20

Bankruptcy is defined in volume 2 Halsbury's Laws of England, 2nd edit., p. 4 as "a proceeding by which the State takes possession of the property of a debtor by an officer appointed for the purpose, and such property is realized and subject to certain formalities, distributed rateably among the persons to whom the debtor owes money or has incurred pecuniary liabilities."

In the Assignment and Preferences case—*Attorney-General of Ontario v. Attorney-General of Canada*, 1894, A. C. 189, the Lord Chancellor said that:

"A feature common to all systems of bankruptcy and insolvency to which reference has been made is that the enactments are designed to secure that in the case of an insolvent person his assets shall be rateably distributed among his creditors whether he is willing that they so be distributed or not." 30

In the Companies' Creditors Arrangement Act Reference, to the Supreme Court of Canada, 1934, S. C. R. 659, Duff, C. J., said, at p. 661:

"Matters normally constituting part of a bankruptcy scheme, but not in their essence matters of bankruptcy and insolvency may, of course, from another point of view and in another aspect be dealt with by a provincial legislature; but when treated as matters pertaining to bankruptcy and insolvency, they clearly fall within the legislative authority of the Dominion." 40

If a provincial legislature confines the legislation enacted by it to the subjects assigned to it exclusively by the British North America Act, it may, when necessary, enact provisions which might normally be found in bankruptcy legislation but which are not of the essence of bankruptcy, that is to say, in my opinion, the province under its exclusive jurisdiction over municipal institutions and property and civil rights, may legislate in relation to matters

appertaining to a scheme dealing with the reconstruction of the financial affairs of municipal corporations and the funding and refunding of their indebtedness if in so doing it does not treat them as matters pertaining to bankruptcy and the legislation does not seek to deal with those matters which have been held to be common to, and the essence of, all systems of bankruptcy and insolvency.

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Continued

In *L'Union St. Jacques de Montreal v. Belisle*, 1874, L. R. 6, P. C. 31, Lord Selbourne said at page 36, in discussing the meaning of the words "bankruptcy" and "insolvency" as they appear in section 91 of the British North
10 America Act:

"There is no indication of anything being contemplated, except what may properly be described as general legislation,"

And at page 37, referring to the Society which was the subject of the provincial legislation attacked as *ultra vires* of the Province, as being within the category of bankruptcy legislation, Lord Selborne said:

20 "The fact that this particular Society appears upon the face of the Provincial Act to have been in a state of embarrassment, and in such a financial condition that unless relieved by legislation, it might have been likely to come to ruin, does not prove that it was in any legal sense within the category of insolvency. And in point of fact the whole tendency of the Act is to keep it out of that category, and not to bring it into it."

Can it be maintained that the amalgamated municipalities and their subservient commissions are "in any legal sense within the category of insolvency?" Evidence was submitted as to the total assessed value of properties within the boundaries of these municipalities and also of their total indebtedness, and I cannot hold that they are insolvent within the legal sense of that word.

30 Again, can it be said that the attacked legislation deals with those matters which are the essence of bankruptcy and insolvency? Does it provide machinery for winding-up the municipalities and commissions in question, and for distributing their assets among their creditors? It is true that the original municipal corporations and commissions were dissolved and lost their separate entities, but their existence was continued, and their assets and property were vested, in the new City of Windsor and in The Windsor Utility Commission. They did not disappear as in the case of a corporate body which is subject to the provisions of the Bankruptcy Act, nor were their assets distributed among their creditors. It is not possible to conceive that the whole of the property of a municipality could be distributed among its creditors, and no provision was made by the attacked legislation to distribute the assets or property of
40 these municipalities and other bodies, among their creditors. The plaintiffs say that the power of sale or other disposition of assets given to the Ontario Municipal Board by The Department of Municipal Affairs Act, fulfills these conditions; but I think it obvious that this power of sale or disposition can not be termed a power directed towards the distribution of the property of a municipality among creditors. No machinery, as in bankruptcy legislation, was set up to realize assets and to distribute the proceeds of a sale of assets. See *Quebec Municipal Commission v. Town of Aylmer* (1933), 2 D. L. R. 368,

In the Supreme
Court of Ontario
No. 20
Reasons for
Judgment,
Hogg, J.,
July 26, 1937
Concluded

The "pith and substance" of the legislation is directed solely to matters relating to municipal corporations, namely, the protection of the ratepayers and the creditors of the municipalities in question under the conditions and circumstances in which these municipalities found themselves.

I may sum up my conclusions as follows:

(1) No substantive right of the plaintiffs has been affected adversely by the mere preparation and submission of the plan directed by section 7 of The City of Windsor (Amalgamation) Act, 1935, and as a consequence there is no ground for the action.

(2) The remedies of an accounting and of a receivership, cannot be 10 directed as against the defendants.

(3) The statutes of the Legislature of the Province of Ontario and parts of Statutes, alleged by the plaintiffs to be invalid, are not ultra vires of the Province upon the grounds advanced by the plaintiffs that they are in relation to bankruptcy and insolvency.

The action is dismissed with costs.

JUDGMENT AT TRIAL

In the Supreme
Court of Ontario
No. 21
Judgment at Trial

1. This action coming on for trial on the 28th, 29th and 30th days of September, 1936, before this Court at the Assizes holden for the County of Essex at Windsor, Ontario, in the presence of counsel for all parties, upon 20 hearing read the pleadings and upon hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct that this action stand over for judgment, and the same coming on this day for judgment.

2. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed with costs to be paid by the plaintiffs to the defendants forthwith after taxation thereof.

JUDGMENT SIGNED OCTOBER 8th, 1937.

Sgd. "A. A. MacKINNON,"
Loc. Reg. Essex.

Entered S. C. J. Book, No 14, Folio 188, this 8th day of October, 1937. 30
Sgd. "A. A. MacKINNON," L. R. E.

NOTICE OF APPEAL

In the Court of
Appeal for
Ontario
No. 22
Notice of Appeal

TAKE NOTICE that the plaintiffs' appeal to the Court of Appeal for Ontario from the judgment pronounced by the Honourable Mr. Justice Hogg on the 26th day of July, 1936, and ask that the said judgment may be reversed and that judgment should be entered for the plaintiffs upon the following grounds:

1. The learned Trial Judge erred in rejecting the evidence of the witnesses MacMillan and Long of the statement made on behalf of the Government by the Honourable the Minister of Municipal Affairs to properly authorized representatives of the Corporation of the Town of Walkerville that the Government was forced to take steps to remedy the bankrupt condition of the Border Municipalities and intended to pass legislation for amalgamating the defendant municipalities for the sole purpose of remedying their bankrupt condition.

10 2. The learned Trial Judge erred in finding that Section 8 of the Ontario Municipal Board Act, 1932, was *intra vires* of the Legislative Assembly of the Province of Ontario.

3. The learned Trial Judge erred in holding that the Ontario Municipal Board was not a superior District or County Court within the meaning of the British North America Act, 1867.

20 4. The learned Trial Judge erred in failing to find that Part 6 of the Ontario Municipal Board Act, 1932, and Part III of The Department of Municipal Affairs Act, 1935, The City of Windsor (Amalgamation) Act, 1935, and the amendments thereto are *ultra vires* of the Legislative Assembly of the Province of Ontario, on the ground that said Statutes and parts thereof deal with:

- (a) Bankruptcy;
- (b) Interest;
- (c) Civil Rights existing outside the Province.

30 5. The learned Trial Judge erred in not finding that the series of Acts commencing with the default in payment of their obligations by the municipalities of East Windsor and Sandwich, the enactment of Part VI of The Ontario Municipal Board Act, 1932, the appointment of Committees of Supervisors pursuant thereto for the control and administration of the affairs and finances of the defaulting defendant municipalities and their local Boards and Commissions and the defendant Essex Border Utilities Commission, the enactment of Part III of the Department of Municipal Affairs Act, 1935, the supervision, control and administration thereof by the Department of Municipal Affairs under the powers contained therein, the appointment by His Honour the Lieutenant-Governor-in-Council of the Royal Commission on Border Cities Amalgamation, the enactment of the City of Windsor (Amalgamation) Act, 1935, providing for the amalgamation of the defendant municipal corporations and their local boards and commissions, the control and administration of the affairs of the amalgamated municipalities by The Department of Municipal Affairs and the Windsor Finance Commission, the provision for
40 compulsory acceptance of a scheme for refunding the debts thereof, and the change in the form of control and administration provided by the City of Windsor (Amalgamation) Amendment Act, 1936, and all the several matters and things had and done under the said statutes, were for the purpose of administering the affairs of the said defendant municipalities and their local boards and commissions and dealing with their assets and liabilities as insolvent or bankrupt corporations.

6. The learned Trial Judge erred in finding that the City of Windsor (Amalgamation) Act, 1935, and the City of Windsor (Amalgamation) Amendment Act, 1936, are intra vires of the legislative Assembly of the Province of Ontario notwithstanding the provisions of Section 91 of the British North American Act, 1867, and particularly sub-head 21 of the said section and the last sentence thereof.

7. The learned Trial Judge erred in not finding that the Corporation of the City of Windsor, the Corporation of the Town of Sandwich, the Corporation of the City of East Windsor, and the Corporation of the Town of Walkerville, the Essex Border Utilities Commission, the Walkerville-East Windsor Water Commission, the Hydro-Electric Commission of the City of East Windsor, the Hydro-Electric Commission of the Town of Walkerville, the Hydro-Electric Commission of the City of Windsor, the Hydro-Electric Commission of the Town of Sandwich, The Water Commissioners of the City of Windsor, The Board of Water Commissioners of the Town of Sandwich, were in fact insolvent and bankrupt at the time of the trial of this action. 10

8. In the alternative:

(a) The learned Trial Judge erred in finding that the scheme of funding and refunding the debts of the amalgamated municipalities was in accordance with the terms of the City of Windsor (Amalgamation) Act, 1935. 20

(b) The learned Trial Judge erred in finding that the Ontario Municipal Board had the authority to approve of the scheme of funding and refunding the debts of the amalgamated municipalities.

(c) The learned Trial Judge erred in not holding that the plaintiff Ladore and all those on whose behalf he sues as holders of Park Fund debentures of the Town of Walkerville have a lien and charge on all the parks of the Town of Walkerville and that such lien and charge ought to be maintained in any scheme of funding and refunding the debts of the Town of Walkerville. 30

(d) The learned Trial Judge erred in not finding that the plaintiff Ladore and all those on whose behalf he sues as holders of Local Improvement debentures of the Town of Walkerville had a prior charge on all rates collected for such Local Improvements in the Town of Walkerville and on the lands benefited thereby, and that such charge and priority ought to be maintained in any scheme of funding and refunding the debts of the Town of Walkerville.

(e) The learned Trial Judge erred in not finding that the plaintiff Ladore and all those on whose behalf he sues as holders of debentures of the Walkerville-East Windsor Water Commission have a first charge and lien on all the assets, property, system and revenues of the said Commission and that such first charge and lien ought to be maintained in any scheme of funding and refunding the debts of the said Commission. 40

(f) The learned Trial Judge erred in not finding that the plaintiff Ladore and all those on whose behalf he sues, as holders of debentures of the Essex Border Utilities Commission have a first charge and lien on the assets, systems, property and revenue of the said Commission and that

such charge and lien ought to be maintained in any scheme of funding and refunding the debts of the said Commission.

In the Court of
Appeal for Ontario
No. 22
Notice of Appeal
July 31, 1937.

Concluded

AND FURTHER TAKE NOTICE that at the opening of the said appeal the Appellants will ask leave to amend paragraph 4 of the prayer contained in the Statement of Claim by adding thereto in the fourth line of the said paragraph after the word "Sandwich" the words: "or any similar plan," and permitting the Appellants to file as part of the evidence in this case the Order of the Ontario Municipal Board dated the 14th day of April, 1937, but made on the 15th day of June, 1937, and the Plan referred to in the said Order as
10 Schedule "A," which documents are Exhibits "A" and "B" to the affidavit of Charles Sale filed.

DATED the 31st day of July, A.D., 1937.

SALE, SALE & BOWMAN,

303 Bartlet Building, Windsor, Ontario.
Solicitors for the Plaintiffs.

To:

I. A. HUMPHRIES, K.C. Solicitor for the Attorney-General of Ontario.

J. H. RODD, K.C. Solicitor for the defendants Mero, Farrow and McGregor.

The Solicitor for the City of Windsor and the Windsor Utilities Commission,
20 bodies alleged to have been incorporated by the City of Windsor (Amalgamation) Act, 1935.

30 The Corporation of the Town of Walkerville;
The Corporation of the City of East Windsor;
The Corporation of the City of Windsor;
The Corporation of the Town of Sandwich;
The Essex Border Utilities Commission;
The Walkerville-East Windsor Water Commission;
The Water Commissioners of the City of Windsor;
The Board of Water Commissioners of the Town of Sandwich;
The Hydro-Electric Commission of the City of East Windsor;
The Hydro-Electric Commission of the Town of Sandwich;
The Hydro-Electric Commission of the Town of Walkerville;
The Hydro-Electric Commission of the City of Windsor; and the Defendant, George Bennett.

REASONS FOR JUDGMENT OF THE MAJORITY OF THE COURT OF
APPEAL FOR ONTARIO

(Masten and Henderson, J.J.A.) delivered pursuant to Sec. 9 (3) of the Judicature Act, R.S.O., 1937, cap. 100, by Mr. Justice Henderson.

HENDERSON, J. A.: An appeal from the judgment of Mr. Justice Hogg, dated the 26th day of July, 1937.

The plaintiffs in this action and those on whose behalf they sue, are set forth in the statement of claim as follows:

“EDGAR F. LADORE, BURLEY W. BENNETT, HORACE W. CUNNINGHAM, and HARRIE R. DINGWALL, suing on behalf of themselves and all other ratepayers of the Corporation of the Town of Walkerville; 10
And suing on behalf of themselves and all other holders of debentures of the Town of Walkerville;
And suing on behalf of themselves and all other holders of debentures of the Walkerville-East Windsor Water Commission;
And suing on behalf of themselves and all other holders of debentures of the Essex Border Utilities Commission;
And suing on behalf of themselves and all other holders of debentures of the Walkerville-Hydro Electric Commission;
And suing on behalf of themselves and all other holders of Local Improvement 20
Debentures issued by the Town of Walkerville;
And suing on behalf of themselves and all other holders of debentures issued by the Essex Border Utilities Commission and chargeable against the ratepayers of the Town of Walkerville.”

The defendants in this action are likewise set forth as follows:

“GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR, RUSSELL A. FARROW;
THE CORPORATION OF THE TOWN OF WALKERVILLE;
THE CORPORATION OF THE CITY OF EAST WINDSOR;
THE CORPORATION OF THE CITY OF WINDOR; 30
THE CORPORATION OF THE TOWN OF SANDWICH;
THE ESSEX BORDER UTILITIES COMMISSION;
THE WATER COMMISSIONERS OF THE CITY OF WINDOR;
THE BOARD OF WATER COMMISSIONERS OF THE TOWN OF SANDWICH;
THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF EAST WINDSOR;
THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF WALKERVILLE;
THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF WINDSOR; 40
THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF SANDWICH;

THE CORPORATION OF THE CITY OF WINDSOR and THE WINDSOR UTILITIES COMMISSION, bodies alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1935, Chapter 74, being the City of Windsor (Amalgamation) Act, 1935; and THE ATTORNEY-GENERAL OF THE PROVINCE OF ONTARIO."

In the Court of
Appeal for
Ontario
No. 23
Reasons for
Judgment of
Henderson, J. A.,
May 17, 1938
Continued

The relief claimed by the plaintiffs is set forth in the statement of claim as follows:

10 "1. A declaration that Statutes of Ontario, 1935, Chapter 74 and Statutes of Ontario, 1936, Chapter 66, being the City of Windsor (Amalgamation) Act, 1935, is ultra vires and that the defendant, the Corporation of the City of Windsor and the Windsor Utilities Commission, bodies alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1936, Chapter 74, being the City of Windsor (Amalgamation) Act, 1935, are not valid and subsisting corporations and the assets of their co-defendants, other than George Bennett, Harry J. Mero, W. Donald McGregor, Russell A. Farrow and the Attorney-General for Ontario are not vested in the said Corporations.

20 "2. A declaration that Section 8 and Part 6 of the Ontario Municipal Board Act, 1932, being Statutes of Ontario, 1932, Chapter 27, and Part III of the Department of Municipal Affairs Act, 1935, Chapter 16, and amendments thereto are ultra vires.

"3. A declaration that all proceedings taken and had under the provisions of the City of Windsor (Amalgamation) Act, 1935, are void as against the plaintiffs and those on whose behalf they sue.

"4. In the alternative a declaration that the proposed plan for funding and refunding the debts of the amalgamated municipalities of East Windsor, Walkerville, Windsor and Sandwich is not within the powers of the Municipalities or of the Windsor Finance Commission and that the Ontario Municipal Board has no authority to approve of the same.

30 "5. A declaration that the plaintiffs and all other holders of the debentures referred to in Paragraph 2 hereof are entitled to a lien, charge or hypothec on the assets and revenues of the Corporations by whom or on whose behalf the said debentures were issued.

"6. An accounting.

"7. A receiver.

"8. Such further and other relief as the nature of the case may require or this Honourable Court may deem meet."

40 Upon the argument, however, it was conceded that the only relief obtainable by the plaintiffs in this action is a declaration that the Statutes attacked are ultra vires.

The plaintiffs Edgar F. Ladore, Burley W. Bennett and Horace W. Cunningham are ratepayers of the Town of Sandwich, and holders of various debentures which had been issued by that Corporation. The plaintiff Harrie

In the Court of
Appeal for
Ontario

No. 23
Reasons for
Judgment of
Henderson, J. A.,
May 17, 1938

Continued

R. Dingwall is a resident of the City of Detroit in the United States of America, and also the holder of debentures of the Town of Sandwich.

In his oral argument, Mr. Gordon based his appeal on the following grounds:

1. That it relates to bankruptcy and insolvency;
2. That the legislation in question prejudices extra-provincial rights of debenture holders residing out of Ontario;
3. That it deals with the question of interest on the plaintiff's debentures.

The first Statute attacked is an Act to Amalgamate the City of East Windsor, the Town of Walkerville, the City of Windsor and the Town of Sandwich, which came into force on April 18th, 1935, and is Chapter 74 of the Statutes of Ontario, 1935. Section 4 of the Act provides that the amalgamation and incorporation of the new City shall for certain purposes take effect at the time of the passing of the Act, and for all purposes on the 1st day of July, 1935, provided that the affairs of the amalgamated municipalities shall continue to be administered as if they had remained as separate and several municipalities, etc., until the 1st day of January, 1936. 10

The writ of summons in this action was issued on April 29th, 1936, and the plaintiffs allege that the effect of the Statute is to destroy the existence of the four municipalities and to create a new municipality spoken of in the Act as the new City and named the "City of Windsor," incorporated under the provisions of the Act by an amalgamation of the four named municipalities. 20

The plaintiffs allege that this legislation puts their debtor out of existence, and is thus a breach of their legal rights.

I expressed the view during the argument that the plaintiffs' action was premature, but had not in mind at the time the fact that the Act of Amalgamation came into force prior to the issue of the writ. In his reply Mr. Gordon called attention to this, and this fact alters to some extent the view I expressed.

The validity of this Act is attacked on the ground that these municipalities were at the time of the passing of the Act in an insolvent or bankrupt condition, and that in consequence the Legislature is thereby deprived of its powers conferred by Clause 8 of Section 92 of The British North America Act, which provides: 30

"In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

(8) Municipal institutions in the Provinces,"

and is precluded from dealing with these municipalities in the manner proposed.

It is argued that the field of bankruptcy and insolvency is fully occupied by legislation of the Dominion of Canada. It is, however, conceded that the existing Dominion legislation does not apply to municipal institutions. It is a serious question, in my opinion, whether bankruptcy and insolvency legisla- 40

tion could have any application to municipalities, but that need not be discussed, See *Dame Marie-Anna Sarrazin v. Les Cure et Marguilliers de l'Oeuvre et Fabrique de la Paroisse de St. Gabriel de Brandon*, 16 C. B. R., 350. It is sufficient to say that it had not done so.

In the Court of
Appeal for
Ontario
No. 23
Reasons for
Judgment of
Henderson, J. A.,
May 17, 1938
Continued

It is said that East Windsor defaulted on the 1st of October, 1931, in the payment of interest and principal of its debentures then falling due; that the Town of Walkerville defaulted in the payment of debentures maturing on December 15th, 1934; that the City of Windsor defaulted in the payment of interest and principal of debentures maturing December 1st, 1932; and the
10 Town of Sandwich defaulted in the payment of its debenture and interest coupons on March 15th, 1932.

It is also said that orders were made by the Ontario Municipal Board in respect of East Windsor, the City of Windsor, and Sandwich, making these municipalities subject to Part VI of The Ontario Municipal Board Act, 1932, and that no order was made in respect of the Town of Walkerville.

It is also said that a Royal Commission was appointed by Order-in-Council dated December 5th, 1935, to inquire into all or any of the municipal or other local affairs of the Cities of Windsor and East Windsor and the Towns of Walkerville and Sandwich.

20 This Commission in due course made a report which was tendered in evidence and received by the learned Trial Judge, subject to objection. Subsequently he sustained the objection and ruled that the report is not evidence, with which conclusion I agree. Various references in this report to the financial condition of these municipalities are relied on by the plaintiffs to establish bankruptcy or insolvency, but in my opinion even if admissible neither bankruptcy nor insolvency could be so established.

There can be no question that all four municipalities were in serious financial difficulties. This area had experienced a rapid increase of population and a real estate boom which perhaps has not had its counterpart in
30 Eastern Canada. During this seeming prosperity these municipalities undertook very heavy financial obligations and issued debentures in very large amounts. When the inevitable bursting of the boom occurred, coupled with the depression which was so severe in this and other Countries, it was inevitable that financial difficulties would ensue.

It appears upon the evidence that the Town of Walkerville was not in as serious financial difficulties as the other municipalities.

By the Amalgamation Act now in review, a Finance Commission was constituted and by section 7 of the Act this Commission was given among other things, the duty of undertaking the preparation and submission of a
40 plan for funding and refunding the debts of the amalgamated municipalities. The Commission did prepare a plan which was submitted to the Municipal Board in July, 1936.

I agree with the opinion of the learned Trial Judge that so far as the attack rests upon these provisions, the action is premature, because the plan prepared by the Finance Commission was a tentative plan only; it was not in

In the Court of
Appeal for
Ontario
No. 23
Reasons for
Judgment of
Henderson, J. A.,
May 17, 1938
Continued

being at the time this action was commenced, and was therefore not relevant or admissable evidence in this action. Further that plan was never put into force and no legal right of the plaintiffs was affected by it, consequently the claim for a declaration that section 7 is ultra vires gives rise to no legal claim in existence at the date of the issue of the writ. The prayer is therefore purely in the nature of a quia timet action and under the decision in the case of *Re Lockyer, 1934, O. R., 22*, the discretion of the Trial Judge that no such declaration ought to be made in this action ought not to be interfered with by this Court.

My conclusion on the question of bankruptcy and insolvency, is, therefore, that granting that these municipalities were and are in great financial difficulties, it by no means follows in my opinion that they are any of them can be declared bankrupt or insolvent and if this were not so there is not, in my opinion, any evidence before this Court that they are bankrupt or insolvent, assuming as I have said already that these terms could be applied to a municipal corporation. 10

Turning now to the question of interference with civil rights outside the boundaries of Ontario, by the Statute amalgamating these municipalities, Walkerville ceased to exist on the 1st of January, 1936. The debtor, that is the Town of Walkerville, was thus declared to be non-existent from that date and the individual plaintiff residing outside the Province of Ontario who held securities was thus deprived of the debtor liable to him for the payment of his security as were also the plaintiffs resident in the municipality. 20

The enforcement of their rights against the municipality was necessarily and essentially from its very nature something that must be done in the Province of Ontario. The Municipality of Walkerville is situate in Ontario, and therefore no enforcement could take place of that right except in the Courts of Ontario. It is therefore a right existing in Ontario alone, regardless of the location of the creditor, just as much as would be an action in rem regarding the title to land or the enforcement of specific performance of a contract in regard to land in Ontario. This, I think, is sufficient to distinguish the case from the reasoning in *Ottawa Valley Power Company et al v. Hydro-Electric Power Commission et al, 1937, O. R., 265*, *Beauharnois Light, Heat and Power Company Limited et al v. The Hydro-Electric Power Commission of Ontario et al, 1937, O. R., 786* and *Royal Bank of Canada et al v. The King, 1913, A.C., 283*. 30

Apart from all this, all the provisions of the Amalgamation Act are in my opinion clearly within the exclusive jurisdiction of the Provincial Legislature. The Act is designed and enacted to create a scheme or plan by which their financial difficulties may be overcome, and an opportunity given for recovery.

The issue by the Corporation of the Town of Walkerville of the debentures held by the plaintiffs was in my opinion a "local undertaking" within the class of subjects exclusively assigned to the Provincial authority by sub-head 10 of section 92 of The British North America Act and as pointed out by Osler, J., in *Jones v. Canada Central Railway, (1881) 46 U. C. R., 250*, the powers of the Provincial Legislature are not paralyzed merely because some or all of the debts payable were payable to creditors resident outside the Province. See also the discussion upon this case in *Lefroy's Canada's Federal System* at page 454. 40

There can, in my opinion, be no doubt that the Legislature has the fullest and widest powers and jurisdiction to create municipal institutions, to merge or amalgamate or otherwise alter them, to endow them with administrative powers and powers in the nature of legislative powers concerned with the welfare of the inhabitants and with the raising of municipal revenues and the expenditures thereof, and the education, health and well being of the people.

In the Court of
Appeal for
Ontario
No. 23
Reasons for
Judgment of
Henderson, J. A.,
May 17, 1938
Continued

To argue that because persons have seen fit to become owners of debentures issued by a municipality and that some of these persons are resident outside of the Province of Ontario is thereby to limit or modify or restrict the jurisdiction of the Legislature is in my view quite untenable.

This disposes of the attack upon the Amalgamation Act except so far as it concerns section 6 thereof, which confers upon the Finance Commission the same rights, authorities, powers and duties as by the Provisions of Part III of the Department of Municipal Affairs Act, 1935, are conferred upon the said Department and provides that said Part III shall apply to the amalgamated municipalities and to the new City and to the said Local Boards. This is considered in my discussion of the other Statutes under attack.

The next Statutes attacked are section 8 and Part VI of The Ontario Municipal Board Act, being chapter 27 of the Statutes of Ontario of 1932 and Part III of the Department of Municipal Affairs Act, 1935, chapter 16 of the Statutes of Ontario and Amendments thereto.

The provisions of Part VI of The Ontario Municipal Board Act, 1932, are repealed as Part III of the Department of Municipal Affairs Act, 1935, and are dealt with in the judgment of the Judicial Committee of the Privy Council in the recent case not yet reported of The Corporation of the City of Toronto v. The Corporation of the Township of York and the Attorney-General for the Province of Ontario. In his judgment in that case Lord Atkin says in part as follows:

“But a study of the provisions of the Municipal Board Act read in the light of its history as a successor to the Ontario Railway and Municipal Board (see sections 6 and 7) leads their Lordships to the conclusion that the Board is primarily, in ‘pith and substance’, an administrative body. Parts IV, V, VI and VII are almost entirely administrative; and though some of them are now repealed and the duties of the Board transferred to other administrative channels their existence assists to reveal the original legislative intention. Mr. Gershom Mason in his argument for the respondents gave a survey of the multifarious administrative duties which from time to time had been imposed upon the Board and its predecessor by legislation of the Province. It is unnecessary to review the statutes; it is sufficient to say that in respect of Municipal Institutions, Highways, Railways, Public Utility Acts dealing with Water, Gas and Electricity, Telephone and apparently other matters as well, the Board is entrusted with duties of supervision and decision which are purely administrative and in their totality would appear to make it one of the most important parts of administrative machinery in the Province.”

In the Court of
Appeal for
Ontario
No. 23
Reasons for
Judgment of
Henderson, J. A.,
May 17, 1938
Concluded

It is true that in that case the subject matter of the attack was the provisions of sections 41 to 46 and sections 54 and 59 of The Ontario Municipal Board Act, upon the ground that the Board was entrusted with the jurisdiction and powers of a superior court and within the purview of those sections was in fact constituted a superior court, and to the extent that this is so the Judicial Committee declared these provisions ultra vires. It is also true that the question of the bankruptcy of a municipal institution did not arise, but Part VI of The Ontario Municipal Board Act (1932) and Part III of The Department of Municipal Affairs Act (1935) are headed "Special jurisdiction over defaulting municipalities," and are as it appears to me expressly held in that judgment 10 to be valid, the result being that it is not open to question in this Court that The Ontario Municipal Board is validly constituted, and that being so, that The Department of Municipal Affairs is equally validly constituted and that the provisions of section 8 and Part VI of the Act respecting the former, and Part III of the Act respecting the latter, and the amendments thereto are within the powers of the Legislature. This being so, the attack upon these Acts and upon section 6 of The Amalgamation Act, fail.

With respect to the question of interest it is sufficient to point out that at the date of the issue of the writ in this action the rate of interest on the plaintiffs' debentures had not been affected, and this alleged ground had not arisen and might never arise. 20

Moreover during the argument we were told that the scheme of amalgamation which has been carried out is upon the basis that the former bondholders receive bonds of the new municipality, dollar for dollar as to principal, but with varying rates of interest and that the new bonds and interest thereon are, as among those areas which from the new City, a charge upon the former area or municipality in the proportion in which they represent the bonds issued by the former area or municipality, and that the rate of interest varies according to their ability to pay a greater or less rate of interest in the opinion of those responsible for the plan. 30

This is a matter of accounting, evidently in an attempt to accomplish two things; First, to give bond-holders a return according to the supposed comparative value of their former bonds, and the other to do equity as between areas now amalgamated. We were also informed that 95% or more of all the former bond-holders have surrendered their old bonds and accepted new ones.

Mr. Gordon argued strongly that this interference with the rate of interest is ultra vires the powers of the Legislature. It seems manifest that this is merely an incidental item in a general scheme and that the Statutes impugned are not Statutes concerning interest.

In the able and exhaustive arguments addressed to us, many cases were cited which I think it unnecessary to discuss. 40

Mr. Gordon prepared an exhaustive memorandum of law which exhibits great industry and patience, but in the views I entertain, I deem it unnecessary to review the cases other than those to which I have referred.

For these reasons I would dismiss the appeal with costs.

IN THE COURT OF APPEAL FOR ONTARIO

In the Court of
Appeal for
Ontario
No. 24
Order of The
Court of Appeal

Tuesday, the 17th day of May, 1938.

THE HONOURABLE CHIEF JUSTICE LATCHFORD,
THE HONOURABLE MR. JUSTICE MASTEN,
THE HONOURABLE MR. JUSTICE HENDERSON.

BETWEEN:

EDGAR F. LADORE, et al,

Plaintiffs

—and—

10

GEORGE BENNETT, et al,

Defendants

ORDER OF THE COURT OF APPEAL FOR ONTARIO

Upon motion made unto this Court on the 21st, 22nd and 23rd days of March, 1938, by counsel on behalf of the plaintiffs Edgar F. Ladore, Burley W. Bennett, Horace W. Cunningham and Harrie R. Dingwall, in the presence of counsel for the defendants, by way of appeal from the judgment of the Honourable Mr. Justice Hogg pronounced herein, the 27th day of July, 1937, upon hearing read the pleadings and proceedings in the action, the evidence adduced at the trial and the judgment aforesaid, and upon hearing what was
20 alleged by counsel aforesaid, this Court was pleased to direct that the appeal stand over for judgment and the same coming on this day for judgment;

1. THIS COURT DOTH ORDER AND ADJUDGE that the appeal be and the same is dismissed.

2. THIS COURT DOTH FURTHER ORDER that the plaintiffs do pay to the defendants their costs of this appeal forthwith after taxation thereof.

"D'ARCY HINDS,"

(Seal)

Registrar, S.C.O.

Entered O. B. 168, page 147, June 3rd, 1938, E. B.

IN THE SUPREME COURT OF ONTARIO

Friday the 22nd day of July, A.D., 1938.

The Honourable Mr. Justice Henderson,
in Chambers

BETWEEN:

EDGAR F. LADORE, et al	Plaintiffs
—and—	
GEORGE BENNETT, et al	Defendants

UPON THE APPLICATION OF the above-named plaintiffs for an 10
Order approving the security given by the said plaintiffs on their appeal to
His Majesty in His Privy Council and allowing appeal of the said plaintiffs
to His Majesty in His Privy Council from the judgment of the Court of Appeal
of Ontario made 17th day of May, 1938, on appeal from a judgment of the
Supreme Court of Ontario dated 26th day of July, 1937, and it appearing
that there has been deposited in Court Dominion of Canada Victory Bonds
payable to bearer securing the sum of TEN THOUSAND DOLLARS (\$10,-
000.00) and bearing interest at $4\frac{1}{2}\%$ and maturing on the 1st day of Novem-
ber, 1958, with all coupons maturing after the first day of November, 1938, as
security that the said plaintiffs will effectually prosecute this appeal and 20
pay such costs and damages as may be awarded in case the judgment appealed
from is confirmed, and all parties consenting thereto,

1. IT IS ORDERED that pending further order of this Court or a
judge thereof that the Accountant shall deliver to Edgar F. Ladore the coupons
attached to the said bonds as the same fall due.

2. AND IT IS FURTHER ORDERED that the said security filed in
this Court is hereby approved and allowed as good and sufficient security that
the plaintiffs will effectually prosecute their appeal and pay such costs and
damages as may be awarded by His Majesty in His Privy Council.

3. AND IT IS FURTHER ORDERED that the said appeal be and 30
the same is hereby allowed.

4. AND IT IS FURTHER ORDERED that execution under the said
judgment hereby appealed from shall be and the same is hereby stayed.

5. AND IT IS FURTHER ORDERED that the costs of this motion
be costs in the appeal.

"W. J. CADWELL,"
Assistant Registrar S.C.O.

Entered O. B. 167, page 405, August 2nd, 1938, "E. B."

RECORD OF PROCEEDINGS

PART II—EXHIBITS

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 1
Bylaw No. 808
of Walkerville,
August 10, 1920

PLAINTIFF'S EXHIBIT NO. 2 (a) 1

BYLAW NO. 808 OF THE TOWN OF WALKERVILLE

A Bylaw to provide for borrowing the sum of \$100,000.00 by the issue of debentures to pay for the cost of paving with Bitulithic Pavement, Monmouth Road from Niagara to Ontario Street, Lincoln Road from Cataraqui to Niagara Street, Devonshire Road from Niagara to Ontario Street, Niagara Street from Monmouth Road to the West Town Limit, Ontario Street from
10 Monmouth Road to Devonshire Road.

WHEREAS paving is deemed necessary upon Monmouth Road, from Niagara to Ontario Street, Lincoln Road from Cataraqui to Niagara Street, Devonshire Road from Niagara to Ontario Street, Niagara Street from Monmouth Road to the West Town Limit, Ontario Street from Monmouth Road to Devonshire Road.

AND WHEREAS it is considered desirable and necessary to borrow the said sum of \$100,000.00 on the credit of the Corporation and to issue fifteen year debentures therefore bearing interest at the rate of six per cent per annum, which is the amount of the debt intended to be created by this by-law
20 and is within the lifetime of the work.

AND WHEREAS it is expedient to make the principal of the said debt repayable in yearly sums during the period of fifteen years of such amounts respectively that the aggregate amount payable for the principal and interest in any year shall be equal as nearly as may be to the amount so payable for the principal and interest in each of the other years.

AND WHEREAS it will be necessary to raise annually the sum of \$10,-296.27, during the period of fifteen years to pay the said yearly sum of principal and interest as they become due.

AND WHEREAS the amount of the whole rateable property of the
30 Municipality according to the last revised Assessment Roll, is \$8,607,310.00.

AND WHEREAS the amount of the existing debenture debt of the Corporation (exclusive of local improvement debts, secured by special rates or assessments) is \$607,863.00.

AND WHEREAS it will require the sum of \$10,296.27 to be raised annually during the said period of fifteen years by a special rate sufficient therefore over and above and in addition to all other rates upon all rateable property of the Municipality for the payment of the debt so to be created for the purpose aforesaid and the interest thereon annually at the rate of six per cent. per annum being for principal and interest in each year of said period
40 as follows, that is to say:

In the Supreme Court of Ontario Exhibits No. 2 (a) 1 Bylaw No. 808 of Walkerville, August 10, 1920
Continued

	Interest	Principal	Total
	\$ 6,000.00	\$ 4,296.27	\$ 10,296.27
	5,742.21	4,554.06.....	10,296.27
	5,468.97	4,827.30.....	10,296.27
	5,179.33	5,116.94.....	10,296.27
	4,872.31	5,423.96.....	10,296.27
	4,546.89	5,749.38.....	10,296.27
	4,201.92	6,094.35.....	10,296.27
	3,836.26	6,460.01.....	10,296.27
	3,448.66	6,847.61.....	10,296.27
	3,037.80	7,258.47.....	10,296.27
	2,602.30	7,693.97.....	10,296.27
	2,140.66	8,155.61.....	10,296.27
	1,651.32	8,644.95.....	10,296.27
	1,132.62	9,163.65.....	10,296.27
	582.80	9,713.47.....	10,296.27
	<hr/>	<hr/>	
	\$ 54,444.05	\$ 100,000.00	

10

AND WHEREAS it is necessary to authorize the Mayor and Treasurer to issue debentures as aforesaid.

THEREFORE the Corporation of the Town of Walkerville by the Council 20 thereof enacts as follows:

1. That for the purpose of paying the cost of paving with Bitulithic Pavement, Monmouth Road from Niagara to Ontario Streets, Lincoln Road from Catarqui to Niagara Streets, Devonshire Road from Niagara to Ontario Street, Niagara from Monmouth Road to the West Town Limit, and Ontario from Monmouth Road to Devonshire Road, the Mayor of the Town of Walkerville shall be and he is hereby authorized and empowered to borrow from any person, company, society or bank willing to loan the same upon the credit of the debentures hereinafter mentioned, a sum not exceeding the sum of \$100,000.00 for the purpose of paying the cost of the work set out and enumerated in the preamble by this bylaw and to issue debentures up to the following amounts, that is to say: 30

- For the sum of \$4,296.27 payable in the year 1921,
- For the sum of 4,554.06 payable in the year 1922,
- For the sum of 4,827.30 payable in the year 1923,
- For the sum of 5,116.94 payable in the year 1924,
- For the sum of 5,423.96 payable in the year 1925,
- For the sum of 5,749.38 payable in the year 1926,
- For the sum of 6,094.35 payable in the year 1927,
- For the sum of 6,460.01 payable in the year 1928,
- For the sum of 6,847.61 payable in the year 1929,
- For the sum of 7,258.47 payable in the year 1930,
- For the sum of 7,693.97 payable in the year 1931,
- For the sum of 8,155.61 payable in the year 1932,
- For the sum of 8,644.95 payable in the year 1933,
- For the sum of 9,163.65 payable in the year 1934,
- For the sum of 9,713.47 payable in the year 1935,

40

2. That the said debentures shall be sealed with the seal of the Corporation and signed by the said Mayor and the Treasurer of the said Town and be payable on the fourteenth day of the month of December in the year in which the same respectively under the preceding section becomes due and may be made payable at any place or places in Canada or Great Britain and that the debentures as to both principal and interest may be expressed in Canadian currency.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 1
Bylaw No. 808
of Walkerville,
August 10, 1920
Concluded

3. That the debentures shall have coupons attached thereto for the payment of interest which shall be at and of the rate of six per cent. per annum and be payable at any place or places in Canada or Great Britain on the fourteenth day of the month of December in each year during the currency of the said debentures and the first of said coupons being payable on the fourteenth day of December, 1921.

4. That for the purpose of redeeming the said debentures and paying the interest thereon, as the same respectively becomes due, an annual special rate over and above and in addition to all other rates sufficient to produce the sum of \$10,296.27 shall be raised, levied, and collected in each and every year during the currency of the said debentures upon all the rateable property of the Municipality which special rate shall be levied and collected at the same time in the same manner and with the same powers as the other rates of the Municipality are levied and collected.

5. That the borrowed money as aforesaid shall be applied in payment of the cost of the said work, and for no other purpose whatever.

Read first time July 7, 1920.
Read second time July 7, 1920.
Read third time August 10th, 1920

(SEAL)

(Signed) CHAS. S. KING, Mayor.
(Signed) A. E. COCK, Clerk.

PLAINTIFFS' EXHIBIT NUMBER 2 (a)—2

30

DOMINION OF CANADA, PROVINCE OF ONTARIO
TOWN OF WALKERVILLE

\$1,000.00 DEBENTURE No. 96

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 2
Debenture No.
96 of Walkerville,
March 22, 1921

THE CORPORATION of the Town of Walkerville, hereby promises to pay to the Bearer the sum of ONE THOUSAND DOLLARS of lawful money of Canada, at the Office of the Canadian Bank of Commerce, in the Town of Walkerville, on the Fourteenth day of December, A.D., 1934, and to pay interest thereon at the rate of six per cent. per annum, yearly, on the Fourteenth day of December, in each year to the bearer of the annexed coupons upon presentation and surrender thereof at the said Bank, as the same severally become due.

40

THIS DEBENTURE, or any interest therein, shall not, after a Certificate of Ownership has been indorsed thereon by the Treasurer of this Corporation, be transferable, except by entry by the Treasurer, or his Deputy, in the Debenture Registry Book of the said Corporation at the Town of Walkerville.

DATED at the Town of Walkerville, this Twenty-Second day of March, A.D., 1921.

IN TESTIMONY WHEREOF and under the authority of Bylaw Number 808 of the Municipal Council of the Corporation of the Town of Walkerville, duly passed on the Twenty-Second day of March, 1921, this Debenture is sealed with the seal of the said Corporation and signed by the Mayor and Treasurer thereof. 10

(SEAL) CHAS. J. STODGELL, Mayor
A. E. COCK, Treasurer

BACK—

In pursuance of The Municipal Act, the Ontario Railway and Municipal Board hereby certifies that the within Debenture is valid and binding, and that its validity is not open to be questioned in any Court on any ground whatever.

DATED the 3rd day of May, 1921.

(SEAL) D. M. MacINTYRE, Chairman 20

PLAINTIFFS' EXHIBIT NO. 2 (a)—3

List of other Debentures issued under bylaw No. 808 of the Corporation of the Town of Walkerville, held by E. F. Ladore.

In the Supreme Court of Ontario Exhibits No. 2 (a) 3 List of other Debentures held by E. F. Ladore

Debenture No.	Face Value	
98.....	\$1,000.00	
" " 99.....	" " 1,000.00	
" " 100.....	" " 1,000.00	
" " 101.....	" " 1,000.00	
" " 102.....	" " 1,000.00	
" " 103.....	" " 1,000.00	
" " 104.....	" " 1,000.00	
" " 105.....	" " 1,000.00	
" " 106.....	" " 1,000.00	
	\$9,000.00	

30

PLAINTIFFS' EXHIBIT NO. 2 (a)—4

Bylaw No. 852, Town of Walkerville, to raise by the issue of Debentures the sum of \$75,000. Not Printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—5

Debenture No. 81. For the sum of \$1,000.00 due December 14, 1935, and issued under Bylaw No. 852. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—6

In the Supreme Court of Ontario Exhibits

Bylaw No. 853, for the Town of Walkerville to raise by issue of debentures the sum of \$60,000.00. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—7

Debenture No. 58 for \$1,000.00 due December 14, 1939, and issued under Bylaw No. 853, together with interest coupons attached. Not printed by Consent

PLAINTIFFS' EXHIBIT NO. 2 (a)—8

BYLAW NO. 903 OF THE TOWN OF WALKERVILLE

10 A Bylaw to raise by way of loan the sum of \$510,000.00 for the purpose of purchasing a site for a High School and erecting a School thereon in the Town of Walkerville.

In the Supreme Court of Ontario Exhibits No. 2 (a) 8 Bylaw No. 903 of Walkerville, March 15, 1922

WHEREAS the High School Board of the Town of Walkerville has made a requisition upon the Council of the Town of Walkerville to raise the sum of Five Hundred and Ten Thousand Dollars by the sale of debentures to cover the cost of purchasing a site and erecting a school thereon in the Town of Walkerville and incidental purposes thereto, that is to say:

20	Site.....	\$ 60,000.00
	School building.....	326,000.00
	Plumbing, Heating and Ventilating.....	85,000.00
	Architect's Fees.....	22,000.00
	Wiring.....	12,000.00
	Sillex Walls and Grading.....	2,700.00
	Superintendence.....	2,300.00
		\$510,000.00

AND WHEREAS it is deemed expedient and necessary to comply with the said requirements and to raise by way of loan the said sum of money for the said purpose upon debentures to be issued therefore, such debentures to extend over a period of thirty years and to be payable in annual instalments
 30 during the said period, the said instalments respectively to be of such amounts that the amount payable for principal and interest in any year shall be equal as nearly as may be to that required in any other year.

AND WHEREAS it is necessary to authorize the Mayor and Treasurer to issue debentures as aforesaid.

AND WHEREAS it will require the sum of \$37,050.98 to be raised annually during the said period of thirty years by a special rate sufficient therefor over and above and in addition to all other rates upon all the rateable property of the Municipality for the payment of the debt so to be created for the several purposes aforesaid and the interest thereon annually at the rate of
 40 six per cent. (6%) per annum being for principal and interest in each year of the said period as follows, that is to say:

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 8
Bylaw No. 903
of Walkerville,
March 15, 1922
Continued

No.	Principal	Interest	Total	Year
1	\$ 6,450.98	\$30,600.00	\$37,050.98	1922
2	6,939.00	30,212.98	37,050.98	1923
3	7,248.28	29,892.70	37,050.98	1924
4	7,683.15	29,367.83	37,050.98	1925
5	8,144.14	28,906.84	37,050.98	1926
6	8,632.78	28,418.20	37,050.98	1927
7	9,150.74	27,900.24	37,050.98	1928
8	9,699.78	27,351.20	37,050.98	1929
9	10,281.76	26,769.22	37,050.98	1930
10	10,898.66	26,152.32	37,050.98	1931
11	11,552.68	25,498.30	37,050.98	1932
12	12,245.74	24,805.24	37,050.98	1933
13	12,980.49	24,070.49	37,050.98	1934
14	13,759.30	23,291.68	37,050.98	1935
15	14,584.84	22,477.14	37,050.98	1936
16	15,459.84	21,591.14	37,050.98	1937
17	16,387.57	20,663.41	37,050.98	1938
18	17,370.84	19,630.14	37,050.98	1939
19	18,413.11	18,637.87	37,050.98	1940
20	19,517.92	17,533.96	37,050.98	1941
21	20,689.01	16,361.97	37,050.98	1942
22	21,930.43	15,120.55	37,050.98	1943
23	23,246.28	13,804.70	37,050.98	1944
24	24,641.07	12,409.91	37,050.98	1945
25	26,119.56	10,931.42	37,050.98	1946
26	27,686.65	9,364.33	37,050.98	1947
27	29,347.97	7,703.01	37,050.98	1948
28	31,108.87	5,942.11	37,050.98	1949
29	32,975.60	4,075.38	37,050.98	1949
30	32,953.96	2,097.02	37,050.98	1950
<hr/>				
\$510,000.00				

AND WHEREAS the amount of the whole rateable property of the whole Municipality according to the last revised Assessment Roll thereof by the County Judge of the County of Essex is \$11,234,382.00 exclusive of property assessed for school rates only.

AND WHEREAS the amount of the existing debenture debt of the Municipality, exclusive of local improvement debts secured by special rates of assessment is \$534,502.42 no part of which debt nor of the interest thereon is due or in arrear.

THEREFORE the Corporation of the Town of Walkerville by the Council thereof enacts as follows:

1. That for the purpose of enabling the High School Board of the Town of Walkerville to pay for the cost of the said site and the erection of a school thereon as set out and enumerated in the preamble of this Bylaw, the Mayor and Treasurer of the Town of Walkerville shall be and are hereby authorized and empowered to borrow from any person, company, society or bank willing to loan the same upon the credit of the debentures hereinafter mentioned a sum not exceeding the sum of \$510,000.00 for the purpose of paying the cost of purchasing a site and erecting a school thereon set out and enumerated in 50

the preamble of this bylaw and to issue debentures to the said amount in sums respectively as follows, that is to say:

	Debentures for the sum of \$ 6,450.98 payable in the year 1922.
	Debentures for the sum of 6,838.00 payable in the year 1923.
	Debentures for the sum of 7,248.28 payable in the year 1924.
	Debentures for the sum of 7,683.15 payable in the year 1925.
	Debentures for the sum of 8,144.14 payable in the year 1926.
	Debentures for the sum of 8,632.78 payable in the year 1927.
10	Debentures for the sum of 9,150.74 payable in the year 1928.
	Debentures for the sum of 9,699.78 payable in the year 1929.
	Debentures for the sum of 10,281.76 payable in the year 1930.
	Debentures for the sum of 10,898.66 payable in the year 1931.
	Debentures for the sum of 11,552.68 payable in the year 1932.
	Debentures for the sum of 12,245.74 payable in the year 1933.
	Debentures for the sum of 12,980.49 payable in the year 1934.
	Debentures for the sum of 13,759.30 payable in the year 1935.
	Debentures for the sum of 14,584.84 payable in the year 1936.
	Debentures for the sum of 15,459.84 payable in the year 1937.
20	Debentures for the sum of 16,387.57 payable in the year 1938.
	Debentures for the sum of 17,370.84 payable in the year 1939.
	Debentures for the sum of 18,413.11 payable in the year 1940.
	Debentures for the sum of 19,517.92 payable in the year 1941.
	Debentures for the sum of 20,689.01 payable in the year 1942.
	Debentures for the sum of 21,930.43 payable in the year 1943.
	Debentures for the sum of 23,246.28 payable in the year 1944.
	Debentures for the sum of 24,641.07 payable in the year 1945.
	Debentures for the sum of 26,119.53 payable in the year 1946.
	Debentures for the sum of 27,686.65 payable in the year 1947.
	Debentures for the sum of 29,347.97 payable in the year 1948.
30	Debentures for the sum of 31,108.87 payable in the year 1949.
	Debentures for the sum of 32,975.60 payable in the year 1950.
	Debentures for the sum of 34,953.96 payable in the year 1951.

2. That the said debentures shall be sealed with the seal of the Corporation and signed by the said Mayor and the Treasurer of the said Town and be payable on the fourteenth day of the month of December in the year in which the sum respectively under the preceding section becomes due at the Canadian Bank of Commerce in the Town of Walkerville, and shall be dated the 14th day of December, 1921.

40 3. That the said debentures shall have coupons attached thereto for the payment of the interest, which shall be at and after the rate of six per cent. per annum, and shall have the name of the Treasurer printed, lithographed or stamped thereon and the said coupons shall be payable at the office of the Canadian Bank of Commerce in Walkerville yearly, namely, on the fourteenth day of December in each year during the currency of said debentures and the first coupons being payable on the fourteenth day of December, A.D., 1922.

50 4. That for the purpose of redeeming the said debentures and paying the interest thereon as the same respectively becomes due, an annual special rate over and above and in addition to all other rates sufficient to produce the sum of \$37,050.98 shall be raised, levied and collected in each and every year during the currency of the said debentures, upon all the rateable property of the Municipality, which special rate shall be levied and collected at the

In the Supreme Court of Ontario Exhibits No. 2 (a) 8 Bylaw No. 903, of Walkerville, March 15, 1922 Concluded

same time, in the same manner and with the same powers as the other rates of the Municipality are levied and collected.

5. That the money borrowed as aforesaid, shall by the said Treasurer be paid over to the High School Board of the Town of Walkerville to be used for the payment of the cost of the work enumerated in the preamble of this bylaw.

6. That this Bylaw shall come into force and take effect on and from the 15th day of March, 1922.

Read 1st time, March 15th, 1922.

Read 2nd time, March 15th, 1922.

Read 3rd time, March 15th, 1922.

10

DATED at Walkerville this 15th day of March, 1922.

(SEAL)

(Signed) CHAS. J. STODGELL, Mayor

(Signed) A. E. COCK, Clerk

PLAINTIFFS' EXHIBIT NO. 2 (a)—9

In the Supreme Court of Ontario Exhibits No. 2 (a) 9 Debenture No. 188 of Walkerville December 14, 1922

DOMINION OF CANADA, PROVINCE OF ONTARIO

TOWN OF WALKERVILLE

\$1,000.00 DEBENTURE No. 118

THE CORPORATION OF THE TOWN OF WALKERVILLE hereby promises to pay to the bearer the sum of ONE THOUSAND DOLLARS of lawful money of Canada, at the Office of The Canadian Bank of Commerce, in the Town of Walkerville, on the Fourteenth day of December, 1934, and to pay interest thereon in the meantime at the rate of six per centum per annum, yearly, on the Fourteenth day of December, in each year, to the bearer of the annexed coupons upon presentation thereof at the said Office as they become due. 20

THIS DEBENTURE or any interest therein, shall not, after a certificate of ownership has been endorsed thereon by the Treasurer of this Municipal Corporation, be transferable, except by entry by the Treasurer or his Deputy, in the Debenture Registry Book of the said Corporation at the Town of Walkerville. 30

DATED at Walkerville, this Fourteenth day of December, One Thousand and Nine Hundred and Twenty-One.

IN TESTIMONY WHEREOF and under the authority of Bylaw No. 903, of the Municipal Council of the Corporation of the Town of Walkerville, duly passed on the Fifteenth day of March, 1922, this Debenture is sealed with the seal of the said Corporation, and signed by the Mayor and Treasurer thereof.

(SEAL)

CHAS. J. STODGELL, Mayor

A. E. COCK, Treasurer

40

PLAINTIFFS' EXHIBIT NO. 2 (a)—10

List of other Debentures issued under Bylaw 903 of the Corporation of the Town of Walkerville, held by E. F. Ladore.

In the Supreme Court of Ontario Exhibits No. 2 (a) 10 List of other Debentures held by E. F. Ladore.

Debenture No. 116.....	Face Value	\$1,000.00
" " 117.....	" "	1,000.00
" " 119.....	" "	1,000.00
" " 120.....	" "	1,000.00
" " 121.....	" "	1,000.00
		<hr/>
		\$5,000.00

10 PLAINTIFFS' EXHIBIT NO. 2 (a)—11

Bylaw No. 701, Town of Walkerville, to establish Board of Parks Management, under the Public Parks Act. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—12

BYLAW NO. 979 OF THE TOWN OF WALKERVILLE

A Bylaw to provide for the borrowing of the sum of Thirty Thousand Dollars (\$30,000.00) by the issue of debentures to pay the cost of acquiring certain land on the North West corner of Seneca Street and Kildare Road for park purposes.

In the Supreme Court of Ontario Exhibits No. 2 (a) 12 Bylaw No. 979 of Walkerville, Dec. 26, 1923

20 WHEREAS the Board of Park Management of the Town of Walkerville has by requisition to the Council of the Town required the raising of the sum of Thirty Thousand Dollars (\$30,000.00) by a special issue of debentures for the purpose of acquiring a certain parcel of land on the North West corner of Seneca Street and Kildare Road as being necessary for park purposes and for making permanent improvements thereon so that the same may be used for athletic purposes.

30 AND WHEREAS the said parcel of land has a frontage of about six hundred and twenty-six feet on Seneca Street and four hundred and seventeen feet on Kildare Road and the cost of acquiring such will be the sum of Twenty-Four Thousand Dollars (\$24,000.00) and the necessary improvements for the said purposes will amount to Six Thousand Dollars (\$6,000.00).

AND WHEREAS it is considered desirable to borrow for said purpose the sum of \$30,000.00 on the credit of the Corporation and to issue twenty year debentures therefor bearing interest at the rate of five per cent. per annum, which is the amount of the debt intended to be created by this Bylaw and is within the time provided in the Municipal Act for payment of the debentures issued for the work.

40 AND WHEREAS it is expedient to make the principal of the said debt repayable in yearly sums during the period of twenty years of such amounts respectively that the aggregate amount payable for the principal and interest in any year shall be equal as nearly may be to the amount so payable for the principal and interest in each of the other years.

AND WHEREAS it will be necessary to raise annually the sum of \$2,407.28, during the period of twenty years to pay the said yearly sums of principal and interest as they become due.

AND WHEREAS the amount of the whole rateable property of the Municipality according to the last revised Assessment Roll is \$14,146,174.00.

AND WHEREAS the amount of the existing debenture debt of the Corporation (exclusive of local improvement debts, secured by special rates of assessment) is \$1,270,274.98.

AND WHEREAS it will require the sum of \$2,407.28 to be raised annually during the said period of twenty years by a special rate over and above all other rates upon all the rateable property of the Municipality for the payment of the debt so to be created for the purpose aforesaid and interest thereon annually at the rate of five per cent. per annum. 10

AND WHEREAS it is necessary to authorize the Mayor and Treasurer to issue debentures as aforesaid.

THEREFORE the Corporation of the Town of Walkerville by the Council thereof enacts as follows:

1. For the purpose of paying the cost of acquiring the said parcel of land situate lying and being in the Town of Walkerville, County of Essex, on the North West corner of Seneca Street and Kildare Road and having a frontage on Seneca Street of Six hundred and twenty-six (626) feet more or less and four hundred and seventeen (417) feet more or less on Kildare Road and for necessary permanent improvements thereto as set out in the preamble of this Bylaw the Corporation of the Town of Walkerville shall raise the sum of \$30,000.00 by the issue of debentures and the Mayor of the Town of Walkerville, shall be and he is hereby authorized and empowered to borrow from any person, company, society, or bank willing to loan the same upon the credit of the said debentures, a sum not exceeding the sum of \$30,000.00 for the said purpose; said debentures shall bear interest at the rate of five per cent. per annum and be payable in twenty annual instalments during the twenty years next after the time when the same are issued and the respective amounts of principal and interest payable each year shall be as follows: 20 30

No.	Principal	Interest	Total
1	\$ 907.28	\$1,500.00.....	\$2,407.28
2	952.64	1,454.64.....	2,407.28
3	1,000.28	1,407.00.....	2,407.28
4	1,050.29	1,356.99.....	2,407.28
5	1,102.80	1,304.48.....	2,407.28
6	1,157.95	1,249.33.....	2,407.28
7	1,215.85	1,191.43.....	2,407.28
8	1,276.64	1,130.64.....	2,407.28
10 9	1,340.47	1,066.81.....	2,407.28
10 10	1,407.49	999.79.....	2,407.28
11	1,477.87	929.41.....	2,407.28
12	1,551.76	855.52.....	2,407.28
13	1,629.35	777.93.....	2,407.28
14	1,710.82	696.46.....	2,407.28
15	1,796.36	610.92.....	2,407.28
16	1,886.18	521.10.....	2,407.28
17	1,980.49	426.79.....	2,407.28
18	2,079.54	327.74.....	2,407.28
20 19	2,183.39	223.89.....	2,407.28
20 20	2,292.55	114.73.....	2,407.28
	<u>\$30,000.00</u>		

In the Supreme Court of Ontario Exhibits No. 2 (a) 12 Bylaw No. 979 of Walkerville, Dec. 26, 1923
Conclude

2. That the said debentures shall be sealed with the seal of the Corporation and signed by the said Mayor and the Treasurer of the said Town and be payable on the fourteenth day of December, in the year in which the same respectively under the preceding section becomes due and payable at the Canadian Bank of Commerce, in the Town of Walkerville, and that the debentures as to both principal and interest may be expressed in Canadian currency.

30 3. That the debentures shall have coupons attached thereto for the payment of interest which shall be at and of the rate of five per cent. per annum and be payable at the Canadian Bank of Commerce, in the Town of Walkerville, on the 14th day of December in each year during the currency of the said debentures. The Treasurer of the Corporation shall sign the coupons or his signature may be lithographed or printed thereon.

40 4. That for the purpose of redeeming the said debentures and paying the interest thereon as the same respectively becomes due, an annual special rate over and above and in addition to all other rates sufficient to produce the sum of \$2,407.26 shall be raised, levied and collected in each and every year during the currency of the said debentures upon all the rateable property of the Municipality which special rate shall be levied and collected at the same time, in the same manner and with the same powers as the other rates of the Municipality are levied and collected.

5. That the money borrowed as aforesaid shall be applied for the purpose of acquiring the said parcel of land for park purposes and for permanent improvements thereon.

Read 1st time October 24th, 1923.

Read 2nd time October 24th, 1923.

Read 3rd time December 26th, 1923.

50

(SEAL)

(Signed) CHAS. J. STODGELL, Mayor

(Signed) A. E. COCK, Clerk

In the Supreme Court of Ontario Exhibits No. 2 (a) 13 Debenture No. 28 of Walkerville, Dec. 27, 1923

PLAINTIFFS' EXHIBIT NO. 2 (a)—13

DOMINION OF CANADA, PROVINCE OF ONTARIO
TOWN OF WALKERVILLE

\$1,000.00 DEBENTURE No. 28

THE CORPORATION OF THE TOWN OF WALKERVILLE hereby promises to pay to the bearer the sum of ONE THOUSAND DOLLARS of lawful money of Canada, at the Canadian Bank of Commerce, in the Town of Walkerville, on the Fourteenth day of December, A.D., 1939, and to pay interest thereon at the rate of five per cent. per annum, yearly, on the Fourteenth day of December, in each year, to the bearer of the annexed Coupons, upon presentation and surrender thereof at the said Bank as the same severally become due 10

THIS DEBENTURE, or any interest therein, shall not, after a certificate of ownership has been indorsed thereon by the Treasurer of this Corporation, be transferable, except by entry by the Treasurer or his Deputy, in the Debenture Registry Book of the said Corporation, at the Town of Walkerville.

DATED at the Town of Walkerville, this Twenty-Seventh day of December, A.D., 1923.

IN TESTIMONY WHEREOF, and under the authority of Bylaw No. 979, of the Municipal Council of the Corporation of the Town of Walkerville, duly passed on the Twenty-Sixth day of December, 1923, this Debenture is sealed with the seal of the said Corporation and signed by the Mayor and Treasurer thereof. 20

(SEAL) ROBT. CALDERWOOD, Mayor
A. E. COCK, Treasurer

In the Supreme Court of Ontario Exhibits No. 2 (a) 14 List of Debentures held by E. F. Ladore

PLAINTIFFS' EXHIBIT NO. 2 (a)—14

List of other debentures issued under Bylaw No. 979 of the Corporation of the Town of Walkerville held by E. F. Ladore.

Debenture No. 30.....	Face Value	\$1,000.00	
" " 32.....	" "	1,000.00	30
" " 33.....	" "	1,000.00	
" " 35.....	" "	1,000.00	
" " 36.....	" "	1,000.00	
" " 38.....	" "	1,000.00	
" " 39.....	" "	1,000.00	
		<u>\$7,000.00</u>	

PLAINTIFFS' EXHIBIT NO. 2 (a)—15

Bylaw No. 913 of the Town of Walkerville, to consolidate the sums authorized to be borrowed by certain local improvement Bylaws into one sum of \$69,429.32 and to borrow the same by the issue of debentures. Not printed by Consent. 40

PLAINTIFFS' EXHIBIT NO. 2 (a)—16

Debenture No. 56 for \$1,000.00 due on the 14th day of December, 1934, and issued under Bylaw No. 913. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—17

List of other debentures issued under Bylaw No. 913 of the Corporation of the Town of Walkerville held by E. F. Ladore.

In the Supreme Court of Ontario Exhibits No. 2 (a) 17 List of Debentures held by E. F. Ladore

	Debenture No. 57.....	Face Value \$1,000.00
	" " 58.....	" " 1,000.00
	" " 59.....	" " 1,000.00
10	" " 60.....	" " 1,000.00
	" " 62.....	" " 1,000.00
	" " 63.....	" " 1,000.00
	" " 64.....	" " 1,000.00
	" " 65.....	" " 1,000.00
	" " 66.....	" " 1,000.00
	" " 67.....	" " 1,000.00
		<u>\$10,000.00</u>

PLAINTIFFS' EXHIBIT NO. 2 (a)—18

BYLAW NO. 1137 OF THE TOWN OF WALKERVILLE

20 A Bylaw to consolidate the sums authorized to be borrowed by certain local improvement Bylaws into one sum of \$243,854.51 and to borrow the same by the issue of debentures therefor.

In the Supreme Court of Ontario Exhibits No. 2 (a) 18 Bylaw No. 1137 of Walkerville, April 14, 1926

WHEREAS the Municipal Council of the Corporation of the Town of Walkerville has passed the Bylaws hereinafter mentioned providing for borrowing money by the issue of debentures to pay for the construction of certain works, as local improvements, therein referred to, namely:

	No. of Bylaw	When Passed	Nature of Work	Situation of Work	Amount of Loan
30	1132	14 Apr., 1926	Pavement	On Monmouth Road from Wyandotte St. to Ottawa Street.....	\$133,732.74
	1133	14 Apr., 1926	Pavement	On Ottawa Street from the West Town Limit to Walker Road, widening the roadway to provide for a 48' pavement.....	92,784.42
	1134	14 Apr., 1926	Sanitary and Storm Water Sewers.	In the alleys between Kildare and Victoria, Victoria and Windermere, Windermere and Lincoln, Lincoln and the West Town limit from Vimy Avenue to Ypres Avenue.....	9,980.81
40	1135	14 Apr., 1926	Concrete and Asphalt	On Walker Road from North limit of the Canadian National Railway to Sandwich Street.....	5,847.15
	1136	14 Apr., 1926	Private drain connections	To the lots on the West side of Walker Road from the alley north of Tecumseh Road, lots 32 to 44, inclusive.....	1,509.39

In the Supreme Court of Ontario Exhibits No. 2 (a) 18 Bylaw No. 1137 of Walkerville, April 14, 1926

AND WHEREAS the aggregate of the sums authorized by the said Bylaws to be borrowed is the sum of \$243,854.51 and it is desirable to consolidate the said sums into one sum of \$243,854.51 and to issue debentures therefor in one consecutive issue, which is the amount of the debt intended to be created by this Bylaw.

Continued

AND WHEREAS all of the said Bylaws provide that the debentures to be issued thereunder shall bear interest at the rate of five per cent. per annum, and that the principal of the debt shall be repayable in yearly sums during the period of 15 years, of such amounts respectively that the aggregate amount payable for principal and interest in any year shall be equal as nearly as may be to the amount so payable in each of the other years. 10

AND WHEREAS the amount of the whole rateable property of the Municipality according to the last revised assessment roll is \$13,122,625.00

AND WHEREAS the amount of the existing debenture debt of the Municipality (exclusive of local improvement debts secured by special rates of assessment) is \$318,848.47 and no part of the principal or interest is in arrear.

THEREFORE the Municipal Corporation of the Town of Walkerville by the Council thereof enacts as follows:

1. The sums authorized by the said Bylaws to be borrowed are hereby consolidated into one sum of \$243,854.51. 20

2. For the purpose aforesaid there shall be borrowed on the credit of the Corporation at large the sum of \$243,854.51 and the debentures shall be issued therefore in one consecutive issue in sums of not less than \$50.00 each, bearing interest at the rate of five per cent. per annum, and having coupons attached thereto for the payment of the interest.

3. The debentures shall all bear the same date, and shall be issued within two years after the day on which the earliest of the said Bylaws was passed, and may bear any date within such two years, and shall be payable in 15 annual instalments during the 15 years next after the time when the same are issued, and the respective amounts of principal and interest payable in each of such years shall be as follows: 30

No.	Principal	Interest	Total
1	\$11,300.78	\$12,192.71.....	\$23,493.49
2	11,865.82	11,627.67.....	23,493.49
3	12,459.11	11,034.38.....	23,493.49
4	13,082.06	10,411.43.....	23,493.49
5	13,736.15	9,757.34.....	23,493.49
6	14,422.96	9,070.53.....	23,493.49
7	15,144.12	8,349.37.....	23,493.49
8	15,901.32	7,592.17.....	23,493.49
9	16,696.39	6,797.10.....	23,493.49
10	17,531.23	5,962.26.....	23,493.49
11	18,407.77	5,085.72.....	23,492.49
12	19,328.17	4,165.32.....	23,493.49
13	20,294.59	3,198.90.....	23,493.49
14	21,309.30	2,184.19.....	23,493.49
15	22,374.74	1,118.75.....	23,495.49

40

4. The debentures as to both principal and interest may be expressed in Canadian currency, and may be payable at any place or places in Canada or Great Britain.

5. The Mayor and the Treasurer of the Corporation shall sign and issue the debentures; the interest coupons shall have the name of the Treasurer signed, stamped, lithographed or printed thereon and the debentures shall be sealed with the seal of the Corporation.

6. The money to be borrowed as aforesaid shall be apportioned crediting each work with the amount of the loan provided for by the Bylaw relating thereto as above set forth.

7. This Bylaw shall come into force and take effect on the day of the final passing thereof.

(Signed) ROBT. CALDERWOOD, Mayor

(SEAL)

(Signed) A. E. COCK, Clerk

Read 1st time April 14th, 1926.

Read 2nd time April 14th, 1926.

Read 3rd time April 14th, 1926,

and finally passed April 14th, 1926.

PLAINTIFFS' EXHIBIT NO. 2 (a)—19

20

NO. 133

DOMINION OF CANADA, PROVINCE OF ONTARIO
TOWN OF WALKERVILLE

\$196.39 DEBENTURE \$196.39

30 THE CORPORATION OF THE TOWN OF WALKERVILLE hereby promises to pay to the bearer the sum of ONE HUNDRED AND NINETY-SIX 39/100 DOLLARS of lawful money of Canada at The Canadian Bank of Commerce in the Town of Walkerville on the FOURTEENTH DAY OF DECEMBER, A.D., 1934, and to pay interest thereon at the rate of five per cent. per annum yearly on the Fourteenth day of December in each year to the bearer of the annexed coupons upon presentation and surrender thereof at the said Bank as the same severally become due.

THIS DEBENTURE or any interest therein shall not, after a certificate of ownership has been indorsed thereon by the Treasurer of this Corporation, be transferable, except by entry by the Treasurer or his Deputy in the Debenture Registry Book of the said Corporation at the Town of Walkerville.

DATED at the Town of Walkerville this Fourteenth day of April, A.D., 1926.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 18
Bylaw No.
1137 of Walkerville,
April 14,
1926

Concluded

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 19
Debenture No.
133 of Walkerville,
April 14, 1926

In the Supreme Court of Ontario Exhibits No. 2 (a) 19 Debenture No. 133 of Walkerville, April 14, 1926
Concluded

IN TESTIMONY WHEREOF and under the authority of Bylaw No. 1137 of the Municipal Council of the Corporation of the Town of Walkerville, duly passed on the Fourteenth day of April, A.D., 1926, this Debenture is sealed with the seal of the said Corporation and signed by the Mayor and Treasurer thereof.

ROBT. CALDERWOOD, Mayor
 A. E. COCK, Treasurer

(SEAL)

BACK—

In pursuance of the Municipal Act, the Ontario Railway and Municipal Board hereby certifies that the within debenture is valid and binding and that its validity is not open to be questioned in any Court on any ground whatever. 10

DATED the 7th day of August, 1926.

(SEAL) A. B. INGRAM, Vice Chairman

PLAINTIFFS' EXHIBIT NO. 2 (a)—20

Bylaw No. 1300, Town of Walkerville, to borrow the sum of \$162,094.60 upon debentures to pay for the construction of certain local improvements. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—21

Debenture No. 109 for \$1,000.00, due December 14th, 1937, and issued under Bylaw No. 1300. Not printed by Consent. 20

PLAINTIFFS' EXHIBIT NO. 2 (a)—22

Bylaw No. 738, Town of Walkerville, to constitute a Housing Commission under the Ontario Housing Act, 1919. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—23

Bylaw No. 1378, Town of Walkerville, to borrow \$140,000.00 upon debentures for Housing Commission purposes. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—24

Debenture No. 154 for \$1,000.00 due December 14, 1953, issued under Bylaw No. 1378 of the Town of Walkerville. Not printed by consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—25

List of other debentures issued under Bylaw 1378 of the Corporation of the Town of Walkerville held by E. F. Ladore. 30

In the Supreme Court of Ontario Exhibits No. 2 (a) 25 List of other Debentures held by E. F. Ladore

Debenture No. 150.....	Face Value	\$1,000.00
" " 151.....	" "	1,000.00
" " 152.....	" "	1,000.00
" " 153.....	" "	1,000.00
		<hr/>
		\$4,000.00

PLAINTIFFS' EXHIBIT NO. 2 (a)—26

Report of the Auditors for the Town of Walkerville for the year 1934. Not printed by Consent.

In the Supreme Court of Ontario Exhibits

PLAINTIFFS' EXHIBIT NO. 2 (a)—27

Report of the Auditors for 1935 for the Towns of Walkerville and Sandwich and the Cities of Windsor and East Windsor. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—28

Order of the Ontario Railway and Municipal Board, dated March 5, 1929, erecting the Town of Ford City into the City of East Windsor. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—29

THE ONTARIO MUNICIPAL BOARD

P. F. A-3995

In the Supreme Court of Ontario Exhibits No. 2 (a) 29 Order of Ontario Municipal Board re City of East Windsor, May 4, 1932

WEDNESDAY, THE 4TH DAY OF MAY, A.D., 1932

BEFORE:

C. R. McKEOWN, ESQ., K.C.,
Chairman

J. A. ELLIS, ESQ.,
Vice-Chairman, and

20 H. L. CUMMINGS, ESQ.,
Commissioner

) IN THE MATTER of the Application
) of the City of East Windsor, for an
) Order under Part VI of "The Ontario
) Municipal Board Act, 1932," making
) the said Municipality subject to said
) Part VI of said Act.
)
)
)
)
)
)

UPON THE APPLICATION of the Corporation of the City of East Windsor made this day at the Town of Sandwich, in the County of Essex, for an Order under Part VI of "The Ontario Municipal Board Act, 1932," vesting in Supervisors control and charge over the administration of all of the affairs of the said Municipality, and to declare that it shall be subject to the provisions of said Part VI of the Act, in the presence of Counsel for the said Municipality, no one appearing to oppose the said application, although due notice thereof was given by advertisement appearing in the Border Cities Star on the Twenty-Third and Thirtieth days of April, 1932, as directed by this Board and upon inquiry it appearing that the said Municipality has failed to meet and pay its debenture indebtedness and interest thereon and other obligations as the same became due and after payment thereof had been duly demanded and it also appearing that the default in payment has been occasioned from financial difficulties affecting the said Municipality and that it is so financially involved and embarrassed in meeting its obligations that further defaults herein may ensue.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 29
Order of Ont-
ario Municipal
Board re City of
East Windsor,
May 4, 1932

Concluded

THIS BOARD DOTH ORDER that the administration of all of the affairs of the Municipality of the City of East Windsor as in Part VI of "The Ontario Municipal Board Act, 1932," is provided, be and the same is hereby vested in a Committee of Supervisors to be known as "The Supervisors of the City of East Windsor," and hereafter and until this Board shall otherwise determine and order, doth further order and declare that the said Municipality shall be subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932."

THIS BOARD DOTH FURTHER ORDER that Notice that the said Municipality has become subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932," shall be given in the "Ontario Gazette" and in the "Border Cities Star," a newspaper published in the City of Windsor, in the County of Essex, and in the "Financial Post," a newspaper published in the City of Toronto; in the County of York, by publishing therein a Notice once a week for three weeks in the form following, namely:

"THE ONTARIO MUNICIPAL BOARD

"NOTICE IS HEREBY GIVEN that the Municipality of the City of 'East Windsor has become subject to the provisions of Part VI of 'The Ontario Municipal Board Act, 1932,' by an Order of The Ontario Municipal Board bearing date the 4th day of May, 1932, and from and after the first publication of this Notice in 'The Ontario Gazette,' all actions or proceedings against the said Municipality are stayed and thereafter no action or other proceeding against the said Municipality shall be commenced or continued nor shall a levy be made under a Writ of Execution against it without leave of The Ontario Municipal Board. 10 20

"DATED this 4th day of May, A.D., 1932.

"H. C. SMALL,

"Secretary of The Ontario Municipal Board."

(SEAL)

(Signed) C. R. McKEOWN, Chairman

PLAINTIFFS' EXHIBIT NO. 2 (a)—30

30

Copy of Notice published in the "Ontario Gazette" in the issues of May 14th, May 21st and May 28th, 1932.

"THE ONTARIO MUNICIPAL BOARD

"NOTICE IS HEREBY GIVEN that the Municipality of the City of 'East Windsor has become subject to the provisions of Part VI of 'The Ontario Municipal Board Act, 1932' by an Order of the Ontario Municipal Board bearing date the 4th day of May, 1932, and from and after the first publication of this notice in 'The Ontario Gazette,' all actions or proceedings against the said Municipality are stayed and thereafter no action or other proceeding against the said Municipality shall be commenced or continued nor shall a levy be made under a Writ of Execution against it without leave of the Ontario Municipal Board. 40

"DATED this 4th day of May, A.D., 1932.

"(Signed) H. C. SMALL,

"Secretary of the Ontario Municipal Board."

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 30
Notice in The
Ontario Gazette
re East Windsor,
May 4, 1932

PLAINTIFFS' EXHIBIT NO. 2 (a)—31

Report of the Auditors of East Windsor for 1934. Not printed by Consent.

In the Supreme Court of Ontario Exhibits No. 2 (a) 37, Order of The Ontario Municipal Board re City of Windsor, Nov. 23, 1932.

PLAINTIFFS' EXHIBIT NO. 2 (a)—37

A-4420

THE ONTARIO MUNICIPAL BOARD

WEDNESDAY, THE 23RD DAY OF NOVEMBER, A.D., 1932

BEFORE:

- 10 C. R. McKEOWN, ESQ., K.C.,
Chairman
- J. A. ELLIS, ESQ.,
Vice Chairman, and
- H. L. CUMMINGS, ESQ.,
Commissioner

)
) IN THE MATTER of the application
) of the Corporation of the City of Windsor,
) for an Order under Part VI of "The
) Ontario Municipal Board Act, 1932,"
) making the said Municipality subject to
) said Part VI of said Act.
)
)
)

20 UPON THE APPLICATION of the Corporation of the City of Windsor, made this day at the City of Toronto, in the County of York, for an Order under Part VI of "The Ontario Municipal Board Act, 1932," vesting in supervisors control and charge over the administration of all the affairs of the said Municipality and to declare that it shall be subject to the provisions of said Part VI of the Act, in the presence of Counsel for the said Municipality, and upon inquiry it appearing that the said Municipality has become so financially involved or embarrassed that default in meeting its obligations may probably ensue.

30 THIS BOARD DOTH ORDER that the administration of all the affairs of the Municipality of the City of Windsor as in Part VI of "The Ontario Municipal Board Act, 1932," is provided, be and the same is hereby vested in a committee of supervisors to be known as "The Supervisors of the City of Windsor," and hereafter and until this Board shall otherwise determine and order, doth further order and declare that the said Municipality shall be subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932."

THE BOARD DOTH FURTHER ORDER that notice that the said Municipality has become subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932," shall be given in "The Ontario Gazette" and in "The Border Cities Star," a newspaper published in the City of Windsor in the County of Essex, and in "The Financial Post," a newspaper published in the City of Toronto in the County of York, by publishing therein a notice in the form following, namely:

"THE ONTARIO MUNICIPAL BOARD

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 37
Order of The
Ontario Municipal
Board re The City
of Windsor, Nov.
23, 1932

Concluded

"NOTICE IS HEREBY GIVEN that the Corporation of the City of Windsor has become subject to the provisions of Part VI of 'The Ontario Municipal Board Act, 1932,' by an Order of the Ontario Municipal Board bearing date the 23rd day of November, 1932, and from and after the first publication of this notice in the Ontario Gazette, all actions or proceedings against the said Corporation are stayed and thereafter no action or other proceedings against the said Corporation shall be commenced or continued, nor shall a levy be made under a Writ of Execution against it without leave of The Ontario Municipal Board.

10

"H. C. SMALL.

"Secretary of The Ontario Municipal Board.

"DATED this 23rd day of November, A.D., 1932."

(SEAL)

C. R. McKEOWN, Chairman

"O.B. 25 p. 38, A.C.M."

PLAINTIFFS' EXHIBIT NO. 2 (a)—38

Copy of Notice appearing in the "Ontario Gazette" in the issue of November 26th, 1932.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 38
Notice in The
Ontario Gazette
re Windsor, Nov.
23, 1932

"THE ONTARIO MUNICIPAL BOARD

"NOTICE IS HEREBY GIVEN that the Corporation of the City of Windsor has become subject to the provisions of Part VI of the Ontario Municipal Board Act, 1932, by an Order of the Ontario Municipal Board bearing date the 23rd day of November, 1932, and from and after the first publication of this notice in the Ontario Gazette, all actions or proceedings against the said municipality are stayed and thereafter no action or other proceeding against the said municipality shall be commenced or continued nor shall a levy be made under a writ of execution against it without leave of the Ontario Municipal Board.

20

"DATED this 23rd day of November, A.D., 1932.

"(Signed) H. C. SMALL,

30

"Secretary of the Ontario Municipal Board."

PLAINTIFFS' EXHIBIT NO. 2 (a)—39

Report of the Auditors for the City of Windsor, for 1934. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2.(a)—40

P. F. A-4004

In the Supreme Court of Ontario Exhibits No. 2 (a) 40 Order of The Ontario Municipal Board re Sandwich, May 4, 1932

THE ONTARIO MUNICIPAL BOARD

WEDNESDAY, THE 4TH DAY OF MAY, A.D., 1932

BEFORE:

- C. R. McKEOWN, ESQ., K.C.,
Chairman
- J. A. ELLIS, ESQ.,
Vice Chairman, and
- H. L. CUMMINGS, ESQ.,
Commissioner

IN THE MATTER of the Application of the Town of Sandwich, for an Order under Part VI of "The Ontario Municipal Board Act, 1932," making the said Municipality subject to said Part VI of said Act.

10

UPON THE APPLICATION of the Corporation of the Town of Sandwich, made this day at the Town of Sandwich, in the County of Essex, for an Order under Part VI of "The Ontario Municipal Board Act, 1932," vesting in supervisors control and charge over the administration of all the affairs of the said Municipality, and to declare that it shall be subject to the provisions of said Part VI of the Act, in the presence of Counsel for the said Municipality, no one appearing to oppose the said application, although due notice thereof was given by advertisement appearing in the "Border Cities Star" on the 21st and 28th days of April, 1932, as directed by this Board, and upon inquiry it appearing that the said Municipality has failed to meet and pay its debenture indebtedness and interest thereon and other obligations as the same became due and after payment thereof had been duly demanded and it also appearing that the default in payment has been occasioned from financial difficulties affecting the said Municipality and that it is so financially involved and embarrassed in meeting its obligations that further defaults herein may ensue.

20

THIS BOARD DOTH ORDER that the administration of all of the affairs of the Municipality of the Town of Sandwich as in Part VI of "The Ontario Municipal Board Act, 1932," is provided, be and the same is hereby vested in a Committee of Supervisors to be known as "The Supervisors of the Town of Sandwich," and hereafter and until this Board shall otherwise determine and order, doth further order and declare that the said Municipality shall be subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932."

30

THIS BOARD DOTH FURTHER ORDER that Notice that the said Municipality has become subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932," shall be given in the "Ontario Gazette" and in the "Border Cities Star," a newspaper published in the City of Windsor, in the County of Essex, and in the "Financial Post," a newspaper published in the City of Toronto, in the County of York, by publishing therein a Notice once a week for three weeks in the form following, namely:

40

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 40
Order of The
Ontario Municipal
Board re Sand-
wich, May 4, 1932
Concluded

“THE ONTARIO MUNICIPAL BOARD

“NOTICE IS HEREBY GIVEN that the Municipality of the Town of Sandwich has become subject to the provisions of Part VI of ‘The Ontario Municipal Board Act, 1932,’ by an Order of The Ontario Municipal Board bearing date the 4th day of May, 1932, and from and after the first publication of this Notice in the ‘Ontario Gazette’ all actions or proceedings against the said Municipality are stayed and thereafter no action or other proceeding against the said Municipality shall be commenced or continued nor shall a levy be made under a Writ of Execution against it without leave of ‘The Ontario Municipal Board.

10

“DATED this 4th day of May, A.D., 1932.

“H. C. SMALL,

“Secretary of The Ontario Municipal Board.”

(Seal Ontario Municipal Board)

C. R. McKEOWN, Chairman

PLAINTIFFS' EXHIBIT NO. 2 (a)—41

Copy of Notice published in the Ontario Gazette in the issues of May 14th, May 21st, and May 28th, 1932.

“THE ONTARIO MUNICIPAL BOARD

“NOTICE IS HEREBY GIVEN that the Municipality of the Town of Sandwich has become subject to the provisions of Part VI of ‘The Ontario Municipal Board Act, 1932,’ by an Order of the Ontario Municipal Board bearing date the 4th day of May, 1932, and from and after the first publication of this Notice in the ‘Ontario Gazette,’ all actions or proceedings against the said Municipality are stayed and thereafter no action or other proceeding against the said municipality shall be commenced or continued nor shall a levy be made under Writ of Execution against it without leave of the ‘Ontario Municipal Board.

20

“DATED this 4th day of May, A.D., 1932.

“(Signed) H. C. SMALL,

“Secretary of the Ontario Municipal Board.”

30

PLAINTIFFS' EXHIBIT NO. 2 (a)—42

Report of the Auditors for the Town of Sandwich, for 1934. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—43

BYLAW NO. 34 OF THE ESSEX BORDER UTILITIES COMMISSION

A Bylaw to raise by way of loan the sum of Seven Hundred and Sixty-Five Thousand Dollars (\$765,000.00) for the purpose of constructing a Water Filtration Plant in and for the Essex Border Municipalities.

WHEREAS the Consolidated Essex Border Utilities Act provides that

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 43

the Essex Border Utilities Commission may construct a system of water works in the Essex Border Municipalities.

In the Supreme Court of Ontario
Exhibits
No. 2 (a) 43
Bylaw No. 34
of The Essex
Border Utilities
Commission,
April 2, 1924
Continued

AND WHEREAS pursuant to the requirements of the said Act the Essex Border Utilities Commission did employ J. Clark Keith, as engineer to make the preliminary examination and survey of the proposed work and to make a report estimate and apportionment of the cost thereof and accordingly the said J. Clark Keith did make a preliminary examination and survey of the proposed Water Filtration Plant and a report, estimate and apportionment of the cost thereof, which bears date the 7th day of April, 1922.

10 AND WHEREAS the Essex Border Utilities Commission did adopt the said report and did file the same with the Clerk of each of the Essex Border Municipalities who would become liable for the whole or any part of the said cost, except the Township of Sandwich West, on the 22nd day of July, 1922, and did likewise file the same with the Township of Sandwich West on the 23rd day of July, 1922.

AND WHEREAS the said report showed the estimate of the cost of the said Water Filtration Plant to be the sum of Seven Hundred and Sixty-Five Thousand Dollars (\$765,000.00).

20 AND WHEREAS upon appeal from the said report to the Ontario Railway and Municipal Board pursuant to the provisions of the Consolidated Essex Border Utilities Act the proportions charged upon each of the Essex Border Municipalities liable under the said report were confirmed as appears by the order of the said Board dated the 24th day of October, 1922.

AND WHEREAS the proportions of the cost of the said Water Filtration Plant to be borne by the several Municipalities as appears by the said report is as follows:

30	City of Windsor.....	\$387,090.00
	Town of Walkerville.....	112,450.00
	Town of Sandwich.....	61,200.00
	Town of Ford City.....	71,140.00
	Town of Riverside.....	21,420.00
	Township of Sandwich West.....	55,850.00
	Town of Ojibway.....	55,850.00
		\$765,000.00

AND WHEREAS the Provincial Board of Health did on the 7th day of November, 1922, approve of the plan of the proposed Water Filtration Plant including source of supply and the proposed work.

40 AND WHEREAS pursuant to the said Act the construction of the said Water Filtration Plant was submitted to and approved by the electors of the Essex Border Municipalities respectively, on the following dates:

- The City of Windsor, 4th day of December, 1922.
- Town of Walkerville, 11th day of December, 1922.
- Town of Sandwich, 1st day of January, 1923.
- Town of Ford City, 1st day of January, 1923.
- Town of Riverside, 1st day of January, 1923.
- Township of Sandwich West, 1st day of January, 1923.

In the Supreme Court of Ontario Exhibits No. 2 (a) 43 Bylaw No. 34 of The Essex Border Utilities Commission, April 2, 1924

Continued

and was approved by the majority of the council of the Town of Ojibway on the 5th day of March, 1924.

AND WHEREAS the Essex Border Utilities Commission deems it expedient to proceed with the construction of the said Water Filtration Plant and to authorize the payment of the cost thereof by the issue of the debentures.

AND WHEREAS the amount of the whole rateable property of each of the said municipalities including that portion of the Township of Sandwich West mentioned in Schedule "A" of the Consolidated Essex Border Utilities Act according to the last revised assessment roll thereof as certified by the County Judge of the County of Essex is as follows:

10

City of Windsor.....	\$54,651,125.00
Town of Walkerville.....	12,439,642.00
Town of Sandwich.....	6,538,512.00
Town of Ford City.....	6,158,621.00
Town of Riverside.....	2,901,708.00
Town of Ojibway.....	1,554,696.00
Township of Sandwich West (portion).....	1,118,950.00

exclusive of property assessed for school rates only.

AND WHEREAS the amount of the existing debenture debt of each of the said Municipalities, including that portion of the Township of Sandwich West mentioned in Schedule "A" of the Consolidated Essex Border Utilities Act, exclusive of local improvement debts secured by special rates of assessment is as follows:

20

City of Windsor.....	\$6,261,601.15
Town of Walkerville.....	356,480.23
Town of Sandwich.....	388,922.19
Town of Ford City.....	327,852.10
Town of Riverside.....	66,586.39
Town of Ojibway.....	40,427.21
Township of Sandwich West (portion).....	51,679.62

30

no part of which debt nor of the interest thereon is due or in arrear.

THEREFORE the Essex Border Utilities Commission enacts as follows:

1. For the purpose of paying the cost of constructing the said Water Filtration Plant the Essex Border Utilities Commission shall raise the sum of Seven Hundred and Sixty-Five Thousand Dollars (\$765,000.00) by the issue of debentures and the Chairman of the Commission shall be and he is hereby authorized and empowered to borrow from any person, company, society or bank willing to loan the same upon the credit of the said debentures a sum not exceeding the sum of \$765,000.00.

2. The said debentures shall be issued in two sets of Three Hundred and Eighty-Two Thousand Five Hundred Dollars (\$382,500.00) each, and the first set shall be issued and be dated the first day of February, 1924, and the second set on or before the 1st day of February, 1926.

40

3. The said debentures shall bear interest at the rate of five and three-quarters per cent. per annum and shall be expressed in Canadian Currency as to both principal and interest and the debentures of both sets shall be payable in thirty annual instalments during the thirty years next after the time when the same are issued.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 43
Bylaw No. 34
of The Essex
Border Utilities
Commission,
April 2, 1924

4. The respective amounts of principal and interest payable in each year in respect of the first set shall be as follows:

Continued

	No.	Principal	Interest	Total
	1	\$ 5,055.21	\$21,993.75	\$27,048.96
10	2	5,345.89	21,703.07	27,048.96
	3	5,653.28	21,395.68	27,048.96
	4	5,978.34	21,070.62	27,048.96
	5	6,322.09	20,726.87	27,048.96
	6	6,685.63	20,363.33	27,048.96
	7	7,070.04	19,978.92	27,048.96
	8	7,476.56	19,572.40	27,048.96
	9	7,906.47	19,142.49	27,048.96
	10	8,361.09	18,687.87	27,048.96
	11	8,841.87	18,207.09	27,048.96
20	12	9,350.26	17,698.70	27,048.96
	13	9,887.90	17,161.06	27,048.96
	14	10,456.47	16,592.49	27,048.96
	15	11,057.71	15,991.25	27,048.96
	16	11,693.52	15,355.44	27,048.96
	17	12,365.89	14,683.07	27,048.96
	18	13,076.86	13,972.10	27,048.96
	19	13,828.85	13,220.11	27,048.96
	20	14,624.01	12,424.95	27,048.96
	21	15,464.89	11,584.07	27,048.96
30	22	16,354.12	10,694.84	27,048.96
	23	17,294.48	9,754.48	27,048.96
	24	18,288.91	8,760.05	27,048.96
	25	19,340.52	7,708.44	27,048.96
	26	20,452.60	6,596.36	27,048.96
	27	21,628.63	5,420.33	27,048.96
	28	22,872.27	4,176.69	27,048.96
	29	24,187.43	2,861.53	27,048.96
	30	25,578.21	1,470.75	27,048.96

5. The respective amount of principal and interest payable in each 40 year in respect of the second set shall be as follows:

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 43
Bylaw No. 34
of The Essex
Border Utilities
Commission,
April 2, 1924

No.	Principal	Interest	Total	
1	\$ 5,055.21	\$21,993.75.....	\$27,048.96	
2	5,345.89	21,703.07.....	27,048.96	
3	5,653.28	21,395.68.....	27,048.96	
4	5,978.34	21,070.62.....	27,048.96	
5	6,322.09	20,726.87.....	27,048.96	
6	6,685.63	20,363.33.....	27,048.96	
7	7,070.04	19,978.92.....	27,048.96	
8	7,476.56	19,572.40.....	27,048.96	
9	7,906.47	19,142.49.....	27,048.96	10
10	8,361.09	18,687.87.....	27,048.96	
11	8,841.87	18,207.09.....	27,048.96	
12	9,350.26	17,698.70.....	27,048.96	
13	9,887.90	17,161.06.....	27,048.96	
14	10,456.47	16,592.49.....	27,048.96	
15	11,057.71	15,991.25.....	27,048.96	
16	11,693.52	15,355.44.....	27,048.96	
17	12,365.89	14,683.07.....	27,048.96	
18	13,076.86	13,972.10.....	27,048.96	
19	13,828.85	13,220.11.....	27,048.96	20
20	14,624.01	12,424.95.....	27,048.96	
21	15,464.89	11,584.07.....	27,048.96	
22	16,354.12	10,694.84.....	27,048.96	
23	17,294.48	9,754.48.....	27,048.96	
24	18,288.91	8,760.05.....	27,048.96	
25	19,340.52	7,708.44.....	27,048.96	
26	20,452.60	6,596.36.....	27,048.96	
27	21,628.63	5,420.33.....	27,048.96	
28	22,872.27	4,176.69.....	27,048.96	
29	24,187.43	2,861.53.....	27,048.96	30
30	25,578.21	1,470.75.....	27,048.96	

6. The said debentures shall be sealed with the seal of the Commission and signed by the Chairman and the Secretary of the said Commission and both the principal and interest shall be payable on the 1st day of February in each year at the principal office of the Canadian Bank of Commerce in the City of Toronto or in the City of Windsor at holders option.

7. The said debentures shall have coupons attached thereto for the payment of the interest at the rate of five and three-quarters per cent. per annum, which shall be signed by the secretary of the Commission and the signature may be written, stamped or lithographed thereon. The first of said coupons being payable on the 1st day of February occurring next after the issue of the set of which they form part. 40

8. The money borrowed as aforesaid shall be expended for the purpose of paying for the cost of the construction of the said Water Filtration Plant, set out in the preamble of this Bylaw and for no other purpose whatever.

9. A duplicate original of this Bylaw shall forthwith after the passage thereof be served upon the Municipal Corporations of the City of Windsor, the Towns of Walkerville, Sandwich, Ford City, Riverside and Ojibway and the Township of Sandwich West,

10. The said Corporations are hereby required under sub-section 3 of 50

section 10 of the Consolidated Essex Border Utilities Act to levy and collect in each and every year during the currency of the first set of said debentures the following annual special rates over and above and in addition to all other rates, namely:

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 43
Bylaw No. 34
of The Essex
Border Utilities
Commission,
April 2, 1924
Conclude

- 10 In the City of Windsor a rate sufficient to produce \$13,686.77.
In the Town of Walkerville a rate sufficient to produce \$3,976.02.
In the Town of Sandwich a rate sufficient to produce \$2,163.92.
In the Town of Ford City a rate sufficient to produce \$2,515.38.
In the Town of Riverside a rate sufficient to produce \$757.37.
In the Town of Ojibway a rate sufficient to produce \$1,974.75.
In that portion of the Township of Sandwich West set out in Schedule A of the Consolidated Essex Border Utilities Act a rate sufficient to produce \$1,974.75, the whole being sufficient to produce the annual sum of \$27,048.96.

11. The said Corporations are hereby required under sub-section 3 of section 10 of the Consolidated Essex Border Utilities Act to levy and collect in each and every year during the currency of the second set of said debentures the following annual special rates over and above and in addition to all other rates, namely:

- 20 In the City of Windsor a rate sufficient to produce \$13,686.77.
In the Town of Walkerville a rate sufficient to produce \$3,976.02.
In the Town of Sandwich a rate sufficient to produce \$2,163.92.
In the Town of Ford City a rate sufficient to produce \$2,515.38.
In the Town of Riverside a rate sufficient to produce \$757.37.
In the Town of Ojibway a rate sufficient to produce \$1,974.75.
In that portion of the Township of Sandwich West set out in Schedule A of the Consolidated Essex Border Utilities Act a rate sufficient to produce \$1,974.75, the whole being sufficient to produce the annual sum of \$27,048.96.

12. The money so levied and collected shall forthwith upon its payment be applied in payment of the said debentures and paying the interest thereon
30 as the same respectively become due and for no other purpose whatever.

13. This Bylaw shall come into force and take effect on the final passing thereof.

(Signed) C. W. HOARE, Chairman

(Signed) R. B. BRAID, Secretary

Read 1st time April 2nd, 1924.
Read 2nd time April 2nd, 1924.
Read 3rd time April 2nd, 1924.
and finally passed.

PLAINTIFFS' EXHIBIT NO. 2 (a)—44

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 44
Debenture
No. 58 of The
Essex Border
Utilities Com-
mission, Feb. 2,
1925

DOMINION OF CANADA, PROVINCE OF ONTARIO
THE ESSEX BORDER UTILITIES COMMISSION

\$1,000.00 DEBENTURE \$1,000.00

NO. 58

THE ESSEX BORDER UTILITIES COMMISSION hereby promises to pay to the bearer on the FIRST DAY OF FEBRUARY, 1934, the sum of ONE THOUSAND DOLLARS of lawful money of Canada at the principal office of The Canadian Bank of Commerce in the City of Toronto or in the City of Windsor, at holder's option, and to pay interest thereon at the rate of five and three-quarters per cent. per annum on the first day of February in each year to the bearer of the annexed coupons upon presentation and surrender thereof at either of the said places as the same severally become due. 10

THIS DEBENTURE or any interest therein shall not, after a certificate of ownership has been indorsed thereon by the Treasurer of this Commission, be transferable except by entry by the Treasurer or his Deputy in the Debenture Registry Book of the said Commission at the City of Windsor, in the County of Essex.

DATED at the City of Windsor, this second day of February, 1925.

IN TESTIMONY WHEREOF and under the authority of Bylaw No. 20 34, of The Essex Border Utilities Commission, duly passed on the second day of April, 1924, this Debenture is sealed with the corporate seal of the said Commission and is signed by the Chairman and Secretary thereof.

(SEAL) C. W. HOARE, Chairman
R. B. BRAID, Secretary

COUPON—

BYLAW NO. 34

COUPON NO. 9 DEBENTURE NO. 58

THE ESSEX BORDER UTILITIES COMMISSION will pay to the bearer on the first day of February, 1934, FIFTY-SEVEN AND 50/100 30 DOLLARS of lawful money of Canada, at the principal office of The Canadian Bank of Commerce in Toronto or Windsor, at holder's option, being yearly interest due on the above Debenture.

C. W. HOARE, Chairman
R. B. BRAID, Secretary

PLAINTIFFS' EXHIBIT NO. 2 (a)—45

List of other debentures issued under Bylaw No. 34 of the Essex Border Utilities Commission held by E. F. Ladore.

Debenture No. 53.....	Face Value	\$1,000.00
" " 54.....	" "	1,000.00
" " 55.....	" "	1,000.00
" " 56.....	" "	1,000.00
" " 59.....	" "	1,000.00
" " 60.....	" "	1,000.00
" " 61.....	" "	1,000.00
" " 62.....	" "	1,000.00
" " 63.....	" "	1,000.00
" " 64.....	" "	1,000.00
		<hr/>
		\$10,000.00

In the Supreme Court of Ontario Exhibits No. 2 (a) 45 List of other Debentures held by E. F. Ladore

10

PLAINTIFFS' EXHIBIT NO. 2 (a)—46

P. F. A-4673

THE ONTARIO MUNICIPAL BOARD

TUESDAY, THE 23RD DAY OF MAY, A.D., 1933

In the Supreme Court of Ontario Exhibits No. 2 (a) 46 Order of The Ontario Municipal Board re The Essex Border Utilities Commission, May 23, 1933

BEFORE:) IN THE MATTER of the Application
 C. R. McKEOWN, Esq., K.C.,) of The Essex Border Utilities Com-
 Chairman, and) mission, for an Order under Part VI of
 20 H. L. CUMMINGS, ESQ.,) "The Ontario Municipal Board Act,
 Commissioner) 1932," making the said Commission sub-
) ject to said Part VI of said Act, and
) IN THE MATTER of "The Ontario
) Municipal Board Act, 1932," and
) IN THE MATTER of "The Essex
) Border Utilities Commission Act, 1933."

20

UPON THE APPLICATION of the Corporation of The Essex Border Utilities Commission made this day at the City of Toronto, in the County of York, for an Order under Part VI of "The Ontario Municipal Board Act, 1932," vesting in supervisors control and charge over the administration of all
 30 of the affairs of the said Commission, and to declare that it shall be subject to the provisions of said Part VI of the Act, and upon inquiry it appearing that the said Commission has failed to meet and pay its obligations as the same became due and after payment thereof had been duly demanded, and it also appearing that the default in payment has been occasioned from financial difficulties affecting the said Commission and that it is so financially involved and embarrassed in meeting its obligations that further defaults therein may ensue.

30

THIS BOARD DOTH ORDER that the administration of all of the affairs of The Essex Border Utilities Commission, as in Part VI of "The Ontario Municipal Board Act, 1932," and section 6 of "The Essex Border Utilities Commission Act, 1933," is provided, be and the same is hereby
 40 vested in a Committee of Supervisors, to be known as "The Supervisors of The Essex Border Utilities Commission," and hereafter and until this Board shall otherwise determine and order, doth further order and declare that the said Commission shall be subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932."

40

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 46
Order of The Ont-
ario Municipal
Board re The
Essex Border
Utilities Com-
mission, May 23,
1933.

Concluded

THIS BOARD DOTH FURTHER ORDER that Notice that the said Commission has become subject to the provisions of Part VI of "The Ontario Municipal Board Act, 1932," shall be given in "The Ontario Gazette," and in "The Border Cities Star," a newspaper published in the City of Windsor, in the County of Essex, and in the "Financial Post," a newspaper published in the City of Toronto, in the County of York, by publishing therein a Notice once a week for three weeks in the form following, namely:

"THE ONTARIO MUNICIPAL BOARD

"NOTICE IS HEREBY GIVEN that 'The Essex Border Utilities Com-
mission has become subject to the provisions of Part VI of 'The Ontario 10
'Municipal Board Act, 1932,' by an Order of The Ontario Municipal Board
'bearing date the 23rd day of May, 1933, and from and after the first publica-
'tion of this Notice in the 'Ontario Gazette,' all actions or proceedings
'against the said Commission are stayed, and thereafter no action or other
'proceeding against the said Commission shall be commenced or continued,
'nor shall a levy be made under a Writ of Execution against it without leave
'of The Ontario Municipal Board.

"DATED this day of , 1933.

"H. C. SMALL,
"Secretary The Ontario Municipal Board." 20

(SEAL)

C. R. McKEOWN, Chairman

"O. B. 25 p. 282, A. C. M."

PLAINTIFFS' EXHIBIT NO. 2 (a)—47

Order of the Ontario Municipal Board dated July 25, 1933, appointing a Board of Supervisors for the Essex Border Utilities Commission. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—48

Report of the Auditors for the Essex Border Utilities Commission for the year 1934. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—49

30

Report of the Auditors for the Essex Border Utilities Commission for the year 1935. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—50

Letters Patent Incorporating the Walkerville Water Company, Limited, November first, 1902. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—51

Letters Patent incorporating the Walkerville Construction Company, November 11, 1916. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—52

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 52
Bylaw No. 3 of
the Walkerville-
East Windsor
Water Com-
mission, June 24,
1930

BYLAW NUMBER 3

THE WALKERVILLE EAST-WINDSOR WATER COMMISSION

"Bylaw to authorize the issue of debentures to provide the sums required to pay the purchase price of the works and property described in Schedule (1) to The Walkerville-East Windsor Water Commission Act, 1930, and the estimated sum to cover discount on the sale of the debentures and the expenses preliminary and incidental to the purchase."

WHEREAS under The Walkerville-East Windsor Water Commission
10 Act, 1930, The Walkerville-East Windsor Water Commission is authorized to acquire on behalf of the Town of Walkerville and the City of East Windsor the works and property, hereinafter called "the System," described in an agreement dated the 22nd day of January, 1930, set out in Schedule 1 to said Statute;

AND WHEREAS the said Commission is empowered to pass Bylaws from time to time without the assent of the electors authorizing the issue of debentures to provide the sums required to pay the purchase price of the said System, ascertained as provided by the said agreement, and any estimated sum to cover discount on the sale of the debentures and the expenses pre-
20 liminary and incidental to the purchase;

AND WHEREAS the purchase price of the said System has been ascertained pursuant to said Act at the sum of \$712,573.05, and the sum ascertained to cover discount on the sale of debentures for said amount and expenses preliminary and incidental to the purchase of the said System is \$37,426.95, the said sums aggregating \$750,000.00 which is the amount of the debt intended to be created by this Bylaw;

AND WHEREAS it is necessary and expedient to authorize the issue and sale of debentures of the Commission to the amount of \$750,000.00, to provide the sums required for the purposes aforesaid;

30 AND WHEREAS the said Commission has no existing debenture debt;

AND WHEREAS the said works and property have been approved by the Department of Health for Ontario;

NOW THEREFORE BE IT ENACTED as a Bylaw of The Walkerville-East Windsor Water Commission AS FOLLOWS:

1. That for the purposes aforesaid and under the authority of The Walkerville-East Windsor Commission Act, 1930, there shall be issued and sold debentures of The Walkerville-East Windsor Water Commission to the aggregate principal amount of \$750,000.00 in sums of not less than \$100.00 each, bearing interest at the rate of five and one-half per cent. per annum,
40 payable half-yearly on the 30th day of June and the 31st day of December in each year, and having coupons attached thereto for the payment of the interest.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 52
Bylaw No. 3 of
the Walkerville-
East Windsor
Water Com-
mission, June 24,
1930

2. The debentures shall all be dated as of the 30th day of June, 1930, and shall be payable in thirty annual instalments of principal on the 30th day of June in each of the years 1931 to 1960, inclusive, and the respective amounts of principal and interest payable in each of such years shall be as shown in Schedule "A" hereto annexed, which is hereby declared to be and form part of this Bylaw.

Continued

3. The said debentures shall be payable as to both principal and interest in gold coin of lawful money of Canada at the principal office of The Canadian Bank of Commerce in the City of Toronto, in the City of Montreal or in the Town of Walkerville at the option of the holder. 10

4. The said debentures shall rank *pari passu* without preference or priority one over another.

5. The said debentures shall be substantially in accordance with the form set out in Schedule "B" hereto annexed, varying such form according to the denomination and maturity of the respective debenture, and shall be signed by the Chairman and Secretary of the Commission and shall be sealed with the Corporate Seal of the Commission. The interest coupons attached to said debentures shall have engraved, lithographed or printed thereon the facsimile signatures of the Chairman and Secretary of the said Commission.

6. That during thirty years, the currency of the said debentures, the said Commission shall raise annually the sum of \$51,604.04 for the payment of the said debt and interest and for such purpose the said Commission shall as required by the said Act charge and collect in every year a special rate throughout the territory served by the System from time to time sufficient to produce the said sum of \$51,604.04. 20

7. This Bylaw shall come into force and take effect on the day of its final passage.

PASSED by The Walkerville-East Windsor Water Commission and sealed with the Corporate Seal this 24th day of June, 1930.

(Signed) J. CLARK KEITH, Chairman 30

(SEAL)

(Signed) C. D. BROWN, Secretary

Read first time June 24th, 1930.

Read second time June 24th, 1930.

Read third time June 24th, 1930.

		SCHEDULE "A"		
	No.	Principal	Interest	Total
	1	\$10,354.04	\$41,250.00.....	\$51,604.04
	2	10,923.51	40,680.53.....	51,604.04
	3	11,524.30	40,079.74.....	51,604.04
	4	12,158.14	38,777.20.....	51,604.04
	5	12,826.84	38,777.20.....	51,604.04
	6	13,532.31	38,071.73.....	51,604.04
	7	14,276.59	37,327.45.....	51,604.04
10	8	15,061.87	36,542.17.....	51,604.04
	9	15,890.18	35,713.86.....	51,604.04
	10	16,764.17	34,839.87.....	51,604.04
	11	17,686.20	33,917.84.....	51,604.04
	12	18,658.94	32,945.10.....	51,604.04
	13	19,685.18	31,918.86.....	51,604.04
	14	20,767.86	30,836.18.....	51,604.04
	15	21,910.10	29,693.94.....	51,604.04
	16	23,115.15	28,488.89.....	51,604.04
	17	24,386.49	27,217.55.....	51,604.04
20	18	25,727.74	25,876.30.....	51,604.04
	19	27,142.77	24,461.27.....	51,604.04
	20	28,635.70	22,968.34.....	51,604.04
	21	30,210.58	21,393.46.....	51,604.04
	22	31,872.16	19,731.88.....	51,604.04
	23	33,625.13	17,978.91.....	51,604.04
	24	35,474.52	16,129.52.....	51,604.04
	25	37,425.61	14,178.43.....	51,604.04
	26	39,484.02	12,120.02.....	51,604.04
	27	41,655.63	9,948.41.....	51,604.04
30	28	43,946.71	7,657.33.....	51,604.04
	29	46,363.78	5,240.26.....	51,604.04
	30	48,913.78	2,690.26.....	51,604.04

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 52
Bylaw No. 3 of
the Walkerville-
East Windsor
Water Com-
mission, June 24,
1932

Continued

PLAINTIFFS' EXHIBIT No. 2 (a) 53.

DOMINION OF CANADA, PROVINCE OF ONTARIO
THE WALKERVILLE-EAST WINDSOR WATER COMMISSION
\$1,000.00 DEBENTURE \$1,000.00
NO. 255

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 53
Debenture No.
255 of The
Walkerville-East
Windsor Water
Commission, June
24, 1930

40 THE WALKERVILLE-EAST WINDSOR WATER COMMISSION
hereby promises to pay to the bearer or if registered to the registered holder
hereof the sum of ONE THOUSAND DOLLARS in gold coin of lawful
money of Canada, at the principal office of The Canadian Bank of Commerce
in the City of Toronto, in the City of Montreal or in the Town of Walkerville,
at holder's option, on the thirtieth day of June, A.D., 1946, and to pay in-
terest thereon at the rate of five and one-half per cent. per annum, half-
yearly, in like money, on the thirtieth day of June and the thirty-first day of
December in each year to the bearer of the annexed coupons upon presenta-
tion and surrender thereof at any of said places, at holder's option, as the
same severally become due.

50 THIS DEBENTURE or any interest therein shall not, after a certificate
of ownership has been indorsed thereon by the Secretary of this Commission,

be transferable, except by entry by the Secretary or his Deputy in the Debenture Registry Book of the said Commission at the Town of Walkerville.

DATED at the Town of Walkerville this thirtieth day of June, 1930.

IN TESTIMONY WHEREOF and under the authority of Bylaw No. 3 of The Walkerville-East Windsor Water Commission, duly passed on the twenty-fourth day of June, A.D., 1930, this Debenture is sealed with the seal of the said Commission and signed by the Chairman and Secretary thereof.

J. CLARK KEITH, Chairman

C. D. BROWN, Secretary

PLAINTIFFS' EXHIBIT NO. 2 (a)—54

10

List of other debentures issued under Bylaw No. 3 of the Walkerville-East Windsor Water Commission held by E. F. Ladore.

Debenture No. 099

Face value \$1,000.00

PLAINTIFFS' EXHIBIT NO. 2 (a)—55

Auditors' Report for 1935 for The Walkerville-East Windsor Water Commission. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—56

Auditors' Report for 1935 for the Water Commissioners of the City of Windsor. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—57

20

Bylaw No. 144 of The Town of Sandwich creating the Board of Water Commissioners of Sandwich. Not printed by consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—58

Bylaw No. 436 of The Town of Sandwich creating the Board of Water Commissioners of Sandwich. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—59

Auditors' Report for 1935 for the Board of Water Commissioners of Sandwich. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—60

Minutes of Town Council of Ford City. Not printed by Consent.

30

PLAINTIFFS' EXHIBIT NO. 2 (a)—61

Bylaw No. 906 of the City of East Windsor changing name of Hydro Commission. Not printed by Consent.

In the Supreme Court of Ontario Exhibits No. 2 (a) 53 Debenture No. 255 of The Walkerville-East Windsor Water Commission, June 24, 1930

Concluded

In the Supreme Court of Ontario Exhibits No. 2 (a) 54 List of other Debentures held by E. F. Ladore

PLAINTIFFS' EXHIBIT NO. 2 (a)—62

Auditors report for 1934 for Hydro-Electric Commission of East Windsor. Not printed by Consent.

In the Supreme
Court of Ontario
Exhibits

PLAINTIFFS' EXHIBIT NO. 2 (a)—63

Auditors' Report for 1935 for Hydro-Electric Commission of East Windsor. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—64

Bylaw No. 506 of Walkerville constituting the Walkerville Hydro-Electric Commission. Not printed by Consent.

10 PLAINTIFFS' EXHIBIT NO. 2 (a)—65

Auditors' Report for 1935 for The Walkerville Hydro-Electric Commission. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—66

Bylaw 1654½ constituting The Windsor Hydro-Electric System. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—67

Auditors' Report for 1935 for The Windsor Hydro-Electric Commission. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—68

20 Minutes of a Meeting of The Sandwich Town Council, Dec. 3rd, 1923. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—69

Auditors' Report for 1934 for Sandwich Hydro-Electric Commission. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—70

Auditors' Report for 1935 for Sandwich Hydro-Electric Commission. Not printed by Consent.

PLAINTIFFS' EXHIBIT NO. 2 (a)—71

30 ONTARIO
EXECUTIVE COUNCIL OFFICE

Copy of an Order-in-Council approved by the Honourable, the Lieutenant-Governor, dated the 1st day of May, A.D., 1935.

WHEREAS under the provisions of section 5 of The City of Windsor Amalgamation Act, 1935, there is to be constituted for the new City of Windsor

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 71
Order-in-Council

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 71
Order-in-Council
Appointing The
Windsor Finance
Commission, May
1, 1935

Concluded

incorporated under the provisions of the said Act by the amalgamation of the existing municipalities of East Windsor, Walkerville, Windsor and Sandwich, and for each of the said municipalities, a finance commission to be known as "The Windsor Finance Commission."

AND WHEREAS under the authority of the said Act the three persons who are to compose the said finance commission are to be appointed in the first instance by the Lieutenant-Governor in Council to hold office during pleasure, and one of them is to be designated as the chairman.

AND WHEREAS it is expedient forthwith to appoint the members of the said commission. 10

The Minister of Public Welfare and Municipal Affairs recommends that for the purposes mentioned in the said Act, The Windsor Finance Commission forthwith be constituted and be composed of the following three persons, namely:

Harry J. Mero, of the City of Windsor, Company Manager;
William Donald McGregor, of the City of Windsor, Automobile Dealer;
Russell A. Farrow, of the Town of Walkerville, Customs Broker.

The Minister further recommends that of the said three persons, the said Harry J. Mero be designated as chairman of the said Commission, and that the said William Donald McGregor be appointed as representing holders 20 of debentures of the said municipalities, and that each of the said three persons hold office during pleasure.

The Committee of Council concur in the recommendation of the Honourable, the Minister of Public Welfare and Municipal Affairs, and advise that the same be acted upon.

Certified,

(Signed) C. F. BULMER,
Clerk, Executive Council.

PLAINTIFFS' EXHIBIT NO. 2 (a)—72

DEFENDANTS' EXHIBIT NO. 15 30

Notice published in the "Ontario Gazette" and "Windsor Daily Star," in the issue of June 13th, 1936.

"THE ONTARIO MUNICIPAL BOARD

"Notice is hereby given that the Corporation of The City of Windsor, "as incorporated under the provisions of The City of Windsor (Amalgamation) "Act, 1935, has by reason of the provisions thereof become subject to the "provisions of Part III of the Department of Municipal Affairs Act, 1935, and "from and after the first publication of this Notice in 'The Ontario Gazette' all

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 72 and
15
Notice Published
in The Ontario
Gazette and
Windsor Daily
Star, June 10,
1936

"actions are stayed and thereafter no action or other proceeding against the said Corporation shall be commenced or continued, nor shall a levy be made under a Writ of Execution against it without leave of the Ontario Municipal Board.

"DATED this tenth day of June, A.D., 1936.

"(Signed) M. B. SANDERSON,
"Secretary of The Ontario Municipal Board"

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 72
Notice Published
in The Ontario
Gazette and
Windsor Daily
Star, June 10,
1936

Concluded

PLAINTIFFS' EXHIBIT NO. 2 (a)—73

10 Plan for funding and refunding the debts of the Amalgamated Municipalities of East Windsor, Walkerville, Windsor and Sandwich.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme of Fund-
ing and Refund-
ing the Debts of the
Amalgamated
Municipalities,
1936

HISTORY

Prior to the amalgamation of East Windsor, Walkerville, Windsor and Sandwich under The City of Windsor (Amalgamation) Act, 1935, those four Municipalities functioned separately and each owed large amounts to the public. All four Municipalities were in default for payment of part of the principal owing on their several debts, the default having occurred in the case of East Windsor on October 1st, 1931, Sandwich on March 1st, 1932, Windsor on December 1st, 1932, and Walkerville on December 14th, 1934. The first three Municipalities were also in default for payment of interest. In 1935 the City of Windsor (Amalgamation) Act, 1935, was passed for the purpose of amalgamating the four Municipalities and providing a solution for the problems created by the above defaults. Under the Act a Commission known as "The Windsor Finance Commission" was constituted and was authorized to undertake the preparation and submission of a plan for funding and refunding the debts of the Amalgamated Municipalities. The Finance Commission at once set to work on this difficult problem, and under its supervision extensive audits and appraisals were conducted with the object of ascertaining the ability of the ratepayers of the Amalgamated Municipalities to meet the above mentioned obligations. The result of these audits and appraisals was embodied in comprehensive reports dealing with all aspects of the financial situation in the Amalgamated Municipalities. The Finance Commission then proceeded as authorized by the Statute to prepare a plan for funding and refunding the debts of the Amalgamated Municipalities based on the result of their findings as shown in these reports. Meanwhile Protective Committees had been formed by the debenture holders of the several Municipalities, and these Committees also conducted an independent financial survey of the defaulting Municipalities. All parties were agreed on the desirability of having a plan, if possible, which would be satisfactory to both the ratepayers and the creditors of the Municipalities. With this object, the plan prepared by the Finance Commission was then discussed with the Protective Committees, and after prolonged negotiations the Plan as now submitted and embodied in the following Articles was approved by the Finance Commission and by the Protective Committees.

ARTICLE 1

OBJECT AND SCOPE OF PLAN

SECTION 1—The object of this Plan is to provide for the funding and refunding of the debts of the Amalgamated Municipalities. Immediately prior to their dissolution the debts of these Municipalities (including arrears of interest accrued to December 31st, 1935, and subject to certain minor adjustments) amounted in the aggregate to \$40,796,777.44, part of which was secured by debentures. Of that aggregate indebtedness there had been incurred for all purposes except public and separate school purposes debts to the amount of \$30,505,992.86 and for public school purposes debts to the amount of \$4,180,562.32 and the accrued interest thereon amounted to \$6,110,222.26. These debts (exclusive of interest) were distributed as follows:

Municipality	General Purposes	School Purposes
East Windsor.....	\$5,726,881.67	\$ 892,216.86
Walkerville.....	4,146,743.85	346,198.43
Windsor.....	16,747,968.40	2,417,605.58
Sandwich.....	3,884,398.94	524,541.45

SECTION 2—It is proposed to fund and refund the principal of the aforesaid debts of the Amalgamated Municipalities amounting to \$34,686,555.18 by creating debentures of the New City to the same principal amount and by issuing such debentures to or for the creditors of the Amalgamated Municipalities in discharge of all liability to them for such principal. It is proposed to discharge all liability for the accrued interest amounting to \$6,110,222.26 by distributing among the creditors cash in the amount of \$2,661,366.00 on the basis set out in Article VI hereof. It is not proposed in this Plan to differentiate between debts formerly secured by debentures and debts not so secured nor is it proposed to differentiate between any classes of creditors as to principal, the intention being that every creditor shall receive debentures of the New City in the same principal amount as the principal amount of the debt owing to him by the Amalgamated Municipality. It is, however, proposed to differentiate between classes of creditors as to interest, the intention being that creditors of each of the Amalgamated Municipalities shall receive a rate of interest different from that received by the creditors of each of the other Amalgamated Municipalities and that Income Interest shall be varied according to the rates formerly payable on the debt. In this respect the Plan recognizes differences in the capacity of the several Municipalities to meet interest obligations. It will therefore be necessary to issue the debentures of the New City in several series so as to distinguish (a) the debts incurred by each of the Amalgamated Municipalities, (b) the debts incurred for public school purposes, and (c) the debts incurred at interest rates greater or less than a certain percentage. The Plan embodies the principal that a minimum fixed rate of interest (referred to in the Plan as "the mandatory rate" or "mandatory interest") shall be paid on the debentures of each series and that if the operating expenditure of the New City in any year exceeds \$585,000 for the Board of Education or \$2,115,000 for other purposes an amount equivalent

to 125% of such excess shall be paid into a special fund and shall be applied in payment of additional interest (referred to in this Plan as "income interest") and in the purchase and redemption of debentures. The income interest payments should therefore assist in equalizing the mandatory rates as between the several Municipalities. The Plan also embodies the principle that surplus revenue of the City not required to meet operating expenditure, interest or payments to the Special Fund shall be paid to a Sinking Fund to be applied in the purchase and redemption of debentures.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme of Fund-
ing and Refunding
the Debts of the
Amalgamated
Municipalities,
1936

Continued

SECTION 3—In order to give effect to the aforesaid differentiations in
10 mandatory interest and income interest it is proposed to issue the debentures
of the New City in several series, of which the designating letters shall be as
follows: AX, AY, B, CX, CY, DX, DY, AAX, AAY, BB, CCX, CCY, and
DDY. Debentures of Series AX, AY, AAX, and AAY will be issued to fund
and refund the debts of East Windsor, those designated AX and AY being
applicable to debts contracted for general purposes as set out in Section 1 of
this Article, and those designated AAX and AAY being applicable to the debts
20 contracted for school purposes as set out in the said Section 1. Similarly, the
debentures of the series bearing the designating letters B or BB will be issued
to fund and refund the debts of Walkerville, the series bearing the designating
letters, CX, CY, CCX or CCY the debts of Windsor, and the series bearing the
designating letters DX, DY or DDY the debts of Sandwich. The letter X or
the letter Y in the designating letters of a series will indicate whether the debt
to be refunded by such series carried interest at a rate not exceeding 5.49% or
at a rate exceeding 5.49%, as the case may be. The amount of income interest
payable on a debenture depends partly on this differentiation.

ARTICLE II

INTERPRETATIONS

In this Plan the following words, phrases and expressions shall, wherever used, if the context permits, have the following meanings:

30 1. "This Plan," "the Plan," "hereby," "herein," "hereto" and "here-
under" mean and refer to the Plan herein set out for funding and refunding the
debts of the Amalgamated Municipalities and the Schedules thereto.

2. "Amalgamated Municipalities" means East Windsor, Walkerville,
Windsor and Sandwich severally.

3. (a) "East Windsor" means the Municipality and Corporation of the
City of East Windsor as existing prior to the date of its dissolution.

(b) "Walkerville" means the Municipality and Corporation of the
Town of Walkerville as existing prior to the date of its dissolution.

40 (c) "Windsor" means the Municipality and Corporation of the City
of Windsor as existing prior to the date of its dissolution.

(d) "Sandwich" means the Municipality and Corporation of the
Town of Sandwich as existing prior to the date of its dissolution.

Continued

4. "The City" or "the New City" means the Municipality and Corporation of the City of Windsor incorporated under the provisions of The City of Windsor (Amalgamation) Act, 1935.

5. "New Debentures" means the debentures of the City created and issued pursuant to this Plan.

6. "General Debentures" means the New Debentures issued by the City for the purpose of funding and refunding debts incurred by the Amalgamated Municipalities for all purposes except public and separate school purposes but including debts incurred for public school purposes to the extent of \$91,811.19 under Bylaws Nos. 1315, 2463 and 1738 of Windsor and debt of \$229,618.10 referred to in Part 14 of the Second Schedule hereto. 10

7. "School Debentures" means the New Debentures issued by the City for the purpose of funding and refunding debts incurred by the Amalgamated Municipalities for public school purposes except to the extent of \$321,429.29 as set out in Clause 6 above.

8. "Mandatory Interest" means interest payable on the New Debentures at fixed rates per cent. per annum half-yearly as provided in this Plan.

9. "Income Interest" means interest payable on the New Debentures as provided in Article IV hereof and computed in the manner provided in Article V hereof. 20

10. "Arrears of Interest" means the amount payable as set out in Article VI hereof to creditors of the Amalgamated Municipalities for and in full settlement of interest accrued due on their debts and owing and unpaid as of December 31st, 1935, but not including the amount due on unrepresented coupons as herein defined.

11. "Interest Arrears Warrant" means the coupon attached to New Debentures of Series DX, DY and DDY representing the right of the holder thereof to receive, if and when paid, Arrears of Interest as set out in Section 3 of Article VI hereof.

12. "Unrepresented Coupons" means the coupons for interest on the debentures of the Amalgamated Municipalities which accrued due prior to default in payment of interest on such debentures and were not presented for payment when due and a list of which is set out in the Third Schedule hereto. 30

13. "Fiscal Agent" means Chester W. McDiarmid, Fiscal Agent of the City and of the Windsor Finance Commission, and his successor duly appointed from time to time.

14. "Board" means the Ontario Municipal Board and its successor from time to time.

15. "Trustees" means the Board of Trustees from time to time as established under Article VIII hereof. 40

16. "Board of Education" means the Board of Education of the City and any successor or successors exercising the same authority as vested in the said Board of Education on the 1st day of June, 1936.

17. "Local Board" means and includes any School Board, Public Utility Commission, Transportation Commission, Public Library Board, Board of Park Management, Local Board of Health, Board of Police Commissioners and any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes including school purposes of the City or the Amalgamated Municipalities, but shall not, in any case, include a Separate School Board.

In the Supreme Court of Ontario Exhibits No. 2 (a) 73 Scheme of Funding and Refunding the Debts of the Amalgamated Municipalities, 1936

Continued

18. "Department" means the Department of Municipal Affairs of the Province of Ontario or any other Governmental or Departmental authority exercising the same or similar jurisdiction over Ontario municipalities as is now exercised by the said Department of Municipal Affairs.

19. Words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing a person or persons shall include any body corporate or politic (including a municipal corporation) and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.

ARTICLE III

20 FORM, EXECUTION AND ISSUE OF NEW DEBENTURES

SECTION 1—The City shall create and issue for the purpose of giving effect to this Plan New Debentures in the aggregate principal amount of \$34,686,555.18, of which \$30,505,992.86 in principal amount shall be General Debentures and designated as "City of Windsor General Refunding Debentures," and \$4,180,562.32 in principal amount shall be School Debentures and designated as "City of Windsor Public School Refunding Debentures."

SECTION 2—The General Debentures shall be issued in several series, to be designated as AX, AY, B, CX, CY, DX and DY, and the School Debentures shall be issued in several series, to be designated as AAX, AAY, BB, CCX, CCY and DDY. The General Debentures of the said several series shall be issued in the following principal amounts:

Series AX in the principal amount of.....	\$ 3,459,481.92
Series AY in the principal amount of.....	2,267,399.75
Series B in the principal amount of.....	4,146,743.85
Series CX in the principal amount of.....	11,683,035.38
Series CY in the principal amount of.....	5,064,933.02
Series DX in the principal amount of.....	1,107,234.86
Series DY in the principal amount of.....	2,777,164.08

The School Debentures of the said several series shall be issued in the following principal amounts:

Series AAX in the principal amount of.....	\$ 428,312.97
Series AAY in the principal amount of.....	463,903.89
Series BB in the principal amount of.....	346,198.43
Series CCX in the principal amount of.....	1,085,916.28
Series CCY in the principal amount of.....	1,331,689.30
Series DDY in the principal amount of.....	524,541.45

Continued

SECTION 3—The New Debentures shall be dated as of the First day of January, 1936, and shall mature on the Thirty-first day of December, 1995. 10
The New Debentures of the said several series shall bear Mandatory Interest at the following rates per annum:

Series AX at the rate of two per cent. (2%)	
Series AY at the rate of two per cent. (2%)	
Series B at the rate of four and one-quarter per cent. (4¼%)	
Series CX at the rate of three and one-half per cent. (3½%)	
Series CY at the rate of three and one-half per cent. (3½%)	
Series DX at the rate of one and one-half per cent. (1½%)	
Series DY at the rate of one and one-half per cent. (1½%)	
Series AAX at the rate of two per cent. (2%)	20
Series AAY at the rate of two per cent. (2%)	
Series BB at the rate of four and one-quarter per cent. (4¼%)	
Series CCX at the rate of three and one-half per cent. (3½%)	
Series CCY at the rate of three and one-half per cent. (3½%)	
Series DDY at the rate of one and one-half per cent. (1½%)	

The New Debentures of the said several series shall also bear Income Interest, if and when payable, pursuant to the provisions of Articles IV and V of this Plan, computed in the manner set out in the said Article V of this Plan. The principal of the New Debentures and the Mandatory Interest and Income Interest thereon shall be payable at the Windsor (Ontario) Branch of The Canadian Bank of Commerce in lawful money of the Dominion of Canada, as to principal on the 31st day of December, 1995, and as to Mandatory Interest half-yearly on the 30th day of June and the 31st day of December in each year, the first of such Mandatory Interest payments to be payable as of the 30th day of June, 1936, and as to Income Interest, if and when payable, on the 30th day of June in each year. 30

SECTION 4—The General Debentures of Series B, Series CX and Series CY and the coupons appertaining thereto for Mandatory Interest and Arrears of Interest shall be in substantially the form set out in Part 1 of the First Schedule hereto, and the School Debentures of Series BB, Series CCX and Series CCY and the coupons appertaining thereto for Mandatory Interest and Arrears of Interest shall be in the same form as the General Debentures of the said respective series save that the words 'Public School' shall be substituted for the word 'General' wherever it occurs therein. The General Debentures of Series AX, Series AY, Series DX and Series DY and the coupons appertaining thereto for Mandatory Interest and Arrears of Interest shall be in substantially the form set out in Part 2 of the First Schedule hereto save that 40

the General Debentures of Series DX and Series DY in lieu of a coupon for Arrears of Interest shall carry an Interest Arrears Warrant in the form set out in the said Part 2. The School Debentures of Series AAX and Series AAY and Series DDY and the coupons appertaining thereto for Mandatory Interest and Arrears of Interest shall be in the same form as the General Debentures of Series AX, Series AY and Series DY respectively save that the words 'Public School' shall be substituted for the word 'General' wherever it occurs therein and the School Debentures of Series DDY in lieu of a coupon for Arrears of Interest shall similarly carry an Interest Arrears Warrant.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme for Fund-
ing and Refunding
the Debts of the
Amalgamated
Municipalities,
1936

Continued

- 10 SECTION 5—Each and every General Debenture shall constitute an obligation of the City and of the ratepayers thereof from time to time, and each and every School Debenture shall constitute an obligation of the City and of the ratepayers thereof from time to time assessed as public school supporters. Each and every New Debenture shall rank *pari passu* and shall be secured equally and rateably with each and every other New Debenture of any series.

- 20 SECTION 6—All New Debentures and the interest coupons thereon issued or to be issued pursuant to this Plan shall be executed in the manner and by the persons designated by law for that purpose. The coupons for Arrears of Interest and the Interest Arrears Warrant shall be signed by the Fiscal Agent and his signature may be engraved, lithographed or otherwise mechanically reproduced thereon, and such engraved, lithographed or otherwise mechanically reproduced signature shall be deemed for all purposes the signature of the Fiscal Agent and shall be binding on the City.

SECTION 7—The City shall forthwith cause the New Debentures in the aggregate principal amount of \$34,686,555.18 and in such denominations and broken amounts as may be designated by the Fiscal Agent to be issued and executed as aforesaid and to be delivered to the Fiscal Agent.

SECTION 8—The Fiscal Agent shall deal with and distribute the New Debentures so delivered to him as follows:

- 30 (a) Upon presentation and surrender to the Fiscal Agent of a debenture or debentures of any issue described in the column numbered 1 of Parts 1, 3, 4, 6, 7, 8, 10, 11, 12, 14 and 15 of the Second Schedule to this Plan (or upon deposit with the Fiscal Agent of proof of loss or destruction thereof and indemnity in form satisfactory to him) the Fiscal Agent shall deliver to the person presenting and surrendering such debenture or debentures (or depositing such proof and indemnity), or in the case of registered debentures to the registered holder thereof or his duly authorized agent, a New Debenture or New Debentures of the same principal amount as
40 the debenture or debentures so presented and surrendered (or in respect of which such proof and indemnity is deposited) and of the series set out in column numbered 2 of the said parts of the said Second Schedule opposite the description in the said columns numbered 1 of the issue of the debenture or debentures so presented and surrendered (or in respect of which such proof and indemnity is deposited) and such delivery shall be in substitution and exchange for such debenture or debentures;

Continued

(b) Upon satisfactory proof and evidence being furnished to the Fiscal Agent by any creditor of the Amalgamated Municipalities whose name is set out in the column headed "Creditor" in Part 2, 5, 9 or 13 of the Second Schedule hereto of his claim as set out opposite his name in the column numbered 1 in the said Part of the said Second Schedule, and upon surrender to the Fiscal Agent by such creditor of any collateral security for his claim as set out in the Note following such creditor's name in the said column headed "Creditor" and upon execution and delivery by such creditor to the Fiscal Agent of a satisfactory release of his claim and the debt represented by it the Fiscal Agent shall deliver to such creditor a New Debenture or New Debentures of the series set out in the column numbered 2 in the said Part of the said Second Schedule opposite the name of such creditor of the same aggregate principal amount as the amount of the claim so released, and such delivery by the Fiscal Agent shall be deemed to be and shall be in payment and satisfaction of the said claim and the debt represented by it. The Fiscal Agent shall thereupon forthwith cancel any collateral security so surrendered and transmit it to the Treasurer of the City who shall cause it to be destroyed; 10

(c) Upon presentation and surrender to the Fiscal Agent of a debenture or debentures of any issue described in column numbered 1 of Part 16 of the said Second Schedule (or upon deposit with the Fiscal Agent of proof of loss or destruction thereof and indemnity in form satisfactory to him) the Fiscal Agent shall deliver to the person presenting and surrendering such debenture or debentures (or depositing such proof and indemnity), or in the case of registered debentures to the registered holder thereof or his duly authorized agent, in respect of each debenture so presented and surrendered (or in respect of which such proof and indemnity is deposited) two New Debentures each for one-half of the principal amount of the debenture so presented and surrendered (or in respect of which such proof and indemnity is deposited), and such two New Debentures shall be of the respective series set out in column numbered 2 of the said Part 16 of the said Second Schedule opposite the description in the said column numbered 1 of the issue of the debenture so presented and surrendered (or in respect of which such proof and indemnity is deposited), and such delivery shall be in substitution and exchange for such debenture or debentures; 20 30

(d) The Fiscal Agent shall set aside and deliver to a Corporate Trustee nominated by the Board in payment and satisfaction of the indebtedness of the Amalgamated Municipalities in respect of the debenture debt of the Essex Border Utilities Commission as set out in column numbered 1 of Part 17 of the Second Schedule hereto, New Debentures of the series set out in column numbered 2 of the said Part 17 opposite the figures representing the said indebtedness in the said column numbered 1 of the said Part 17 and in the same aggregate principal amount as such indebtedness. The receipt of such Corporate Trustee for the New Debentures so set aside and delivered shall constitute a valid and binding receipt to and release of the Fiscal Agent and the Amalgamated Municipalities in respect 40

of such indebtedness. The Corporate Trustee shall hold the New Debentures so set aside and delivered to it by the Fiscal Agent in trust for the holders of debentures of the Essex Border Utilities Commission to be dealt with in accordance with a plan to be prepared to take care of the liability for the debenture debt of the said Commission. Any moneys collected in respect of principal, interest or otherwise of the New Debentures so delivered to the Corporate Trustee under this clause (d) shall be dealt with in accordance with the said plan above referred to in this clause (d);

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme of Fund-
ing and Refunding
the Debts of the
Amalgamated
Municipalities,
1936

Continued

10 (e) The Fiscal Agent on receiving from the Treasurer of Ontario the debentures of the Amalgamated Municipalities referred to in the notes in Part 18 of the Second Schedule hereto shall deliver to the Treasurer of Ontario in payment and satisfaction of the indebtedness of the Amalgamated Municipalities in respect of the capital liability and operating deficits of the Sandwich, Windsor & Amerstburg Railway as set out in the column numbered 1 of Part 18 of the Second Schedule hereto New Debentures of the Series set out in the column numbered 2 of the said Part 18 opposite the figures representing the said indebtedness in the said column numbered 1 and in the same aggregate principal amount as such
20 indebtedness. The receipt of the Treasurer of Ontario for the said New Debentures shall constitute a valid and binding receipt to and release of the Fiscal Agent and the Amalgamated Municipalities in respect of such indebtedness;

(f) The Fiscal Agent on receiving from the depositary thereof the debentures of Windsor deposited as collateral security and referred to in the Note in Part 19 of the Second Schedule hereto shall set aside and deliver to the Trustee for bondholders under a certain Mortgage Deed of Trust securing the bonds of the Windsor, Essex and Lake Shore Electric Railway Association and dated February 1st, 1929, in payment and
30 satisfaction of the indebtedness of Windsor in respect of the bond issue secured by the said Mortgage Deed of Trust New Debentures of Series CY in the same aggregate principal amount as the amount of the said indebtedness set out in the said column numbered 1 of the said Part 19. The receipt of the said Trustee above mentioned in this clause (f) for the said New Debentures shall constitute a valid and binding receipt to and release of the Fiscal Agent and Windsor in respect of the said indebtedness of Windsor, and in respect of any claim by any person whether by way of debt or contribution or otherwise in respect of such indebtedness. The Fiscal Agent shall also deliver to a chartered bank or trust company
40 to be nominated by the Board in payment and satisfaction of the indebtedness of Windsor in respect of the debenture and other debt of the Windsor, Essex and Lake Shore Electric Railway Association (except the indebtedness in respect of the bond issue referred to above in this clause (f) as set out in column numbered 1 of Part 20 of the Second Schedule hereto, New Debentures of Series CY in the same aggregate principal amount as the amount of the said indebtedness of Windsor so set out, and the receipt of such chartered bank or trust company for the said New

Debentures shall constitute a valid and binding receipt to and release of the Fiscal Agent and Windsor in respect of such indebtedness of Windsor and in respect of any claim by any person, whether by way of debt or contribution or otherwise, in respect of such indebtedness. The said chartered bank or trust company shall hold the New Debentures so delivered to it by the Fiscal Agent in trust for the new debenture holders and other creditors of the said Railway, to be dealt with in accordance with a plan to be prepared to take care of the liability for the debt of the said Railway.

SECTION 9—All New Debentures shall prior to delivery thereof by the Fiscal Agent pursuant to the authority of Section 8 of this Article III be certified by the Fiscal Agent as certifying agent, but the Fiscal Agent may appoint another person or persons to perform the act of signing the certification. 10

SECTION 10—If any person entitled to receive New Debentures pursuant to Section 8 of this Article III fails to apply for and obtain them from the Fiscal Agent on or prior to the thirty-first day of December, 1956, the New Debentures which such person would otherwise be so entitled to receive shall be cancelled by the Fiscal Agent and delivered to the Treasurer of the City for destruction, and the indebtedness represented by such New Debentures shall be extinguished and such person shall be barred from making any claim in respect thereof. 20

SECTION 11—In case any of the New Debentures or coupons issued pursuant to this Plan shall become mutilated or be lost or destroyed the City in its discretion may issue, and thereupon the Fiscal Agent shall, deliver another New Debenture or coupon of like date and tenor as the one mutilated, lost or destroyed in exchange for and in place of and upon cancellation of the mutilated debenture or coupon or in lieu of and in substitution for the same if lost or destroyed, and the substituted New Debenture or coupon shall be in a form approved by the Fiscal Agent. In case of loss or destruction the applicant for such substituted Debenture or coupon shall furnish to the City and to the Fiscal Agent such evidence of the loss or destruction of the New Debenture or coupon so lost or destroyed as shall be satisfactory to the City and to the Fiscal Agent in their discretion and such applicant shall also furnish indemnity satisfactory to them in their discretion. 30

SECTION 12—The Fiscal Agent shall forthwith upon receipt thereof cancel any debentures and other evidences of indebtedness of any of the Amalgamated Municipalities and any collateral securities received by him pursuant to Section 8 of this Article III and shall deliver to the Treasurer of the City such debentures and other evidences of indebtedness and collateral securities so cancelled. The Treasurer of the City shall retain such debentures and other evidences of indebtedness and collateral securities until December 31st, 1941, and shall immediately thereafter destroy them. 40

ARTICLE IV

CREATION AND MAINTENANCE OF INCOME INTEREST FUND
AND SINKING FUND

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme of Fund-
ing and Refund-
ing the Debts of the
Amalgamated
Municipalities,
1936

Continued

SECTION 1—As long as any of the New Debentures are outstanding the City shall pay to the Trustees on or before the First day of December in each year a sum equivalent to one hundred and twenty-five per cent. (125%) of the amount (if any) by which the operating expenses of the City exceed \$2,115,000 and/or of the amount (if any) by which the operating expenses of the Board of Education exceed \$585,000. The said sum shall be levied and collected in
10 the taxes for each year in which the operating expenses exceed the above mentioned amount or amounts.

“Operating expenses of the City” means and includes all moneys expended or to be expended by the City in any year for every purpose whatsoever except—

- (a) the expenses of the Board of Education, the Separate School Board of the City and the Windsor Utilities Commission;
- (b) charges for the payment of principal and interest on the General Debentures and on all debenture debt incurred from time to time for other than school purposes;
- 20 (c) expenses in the nature of capital replacements; and in the event of any dispute as to whether an expense is in the nature of a capital replacement expense such dispute shall be referred by the Trustees to a firm of Chartered Accountants and the decision of such firm shall be communicated to the Trustees and the City and shall be binding on all parties for the purpose of this Article;;
- (d) expenses for relief for which the City is liable to provide under the provisions of The Unemployment Relief Act, 1935, including expenses incurred in connection with the administration thereof;
- 30 (e) expenses of the City imposed or increased by reason of legislation of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario, which legislation is of general application to all municipalities in Ontario and in the opinion of the Trustees provides for an imposition and/or increase in expenses of the City of an extraordinary character not of the nature of maintenance and operation; and before providing for the payment of or paying any such extraordinary expenses the City shall refer the same to the Trustees for their opinion as to its character, and the decision of the Trustees as to whether such extraordinary expenses are operating expenses within the meaning of this Section shall be final and binding on all parties for the purposes of this
40 Article.

“Operating expenses of the Board of Education” means and includes all moneys expended or to be expended by the Board of Education in any year for every purpose whatsoever except—

Continued

- (aa) general expenses of the City;
- (bb) charges for the payment of principal and interest on the School Debentures and on all debenture debt incurred from time to time for school purposes;
- (cc) expenses in the nature of capital replacements; and in the event of any dispute as to whether an expense is in the nature of a capital replacement expense such dispute shall be referred by the Trustees to a firm of Chartered Accountants and the decision of such firm shall be communicated to the Trustees and the City and shall be binding on all parties for the purposes of this Article; 10
- (dd) expenses of the Board of Education imposed or increased by reason of legislation of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario, which legislation is of general application to all Boards of Education in Ontario and in the opinion of the Trustees provides for an imposition and/or increase in expenses of the Board of Education of an extraordinary character not of the nature of maintenance and operation; and before providing for the payment of or paying any such extraordinary expenses the Board of Education shall refer the same to the Trustees for their opinion as to its character, and the decision of the Trustees as to whether such extraordinary expenses are operating expenses within the meaning of this Section shall be final and binding on all parties for the purposes of this Article. 20

SECTION 2—As long as any of the New Debentures are outstanding the City shall pay to the Trustees on or before the Fifteenth day of April in any year a sum (as ascertained by the certificate of the auditor for the City) equivalent to the amount by which the total receipts of the City for the preceding fiscal year from all sources except moneys borrowed have exceeded the obligations of the City for such preceding year in respect of—

- (a) operating expenses of the City;
- (b) expenditure on or in repayment of loans for capital replacements as determined in clause (c) of Section 1 of this Article; 30
- (c) charges for the payment of principal and interest on the General Debentures and on all debenture debt incurred from time to time for other than school purposes;
- (d) expenses for relief as defined in clause (d) of Section 1 of this Article;
- (e) expenses of an extraordinary character as defined in clause (e) of Section 1 of this Article;
- (f) payments to the Trustees under Section 1 of this Article by reason of the operating expenses of the City exceeding the sum of \$2,115,000;—

and the City or the Board of Education shall pay to the Trustees on or before the Fifteenth day of April in any year a sum (as ascertained by the certificate of the auditor for the City) equivalent to the amount by which the total receipts of the Board of Education for the preceding fiscal year from all sources 40

except moneys borrowed have exceeded the obligations of the Board of Education for such preceding year in respect of—

- (aa) operating expenses of the Board of Education;
- (bb) expenditure on or in repayment of loans for capital replacements as determined in clause (cc) of Section 1 of this Article;
- (cc) charges for the payment of principal and interest on the School Debentures and on all debenture debt incurred from time to time for school purposes;
- 10 (dd) expenses of an extraordinary character as defined in Clause (dd) of Section 1 of this Article;
- (ee) payments to the Trustees under Section 1 of this Article by reason of the operating expenses of the Board of Education exceeding the sum of \$585,000.

For the purposes of this Section the operating capital of the City to an amount not exceeding \$325,000 shall not be deemed a receipt of the City in any fiscal year.

SECTION 3—The Trustees shall create and maintain for the purpose of paying Income Interest on the New Debentures a special fund to be known as "the Income Interest Fund" into which they shall pay from time to time three-
20 fifths of the sums received by them from the City under Section 1 of this Article IV. The Income Interest Fund shall be maintained in a deposit account in Ontario with a chartered bank of the Dominion of Canada or a trust company authorized to do business in Ontario. Such account shall be in the names of the Trustees and shall be designated as "Income Interest Fund."

SECTION 4—The moneys so paid into the Income Interest Fund and any other moneys from time to time at the credit thereof shall be accumulated in the said Fund until the amount to the credit thereof including interest, if any, thereon shall be at least \$191,030.00. If on the Thirtieth day of April in any
30 year the moneys to the credit of the Income Interest Fund amount to at least \$191,030.00, the Trustees shall forthwith authorize a distribution of Income Interest to the holders of the New Debentures payable on the next succeeding thirtieth day of June, and shall forthwith determine the aggregate amount of such distribution, which shall be in their discretion but not less than \$191,030.00 and may exceed that amount. The Trustees shall also forthwith notify the Treasurer of the City in writing by registered post that they have authorized such distribution in the aggregate amount so determined. The Treasurer shall thereupon compute the amount of Income Interest payable in
40 respect of each and every New Debenture then outstanding pursuant to the basis of computation set forth in Article V hereof, and shall on or before the fifteenth day of the said month of June deliver a statement of such computation to the Windsor Branch of The Canadian Bank of Commerce. On or before the twenty-fifth day of the said month of June the Trustees shall pay to the Windsor (Ontario) Branch of The Canadian Bank of Commerce for the credit of Income Interest Account the amount of the said distribution with the

In the Supreme Court of Ontario Exhibits No. 2 (a) 73 Scheme of Funding and Refunding the Debts of the Amalgamated Municipalities, 1936

Continued

Continued

necessary authority to enable the said Bank to pay out of such account Income Interest to the holders of the New Debentures. The Trustees shall give such public notice of each proposed distribution of Income Interest as they may consider proper under the circumstances.

SECTION 5—If on the thirtieth day of April in any year the moneys at the credit of the Income Interest Fund when added to the total amount of Mandatory Interest payable during such year on all of the New Debentures then outstanding would exceed an amount equivalent to five per cent. (5%) of the aggregate principal amount of the New Debentures then outstanding, a sum equivalent to such excess shall be transferred by the Trustees from the Income Interest Fund and paid into the Sinking Fund created under Section 7 of this Article IV. 10

SECTION 6—Any amount to the credit of the Income Interest Fund on the thirty-first day of December, 1995, shall be paid by the Trustees to the Treasurer of the City, to be applied in payment of the principal of the New Debentures.

SECTION 7—The Trustees shall create and maintain for the purpose of providing a sinking fund for the purchase of the New Debentures from time to time a special fund to be known as “the Sinking Fund” into which they shall pay from time to time two-fifths of the sums received by them from the City under Section 1 of this Article IV and all sums received by them from the City and the Board of Education under Section 2 of this Article IV. The Sinking Fund shall be maintained in a deposit account in Ontario with a chartered bank of the Dominion of Canada or a trust company authorized to do business in Ontario. The account shall be in the names of the Trustees and shall be designated as “Sinking Fund.” 20

SECTION 8—The moneys so paid into the Sinking Fund from time to time shall be applied from time to time at the discretion of the Trustees in the purchase of New Debentures. Such New Debentures so purchased shall be forthwith cancelled by the Trustees and delivered to the Treasurer of the City who shall forthwith on receipt thereof destroy them. The Trustees shall not in any calendar year prior to the year 1946 apply moneys at the credit of the Sinking Fund in excess of the amount of \$150,000 toward the purchase of New Debentures. 30

SECTION 9—In any calendar year prior to the year 1946 in which the taxes levied by the City are not less than the taxes levied in the preceding year but are insufficient to pay the obligations of the City and the Board of Education in respect of the items set out in clauses (a), (b), (c), (d), (e), (f) and (aa), (bb), (cc), (dd) and (ee) of Section 2 of this Article IV, the Trustees shall, if requested by the City, apply to the payment of Mandatory Interest any amount at the credit of the Sinking Fund after setting aside the aforesaid sum of \$150,000 used or which may be used in the purchase of New Debentures as provided in Section 8 of this Article IV. 40

SECTION 10—All moneys from time to time at the credit of the Sinking Fund may be invested in the name of the Trustees in securities in which

Trustees are by the laws of Ontario authorized to invest trust funds, except mortgages and (subject to the provisions of Section 8 of this Article IV) New Debentures; and any other debentures of the City hereafter issued. The Trustees may also from time to time lend to the City for purposes of capital expenditure on the security of debentures of the City other than New Debentures such amounts as when added to all previous outstanding loans made by the Trustees to the City shall not exceed twenty per cent. (20%) of the moneys then at the credit of the Sinking Fund and available for investment.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme of Fund-
ing and Refunding
the Debts of the
Amalgamated
Municipalities,
1936
Continued

SECTION 11—Any investments or loans made from time to time out of the Sinking Fund may be liquidated by the Trustees at any time in their discretion and shall be liquidated not later than the 30th day of June, 1995. The proceeds of such liquidation from time to time shall be paid into the Sinking Fund. Any amount to the credit of the Sinking Fund on the 31st day of December, 1995, shall be paid by the Trustees to the Treasurer of the City, to be applied in payment of the principal of the New Debentures.

ARTICLE V

COMPUTATION OF INCOME INTEREST

Income Interest shall be computed and payable in accordance with the following provisions:

1. Out of the moneys which the Trustees shall authorize in any year to be distributed as Income Interest pursuant to Section 4 of Article IV hereof there shall be divided pro rata among and paid to the holders of the New Debentures of Series B and Series BB, an amount equivalent to three-quarters of one per cent. of the principal amount of the New Debentures of the said Series B and Series BB then outstanding.

2. The balance of the moneys so authorized by the Trustees to be distributed as Income Interest shall be set apart for payment to the holders of the New Debentures of the remaining Series, being Series AX, Series AY, Series CX, Series CY, Series DX, Series DY, Series AAX, Series AAY, Series CCX, Series CCY and Series DDY, and shall be apportioned as follows:

(a) An amount equivalent to 15% of such balance shall be made available for distribution to the holders of New Debentures of Series AX, Series AY, Series AAX and Series AAY, hereinafter collectively called "Group A";

(b) An amount equivalent to 76% of such balance shall be made available for distribution to the holders of New Debentures of Series CX, Series CY, Series CCX and Series CCY, hereinafter collectively called "Group C";

(c) An amount equivalent to 9% of such balance shall be made available for distribution to the holders of New Debentures of Series DX, Series DY and Series DDY, hereinafter collectively called "Group D."

In the Supreme Court of Ontario Exhibits No. 2 (a) 73 Scheme of Funding and Refunding the Debts of the Amalgamated Municipalities, 1936

Continued

3. (a) In any distribution of Income Interest prior to the year 1952 the holders of the New Debentures of any Series of Group A or Group C or Group D shall be entitled, collectively, to receive an amount out of the moneys so made available for the holders of New Debentures of the whole Group of which such Series forms a part bearing the same proportion to the amount so made available for such Group as the Sacrifice of Interest of all the debentures of such Series bears to the Sacrifice of Interest of all the debentures of all the Series of such Group.

The "Sacrifice of Interest" above referred to is the figure resulting from the multiplication of the principal amount of a new debenture by the figure set out opposite the designating letters of the Series of which the new debenture forms a part, as follows:

Series	AX.....	3
"	AY.....	4
"	CX.....	1.5
"	CY.....	2.5
"	DX.....	3.5
"	DY.....	4.5
"	AAX.....	3
"	AAZ.....	4
"	CCX.....	1.5
"	CCY.....	2.5
"	DDY.....	4.5

20

The money which the holders of the New Debentures of each Series collectively are entitled to receive under this Clause (a) of paragraph 3 of Article V hereof shall be divided pro rata among and paid to such holders.

(b) In any distribution of Income Interest subsequent to the year 1951 the moneys made available under paragraph 2 of this Article V for distribution among the holders of New Debentures of each Group shall be divided pro rata among and paid to such holders.

30

4. If a distribution of Income Interest on the basis above set forth would otherwise result in the holders of all the New Debentures of any Series receiving, collectively, in any year interest (including both Mandatory Interest and Income Interest) to an amount in excess of five per cent. (5%) of the principal amount of the outstanding debentures of such Series, such excess shall be divided, first among the holders of the New Debentures of all the remaining Series of the Group of which such first-mentioned Series forms a part, and, if and when such distribution would result in the holders of all the New Debentures of any Group receiving interest (including Mandatory Interest and Income Interest) at a rate in excess of five per cent. (5%) of the aggregate principal amount of the outstanding debentures of such Group, such excess shall be divided among the holders of the New Debentures of the remaining Group or Groups in the percentage and proportions set out in paragraphs 2 and 3 respectively of this Article V.

40

ARTICLE VI

PAYMENT OF ARREARS OF INTEREST AND UNPRESENTED
COUPONS

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme of Fund-
ing and Refunding
the Debts of the
Amalgamated
Municipalities,
1936

Continued

SECTION 1—The Fiscal Agent shall forthwith open a deposit account with the Windsor (Ontario) Branch of The Canadian Bank of Commerce in the name of "C. W. McDiarmid, Fiscal Agent, City of Windsor," and the City shall thereupon forthwith pay into the said account the sum of \$2,541,551.00 by way of Arrears of Interest, to be applied by the Fiscal Agent in full payment, satisfaction and settlement of all interest accrued due on the debts owing to the creditors of East Windsor, Walkerville and Windsor. The holders of New Debentures of the several series except Series DX, Series DY and Series DDY shall be entitled to receive by way of Arrears of Interest the amount expressed in Coupon No. 1 attached to each of the New Debentures to be issued to them pursuant to this Plan. The basis upon which Arrears of Interest are computed is indicated in the Second Schedule hereto. The column numbered 3 in the said Second Schedule indicates the said interest accrued, and the column numbered 4 in the said Second Schedule indicates the percentage of interest accrued which will be paid as Arrears of Interest.

SECTION 2—Any moneys received or recovered from Imperial Bank of Canada as a result of the litigation referred to in the Notes to item numbered 3 in Part 13 of the Second Schedule hereto shall be set aside and applied as follows:

- (a) The sum of \$8,481.00 shall be paid to the Fiscal Agent and applied in the manner provided in respect thereof in Section 2 of Article XI hereof;
- (b) The balance, if and to the extent that it is received or recovered in whole or part satisfaction of the claim that it represents moneys earmarked or held in trust for the holders of Sandwich debentures, shall be paid to the Fiscal Agent and made available for Arrears of Interest;
- (c) If the portion of the said balance remaining after the payment to the Fiscal Agent under clause (b) of this Section 2 is not less than the difference between \$134,440.00 and the amount of such payment to the Fiscal Agent under said clause (b), there shall be paid to the Fiscal Agent and made available for Arrears of Interest a sum equivalent to the difference between \$119,815.00 and the amount so paid to the Fiscal Agent under said clause (b);
- (d) If the portion of the said balance remaining after payment to the Fiscal Agent under the said clause (b) is less than the difference between \$134,440.00 and the amount of such payment to the Fiscal Agent under said clause (b) there shall be paid to the Fiscal Agent and made available for Arrears of Interest a sum bearing the same ratio to the amount of such remaining portion as the difference between \$119,815 and the amount so paid to the Fiscal Agent under said clause (b) bears to the difference between \$134,440.00 and the amount so paid to the Fiscal Agent under said clause (b);

(e) Any moneys not paid to the Fiscal Agent under clauses (a), (b), (c) and (d) of this Section 2 shall be paid to or retained by the City.

SECTION 3—As soon as any moneys are so available for Arrears of Interest under Section 2 of this Article VI the Fiscal Agent shall open an account with the Windsor (Ontario) Branch of The Canadian Bank of Commerce in the name of "C. W. McDiarmid, Fiscal Agent, Sandwich Arrears," and the City (or if he has already received the same the Fiscal Agent) shall thereupon forthwith pay into the said account the moneys so available. The holders of New Debentures of Series DX, Series DY and Series DDY bearing Interest Arrears Warrants shall be entitled on surrendering such warrants to the said Bank to receive out of the moneys so deposited an amount bearing the same proportion to the amount expressed in the Interest Arrears Warrant so surrendered as the moneys so made available and deposited in the said Bank bear to the sum of \$119,815.00. 10

SECTION 4—The Fiscal Agent, on the presentation and surrender of any of the debentures of the Amalgamated Municipalities from which there have been detached any unpaid coupons for interest accrued since default in payment thereof shall be entitled as a condition of delivering New Debentures pursuant to Section 8 of Article III hereof to detach from such New Debentures coupon No. 1 and make such adjustment of Arrears of Interest in respect thereof including payment to the holders of such coupons when presented as he may deem proper under the circumstances, and such adjustment shall be final and binding on all parties. 20

SECTION 5—The Fiscal Agent shall forthwith open a deposit account with the Windsor (Ontario) Branch of The Canadian Bank of Commerce in the name of "C. W. McDiarmid, Fiscal Agent, Unpresented Coupons," and the City shall thereupon forthwith pay into the said account the sum of \$14,365.86 to be applied in payment of Unpresented Coupons. The holders of Unpresented Coupons shall be entitled to receive payment out of the said account of the amount of the face value of such coupons. A list of the Unpresented Coupons is set out in the Third Schedule hereto. 30

SECTION 6—The City and the Fiscal Agent and the said Bank shall cease to be liable for payment of any Arrears of Interest coupons and Unpresented Coupons and Interest Arrears Warrants which are not presented for payment prior to the 31st day of December, 1942. Any balances to the credit of any of the accounts in the said Bank directed to be opened under this Article VI shall forthwith after the 31st day of December, 1942, be transferred to the Trustees and shall by them be paid into the Income Interest Fund.

ARTICLE VII

READJUSTMENT OF MANDATORY INTEREST

The Trustees shall, during the year 1940, cause a financial survey to be made to those areas of the City which formerly constituted East Windsor and Sandwich, and if the total assessment or levy for taxes in either or both of such areas has increased or improved to an extent sufficient, in the opinion of the Trustees to justify an increase in the rates of Mandatory Interest payable on 40

the New Debentures of Series designated as Series AX Series AY, Series AAX and Series AAY and/or Series DX Series DY and Series DDY or any of them, the Trustees may, by resolution, provide for such increase or increases in the Mandatory Interest payable on the debentures of the said Series, or either Group of them, during the five years commencing with January 1st, 1941, as they may consider to be justified by such increase and improvements.

In the Supreme Court of Ontario Exhibits No. 2 (a) 73 Scheme of Funding and Refunding the Debts of the Amalgamated Municipalities, 1936

Continued

If the Trustees so increase the rate or rates of Mandatory Interest, New Debentures then outstanding of the Series in respect of which such increased rates apply shall be deemed to be amended as though the mandatory rates applicable thereto under Section 3 of Article III hereof were expressed to be at such increased rate or rates

A financial survey similar to the aforesaid survey shall again be made during the year 1945 for the like purposes and the Trustees shall have the like powers of increasing the said rates of Mandatory Interest with the like results, and such survey shall be repeated at quinquennial intervals for the like purposes and with the like results until 1990.

The trustees, however, shall not provide for any increase in the rate of Mandatory Interest which obligates the City to pay interest at a rate exceeding five per cent. (5%) per annum on the principal amount of any of the said New Debentures.

ARTICLE VIII TRUSTEES

SECTION 1—There shall be constituted for the duties herein imposed upon them a Board of Trustees consisting of three members. The first members shall be A. McPherson, of London, Ontario, nominated by the Protective Committees formed by debenture holders of the Amalgamated Municipalities, and two other persons, one of whom is to be appointed by the Treasurer of Ontario and the other to be appointed by the City. The Treasurer of Ontario and the City shall make the aforesaid appointments within one month after the Board has made an order approving of this Plan.

A. McPherson shall hold office until his successor is appointed as hereinafter provided, the appointee of the Treasurer of Ontario shall hold office until December 31st, 1938, and the appointee of the City shall hold office until December 31st, 1937.

On or before December 31st, 1937, the City shall appoint a Trustee to succeed their first appointee, and the successor so appointed shall be a member of the Trustees for a period of two years until December 31st, 1939. On or before December 31st, 1939, the City shall again appoint a successor to be a Trustee for a like period of two years, and so on from time to time.

On or before December 31st, 1938, the Treasurer of Ontario shall appoint a Trustee to succeed his first appointee, and the successor so appointed shall be a member of the Trustees for a period of two years until December 31st, 1940. On or before December 31st, 1940, the Treasurer shall again appoint a successor to be a Trustee for a like period of two years, and so on from time to time.

Continued

The successor of A. McPherson from time to time shall be appointed in the following manner: A. McPherson shall nominate in writing two other persons to constitute with him a panel, of which he shall be the senior member. If at any time a member of the said panel dies, resigns or is incapable of acting, the senior remaining member of the panel shall nominate in writing a person to fill the vacancy on the panel, and so on from time to time. The senior member of the panel from time to time shall be a member of the Board of Trustees. Priority of nomination to the panel shall determine the seniority of members of the panel. The senior member of the panel shall from time to time file with the Treasurer of Ontario and the City the written nomination of each member of the panel and his written acceptance thereof. 10

If at any time the appointee of the Treasurer of Ontario or of the City shall, before the expiration of his term of office, die, resign or be incapable of acting, the Treasurer of Ontario or the City, as the case may be, shall forthwith appoint his successor to fill his unexpired term.

The appointee of the Treasurer of Ontario shall be the Chairman of the Trustees.

If at any time the senior member of the panel or the Treasurer of Ontario or the City fails to make any nomination or appointment to the panel or for Trustee within one month after the time above provided for such nomination or appointment, the Board may upon the application of any Trustee make such nomination or appointment. 20

SECTION 2—The Trustees shall act without remuneration but shall be entitled to receive their actual expenses incurred in attending meetings of the Trustees or while engaged on the business of the Trustees. The Trustees may in connection with the execution of their duties and powers appoint or employ accountants, bankers, solicitors or other experts or agents or employees and shall not be responsible for misconduct of such appointees or employees. The City shall pay to the Trustees their expenses incurred as aforesaid or in connection with the services of such appointees or employees. The City shall not, however, be obligated to pay to the Trustees amounts in excess of \$5,000 in the aggregate for expenses so incurred in any one year without the approval of the Board which may be given on the application of any Trustee. 30

SECTION 3—The Trustees and their duly authorized representatives shall have the right to inspect any or all books or records of the City and/or the Board of Education and/or any other local board at any time and to demand and receive full explanations thereof and of any other matters relevant to this Plan, and all officials, agents and servants of the City and/or the Board of Education and/or any local board shall furnish such information when so requested. 40

ARTICLE IX SUPERVISION

Section 1—For all purposes of this Plan and the execution and administration thereof, the City and all local boards, except as herein otherwise provided, shall, subject to the provisions hereof, be under the jurisdiction of the Board and the control of the Department to the same extent as now provided

in Part III of the Department of Municipal Affairs Act, 1935. Such supervision and control shall be continued until such time as the Trustees by unanimous resolution determine that it is no longer necessary. No amendment or repeal of the said Statute which does not result in the abolition of the Board and the Department without the appointment of successors shall relieve the City from such supervision and control.

In the Supreme
Court of Ontario
Exhibits
No. 2 (a) 73
Scheme of Fund-
ing and Refunding
the Debts of the
Amalgamated
Municipalities,
1936

Continued

ARTICLE X

Upon delivery of the New Debentures to the Fiscal Agent as provided in Section 7 of Article III hereof all debts of the Amalgamated Municipalities, whether direct or indirect and whether by way of contribution or otherwise, shall be deemed to be paid and discharged and the rights of the creditors of the Amalgamated Municipalities shall be limited to receiving New Debentures and Arrears of Interest in accordance with the provisions of Articles III and VI hereof respectively.

ARTICLE XI

GENERAL

SECTION 1—If any person shall on or before the 31st day of December 1937, make a claim against the City of a nature provable under the Bankruptcy Act in respect of a debt of any of the Amalgamated Municipalities for which this Plan makes no other provision, and shall establish the validity of such claim and debt to the satisfaction of the City or of a Court of competent jurisdiction, the City shall issue to such person in full settlement thereof, including accrued interest, a debenture of like tenor and effect as the New Debenture which would have been issuable hereunder in satisfaction of a debt of the same kind and amount.

SECTION 2—The City shall forthwith pay the Fiscal Agent the sum of \$182,686.00 (and if and when any moneys are received or recovered from Imperial Bank of Canada as a result of the litigation referred to in the notes to item numbered 3 in Part 13 of the Second Schedule hereto the additional sum of \$8,481.00) and the Fiscal Agent shall apply the said moneys or so much thereof as may be necessary for those purposes in payment of the expenses of the Protective Committees formed by the holders of debentures of the Amalgamated Municipalities and in payment of the expenses of the Windsor Finance Commission incurred in connection with the funding and refunding of the debts of the Amalgamated Municipalities but not in connection with any other duties performed or services rendered by them. Any surplus out of the amount or amounts so paid to the Fiscal Agent and not required by him for payment of the aforesaid expenses shall be paid by him to the Trustees and shall by them be paid into the Income Interest Fund.

SECTION 3—The Fiscal Agent shall keep a register or registers in which shall be recorded a list of the persons to whom he delivers the New Debentures and such other registers or books as he may deem necessary or proper in order to record the matters herein authorized to be done, and the Fiscal Agent on completion of the performance of the duties hereby imposed on him shall

AND WHEREAS for the purpose of effecting the amalgamation provided for by the said Act and of fully effectuating and carrying into effect the provisions thereof and of the functioning of the New City of Windsor, the approval of such a Plan is essential;

AND WHEREAS on the 22nd, 23rd, 24th, 29th and 30th days of the month of September, 1936, and on the 1st, 6th, 7th, 8th, 9th, 20th and 21st days of the month of October, 1936. the Board heard the evidence adduced on behalf of the Fiscal Agent for The Corporation of the City of Windsor, the said City, the Board of Education of the said City, The Windsor Utilities
 10 Commission, the Debenture Holders' Protective Committees of the four aforesaid former Municipalities, The Canadian Bank of Commerce, Bank of Montreal, W. L. McKinnon, The Hydro Electric Power Commission of Ontario and upon hearing counsel for the aforesaid parties and for the Department of Municipal Affairs for the Province of Ontario, Imperial Bank of Canada, O. L. Bickford, Workmen's Compensation Board, Guaranty Trust Company of Canada, and the Board having rendered its decision on the 21st day of December, 1936, and an agreement having been reached between the said City and the majority of the creditors represented on the hearing in
 20 accordance with the terms and provisions set forth in the Plan hereinafter referred to, the Board did this day vary and amend its said order accordingly.

1. THE BOARD ORDERS pursuant to the provisions of The City of Windsor (Amalgamation) Act, 1935, The Ontario Municipal Board Act, 1932, The Department of Municipal Affairs Act, 1935, and Amendments to the said Acts, and all other authority thereunto enabling, that the Plan for Funding and Refunding the debts of the Amalgamated Municipalities of East Windsor, Walkerville, Windsor and Sandwich, a copy of which is attached hereto and forms Schedule "A" to and is a part of this Order, be and the same is hereby authorized, approved, ratified and confirmed.

2. THE BOARD FURTHER ORDERS for the purpose of giving effect
 30 to the aforesaid Plan that—

(a) The Bylaw, a copy of which is attached hereto and made Schedule "B" and part of this Order, be forthwith passed by the Municipal Council of the Corporation of the City of Windsor, and.

(b) The Mayor and Treasurer of the Corporation of the City of Windsor on behalf of the said Corporation, do forthwith and without further authorization make the payments provided in Article VI, Section 1; Article VI, Section 5; Article VI (a), Section 1; and Article XI, Section 2 of the aforesaid Plan, for the purposes therein respectively set forth.

3. THE BOARD FURTHER ORDERS that notwithstanding the
 40 generality of the foregoing, the provisions of the said Plan are hereby made rules and regulations and the Board orders and directs all Municipal corporations and local Boards thereof and other persons, and particularly the Municipal Council of The Corporation of the City of Windsor, and every local Board of the said City and every officer and servant thereof to do all acts and things and execute all cheques, documents and other papers necessary

In the Court of
 Appeal for Ontario
 Exhibits
 No. A
 Order of The
 Ontario Municipal
 Board Approving
 the Scheme of
 Funding and Re-
 funding the Debts
 of the Amal-
 gamated Muni-
 cipalities, June 15,
 1937

Continued

In the Court of Appeal for Ontario
 Exhibits
 No. A
 Order of the Ontario Municipal Board Approving the Scheme of Funding and Refunding the Debts of the Amalgamated Municipalities, June 15, 1937

or proper for the purpose of giving effect to the provisions of the aforesaid Plan and of this Order.

4. AND THE BOARD FURTHER ORDERS and reserves all jurisdiction conferred upon it by Section 33 (h) of The Department of Municipal Affairs Act, 1935, relating to the Local Improvement rates and charges imposed or to be imposed from time to time by the said Corporation of the City of Windsor.

ORDER signed this 15th day of June, 1937.

“E. W. CROSS,”

Chairman. 10

Continued

(SEAL)

ARTICLE I

OBJECT AND SCOPE OF PLAN

SECTION 1—The object of this Plan is to provide for the funding and refunding of the debts of the Amalgamated Municipalities. Immediately prior to their dissolution the debts of these Municipalities (including arrears of interest accrued to December 31st, 1935, and subject to certain minor adjustments) amounted in the aggregate to \$40,432,906.94, (exclusive of \$209,767.20 referred to in Article III, Section 1 (a)), part of which was secured by debentures. Of that aggregate indebtedness there had been incurred for all purposes except public and separate school purposes debts to the amount of \$30,449,974.87 and for public school purposes debts to the amount of \$4,180,562.32 and the accrued interest thereon amounted to \$5,802,369.76. These debts (exclusive of interest) were distributed as follows: 20

Municipality	General Purposes	School Purposes
East Windsor.....	\$5,726,881.67	\$ 892,216.86
Walkerville.....	4,146,743.85	346,198.43
Windsor.....	16,692,040.81	2,417,605.58
Sandwich.....	3,884,308.54	524,541.45

SECTION-2—It is proposed to fund and refund the principal of the aforesaid debts of the Amalgamated Municipalities amounting to \$34,630,537.19 by creating debentures of the New City to the same principal amount and by issuing such debentures to or for the creditors of the Amalgamated Municipalities in discharge of all liability to them for such principal. It is proposed to discharge all liability for the accrued interest amounting to \$5,802,369.76 by distributing among the creditors cash in the amount of \$2,508,866.76 on the basis set out in Article VI hereof. Apart from arrangements herein set forth for liquidating certain of the current indebtedness of The Canadian Bank of Commerce it is not proposed in this Plan to differentiate between debts formerly secured by debentures and debts not so secured, nor is it proposed to differentiate between any classes of creditors as to principal, the intention being that every creditor shall receive debentures of the New City in the same principal amount as the principal amount of the debt owing to him by the Amalgamated Municipality. It is, however, proposed to differentiate between classes of creditors as to interest, the intention being that creditors of each of the Amalgamated Municipalities shall receive a rate of interest 40

different from that received by the creditors of each of the other Amalgamated Municipalities and that Income Interest shall be varied according to the rates formerly payable on the debt. In this respect the Plan recognizes differences in the capacity of the several Municipalities to meet interest obligations. It will therefore be necessary to issue the debentures of the New City in several series so as to distinguish (a) the debts incurred by each of the Amalgamated Municipalities, (b) the debts incurred for public school purposes, and (c) the debts incurred at interest rates greater or less than a certain percentage. The Plan embodies the principle that a minimum

10 fixed rate of interest (referred to in the Plan as "the mandatory rate" or "mandatory interest") shall be paid on the debentures of each series and that if the combined operating expenditure of the New City and of the Board of Education for Public School purposes exceeds in any year \$2,900,000, an amount equivalent to 125% of such excess shall be paid into special funds and shall be applied in payment of additional interest (referred to in this Plan as "income interest") and in the purchase and redemption of debentures. The income interest payments should therefore assist in equalizing the mandatory rates as between the several Municipalities. The Plan also embodies the principle that surplus revenue of the City not required to meet operating

20 expenditure, mandatory interest and income interest or payments to the Special Fund shall be paid to a Sinking Fund to be applied in the purchase and redemption of debentures.

SECTION 3—In order to give effect to the aforesaid differentiations in mandatory interest and income interest it is proposed to issue the debentures of the New City in several series, of which the designating letters shall be as follows: AX, AY, B, CX, CY, DX, DY, AAX, AAY, BB, CCX, CCY, and DDY. Debentures of Series AX, AY, AAX and AAY will be issued to fund and refund the debts of East Windsor, those designated AX and AY being

30 applicable to debts contracted for general purposes as set out in Section 1 of this Article, and those designated AAX and AAY being applicable to the debts contracted for school purposes as set out in said Section 1. Similarly, the debentures of the series bearing the designating letters B or BB will be issued to fund and refund the debts of Walkerville, the series bearing the designating letters CX, CY, CCX or CCY the debts of Windsor, and the series bearing the designating letters DX, DY or DDY the debts of Sandwich. The letter X or the letter Y in the designating letters of a series will indicate whether the debt to be refunded by such series carried interest at a rate not exceeding 5.49% or at a rate exceeding 5.49%, as the case may be. The amount of income interest payable on a debenture depends partly on this differentiation.

40

ARTICLE II INTERPRETATIONS

In this Plan the following words, phrases and expressions shall, wherever used, if the context permits, have the following meanings:

1. "This Plan," "the Plan," "hereby," "herein," "hereto" and "hereunder" mean and refer to the Plan herein set out for funding and refunding the debts of the Amalgamated Municipalities and the Schedules thereto.

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

2. "Amalgamated Municipalities" means East Windsor, Walkerville, Windsor and Sandwich severally.

3. (a) "East Windsor" means the Municipality and Corporation of the City of East Windsor as existing prior to the date of its dissolution.

(b) "Walkerville" means the Municipality and Corporation of the Town of Walkerville as existing prior to the date of its dissolution.

(c) "Windsor" means the Municipality and Corporation of the City of Windsor as existing prior to the date of its dissolution.

(d) "Sandwich" means the Municipality and Corporation of the Town of Sandwich as existing prior to the date of its dissolution. 10

4. "The City" or "the New City" means the Municipality and Corporation of the City of Windsor incorporated under the provisions of The City of Windsor (Amalgamation) Act, 1935.

5. "New Debentures" means the debentures of the City created and issued pursuant to this Plan.

6. "General Debentures" means the New Debentures issued by the City for the purpose of funding and refunding debts incurred by the Amalgamated Municipalities for all purposes except public and separate school purposes but including debts incurred for public school purposes to the extent of \$91,811.19 under Bylaws Nos. 1315, 2463 and 1738 of Windsor and the debt of \$229,- 20 618.10 referred to in Part 14 of the Second Schedule hereto.

7. "School Debentures" means the New Debentures issued by the City for the purpose of funding and refunding debts incurred by the Amalgamated Municipalities for public school purposes except to the extent of \$321,429.29 as set out in Clause 6 above.

8. "Mandatory Interest" means interest payable on the New Debentures at fixed rates per cent. per annum half-yearly as provided in this Plan.

9. "Income Interest" means interest payable on the New Debentures as provided in Article IV hereof and computed in the manner provided in Article V hereof. 30

10. "Arrears of Interest" means the amount payable as set out in Article VI hereof to creditors of the Amalgamated Municipalities for and in full settlement of interest accrued due on their debts and owing and unpaid as of December 31st, 1935, but not including the amount due on unrepresented coupons as herein defined.

11. "Interest Arrears Warrant" means the coupons attached to New Debentures of Series DX, DY and DDY representing the right of the holder thereof to receive, if and when paid, Arrears of Interest as set out in Section 3 of Article VI hereof.

12. "Unrepresented Coupons" means the interest and the coupons there- 40 fore on the debentures of the Amalgamated Municipalities which accrued due prior to default in payment of interest on such debentures and were not presented for payment when due and a list of which is set out in the Third Schedule hereto.

13. "Fiscal Agent" means Chester W. McDiarmid, Fiscal Agent of the City, and his successor duly appointed from time to time by the Board.

14. "Board" means the Ontario Municipal Board and its successor from time to time.

15. "Trustees" means the Board of Trustees from time to time as established under Article VIII hereof.

16. "Board of Education" means the Board of Education of the City and any successor and successors exercising the same authority as vested in the said Board of Education on the 1st day of June, 1936.

17. "Local Board" means and includes any School Board, Public Utility Commission, Transportation Commission, Public Library Board, Board of
10 Park Management, Local Board of Health, Board of Police Commissioners and any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes including school purposes of the City or the Amalgamated Municipalities, but shall not, in any case, include a Separate School Board.

18. "Department" means the Department of Municipal Affairs of the Province of Ontario or any other Governmental or Departmental authority exercising the same or similar jurisdiction over Ontario municipalities as is now exercised by the said Department of Municipal Affairs.

20 19. "Arrears of Taxes for 1932 and prior years" means and includes all moneys received by the City after December 31st, 1935, and prior to January 1st, 1947, from or in respect of—

(a) Taxes levied by Windsor in any year down to the year 1932 and including any amounts paid for the redemption of properties against which tax arrears certificates have been registered or which have been offered for sale at tax sales; and

(b) The sale of properties in respect of which taxes are in arrears; and

30 (c) Surplus revenue from rental of properties in the possession of the City either by reason of the registration of tax arrears certificates or otherwise by reason of the non-payment of taxes;

Provided that as to the foregoing clauses (b) and (c) such definition shall mean an amount of moneys bearing the same proportion to the moneys so received in respect of each such property as all taxes in arrears at the end of the year 1932 bear to the aggregate amount of all taxes in arrear in respect of any such property; And provided further that nothing in this definition contained shall preclude the application of any surplus revenue from rentals to diminish the amount payable for redemption of any property.

20 "Transfer Agent" means The Guaranty Trust Company of Canada and its successor duly appointed from time to time by the Board.

40 21. Words importing the singular number shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing a person or persons shall include any body corporate or politic (including a municipal corporation) and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of The
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amal-
gamated Muni-
cipalities, June 15,
1937

Continued

ARTICLE III

FORM, EXECUTION AND ISSUE OF NEW DEBENTURES

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

SECTION 1—The City shall forthwith create and issue for the purpose of giving effect to this Plan, New Debentures in the aggregate principal amount of \$34,630,537.19, of which \$30,449,974.87 in principal amount shall be “General Debentures” and designated as “City of Windsor General Refunding Debentures,” and \$4,180,562.32 in principal amount shall be School Debentures and designated as “City of Windsor Public School Refunding Debentures.”

SECTION 1 (a)—The City shall forthwith pass a Bylaw authorizing 10
the creation and issue of New Debentures of Series CY in a principal amount not exceeding \$209,767.20 (in addition to the New Debentures of that Series referred to in Section 2 of this Article III) for the purpose of providing for the liability of Windsor in respect of that amount of the debenture and other debt of The Windsor, Essex and Lake Shore Electric Railway Association set out as Item 2 in column numbered 1 of Part 21 of the Second Schedule hereto and such Bylaw shall not be revoked or altered except in pursuance of an Order of the Board. New Debentures authorized by the said Bylaw shall be issued to the Transfer Agent at such time and in such amount and shall be dealt with and delivered as the Board may order but no Debentures 20
shall be issued under the said Bylaw nor shall the City be required to levy any taxes for payment of the principal thereof or interest thereon except pursuant to order of the Board.

SECTION 2—The General Debentures shall be issued in several series, to be designated as AX, AY, B, CX, CY, DX and DY, and the School Debentures shall be issued in several series, to be designated as AAX, AAY, BB, CCX, CCY and DDY. The General Debentures of the said several series shall be issued in the following principal amounts:

Series AX in the principal amount of.....	\$ 3,459,481.92	
Series AY in the principal amount of.....	2,267,399.75	30
Series B in the principal amount of.....	4,146,743.85	
Series CX in the principal amount of.....	11,627,107.79	
Series CY in the principal amount of.....	5,064,933.02x	
Series DX in the principal amount of.....	1,107,144.46	
Series DY in the principal amount of.....	2,777,164.08	

x—Subject to increase by Order of the Board under the provisions of Section 1 (a) of this Article III by an amount not exceeding \$209,767.20.

The School Debentures of the said several series shall be issued in the following principal amounts: 40

Series AAX in the principal amount of.....	\$ 428,312.97
Series AAY in the principal amount of.....	463,903.89
Series BB in the principal amount of.....	346,198.43
Series CCX in the principal amount of.....	1,085,916.28
Series CCY in the principal amount of.....	1,331,689.30
Series DDY in the principal amount of.....	524,541.45

SECTION 3—The New Debentures shall be dated as of the First day of January, 1936, and shall mature on the Thirty-first day of December, 1975. The New Debentures of the said several series shall bear Mandatory Interest at the following rates per annum:

Series AX at the rate of two per cent. (2%)
 Series AY at the rate of two per cent. (2%)
 Series B at the rate of four per cent. (4%)
 Series CX at the rate of three and one-quarter per cent. (3¼%)
 Series CY at the rate of three and one-quarter per cent. (3¼%)
 Series DX at the rate of one and one-half per cent. (1½%)
 Series DY at the rate of one and one-half per cent. (1½%)
 Series AAX at the rate of two per cent. (2%)
 Series AAY at the rate of two per cent. (2%)
 Series BB at the rate of four per cent. (4%)
 Series CCX at the rate of three and one-quarter per cent. (3¼%)
 Series CCY at the rate of three and one-quarter per cent. (3¼%)
 Series DDY at the rate of one and one-half per cent. (1½%)

10

02

30

40

The New Debentures of the said several series shall also bear Income Interest, if and when payable, pursuant to the provisions of Articles IV and V of this Plan, computed in the manner set out in the said Article V of this Plan. The principal of the New Debentures and the Mandatory Interest and Income Interest thereon shall be payable at the Windsor (Ontario) Branch of The Canadian Bank of Commerce in lawful money of the Dominion of Canada, as to principal on the 31st day of December, 1975, and as to Mandatory Interest half-yearly on the 30th day of June and the 31st day of December in each year, the first of such Mandatory Interest payments to be payable as of the 30th day of June, 1936, and as to Income Interest, if and when payable, on the 30th day of June in each year. The City or the Trustees shall have the right at their option to redeem, either in whole or in part, before maturity the New Debentures on June 30th in any year, at the principal amount thereof together with interest accrued to the date of redemption. If less than all the New Debentures are to be redeemed at any time the New Debentures to be redeemed shall be selected by the Trustees in such manner as they may in their discretion decide. All New Debentures so redeemed as aforesaid shall be forthwith cancelled and shall not be re-issued. Notice of the redemption of any or all of the New Debentures shall be given by the City in form approved by the Trustees by the insertion once at least thirty (30) days before the redemption date thereof of a notice of such redemption in a newspaper of general circulation in the City of Windsor and a newspaper of general circulation in the City of Toronto. After the funds necessary to provide for the redemption of such New Debentures have been set apart at the place and in the manner described in such notice, no holder of a New Debenture so to be redeemed shall be entitled to receive any moneys in respect thereof except the amount so set apart for redemption of such New Debenture.

SECTION 4—The General Debentures of all series and the coupons appertaining thereto shall be in substantially the form set out in the first Schedule hereto. General Debentures of Series DX and Series DY shall carry an Interest Arrears Warrant in substantially the form set out in the

In the Court of
 Appeal for Ontario
 Exhibits
 No. A
 Order of The
 Ontario Municipal
 Board Approving
 the Scheme of
 Funding and Re-
 funding the Debts
 of the Amal-
 gamated Muni-
 cipalities, June 15,
 1937

Continued

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

said Schedule. The General Debentures of all other series shall carry an Arrears of Interest Coupon in substantially the form set out in the said Schedule. The School Debentures of all series shall be in the same form as the General Debentures of the corresponding series, save that the words "Public School" shall be substituted for the word "General" wherever it occurs thereon.

SECTION 5—Each and every General Debenture shall constitute an obligation of the City and of the ratepayers thereof from time to time, and each and every School Debenture shall constitute an obligation of the City and of the ratepayers thereof from time to time assessed as public school supporters. 10
Each and every New Debenture shall rank *pari passu* and shall be secured equally and rateably with each and every other New Debenture of any series.

SECTION 6—All New Debentures shall be sealed with the Seal of the City and shall be signed by the Mayor and the Treasurer of the City, whose signatures may be engraved, lithographed or otherwise mechanically reproduced thereon, and such engraved, lithographed or otherwise mechanically reproduced signatures shall be deemed for all purposes the signatures of the Mayor and Treasurer and shall be binding on the City. The coupons for arrears of interest and the Interest Arrears Warrants appertaining to the New Debentures shall be signed by the Fiscal Agent and all other interest 20
coupons appertaining to the New Debentures shall be signed by the Treasurer of the City and the signatures of the Fiscal Agent and of the Treasurer of the City on such coupons and warrants may be engraved, lithographed or otherwise mechanically reproduced thereon, and such engraved, lithographed or otherwise mechanically reproduced signatures shall be deemed for all purposes the signatures of the Fiscal Agent or of the Treasurer of the City, as the case may be, and shall be binding on the City.

SECTION 7—The City shall forthwith cause the New Debentures in the aggregate principal amount of \$34,630,537.19 and in such denominations and broken amounts as may be designated by the Fiscal Agent to be issued and 30
executed as aforesaid and to be delivered to the Fiscal Agent.

SECTION 8—The Fiscal Agent shall thereupon deliver all of the New Debentures so received by him to The Guaranty Trust Company of Canada, herein called the "Transfer Agent," which shall deal with and distribute the New Debentures so delivered to it as follows:

- (a) Upon presentation and surrender to the Transfer Agent of a debenture or debentures of any issue described in the column numbered 1 of Parts 1, 3, 4, 6, 7, 8, 10, 11, 12, 14 and 15 of the Second Schedule to this Plan (or upon deposit with the Transfer Agent of proof of loss or destruction thereof and indemnity in form satisfactory to it) the Transfer Agent 40
shall deliver to the person presenting and surrendering such debenture or debentures (or depositing such proof and indemnity), or in the case of registered debentures to the registered holder thereof or his duly authorized agent, a New Debenture or New Debentures of the same principal amount as the debenture or debentures so presented and surrendered (or in respect of which such proof and indemnity is deposited) and of the

series set out in column numbered 2 of the said parts of the said Second Schedule opposite the description in the said columns numbered 1 of the issue of the debenture or debentures so presented and surrendered (or in respect of which such proof and indemnity is deposited) and such delivery shall be in substitution and exchange for such debenture or debentures;

10 (b) Upon satisfactory proof and evidence being furnished to the Fiscal Agent by any creditor of the Amalgamated Municipalities whose name is set out in the column headed "Creditor" in Part 2, 5, 9 or 13 of the Second Schedule hereto of his claim as set out opposite his name in the column numbered 1 in the said Part of the said Second Schedule, and upon surrender to the Fiscal Agent by such creditor of any collateral security for his claim as set out in the Note following such creditor's name in the said column headed "Creditor" and upon execution and delivery by such creditor to the Fiscal Agent of a satisfactory release of his claim and the debt represented by it, the Fiscal Agent shall authorize the Transfer Agent to deliver to such creditor a New Debenture or New Debentures of the series set out in the column numbered 2 in the said Part of the said Second Schedule opposite the name of such creditor of the same aggregate principal amount as the amount of the claim so released, and such delivery by the Transfer Agent shall be deemed to be and shall be in payment and satisfaction of the said claim and the debt represented by it. The Fiscal Agent shall thereupon forthwith cancel any collateral security so surrendered and transmit it to the Treasurer of the City, who shall cause it to be destroyed;

20

30 (c) Upon presentation and surrender to the Transfer Agent of a debenture or debentures of any issue described in column numbered 1 of Part 16 of the said Second Schedule (or upon deposit with the Transfer Agent of proof of loss or destruction thereof and indemnity in form satisfactory to it) the Transfer Agent shall deliver to the person presenting and surrendering such debenture or debentures (or depositing such proof and indemnity), or in the case of registered debentures to the registered holder thereof or his duly authorized agent, in respect of each debenture so presented and surrendered (or in respect of which such proof and indemnity is deposited) two New Debentures each for one-half of the principal amount of the debenture so presented and surrendered (or in respect of which such proof and indemnity is deposited), and such two New Debentures shall be of the respective series set out in column numbered 2 of the said Part 16 of the said Second Schedule opposite the description in the said column numbered 1 of the issue of the debenture so presented and surrendered (or in respect of which such proof and indemnity is deposited), and such delivery shall be in substitution and exchange for such debenture or debentures;

40

(d) The Transfer Agent shall set aside and deliver to a Corporate Trustee nominated by the Board in payment and satisfaction of the indebtedness of the Amalgamated Municipalities in respect of the debenture debt of the Essex Border Utilities Commission as set out in column numbered 1 of

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

Part 17 of the Second Schedule hereto, New Debentures of the series set out in column numbered 2 of the said Part 17 opposite the figures representing the said indebtedness in the said column numbered 1 of the said Part 17 and in the same aggregate principal amount as such indebtedness. The receipt of such Corporate Trustee for the New Debentures so set aside and delivered shall constitute a valid and binding receipt to and release of the Fiscal Agent and the Amalgamated Municipalities in respect of such indebtedness. The Corporate Trustee shall hold the New Debentures so set aside and delivered to it by the Transfer Agent in trust for the holders of debentures of the Essex Border Utilities Commission to be dealt with in accordance with a plan to be prepared to take care of the liability of the debenture debt of the said Commission. Any moneys collected in respect of principal, interest or otherwise of the New Debentures so delivered to the Corporate Trustee under this Clause (d) shall be dealt with in accordance with the said plan above referred to in this Clause (d); 10

(e) (i) The Transfer Agent on receiving from the trustee for the Bondholders under the Mortgage Deed of Trust dated February 1st, 1929, securing an issue of First Mortgage Bonds on the property of Sandwich, Windsor and Amherstburg Railway Company, the Debentures of the Amalgamated Municipalities referred to in the notes in Part 18 of the Second Schedule hereto, shall deliver to the said trustee in payment and satisfaction of the indebtedness of the Amalgamated Municipalities in respect of the capital liability of Sandwich, Windsor and Amherstburg Railway Company, as set out in column numbered 1 of Part 18 of the Second Schedule hereto, New Debentures of the Series set out in column numbered 2 of the said Part 18 opposite the figures representing the said indebtedness in the said column numbered 1 and in the same aggregate principal amount of such indebtedness. Before delivery of such New Debentures the Transfer Agent shall detach therefrom coupons numbered 1 and 2; 20 30

(ii) The Transfer Agent shall deliver to the Treasurer of Ontario the coupons numbered 1 and 2 detached by the Transfer Agent from the New Debentures to be delivered by the Transfer Agent to the trustee for the Bondholders pursuant to Paragraph (i) of Clause (e) of this Section 8. The Transfer Agent shall also deliver to the Treasurer of Ontario on account of the indebtedness of the Amalgamated Municipalities in respect of the operating deficits of Sandwich, Windsor and Amherstburg Railway Company, set out in column numbered 1 of Part 19 of the Second Schedule hereto, New Debentures of the series set out in column numbered 2 of the said Part 19, opposite the figures representing the said indebtedness in the said column numbered 1 in the same aggregate principal amount as such indebtedness. The said coupons and the New Debentures shall be delivered to the Treasurer of Ontario and be in full satisfaction and discharge of all liability of the Amalgamated Municipalities to any person whatsoever; 40

(a) for the repayment of the Debentures of Sandwich, Windsor and Amherstburg Railway Company, dated the 1st day of June, 1933;

(b) for operating deficits, indebtedness or obligations of Sandwich, Windsor and Amherstburg Railway Company as of the date hereof; and

(c) for all interest now due on the capital liability of Sandwich, Windsor and Amherstburg Railway Company, as set out in column numbered 1 of Part 18 of the Second Schedule hereto and/or on the said Debentures dated the 1st day of June, 1933.

10 (f) The Transfer Agent, when instructed so to do by the Fiscal Agent, on receiving from the depository thereof the debentures of Windsor deposited as collateral security and referred to in the Note in Part 20 of the Second Schedule hereto shall set aside and deliver to the trustee for Bondholders under a certain Mortgage Deed of Trust securing the bonds of the Windsor, Essex and Lake Shore Electric Railway Association and dated February 1st, 1929, in payment and satisfaction of the indebtedness of Windsor in respect of the bond issue secured by the said Mortgage Deed of Trust, New Debentures of Series CY in the same aggregate principal amount as the amount of the said indebtedness set out in the said column numbered 1 of the said Part 20. The receipt of the said trustee above mentioned in this Clause (f) for the said New Debentures shall constitute a valid and binding receipt to and release 20 of the Fiscal Agent and Windsor in respect of the said indebtedness of Windsor and in respect of any claim by any person whether by way of debt or contribution or otherwise in respect of such indebtedness; provided, however, that before the Fiscal Agent authorizes the Transfer Agent to deliver such New Debentures to the said trustee for the Bondholders, the said trustee shall have completed the liquidation and disposition of the assets of the said Railway now in its possession or under its control, and shall have credited Windsor with its proper share of the moneys so realized; and the Fiscal Agent shall authorize the setting aside and delivery to the said trustee only New Debentures in an aggregate amount, the face value of which is equivalent to the balance of Windsor's indebtedness so ascertained in respect of such bond issue, and the delivery of such New Debentures shall be in full payment and satisfaction of Windsor's indebtedness and constitute a valid and binding receipt as aforesaid. Any New Debentures not required by the Transfer Agent for delivery to the trustee as aforesaid shall be returned to the Treasurer for cancellation;

30

40 (g) For the purpose of providing for the liability of Windsor in respect of the debenture and other debt of the Windsor, Essex and Lake Shore Electric Railway Association set out in column 1 of Part 21 of Schedule 2 hereto, the Transfer Agent shall hold in trust for the debenture holders and other creditors of the Railway New Debentures of Series CY to be issued forthwith, in the same aggregate principal amount as the amount of the indebtedness of Windsor set out in Item 1, column 1 of Part 21 of the Second Schedule hereto, and such further New Debentures as may be issued pursuant to Section 1 (a) of Article III hereof; all such New Debentures and such coupons as may be attached thereto shall be dealt

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debt
of the Amalga-
mated Muni-
cipalities, June 15
1937

Continued

with as the Board may order. The delivery by the Transfer Agent of all such New Debentures in accordance with such order of the Board shall be in full payment and satisfaction of the indebtedness of Windsor in respect of the said debenture and other debt of the said Railway Association (except the indebtedness in respect of the bond issue referred to above in Clause (f)), and the receipt of the Transfer Agent for all such New Debentures shall constitute a valid and binding receipt to and release of the Fiscal Agent and Windsor in respect of such indebtedness of Windsor and in respect of any claim by any person, whether by way of debt or contribution or otherwise in respect of such indebtedness. The receipt of the Transfer Agent for the New Debenture of Series CY to be issued forthwith as provided above shall be deemed to be in payment and satisfaction of Windsor's indebtedness to the full extent of the face value of such Debentures, and no further claim may be made by any Debenture holder or other creditor against the Fiscal Agent or Windsor with respect to such portion so discharged of the whole debt set out in column 1 of Part 21 of the Second Schedule hereto; provided that nothing herein contained shall affect or prejudice the right of the City to contribution from all or any other Municipalities liable for the said debt set out in column numbered 1 of Part 21 of the Second Schedule hereto;

(h) The Transfer Agent upon the surrender to it of any collateral security as set out in Note 2 to Part 22 of the Second Schedule hereto shall deliver to The Canadian Bank of Commerce New Debentures of the series set out in the column numbered 2 of the said Part 22 of the said Second Schedule opposite the name of the accounts in the said Bank of the same aggregate principal amount as the amount of the indebtedness set out in the column numbered 1 of the said Part. Forthwith upon such delivery by the Transfer Agent such indebtedness shall be deemed to be and shall be postponed and varied to the extent that the same shall thereupon and thereafter bear Mandatory Interest and Income Interest and the principal thereof shall be paid in the terms of the New Debentures so delivered. Such New Debentures shall be held by the said Bank as collateral security for the said indebtedness and on any interest date the said Bank may at its option elect to accept the said New Debentures at the principal amount thereof in full payment and satisfaction of the said indebtedness. The provisions of this Section 8 (h) shall be subject to the provisions of Section 2 of Article VI (a) hereof.

SECTION 9—All New Debentures shall prior to distribution thereof by the Transfer Agent pursuant to the authority of Section 8 of this Article III, be certified by the Fiscal Agent as certifying agent, but the Fiscal Agent may in his discretion appoint such Transfer Agent to perform the act of signing the certification as certifying agent.

SECTION 10—In case any of the New Debentures or coupons issued pursuant to this Plan shall become mutilated or be lost or destroyed, the City in its discretion may issue, and thereupon the Transfer Agent shall deliver another New Debenture or coupon of like date and tenor as the one mutilated, lost or destroyed, in exchange for and in place of and upon cancellation of the

10 mutilated debenture or coupon or in lieu of and in substitution for the same if lost or destroyed, and the substituted New Debenture or coupon shall be in a form approved by the Fiscal Agent. In case of loss or destruction the applicant for such substituted Debenture or coupon shall furnish to the City and to the Fiscal Agent such evidence of the loss or destruction of the New Debenture or coupon so lost or destroyed as shall be satisfactory to the City and to the Fiscal Agent in their discretion and such applicant shall also furnish indemnity satisfactory to them in their discretion. In the event of the Fiscal Agent ceasing to function and his office becoming vacant the powers conferred under this Section shall be exercised by the Treasurer of the City

SECTION 11—The Fiscal Agent shall forthwith upon receipt thereof cancel any debentures and other evidences of indebtedness of any of the Amalgamated Municipalities and any collateral securities received by him pursuant to Section 8 of this Article III, and shall deliver to the Treasurer of the City such debentures and other evidences of indebtedness and collateral securities so cancelled. The Treasurer of the City shall retain such debentures and other evidences of indebtedness and collateral securities until December 31st, 1941, and shall immediately thereafter destroy them, and it shall be the duty of the Treasurer to keep a record of such destruction.

20 SECTION 12—The Transfer Agent shall make reports to the Fiscal Agent and/or the Treasurer of the debentures delivered by him pursuant to the provisions of this Article III, exchanges effected and deliveries made by him pursuant to the provisions of this Article III at such intervals as the Fiscal Agent or the Treasurer may require.

ARTICLE IV

CREATION AND MAINTENANCE OF INCOME INTEREST FUND AND SINKING FUND

30 SECTION 1—As long as any of the New Debentures are outstanding the City shall pay to the Trustees on or before the first day of December in each year a sum equivalent to 125% of the amount by which the combined estimated operating expenses of the City and the Board of Education for Public School purposes exceed \$2,900,000. The said sum shall be levied and collected as a part of the taxes for such year of the City. Without limiting the general obligation of the City under the foregoing, and solely for the purpose of establishing as between the City and the Board of Education the proper incidence of the taxes to be levied for the foregoing purpose, such sum when payable hereunder shall be levied and collected from the ratepayers assessable for Public School purposes only to the extent of such sum or to the extent of 125% of the amount by which the estimated operating expenses
40 of the Board of Education for Public School purposes exceed \$660,000, whichever is smaller, the balance being levied against and collected from ratepayers assessable for general purposes. Provided that if the combined actual operating expenses of the City, and of the Board of Education for Public School purposes in any year exceed \$2,900,000.00 the City shall,

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of The
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amal-
gamated Muni-
cipalities, June 15,
1937

before October 1st in the following year, pay to the Trustees a sum equivalent to 125% of such excess, less any sum paid by the City to the Trustees on December 1st preceding such October 1st under the provisions of this Section; and if any amount so paid on such December 1st under the provisions of this section exceeds 125% of the excess of the combined actual operating expenses of the City, and of the Board of Education for Public School purposes over \$2,900,000.00, the City shall in the first year or years thereafter in which any amount becomes payable by the City to the Trustees under this Section 1, be entitled to a credit of an amount equivalent to such last mentioned excess.

Continued

10

“Operating expenses of the City” means and includes all moneys expended or to be expended by the City in any year for every purpose whatsoever except—

- (a) the expenses of the Board of Education for Public School purposes, the Separate School Board of the City and the Windsor Utilities Commission;
- (b) charges for payment of principal and interest on the General Debentures and on all debenture or other capital debt incurred from time to time for other than school purposes;
- (c) expenses in the nature of capital replacements; and in the event of any dispute as to whether an expense is in the nature of a capital replacement expense such dispute shall be referred to the Board whose decision shall be binding on all parties for the purposes of this Article;
- (d) expenses for relief for which the City is liable to provide under the provisions of The Unemployment Relief Act, 1935, including expenses incurred in connection with the administration thereof;
- (e) expenses of the City imposed or increased by reason of or pursuant to legislation of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario, which legislation is of general application to all municipalities in Ontario and in the opinion of the Trustees provides for an imposition and/or increase in expenses of the City of an extraordinary character not of the nature of maintenance and operation; and before providing for the payment of or paying any such extraordinary expense the City shall refer the same to the Trustees for their opinion as to its character, and the decision of the Trustees as to whether such extraordinary expenses are operating expenses within the meaning of this Section may be appealed by the City or the Board of Education to the Board whose decision or the decision of the Trustees, if no such appeal is taken, shall be final and binding on all parties for the purposes of this Article;
- (f) Arrears of Taxes for 1932 and prior years paid to and received by The Canadian Bank of Commerce.

20

40

“Operating expenses of the Board of Education” means and includes all moneys expended or to be expended by the Board of Education in any year for every purpose whatsoever except—

- (aa) general expenses of the City, including Secondary School expenses;

(bb) charges for the payment of principal and interest on the School Debentures and on all debentures or other capital debt incurred from time to time for school purposes;

(cc) expenses in the nature of capital replacements; and in the event of any dispute as to whether an expense is in the nature of a capital replacement expense such dispute shall be referred to the Board whose decision shall be binding on all parties for the purposes of this Article;

(dd) expenses of the Board of Education for Public School purposes imposed or increased by reasons of or pursuant to legislation of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario, which legislation is of general application to all Boards of Education in Ontario and in the opinion of the Trustees provides for an imposition and/or increase in expenses of the Board of Education for Public School purposes of an extraordinary character not of the nature of maintenance and operation; and before providing for the payment of or paying any such extraordinary expenses the Board of Education shall refer the same to the Trustees for their opinion as to its character, and the decision of the Trustees as to whether such extraordinary expenses are operating expenses within the meaning of this Section may be appealed by the Board of Education to the Board whose decision or the decision of the Trustees if no such appeal is taken shall be final and binding on all parties for the purposes of this Article.

SECTION 2—As long as any of the New Debentures are outstanding the City and/or the Board of Education shall pay to the Trustees on or before the Fifteenth day of April in any year a sum (as ascertained by the certificate of the auditor of the City) equivalent to the amount by which the total receipts of the City and/or the Board of Education for all purposes for the preceding fiscal year from all sources except moneys borrowed have exceeded the obligations of the City for such preceding year in respect of—

(a) operating expenses of the City;

(b) expenditure on or in repayment of loans for capital replacements as determined in clause (e) of Section 1 of this Article;

(c) charges for the payment of principal and interest on the General Debentures and on all debenture debt incurred from time to time for other than school purposes;

(d) expenses for relief as defined in clause (d) of Section 1 of this Article;

(e) expenses of an extraordinary character as defined in clause (e) of Section 1 of this Article;

(f) payments to the Trustees under Section 1 of this Article by reason of the combined operating expenses of the City and of the Board of Education for Public School purposes exceeding the sum of \$2,900,000;

(g) arrears of taxes for 1932 and prior years paid to and received by The Canadian Bank of Commerce;

(aa) operating expenses of the Board of Education;

(bb) expenditure on or in repayment of loans for capital replacements as determined in clause (cc) of Section 1 of this Article:

Continued

(cc) charges for the payment of principal and interest on the School Debentures and on all debenture debt incurred from time to time for school purposes;

(dd) expenses of an extraordinary character as defined in Clause (dd) of Section 1 of this Article;

For the purposes of this Section the operating capital of the City to an amount not exceeding \$325,000 shall not be deemed a receipt of the City in any fiscal year.

For the purposes of this Section the certificate of the auditor of the City as to the sum by which the total receipts of the City for the years 1935 and 1936 respectively have exceeded the obligations of the City for each such year and the sums necessary for the purpose of effecting this Plan shall be given to the Trustees forthwith upon the approval of this plan and thereupon the City shall pay such sums to the Trustees. 10

SECTION 3—The Trustees shall create and maintain for the purpose of paying Income Interest on the New Debentures a special fund to be known as "the Income Interest Fund" into which they shall pay from time to time one-half of the sums received by them from the City under Section 1 of this Article IV. The Income Interest Fund shall be maintained in a deposit account in Ontario with The Canadian Bank of Commerce. Such account shall be in the names of the Trustees and shall be designated as "Income Interest Fund." 20

SECTION 4—The moneys so paid into the Income Interest Fund and any other moneys from time to time at the credit thereof shall be accumulated in the said Fund until the amount of the credit thereof including interest, if any, thereon shall be at least \$125,000.00. If on the Thirtieth day of April in any year the moneys to the credit of the Income Interest Fund amount to at least \$125,000.00, the Trustees shall forthwith authorize a distribution of Income Interest to the holders of the New Debentures payable on the next succeeding thirtieth day of June, and shall forthwith determine the aggregate amount of such distribution, which shall be in their discretion but not less than \$125,000.00 and may exceed that amount. The Trustees shall also forthwith notify the Treasurer of the City in writing by registered post that they have authorized such distribution in the aggregate amount so determined. The Treasurer shall thereupon compute the amount of Income Interest payable in respect of each and every New Debenture then outstanding pursuant to the basis of computation set forth in Article V hereof, and shall on or before the fifteenth day of the said month of June deliver a statement of such computation to the Windsor Branch of The Canadian Bank of Commerce. On or before the twenty-fifth day of the said month of June the Trustees shall pay to the Windsor (Ontario) Branch of The Canadian Bank of Commerce for the credit of Income Interest Account the amount of the said distribution with the necessary authority to enable the said Bank to pay out of such account Income Interest to the holders of the New Debentures. The Trustees shall give such public notice of each proposed distribution of Income Interest as they may consider proper under the circumstances. 30 40

SECTION 5—If on the thirtieth day of April in any year the moneys at the credit of the Income Interest Fund when added to the total amount of the

Mandatory Interest payable during such year on all of the New Debentures then outstanding would exceed an amount equivalent to four and one-half per cent. ($4\frac{1}{2}\%$) of the aggregate principal amount of the New Debentures then outstanding, a sum equivalent to such excess shall be transferred by the Trustees from the Income Interest Fund and paid into the Sinking Fund created under Section 7 of this Article IV.

10 SECTION 6—Any amount to the credit of the Income Interest Fund on the thirty-first day of December, 1975, shall be paid by the Trustees to the Treasurer of the City, to be applied in payment of the principal of the New Debentures.

SECTION 7—The Trustees shall create and maintain for the purpose of providing a sinking fund for the purchase of the New Debentures from time to time a special fund to be known as "the Sinking Fund" into which they shall pay from time to time one-half of the sums received by them from the City under Section 1 of this Article IV and all sums received by them from the City and the Board of Education under Section 2 of this Article IV. The Sinking Fund shall be maintained in a deposit or savings account in Ontario with The Canadian Bank of Commerce. The account shall be in the names of the Trustees and shall be designated as "Sinking Fund." Provided, that when
20 the total of such sums so paid into the Sinking Fund in any year are less than \$160,000.00, 88% of the difference between the sum so paid and \$160,000.00 shall be levied for and collected as part of the general taxes of the City in the following year and 12% of the said difference shall be levied for and collected as a part of the taxes chargeable to Public School supporters in the following year and both such sums shall be paid into the said Sinking Fund during such following year, except that so long as the average yearly amount paid into the Sinking Fund subsequent to 1936 is in excess of \$160,000.00 no additional levy shall be required.

30 SECTION 8—The moneys so paid into the Sinking Fund from time to time shall be applied from time to time at the discretion of the Trustees in the purchase of New Debentures. Such New Debentures so purchased shall be forthwith cancelled by the Trustees and delivered to the Treasurer of the City who shall forthwith on receipt thereof destroy them. The Trustees shall not in any calendar year prior to the year 1946 apply moneys at the credit of the Sinking Fund in excess of the amount of \$150,000 toward the purchase of New Debentures, except in the year 1937 when not more than \$300,000. may be so applied by the Trustees.

40 SECTION 9—In any calendar year prior to the year 1946 in which the taxes levied by the City are not less than the taxes levied in the preceding year but are insufficient to pay the obligations of the City and the Board of Education in respect of the items set out in clauses (a), (b), (c), (d), (e), (f), (g) and (aa), (bb), (cc) and (dd) of Section 2 of this Article IV, the Trustees shall, if requested by the City, apply to the payment of Mandatory Interest any amount at the credit of the Sinking Fund after setting aside the aforesaid sum of \$150,000 used or which may be used in the purchase of New Debentures as provided in Section 8 of this Article IV.

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

SECTION 10—All moneys from time to time at the credit of the Sinking Fund may be invested in the name of the Trustees in securities in which Trustees are by the laws of Ontario authorized to invest trust funds, except mortgages and (subject to the provisions of Section 8 of this Article IV) New Debentures, and any other debentures of the City hereafter issued. The Trustees may also from time to time lend to the City for purposes of capital expenditure on the security of debentures of the City other than New Debentures such amounts as when added to all previous outstanding loans made by the Trustees to the City shall not exceed twenty per cent. (20%) of the moneys then at the credit of the Sinking Fund and available for investment.

10

SECTION 11—Any investments or loans made from time to time out of the Sinking Fund may be liquidated by the Trustees at any time in their discretion and shall be liquidated not later than the 30th day of June, 1975. The proceeds of such liquidation from time to time shall be paid into the Sinking Fund. Any amount to the credit of the Sinking Fund on the 31st day of December, 1975, shall be paid by the Trustees to the Treasurer of the City, to be applied in payment of the principal of the New Debentures.

ARTICLE V

COMPUTATION OF INCOME INTEREST

Income Interest shall be computed and payable in accordance with the 20 following provisions:

1. Out of the moneys which the Trustees shall authorize in any year to be distributed as Income Interest pursuant to Section 4 of Article IV hereof there shall be divided pro rata among and paid to the holders of the New Debentures of Series B and Series BB, an amount equivalent to one-half of one per cent. of the principal amount of the New Debentures of the said Series B and Series BB then outstanding.

2. The balance of the moneys so authorized by the Trustees to be distributed as Income Interest shall be set apart for payment to the holders of the New Debentures of the remaining Series, being Series AX, Series AY, Series 30 CX, Series CY, Series DX, Series DY, Series AAX, Series AAY, Series CCX, Series CCY and Series DDY, and shall be apportioned as follows:

(a) An amount equivalent to 16% of such balance shall be made available for distribution to the holders of New Debentures of Series AX, Series AY. Series AAX and Series AAY, hereinafter collectively called "Group A";

(b) An amount equivalent to 76% of such balance shall be made available for distribution to the holders of New Debentures of Series CX, Series CY. Series CCX and Series CCY, hereinafter collectively called "Group C";

40

(c) An amount equivalent to 8% of such balance shall be made available for distribution to the holders of New Debentures of Series DX, Series DY and Series DDY, hereinafter collectively called "Group D."

3. (a) In any distribution of Income Interest prior to the year 1952 the holders of New Debentures of any Series of Group A or Group C or Group D shall be entitled, collectively, to receive an amount out of the moneys so made available for the holders of New Debentures of the whole Group of which such Series forms a part bearing the same proportion to the amount so made available for such Group as the Sacrifice of Interest of all the debentures of such Series bears to the Sacrifice of Interest of all the debentures of all the Series of such Group.

In the Court of Appeal for Ontario
Exhibits
No. A
Order of the Ontario Municipal Board Approving the Scheme of Funding and Re-funding the Debts of the Amalgamated Municipalities, June 15, 1937

Continued

10 The "Sacrifice of Interest" above referred to is the figure resulting from the multiplication of the principal amount of a new debenture by the figure set out opposite the designating letters of the Series of which the new debenture forms a part, as follows:

Series	AX.....	3
"	AY.....	4
"	CX.....	1.75
"	CY.....	2.75
"	DX.....	3.5
"	DY.....	4.5
"	AAX.....	3
"	AAZ.....	4
"	CCX.....	1.75
"	CCY.....	2.75
"	DDY.....	4.5

20

The moneys which the holders of the New Debentures of each Series collectively are entitled to receive under this Clause (a) of paragraph 3 of Article V hereof shall be divided pro rata among and paid to such holders.

30

(b) In any distribution of Income Interest subsequent to the year 1951 the moneys made available under paragraph 2 of this Article V for distribution among the holders of New Debentures of each Group shall be divided pro rata among and paid to such holders.

40

4. If a distribution of Income Interest on the basis above set forth would otherwise result in the holders of all the New Debentures of any Series receiving, collectively, in any year interest (including both Mandatory Interest and Income Interest) to an amount in excess of four and one-half per cent. (4½%) of the principal amount of the outstanding debentures of such Series, such excess shall be divided, first among the holders of the New Debentures of all the remaining Series of the Group of which such first-mentioned Series forms a part, and, if and when such distribution would result in the holders of all the New Debentures of any Group receiving interest (including Mandatory Interest and Income Interest) at a rate in excess of four and one-half per cent. (4½%) of the aggregate principal amount of the outstanding debentures of such Group, such excess shall be divided among the holders of the New Debentures of the remaining Group or Groups in the percentages and proportions set out in paragraphs 2 and 3 respectively of this Article V.

ARTICLE VI

PAYMENT OF ARREARS OF INTEREST AND UNPRESENTED
COUPONS

SECTION 1—The Fiscal Agent shall forthwith open a deposit account with the Windsor (Ontario) Branch of The Canadian Bank of Commerce in the name of "C. W. McDiarmid, Fiscal Agent in trust for Debenture Holders and other Creditors of the Amalgamated Municipalities," and the City shall thereupon forthwith pay into the said account the sum of \$2,390,068.49 in trust by way of Arrears of Interest, to be applied by the Fiscal Agent in full payment, satisfaction and settlement of all interest accrued due on the debts owing to the creditors of East Windsor, Walkerville and Windsor, except the debts set out in column numbered 1 of Part 21 of the Second Schedule hereto. Disbursements from such account shall be made only in payment of Arrears of Interest Coupons and/or Interest Arrears Warrants as herein provided. The holders of New Debentures of the several series except Series DX, Series Dy and Series DDY shall be entitled to receive by way of Arrears of Interest the amount expressed in Coupon No. 1 attached to each of the New Debentures to be issued to them pursuant to this Plan. The basis upon which Arrears of Interest are computed is indicated in the Second Schedule hereto. The column numbered 3 in the said Second Schedule indicates the said interest accrued, and the column numbered 4 in the said Second Schedule indicates the percentage of interest accrued which will be paid as Arrears of Interest. Any payments received by Debenture Holders of Windsor on account of Arrears of Interest shall be taken into account in computing the sums to which such Debenture Holders are entitled as Arrears of Interest.

SECTION 2—Any moneys received or recovered from Imperial Bank of Canada as a result of the litigation referred to in the Notes to item numbered 3 in Part 13 of the Second Schedule hereto shall be set aside and applied as follows:

- (a) The sum of \$9,446.00 shall be paid to the Fiscal Agent and applied in the manner provided in respect thereof in Section 2 of Article XI hereof;
- (b) The balance, if and to the extent that it is received or recovered in whole or part satisfaction of the claim that it represents moneys earmarked or held in trust for the holders of Sandwich debentures, shall be paid to the Fiscal Agent and made available for Arrears of Interest;
- (c) If the portion of the said balance remaining after the payment to the Fiscal Agent under clause (b) of this Section 2 is not less than the difference between \$133,475.00 and the amount of such payment to the Fiscal Agent under said clause (b), there shall be paid to the Fiscal Agent and made available for Arrears of Interest a sum equivalent to the difference between \$118,850.00 and the amount so paid to the Fiscal Agent under said Clause (b);

(d) If the portion of the said balance remaining after payment to the Fiscal Agent under the said Clause (b) is less than the difference between \$133,475.00 and the amount of such payment to the Fiscal Agent under said Clause (b) there shall be paid to the Fiscal Agent and made available for Arrears of Interest a sum bearing the same ratio to the amount of such remaining portion as the difference between \$118,850.00 and the amount so paid to the Fiscal Agent under said Clause (b) bears to the difference between \$133,475.00 and the amount so paid to the Fiscal Agent under said Clause (b);

10 (e) Any moneys not paid to the Fiscal Agent under Clauses (a), (b), (c) and (d) of this Section 2 shall be paid to or retained by the City.

SECTION 3—As soon as any moneys are so available for Arrears of Interest under Section 2 of this Article VI the Fiscal Agent shall open an account with the Windsor (Ontario) Branch of The Canadian Bank of Commerce in the name of "C. W. McDiarmid, Fiscal Agent, Sandwich Arrears," and the City (or if he has already received the same, the Fiscal Agent) shall thereupon forthwith pay into the said account the moneys so available. The holders of New Debentures of Series DX, Series DY and Series DDY bearing Interest Arrears Warrants shall be entitled on surrendering such
20 warrants to the said Bank to receive out of the moneys so deposited an amount bearing the same proportion to the amount expressed in the Interest Arrears Warrant so surrendered as the moneys so made available and deposited in the said Bank bear to the sum of \$118,850.00.

SECTION 4—The Transfer Agent, on the presentation and surrender of any of the debentures of the Amalgamated Municipalities from which there have been detached any unpaid coupons for interest accrued since default in payment thereof shall be entitled as a condition of delivering New Debentures pursuant to Section 8 of Article III hereof to detach from such New Debentures coupon No. 1 and make such adjustment of Arrears of Interest in respect
30 thereof, including payment to the holders of such coupons when presented, as the Fiscal Agent may deem proper under the circumstances and direct and such adjustment shall be final and binding on all parties.

SECTION 5—The Fiscal Agent shall forthwith open a deposit account with the Windsor (Ontario) Branch of The Canadian Bank of Commerce in the name of "C. W. McDiarmid, Fiscal Agent, in Trust, Unpresented Coupons," and the City shall thereupon forthwith pay into the said account in trust the sum of \$14,190.10 to be applied only in payment of Unpresented Coupons. The holders of Unpresented Coupons shall be entitled to receive payment out of the said account of the amount of the face value of such coupons. A list
40 of the Unpresented Coupons is set out in the Third Schedule hereto.

SECTION 6—The City and the Fiscal Agent and the said Bank shall cease to be liable for payment of any Arrears of Interest coupons and Unpresented Coupons and Interest Arrears Warrants which are not presented for payment prior to the 31st day of December, 1943. Any balances to the credit of any of the accounts in the said Bank directed to be opened under this

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

Article VI shall forthwith after the 31st day of December, 1943, be transferred to the Trustees and shall by them be paid into the Income Interest Fund.

ARTICLE VI (a)

SECTION 1—The City shall forthwith pay to The Canadian Bank of Commerce the sum of \$6,457.55, representing the balance in Tax Arrears Account at December 31st, 1935, and the sum of \$300,000 on account of loans and advances made by the said Bank to the Supervisors for Windsor.

SECTION 2—Notwithstanding anything herein contained, The Canadian Bank of Commerce shall, until December 31st, 1946, be entitled to be paid by the City and/or to retain and apply on account of the indebtedness of Windsor to the said Bank (as shown in the Current Account set out in Part 22 of the Second Schedule hereto) any arrears of taxes for 1932 and prior years. Any moneys so received by The Canadian Bank of Commerce shall be applied by the said Bank as follows: First, in payment and satisfaction of interest due to the said Bank in respect of such Current Account at the mandatory rate of $3\frac{1}{4}\%$, and, secondly, on account of the principal due on such Current Account from time to time.

ARTICLE VII

READJUSTMENT OF MANDATORY INTEREST

The Trustees shall, during the year 1940, cause a financial survey to be made of those areas of the City which formerly constituted East Windsor, Walkerville, Windsor and Sandwich, and if the total assessment or levy for taxes in any or all of such areas has increased or improved to an extent sufficient, in the opinion of the Trustees, to justify an increase in the rates of Mandatory Interest payable on the New Debentures or any of them, the Trustees may, by resolution, provide for such increase or increases in the Mandatory Interest payable on the said debentures, during the five years commencing with January 1st, 1941, as they may consider to be justified by such increase and improvements.

If the Trustees so increase the rate or rates of Mandatory Interest, New Debentures then outstanding of the Series in respect of which such increased rates apply shall be deemed to be amended as though the mandatory rates applicable thereto under Section 3 of Article III hereof were expressed to be at such increased rate or rates.

A financial survey similar to the aforesaid survey shall again be made during the year 1945 for the like purposes and the Trustees shall have the like powers of increasing the said rates of Mandatory Interest with the like results, and such survey shall be repeated at quinquennial intervals for the like purposes and with the like results until 1970.

The Trustees, however, shall not provide for any increase in the rate of Mandatory Interest which obligates the City to pay interest at a rate exceed-

ing four and one-half per cent. ($4\frac{1}{2}\%$) per annum on the principal amount of any of the said New Debentures.

Any decision of the Trustees hereunder shall be subject to appeal to the Board who shall however have no jurisdiction to reduce the rate of mandatory interest below the rate prevailing immediately prior to the decision of the Trustees.

ARTICLE VIII TRUSTEES

SECTION 1—There shall be constituted for the duties herein imposed upon them a Board of Trustees consisting of three members. The first members shall be A. McPherson, of London, Ontario, nominated by the Protective Committees formed by debenture holders of the Amalgamated Municipalities, and two other persons, one of whom is to be appointed by the Treasurer of Ontario and the other to be appointed by the City. The Treasurer of Ontario and the City shall make the aforesaid appointments within one month after the Board has made an order approving of this Plan.

A. McPherson shall hold office until his successor is appointed as hereinafter provided, the appointee of the Treasurer of Ontario shall hold office until December 31st, 1939, and the appointee of the City shall hold office until December 31st, 1938.

On or before December 31st, 1938, the City shall appoint a Trustee to succeed their first appointee, and the successor so appointed shall be a member of the Trustees for a period of two years until December 31st, 1940. On or before December 31st, 1940, the City shall again appoint a successor to be a Trustee for a like period of two years, and so on from time to time.

On or before December 31st, 1939, the Treasurer of Ontario shall appoint a Trustee to succeed his first appointee, and the successor so appointed shall be a member of the Trustees for a period of two years until December 31st, 1941. On or before December 31st, 1941, the Treasurer shall again appoint a successor to be a Trustee for a like period of two years, and so on from time to time.

The successor of A. McPherson from time to time shall be appointed in the following manner: A. McPherson shall nominate in writing two other persons to constitute with him a panel, of which he shall be the senior member. If at any time a member of the said panel dies, resigns or is incapable of acting, the senior remaining member of the panel shall nominate in writing a person to fill the vacancy on the panel, and so on from time to time. The senior member of the panel from time to time shall be a member of the Board of Trustees. Priority of nomination to the panel shall determine the seniority of members of the panel. The senior member of the panel shall from time to time file with the Treasurer of Ontario and the City the written nomination of each member of the panel and his written acceptance thereof.

If at any time the appointee of the Treasurer of Ontario or of the City shall, before the expiration of his term of office, die, resign or be incapable of

In the Court of Appeal for Ontario
Exhibits
No. A
Order of The Ontario Municipal Board Approving the Scheme of Funding and Refunding the Debt of the Amalgamated Municipalities, June 15 1937

Continued

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of The
Ontario Municipal
Board Approving
the Scheme of
Funding and Re-
funding the Debts
of the Amal-
gamated Muni-
cipalities, June 15,
1937

Continued

acting, the Treasurer of Ontario or the City, as the case may be, shall forthwith appoint his successor to fill his unexpired term.

The appointee of the Treasurer of Ontario shall be the Chairman of the Trustees.

If at any time the senior member of the panel or the Treasurer of Ontario or the City fails to make any nomination or appointment to the panel or for Trustee within one month after the time above provided for such nomination or appointment, the Board may upon the application of any Trustee make such nomination or appointment.

In addition to the above mentioned three members the Mayor of the City shall at all times be a member of the Board of Trustees and privileged to attend all meetings thereof but not to vote thereat unless he is the appointee of the City under the first paragraph of this Section "1" of this Article. 10

SECTION 2--The Trustees shall act without reumuneration but shall be entitled to receive their actual expenses incurred in attending meetings of the Trustees or while engaged on the business of the Trustees. The Trustees may in connection with the execution of their duties and powers appoint or employ accountants, bankers, solicitors or other experts or agents or employees and shall not be responsible for misconduct of such appointees or employees. The City shall pay to the Trustees their expenses incurred as aforesaid or in connection with the services of such appointees or employees. The City shall not, however, be obligated to pay to the Trustees amounts in excess of \$5,000 in the aggregate for expenses so incurred in any one year without the approval of the Board, which may be given on the application of any Trustee. The books of account of the Trustees shall be subject to audit by the Auditor of the City at all reasonable times. 20

SECTION 3--The Trustees and their duly authorized representatives shall have the right to inspect any or all books or records of the City and/or the Board of Education and/or any other local board at any time and to demand and receive full explanations thereof and of any other matters relevant to this Plan, and all officials, agents and servants of the City and/or the Board of Education and/or any local board shall furnish such information when so requested. 30

ARTICLE IX

SUPERVISION

The City shall comply with the following provisions. On or before the first day of March in each year commencing in the year 1938, the City shall submit its proposed budget for the current year to the Trustees. Unless the Trustees, within fifteen days of the submission to them of the said proposed budget, notify the City of their disapproval, the City may thereafter pass the same and strike its tax rate in accordance therewith. If the Trustees notify the City within the said fifteen days that they do not approve the proposed budget, then either the City or the Trustees may appeal to the Board and 40

the Board shall have power to determine any matters at issue between the City and the Trustees with respect to such proposed budget, and to make such order as it deems necessary or advisable for the purpose of assuring payment of the amount due in such year under this Plan. Subject to the provisions of Section 65 of the Department of Municipal Affairs Act, 1935, the new City shall remain under the supervision of the Department until January 1st, 1938, and then an application may be made to the Board to remove the City and all local Boards from the provisions of Part III of the said Act.

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of the
Ontario Municipal
Board Approving
the Scheme for
Funding and Re-
funding the Debts
of the Amalga-
mated Muni-
cipalities, June 15,
1937

Continued

10

ARTICLE X

Subject to the provisions of Section 1 of Article XI hereof, upon delivery of the New Debentures to the Fiscal Agent as provided in Section 7 of Article III hereof and delivery of New Debentures as may be ordered by the Board under Section 1 (a) of Article III hereof and the payment of the amounts provided by Section 1 of Article VI hereof, all debts of the Amalgamated Municipalities, whether direct or indirect and whether by way of contribution or otherwise, shall be deemed to be paid and discharged and the rights of the creditors of the Amalgamated Municipalities shall be limited to receiving New Debentures and Arrears of Interest in accordance with the provisions of Articles III and VI hereof respectively.

20

Provided that nothing in this Plan contained shall affect—

(a) The rights of any creditors of any of the Amalgamated Municipalities against any government, corporation or person or any municipality or commission (other than the Amalgamated Municipalities or any local Boards thereof) in respect of any liability for the payment of any debt of such Amalgamated Municipalities;

(b) The rights of The Canadian Bank of Commerce under agreements dated the 1st day of February, 1932, validated by Sections 2 and 3 of the Essex Border Utilities Commission Act, 1932, 22 George V. Chapter 97.

30

ARTICLE XI

GENERAL

SECTION 1—If any person shall on or before the 30th day of June, 1938, make a claim against the City of a nature provable under the Bankruptcy Act in respect of a debt of any of the Amalgamated Municipalities for which this Plan makes no other provision, and shall establish the validity of such claim and debt to the satisfaction of the City or of a Court of competent jurisdiction, the City shall issue to such person in full settlement thereof, including accrued interest, a debenture of like tenor and effect as the New Debenture which would have been issuable hereunder in satisfaction of a debt of the same kind and amount.

40

SECTION 2—The City shall forthwith pay the Fiscal Agent in trust for the purposes hereinafter set forth, the sum of \$203,687.00 (and if and when any moneys are received or recovered from Imperial Bank of Canada as a result of the litigation referred to in the notes to item numbered 3 in

In the Court of
Appeal for Ontario
Exhibits
No. A
Order of The
Ontario Municipal
Board Approving
the Scheme for
Funding and Re-
funding the Debts
of the Amal-
gamated Muni-
cipalities, June 15,
1937

Continued

Part 13 of the Second Schedule hereto, the additional sum of \$9,446.00) and the Fiscal Agent, subject to the approval of the Board, shall apply the said moneys or so much thereof as may be necessary in payment of the expenses of the Protective Committees formed by the holders of debentures of the Amalgamated Municipalities, the City, The Windsor Finance Commission, the Fiscal Agent and the Transfer Agent, which expenses were incurred in connection with the negotiations for and preparation, submission and carrying out of this Plan, all costs and expenses arising out of litigation with the Imperial Bank of Canada, and in payment of such sums as the Board may direct by way of costs of and incidental to all proceedings in connection with this Plan. Any surplus out of the amount or amounts so paid to the Fiscal Agent and not required for the aforesaid payments shall be paid by him to the Trustees and shall by them be paid into the Income Interest Fund. 10

SECTION 3—The Fiscal Agent and/or the Transfer Agent shall keep a register or registers in which shall be recorded a list of the persons to whom the New Debentures are delivered pursuant to Article III hereof and such other registers or books as may be deemed necessary or proper in order to record the matters herein authorized to be done and the registers and books and other records relating to such matters shall be subject to inspection by the Treasurer of the City at all reasonable times and the Fiscal Agent and/or the Transfer Agent on completion of the performance of the duties hereby imposed on them shall deliver to the Treasurer of the City all books, records and documents of every nature and description in their custody and possession and relating to the execution and administration of this Plan, and such books, records and documents shall be made available by the Treasurer at all reasonable times to any person having a bona fide direct interest therein. 20

SECTION 4—Upon the settlement or final adjudication of the litigation between the City, Wilfred McDonnell and Imperial Bank of Canada referred to herein, the Fiscal Agent in consultation with the parties to such litigation shall make such adjustment in the Debentures payable to the said Bank as may be required to provide for such settlement or final adjudication and the Fiscal Agent shall return to the Treasurer of the New City for cancellation any New Debentures authorized hereby and not required for the aforesaid purposes. 30

SECTION 5—The Fiscal Agent or the Transfer Agent may be removed by the Board for cause upon the application of the Trustees or any of them.

SECTION 6—The Board may correct typographical or other manifest errors in this Plan, provided that such corrections shall in the opinion of the Trustees in no way prejudice the rights of the holders of New Debentures, and the City shall execute all such documents as may be necessary to give effect to such corrections. 40

SECTION 7—In the event of any dispute or disagreement between any of the persons referred to herein as to the interpretation or operation hereof, such dispute or disagreement shall, at the request of any such person, be referred to the Board for decision, and the decision of the Board thereon shall

be final and binding on all parties in the same manner and to the same extent as if such decision had been included in this Plan as a part thereof.

SECTION 8—No appeal to the Board under the provisions of this Plan shall be heard unless such appeal is made by application filed with the Board within twenty-one days after the date of the decision appealed from, unless the Board is satisfied that the appellant did not know of such decision and that reasonable notice of such decision was not given.

SECTION 9—Except as to the provisions for appeal or amendment herein contained, no order of the Board shall be made altering or varying this Plan in any manner.

In the Court of Appeal for Ontario Exhibits No. A Order of the Ontario Municipal Board Approving the Scheme for Funding and Refunding the Debt of the Amalgamated Municipalities, June 15 1937

Conclude

PLAINTIFFS' EXHIBIT No. 2(a) 74

H. A. Bruce.

PROVINCE OF ONTARIO

EDWARD THE EIGHTH by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

In the Supreme Court of Ontario Exhibits No. 2 (a) 74 Proclamation Bringing the City of Windsor (Amalgamation) Amendment Act, 1936, into Effect August 6, 1936

To all to whom these presents shall come.

GREETING.

PROCLAMATION

20 WHEREAS by an Act passed by the Legislature of Our Province of Ontario in the Session thereof held in the first year of Our Reign instituted "The City of Windsor (Amalgamation) Amendment Act, 1936," it is amongst other things enacted that the said Act shall come into force on a day to be named by the Lieutenant-Governor by his Proclamation;

AND WHEREAS it has appeared expedient that a Proclamation should now issue bringing the said Act into force and effect.

30 NOW KNOW YE that, having taken the premises into Our Royal Consideration We by and with the advice of Our Executive Council of Our Province of Ontario, and in the exercise of the power in US vested in this behalf by the said in part recited Act or otherwise howsoever.

DO by this Our ROYAL PROCLAMATION, hereby name Saturday, the 8th day of August, 1936, as the day on, from and after which the said Act entitled The City of Windsor (Amalgamation) Amendment Act, 1936, shall come into force and take effect.

OF ALL WHICH PREMISES all our loving subjects and all others whom it doth or may in any wise concern are hereby required to take notice and govern themselves accordingly.

In Testimony whereof We have caused these Our Letters to be made Patent and the Great Seal of Our Province of Ontario to be hereunder affixed:

WITNESS: The Honourable Herbert Alexander Bruce, a Colonel in our Royal Army Medical Corps, Fellow of the Royal College of Surgeons of England, etc., Lieutenant-Governor of Our Province of Ontario.

At our Government House in the City of Toronto in Our said Province this Sixth day of August, in the year of Our Lord one thousand nine hundred and thirty-six and in the first year of Our Reign.

By Command.

(Sgd.) "H. C. NIXON,"
Provincial Secretary.

PLAINTIFFS' EXHIBIT No. 2 (b).

10

Volume containing the following Auditors' reports which are referred to under Exhibit 2 (a) and therein numbered: No. 26,—for 1934, Town of Walkerville, Walkerville Hydro-Electric Commission and Walkerville-East Windsor Water Commission; No. 31,—for 1934, City of East Windsor; No. 39,—for 1934, City of Windsor, Windsor Hydro-Electric Commission, and Water Commissioners of Windsor; No. 42,—for 1934, Town of Sandwich and Sandwich Water Commissioners; No. 48,—for 1934, Essex Border Utilities Commission; No. 49,—Essex Border Utilities Commission for 1935; No. 55,—Walkerville-East Windsor Water Commission for 1935; No. 56,—Water Commissioners of Windsor for 1935; No. 59,—Sandwich Water Commissioners for 1935; No. 62,—East Windsor Hydro-Electric Commission for 1934; No. 63,—East Windsor Hydro-Electric Commission for 1935; No. 65,—Walkerville Hydro-Electric Commission for 1935; No. 67,—Windsor Hydro-Electric Commission for 1935; No. 69,—Hydro-Electric Commission of Sandwich for 1934; No. 70,—Sandwich Hydro-Electric Commission for 1935. Not printed by consent.

PLAINTIFFS' EXHIBIT No. 2 (c)

Auditor's Report referred to in Exhibit 2 (a) as number 27, for the year 1935, for the Town of Walkerville, City of East Windsor, City of Windsor, Town of Sandwich. Not printed by consent.

30

PLAINTIFFS' EXHIBIT No. 3

Copy of letter to Attorney-General for Canada dated September 4, 1936, and reply of the Acting Deputy Minister of Justice, and dated September 10, 1936. Not printed by consent.

PLAINTIFFS' EXHIBIT No. 10

Province of Ontario
DEPARTMENT OF MUNICIPAL AFFAIRS
REPORT OF THE ROYAL COMMISSION ON BORDER CITIES
AMALGAMATION

APRIL, 1935

40

Toronto, Printed and Published by T. E. Bowman, Printer to the King's Most Excellent Majesty. 1935

TO THE HONOURABLE THE LIEUTENANT-GOVERNOR OF ONTARIO.

SIR:

Under Order-in-Council, dated 5th December, 1935, the undersigned were appointed a Commission to inquire into all or any of the municipal and other

local affairs of the Cities of Windsor and East Windsor, and the Towns of Walkerville and Sandwich, particularly with regard to acts to be done and steps to be taken in connection with the amalgamation of the said municipalities and into various other matters relating thereto, as set out in said Order-in-Council.

Your Commissioners have made inquiry so directed and herewith report our findings and recommendations as follows:

In the Supreme
Court of Ontario
Exhibits
No. 10
Report of The
Royal Commission
on Border Cities
Amalgamation,
April 10, 1935
Continued

FOREWORD

10 The principle of consolidation and the desirability or otherwise of its application to the problems of this area dates back to the very beginnings of urban development in the district. Sandwich was an unincorporated town prior to 1817. Windsor was incorporated as a village on New Year's Day, 1854. On January 20th, 1853, an editorial appeared in "The Canada Advertiser," a newspaper published in Sandwich, urging the union of Sandwich and Windsor. This editorial appears in full in the Appendix.

20 The uniting of two municipalities at that time would have been so easy of accomplishment as not in any sense to be characterized as a problem. Today it is a highly complex one,—six municipalities have come into being, a situation which might never have arisen if the first Act of Union had taken place in 1854. Walkerville was incorporated as a town in 1890 and Ford City, now East Windsor, in 1915. The incorporation of this last community forced home the necessity of joint action on those matters in which communities had a common interest. The water supply of Windsor, Walkerville and Sandwich was jeopardized by sewage from the rapidly developing Town of Ford City. To meet this situation the Essex Border Utilities Commission was created. Its activities have grown until it now functions in matters relative to Water Supply, Drainage, Health, including Hospital administration, and District Planning. It has served a very useful purpose in this area and many of the problems now facing the district could have been minimized if its power had been extended to embrace services which have been duplicated in every community.

30 Discussions on Amalgamation seem to have occurred periodically. The first definite step toward this end was through a report, dated September 25th, 1928, prepared by the late Mr. J. A. Ellis, then Director of the Bureau of Municipal Affairs. This report recommended the outright amalgamation of Riverside, East Windsor, Walkerville, Windsor and Sandwich or as an alternative the creation of unified police and fire departments for the area. No action was taken on either recommendation. The objection to the adoption of that report rested in the pooling of all the assets and liabilities in the new city without recognition of any advantage or disadvantage in this respect as between the various municipalities involved. Immediately after the announcement of the
40 amalgamation of the four municipalities in the Windsor area into one city, this Commission was requested to report on the best methods of bringing this about and we have endeavoured to allocate to each area its own assets and liabilities and thus avoid the objection to the previous report.

PART I

INTRODUCTION

In our investigations to determine the best method for the working out of the unification of the Municipalities of East Windsor, Walkerville, Windsor and Sandwich, it soon became apparent that the financial condition of the area as a whole, as well as of its constituent units, presented a problem overshadowing in importance all other considerations. We propose to set out some of the causes leading to the serious predicament in which we find the area.

GROWTH OF POPULATION

The growth of Walkerville, Windsor and Sandwich from the founding of these towns up to about the year 1912, in which year Ford City, now East Windsor, was incorporated, was of normal slowness. They depended on industry chiefly for their prosperity and, for the population to be supported, industry was reasonably diversified and of about normal continuity of employment.

Then came the automobile industry, of which the City of Detroit, situated across the river from this area, became not only the American but to a great extent the world centre. This influenced the location in the Windsor area of important automobile and auxiliary industries.

Many of these industries were adaptable to conversion for the manufacture of munitions during the war and were so converted and became the centre of much highly paid labour.

The combined effect of the rapidly growing motor industry and the profitable munitions industry attracted a great increase of population from all parts of Canada. A considerable proportion of the population so attracted obtained employment in the City of Detroit in which city the same conditions existed to a still higher degree.

To illustrate the growth that took place during this period the following table showing the population at different times is given:

	East				Total
	Windsor	Walkerville	Windsor	Sandwich	
1910.....	(Inc. 1912)	3,048	17,538	2,106	12,692
1920.....	5,800	6,279	37,170	3,643	33,381
1930.....	16,081	11,351	68,079	11,483	106,994
1934.....	14,954	9,751	63,010	10,922	98,637

THE COMMUTER SITUATION

To show the extent of the Border area's dependence upon employment in Detroit the following figures are given showing the number of residents in the area listed as "commuters" to and from Detroit, viz.:

1927.....	15,000	
1928.....	10,000	40
1930.....	4,300	
1932.....	2,400	
1934.....	2,151	

These persons were of various occupations. Many were old and valued employees holding responsible positions. Many were expert workmen in automobile and allied industries. They were generally of high-earning capacity and a valuable asset to both the community in which they resided and the one in which they were employed. There existed with this flow of wage and salary-earning commuters from Windsor to Detroit, a counter flow of the same class from Detroit to Windsor, but the counter flow was very much smaller in volume. Partly by reason of the fact that Canada imported from the United States a great deal more manufactured goods than the United States imported from

10 Canada and consequently was sustaining a great many more American workmen in United States plants than the United States was supporting of Canadian workmen in Canadian plants, the local advantage of the Windsor area being many times offset by the national advantage in favour of the United States and partly because the commuting privilege between the two countries had endured for generations, it was reasonably assumed that this privilege would be permanent. However, the depression having set in and unemployment becoming specially acute in the Detroit area, such pressure was brought to bear by labour organizations that, notwithstanding the national balance to the advantage of

20 United States labour as a whole, restrictions of growing stringency were imposed upon the commuting privilege, resulting in the almost total wiping out of the commuter. The number of commuters declined from a peak of 15,000 in 1927 to 2,151 in 1934 with still further restrictions threatened.

Of those so affected, large numbers transferred their residence and their families to Detroit and have become United States citizens, many others have left the Border area to seek homes and employment elsewhere. A small percentage has been absorbed in industry and business in the Border area, the remainder, of which there is a large number, are either sustaining themselves on rapidly diminishing reserves or are being maintained by the State through unemployment relief. Many of these commuters were heads of families so that

30 the effect of this blow to the vitality of the Border area can best be gauged if it is assumed that for each 100 commuters there would be an equal number of dependents. With a reduction in commuters of roughly 13,000, *about 26,000 persons or over one-fourth of the total population of about 100,000 was affected in the way above indicated.*

In the "liquidation" of the commuter the amalgamation area lost in the earning power of its inhabitants somewhere in the neighborhood of \$50,000 per day or the equivalent of three times the present taxpaying ability of all the remaining inhabitants.

UNEMPLOYMENT AND RELIEF

40 The extensive and distressing unemployment brought about in part by this condition and in part by the general depression in business made it imperative that a well organized system of relief should be brought into existence, dependent almost wholly on Federal and Provincial funds. Though, as noted above, many persons left the area to carve out a future elsewhere, there still has been a comparatively slight decrease in population. The explanation for this is that many persons with little or no resources have come from places throughout the

Province where there were no relief organizations or where they were encouraged by their local municipal bodies to do so. They have taken the place of the self-sustaining inhabitants that the Border area has lost. Further additions to the non-sustaining class have come from persons either deported from the United States or turned back by Immigration Officials at the Border and remaining there. The result from all causes is that in the year 1934 there were on relief in the four municipalities a daily average throughout the whole year of 28,636 persons or 29 per cent. of the total population.

CONSTRUCTION OF SCHOOLS—PAVEMENTS—WATER MAINS AND OTHER SERVICES 10

While the buildings and equipment in existence at the commencement of what may be termed the boom period were quite adequate to meet the needs of the community as it then was, the rapid growth that set in during that period soon made imperative a very great extension of educational and other services. Neither citizens nor creditors of the municipalities foresaw the end of the growth that appeared so vigorous. It seemed wisdom on the part of those in charge of such affairs to provide not only for the needs of the present but also for those of at least the near future, and even the near future seemed to demand much expansion. Therefore schools were built, pavements and sidewalks constructed, water mains and sewers laid, and hydro extensions provided to take care of the requirements of those who were arriving today and were surely expected to be coming tomorrow. 20

THE SPECULATOR AND LOCAL IMPROVEMENTS

Supplementing the patriotic desire of the civic fathers to anticipate the requirements of the rapidly growing communities was the profit-gaining motive of the real estate speculator whose object was to have city services extended to the locality in which his subdivision area was located. His interest led to an exaggeration of the necessity for the opening of streets, laying of pavements and installing other services so he, the big speculator, could in this way more surely unload at a worth-while profit, his holdings on the little speculator. City and town councils were too easily imposed upon by propaganda emanating from such interested sources to enter on unnecessary undertakings under the local improvement system whereby vast debts were contracted under the assumption that the general taxes reaped from these subdivisions would more than take care of the corporation's share of the improvements and that the owner's share would be met by the special frontage tax. 30

The real estate boom having collapsed it has now developed that much of this land has *ceased to pay any taxes whatsoever* and has had to be taken over by the municipalities and is now lying barren, unproductive and unsaleable, the *burden of both the corporation's and owners' share of local improvement debt thus falling on the overburdened shoulders of the general taxpayer.* 40

To summarize the situation with respect to municipal services, it may be stated that in the area, with a population of 100,000 persons, there are services fully or partly provided sufficient for a population of 200,000, a large percentage

of which will, in all probability, be depreciated to the point of extinction without having served any useful purpose.

In the Supreme
Court of Ontario
Exhibits
No. 10
The Report of the
Royal Com-
mission on Border
Cities Amalgama-
tion, April 10,
1935

Continued

S. W. & A. RAILWAY DEBT AND DEFICITS

In the year 1920 the four federating municipalities with seven others purchased the Sandwich, Windsor and Amherstburg Railway—an electric railway giving not only a city service but also a suburban service from Tecumseh to Amherstburg.

10 It is alleged, and there appears to be substantial foundation for the contention, that encouragement from those in charge of the Provincial Hydro-Electric System was at least an important if not the determining factor in bringing about this purchase. The amount of the purchase price, together with the cost of rehabilitation and extensions was slightly less than \$6,000,000 for which debentures were issued, guaranteed by the Province of Ontario. This has turned out to be a most unprofitable undertaking. Through inability to meet the amount required to pay interest and to provide sinking funds the debt has now grown to a total of approximately \$7,500,000.

W. E. & L. S. RAILWAY DEBT.

20 In the year 1929, also it is alleged, under encouragement from responsible officers of the Provincial Hydro-Electric Power Commission, the Windsor, Essex and Lake Shore Railway, an electric railway running from Windsor to Leamington, was purchased by a group of municipalities of which one of the amalgamation units, the City of Windsor, participated. The price paid was \$296,000 met by the issue of debentures of the participating communities. Further debt was incurred for rolling stock and other improvements. It was operated by the Hydro-Electric Power Commission of Ontario. This undertaking proved so unprofitable that operation of the road was wholly discontinued in September, 1932. The winding up of its affairs is now in the hands of the Guaranty Trust Company of Canada as trustee. The liabilities against this railway as of December 31st, 1934, amount to approximately \$1,500,000 and the value of its assets is estimated at approximately \$150,000. On this 30 basis the City of Windsor's share of the net liability is approximately \$450,000.

ASSESSMENT CONDITIONS

During the boom period, values of real estate, including buildings, advanced with great rapidity. The assessors of the various municipalities raised assessments substantially but not beyond the extent which boom time sales would appear to justify. The collapse of fictitious values may be taken to synchronize with the stock market crash of the autumn of 1929. The assessment for the tax year of 1930 had then been made and that assessment for the four municipalities aggregating \$169,131,000 marks the peak of assessment.

40 Following the collapse of the boom, real estate in the Border area suffered an acute decline and in the opinion of your Commission this decline is still continuing.

In the Supreme Court of Ontario Exhibits No. 10 The Report of the Royal Commission on Border Cities Amalgamation, April 10, 1935

Continued

The Assessors attempted to adjust their assessments to the changed conditions but tried to reach the ultimate parity between assessment and value by gradual reductions.

The aggregate of the assessments for the tax year 1935 has thus been brought down to \$105,400,000, a reduction of 38 per cent.

From studies which we have made, it is believed that even this reduced amount is still very substantially in excess of the actual market value of the assessed property in the four municipalities. We are of the opinion that a figure somewhere between \$80,000,000 and \$90,000,000 would represent 100 per cent. of actual value. In bringing down of the total assessment to the amount deemed proper it will be essential that the reductions should be equitable as between the various classes of property owners, such as vacant lands, residential, commercial and industrial properties. 10

TAX CONDITIONS

The tax situation must be considered in connection with the assessment condition.

The tax rate for general purposes, including public and high school rates, for the four municipalities in the year 1934 averaged about 35 mills. It is expected that about the same rate will prevail in 1935.

When considering this rate for comparison with that of municipalities situated elsewhere, it must be borne in mind that this rate prevails not with respect to a 60, 70 or 80 per cent. assessment which ordinarily exists throughout the Province, but with respect to an assessment substantially over 100 per cent. of the market value. If the assessment had been 80 per cent. of actual value, in our opinion the rate would be somewhere in the neighbourhood of 43 mills. 20

To show that the rate of taxation as applied to the assessment is practically at the point of the taxpayers' utmost capacity to pay is indicated by the following statistics. The assessed value of property taken over by the various municipalities through tax sale or registration as of December 31st, 1934, is as follows: 30

East Windsor.....	\$1,874,220
Walkerville.....	173,211
Windsor.....	2,818,740
Sandwich.....	1,760,005
Total.....	\$6,626,176

Of the total assessment for land and buildings of approximately \$94,000,000 for the four municipalities the assessed valuation of properties in arrears for taxes at the end of 1934 for the 1933 levy was as follows:

	Improved	Vacant	Total
East Windsor.....	\$13,366,080	\$ 256,560	\$3,622,640
Walkerville.....	1,698,775	165,472	1,864,247
Windsor.....	20,673,580	1,353,160	22,026,740
Sandwich.....	2,226,860	167,470	2,394,330
	<u>\$27,965,295</u>	<u>\$1,942,662</u>	<u>\$29,907,957</u>

This, in the opinion of your Commission, indicates that in so far as the owners of property are concerned, taxation is at the breaking point.

In the Supreme
Court of Ontario
Exhibits
No. 10
The Report of the
Royal Com-
mission on Border
Cities Amalgama-
tion, April 10,
1935

PART II

THE FINANCIAL SITUATION

THE SITUATION AT PRESENT

The situation existing in the Border area today is giving rise to a condition by which something approaching total default is threatened. The present budgets are to some extent fictitious as the provision for maintenance in every department is entirely inadequate. The sums now available must not only be
10 increased substantially but be provided continuously, or the need for new capital expenditures will arise and the municipalities in their present condition will be unable to secure funds for this purpose. If the present scale of expenditure is continued, adequate maintenance resumed and a share of relief provided by the municipalities, there will be very little, if anything, left to pay either principal or interest on the bulk of outstanding bonds. The consequence must be that the credit of the area, both public and private, will be destroyed. Neither public money for needed improvements nor mortgage money for private building will be obtainable and present mortgages will not be renewable unless under some form of government compulsion. Walkerville is admittedly
20 in much better condition financially than the other municipalities, but its location renders impossible its complete escape from the effect of its defaulting neighbours. While the process may be retarded—in the end it will suffer substantially the same fate as the rest of the area, despite its desire and intention to meet its obligations in full.

THE MERIT OF AMALGAMATION

The merit of amalgamation in so far as the Border area is concerned lies in the opportunity it offers to set up an authority, free both from politics and local dictation, secure in its tenure of office for a period of years and able to secure the managerial experience to reorganize all the services on an area-wide basis,
30 having regard to over-all efficiency only. If such a body is set up and permitted to function in an unhampered manner we believe it can achieve a budget for the area of \$3,250,000. This budget is not the outcome of merely a unification of staff and municipal services, it necessarily involves a very material reduction in both personnel and wages. As both of these elements have reached their minimum in East Windsor and Sandwich, it must follow that the payrolls and personnel of Walkerville and Windsor must bear these savings. Services must, to a considerable extent, be brought to a common level. Tax moneys, if based on a uniform mill rate, will flow from Walkerville and Windsor into the other two areas but more particularly from Walkerville. Unless definite compensatory
40 provision is set up, the citizens and bondholders alike of the two more solvent areas will assist in carrying the burden of the two less solvent communities, viz., Sandwich and East Windsor.

Continued

NECESSITY OF A REDUCED BUDGET

The three and a quarter million budget will provide services on a reduced basis but one which should be reasonable from the like viewpoint of citizens and creditors of the area. Unless such a programme is carried out and due recognition given to the protective factor mentioned, immediate amalgamation under existing conditions is without merit and will work to the detriment of Walkerville and, in a lesser degree, to Windsor, without assisting Sandwich or East Windsor. Meantime property values will recede to lower levels, higher mill rates will be a natural sequence, tax arrears will increase and the extent of the default will become greater.

10

The imminence of this situation has been concealed principally in three ways:

1. By neglect of maintenance.
2. By almost complete failure to provide for debenture obligations.
3. By Government assumption of 100 per cent. relief in all municipalities except Walkerville.

MARGIN AVAILABLE FOR DEBT SETTLEMENT

When adequate provision is made for maintenance of public property, for a contribution to relief, for the cost of education and other city services and when the 1936 revenues are estimated as accurately as possible on the present basis of taxation, a situation approximating that shown in Table I is revealed. The figures for net debt given in the Table are obtained by subtracting from the gross debt, including Separate School debt, the estimated amount of recoverables from Hydro, Waterworks and Housing debentures and the estimated collectible part of local improvements.

20

TABLE I

	East				
	Windsor	Walkerville	Windsor	Sandwich	Total
Revenue (1936 est.).....	\$549,000	\$570,000	\$ 2,520,000	\$ 364,000	\$ 4,003,000
Operating Cost (est.).....	513,000	459,000	2,145,000	344,000	3,461,000
Available for Debt.....	\$ 36,000	\$111,000	\$ 375,000	\$ 20,000	\$ 542,000
Gross Debt.....	\$8,139,610	4,376,972	\$22,763,614	\$5,513,046	\$40,793,242
Recoverable (est.).....	1,413,658	940,075	6,366,614	878,817	9,599,164
Net Debt.....	\$6,725,952	\$3,436,897	\$16,397,000	\$4,634,231	\$31,194,078
Percent. of <i>Net Debt</i> available in cash.....	.535%	3.25%	2.3%	.4%	1.7% Av.

30

That is, for the area as a whole, there would be available for both principal and interest a sum equal to 1.7 per cent. of the net debt or enough to discharge the debt *without interest* in 59 years. Such bonds would have no market value and a proposal to settle debts on any such basis as 1.7 per cent. per annum without interest would be regarded everywhere as repudiation. While the

40

creditors might not be able to collect their money, the municipality could not secure the equivalent of a release from bankruptcy. The result would be a compounding of the debt to a point where it would be unwise for anyone to invest a dollar in the area.

In the Supreme
Court of Ontario
Exhibits
No. 10
The Report of the
Royal Commission on Border
Cities Amalgama-
tion, April 10,
1935

Continued

EFFECT OF COMPOUNDING OF INTEREST

This compounding of interest is already well advanced in the Border area. As an illustration, the debt of the Essex Border Utilities Commission exceeds by more than \$50,000 the original amount owing, notwithstanding repayments of \$303,970.43 of principal and a much greater amount of interest since 1920.

10 Many obligations are in a similar position. Unless this situation is dealt with in some manner, the pyramiding debt structure will, in all probability, within twenty-five years exceed the fair market value of everything in the area. Once this condition is generally recognized, unless steps which will command confidence are taken to remedy it, an epidemic of foreclosures on maturing mortgages could only be prevented by a perpetual moratorium and new loans for any purpose either public or private would be out of the question.

TWO REMEDIES ONLY

If this condition is to be avoided, there are two remedies and two remedies only:

20 More Revenue;
Less Expense.

The possibilities of increased revenues under its different subdivisions will first be considered.

REAL ESTATE TAXATION

We find that real estate is, in general, overtaxed already—this has been dealt with previously.

In further proof that residential property is assessed too highly and can stand no further burdens the percentages of residential property in arrears for taxes are submitted.

30 39.6 per cent. of total residence value is in arrears for 1934.
36.5 per cent. of total residence value is in arrears for 1933-34.
26. per cent. of total residence value is in arrears for 1932-33-34.

To understand how this situation has developed with regard to residence values it is only necessary to revert to the figures previously quoted showing 29 per cent. of the population on relief. There was in the area in 1930, housing accommodation for 107,000 people, the then population. At the present time that population has dropped to a little less than 99,000, with nearly 29,000 on relief, reducing the self-sustaining number to 70,000. There is thus housing accommodation for 107,000 competing for the patronage of the 70,000 who can

40 afford to pay. This results in a "tenant's market" with rental returns so low

that when mortgage interest, insurance, repairs and high taxes have to be met the money is not there to meet them and the balance must be obtained by the property owner from some other source.

No additional municipal revenue, therefore, can be looked for from that source.

INDUSTRIAL TAXATION

The entire development of the Border Cities area has been built upon industrial activity. The future of the district seems to be dependent solely on industry, primarily through the retention of those now established there and, secondly, by convincing those having capital to invest in industrial enterprise, that the district offers a safe and attractive field for such investment. 10

It holds generally true that industry attracts industry. The primary consideration of the Border is, therefore, to retain those industries which it now possesses. It might reasonably be assumed that expansion in those industries would follow any general nation-wide business up turn. Local industries have had to meet the competition of lower freight and power rates available to their competitors elsewhere. The larger ones have apparently been able to meet this competition but over 75 of the small industrial establishments have either gone out of business or moved away in four years.

THE EFFECT OF TAXATION ON INDUSTRY

20

Taxation in all its forms is rapidly becoming the greatest obstacle which industry has to face. If there is any method of keeping local industries' taxation at a level where it reasonably approaches parity with that which prevails elsewhere, industries are not likely to be disturbed. If excessive tax rates are imposed to meet refinancing schemes, there will be an immediate and general industrial flight to areas where this does not prevail. Such a refinancing proposal would not only defeat the desired end but would result in a situation by which default would become total and permanent. It is idle to state and folly to infer that industry can either afford excessive taxation or can be forced to submit to it. It can carry its fair share but it cannot be expected to provide the solution for municipal insolvency. There are already substantial arrears of taxes—over \$500,000—on industrial and commercial assessments. 30

BUSINESS TAX

Since in this area business tax is dependent so largely on industries we see no reason to expect a material increase in revenue from this source.

INCOME TAX

In the field of income tax lies, on our opinion, the only hope, from the revenue end, of accomplishing anything that will materially assist in avoiding the ruin of the bondholders and at the same time avoid similar ruin to the present taxpayers. 40

NOTE:—Pages 11 to 42, line 22, omitted by consent.

This may be the proper place to say a word in behalf of several groups of gentlemen who have, under difficult conditions and under much ill-informed criticism, performed well a work of little understood value to the Border area. We refer to the various Committees of Supervisors for the defaulting municipalities of the Border. Without the protection that these Boards gave the community the municipalities would have been subject to endless litigation at the suit of creditors in which those who were the most aggressive would fare the best, municipal services would have been seriously disrupted and, in short, a state not much short of chaos would have ensued.

- 10 By their action, economies have been effected, relief to some extent provided for the taxpayer and a basis of operation prepared which, under amalgamation, makes possible, something more than the shadow of a return to the creditors.

We believe that the measures pointed out in the report may bring some degree of stability to the Border which, being assured, will encourage its citizens to new efforts to bring the area back to something like its one time state of prosperity.

(Sgd.) J. J. COUGHLIN,
Chairman.

- 20 (Sgd.) H. L. BRITTAIN,
Vice-Chairman.

(Sgd.) S. E. MCGORMAN,
Commissioner.

(Sgd.) J. CLARK KEITH,
Commissioner.

(Sgd.) HERBERT L CUMMINGS,
Commissioner.

Toronto, April 10th, 1935.

NOTE:—The Appendix to this report is not printed.

In the Supreme
Court of Ontario
Exhibits
No. 10
The Report of the
Royal Com-
mission on Border
Cities Amalgama-
tion, April 10,
1935

Concluded

PLAINTIFFS' EXHIBIT No. 4

STATEMENT OF DEFAULT

EAST WINDSOR defaulted on the 1st of October, 1931, in the payment of the interest and principal of its debentures falling due on that date. Default has continued up to the present time on all interest coupons and debentures maturing since the 1st of October, 1931, and in the repayment of principal and interest on advances made by the Bank of Montreal for capital purposes amounting to \$588,000.00. Default has also been made in the payment of principal and interest of advances made by the Bank of Montreal amount to \$581,729.26 for current operating purposes in 1931 and prior years and in the payment of certain claims for damages and contractors' accounts arising out of the construction in 1930 of the Wyandotte Street-Drouillard Road subway, amounting to \$132,350.00. The City is also in default in payment of a judgment in favour of the County of Essex arising out of its separation for municipal purposes from the County in 1929, and in the payments due on its share of the guarantee of the bonded indebtedness of the Sandwich, Windsor and Amherstburg Railway Company, and its share of the operating deficits thereof. These two items amount to \$522,787.03 upon which there has accrued interest of \$114,054.27. Except as above all the ordinary expenses have been paid as they fell due. 10

THE TOWN OF WALKERVILLE defaulted in payment of the debentures maturing on December 15th, 1934, amounting to \$278,517.20, on the amounts due on its share of the guarantee of the bonded indebtedness of the Sandwich, Windsor and Amherstburg Railway Company and of its operating deficits amounting to \$95,741.44. The total due and in default on these two accounts amount to \$855,334.44. Default was made in 1934 in payment due to the Province of Ontario on account of advances made under the Housing Act of 1919. Interest coupons due on June 15th, 1935, have not as yet been paid. Except as above all the ordinary expenses have been paid as they fell due. 20

THE CITY OF WINDSOR made default in the payment of interest due 30 on its debentures and the debentures maturing on December 1st, 1932, and such default has continued with the exception of a payment of 3% interest in 1935 on account of interest coupons matured and unpaid to that year. The City is in default in payment of certain advances made by the Canadian Bank of Commerce for capital purposes in 1931 and prior years and amounting to \$669,785.47 in all. The City is also in default in payment of advances made by the Canadian Bank of Commerce in 1932 and prior years for current purposes amounting to \$1,168,838.94. The City is in default for payments due in 1932, 1933 and 1934 to the Township of Sandwich West under an agreement and for debentures assumed; and its assessments for debt purposes to the Essex Border Utilities Commission for 1932 and all subsequent years to date. Default has also been made in the payments due in 1932 and subsequent years on account of the City's share of the bonded debt and operating deficits of the Sandwich, Windsor and Amherstburg Railway and the Windsor, Essex and Lake Shore Railway amounting in all to \$3,013,580.59. There has also been default in payments due to the Province for 1932 and subsequent years on account of ad- 40

vances under the Housing Act of 1919. Except as above all the ordinary expenses of the Municipality have been paid as they fell due.

In the Supreme Court of Ontario Exhibits No. 4 Statement of Default *Concluded*

THE TOWN OF SANDWICH defaulted in the payment of its debentures and the coupons thereon maturing on the 15th March, 1932, and has defaulted on all coupons and debentures maturing since that date. The total amount in default for principal and coupons to December 31st, 1934, is \$726,738.08. Default was also made in the payment in 1932 of certain advances made in 1931 for capital purposes amounting to \$134,000.00 and advances made in 1932 and prior years for current purposes amounting to \$257,000.00. Default has also been made in payment of Sandwich, Windsor and Amherstburg Railway bonded indebtedness guarantee and operating deficits amounting to \$789,564.76 in all, and default has been made in the payments due in 1932 and subsequent years to the Province of Ontario on account of advances under the Housing Act of 1919. Except as above all the ordinary expenses of the municipality have been paid as they fell due.

THE WALKERVILLE-EAST WINDSOR WATER COMMISSION defaulted in the payment of the interest coupons due on its outstanding debentures on June 15th, 1936, and such default has continued to date. All the ordinary expenses of the Commission have been paid as they fell due.

20 THE ESSEX BORDER UTILITIES COMMISSION defaulted in the payment of its debentures and coupons maturing thereon on the 1st day of February, 1933, and on all debentures and coupons maturing since then to the present time and such default has continued to date. The amount due thereon to December 31st, 1935, was \$519,270.91. All the ordinary expenses of the Commission have been paid as they fell due.

PLAINTIFFS' EXHIBIT No. 5

Annual report of Municipal Statistics for the year 1934, by the Department of Municipal Affairs for Ontario—printed and published by T. E. Bowman, Printer to the King's Most Excellent Majesty.

In the Supreme Court of Ontario Exhibits No. 5 Report of Municipal Statistics for 1934

30 NOTE:—Only the facts referring to East Windsor, Walkerville, Windsor and Sandwich and their Boards and Commissions are printed, except as noted.

Page 9. Grand total of Debenture Debt of the Municipalities of Ontario—\$483,934,700. (a) (b).

NOTE (a):—Totals given are not absolutely accurate, as some municipalities have not made available the information necessary for complete totals.

NOTE (b):—The only totals carried to this line are those that do not involve duplication.

	5, Windsor	23, East Windsor	1, Walkerville	2, Sandwich
County or District.....	Essex	Essex	Essex	Essex
40 Assessed Population.....	62,216	14,606	9,968	10,682
Assessed Acreage.....	3,209	1,677	1,036	2,033

	5, Windsor	23, East Windsor	1, Walkerville	2, Sandwich	
County or District.....	Essex	Essex	Essex	Essex	
Assessment:					
Land.....	\$22,578,070	\$3,463,310	\$4,128,315	\$3,366,670	
Buildings.....	38,700,920	8,818,090	9,583,608	5,741,023	
Business.....	4,947,380	2,783,150	2,986,233	392,517	
Income.....	379,660	Nil	Nil	Nil	
Total Amount.....	66,606,030	15,064,550	16,698,156	9,500,210	
Total Per Capita.....	1,071	1,031	1,675	889	
Exemptions.....	15,354,890	3,934,460	2,986,149	3,770,700	10
Assessed for Schools only	106,130	24,000	Nil	Nil	
Tax Levy:					
Municipal.....	\$ 1,598,878	\$ 346,485	\$ 404,313	\$ 237,505	
School.....	734,501	144,367	180,123	114,002	
Local Improvement.....	210,424	2,755	44,042	(h)	
Total Amount.....	\$ 2,542,803	493,607	628,478	351,507	
Total Per Capita.....	40.87	33.79	63.05	32.91	
Tax Collections (Current)					
\$	\$1,888,456	\$ 354,076	\$ 465,594	\$ 234,858	
% of Levy.....	74.3	71.7	74.1	66.8	
Arrears.....	782,845	246,683	213,036	159,429	20
Total.....	\$ 2,671,301	\$ 600,759	\$ 678,630	\$ 394,287	
Tax Arrears:					
Amount.....	2,874,792	496,239	307,717	370,430	
Per Capita.....	46.21	33.98	30.87	34.68	
Debenture Debt:					
Taxable Debt, General	\$ 1,718,018	\$ 173,236	\$ 245,754	\$ 95,323	
Local Improvements....	2,673,744	1,441,614	780,222	1,480,846 (i)	
Public Schools.....	2,229,020	775,658	333,140	657,942	
Secondary Schools.....	1,606,746	Nil	663,746	Nil	
Total Amount.....	\$ 8,227,528	\$2,390,508	\$2,022,862	\$2,234,111	30
Per Capita.....	132.24	163.67	202.94	209.15	
Other Debt:					
Waterworks.....	\$ 681,730 (a)	(d)	(f)	30,665 (i)	
Light and Power.....	1,175,184	91,658	121,677	91,032	
Housing.....	1,280,749 (b)	419,353 (e)	478,803 (g)	108,000 (j)	
Other.....	(a)	(d)	(f)	(i)	
Total Amount.....	\$ 3,137,663 (a)	\$ 511,011 (d)	\$ 600,470 (f)	\$ 229,697	
Per Capita.....	50.43	34.99	60.24	21.50	
Grand Total Amount.....	\$11,365,191 (a)	\$2,901,519 (d)	\$2,623,332 (f)	\$2,463,808 (i)	40
Per Capita.....	182.67	198.65	263.18	230.65	
Capital Loans.....	\$ 491,264 (c)	\$ 633,000	\$ 377,900	\$ 134,000	
Current Loans.....	1,647,340	650,199	100,000	257,000	
Contingent Liabilities or Debentures Guaranteed by Municipality.....	Nil	Nil	Nil	Nil	
Sinking Fund, Actual at Book Value.....	\$ 264,756	Nil	Nil	Nil	
Surplus or Deficits.....	37,437	Nil	Nil	Nil	

FOOT NOTES—(The reference insignia do not correspond with the exhibit).

(a) Exclusive of (1) Waterworks debt, share of E. B. U. C. bonds, \$780,758; (2) Railway debt, share of S. W. & A. Ry., \$2,716,097 and W. E. & L. S. Ry., \$354,488; (3) Debentures of Sandwich West assumed, \$13,804; (4) Current Liability for defaulted debenture principal, \$2,932,722, and (5) \$237,607 debentures hypothecated for capital loan. Inclusive of \$249,290 debentures hypothecated for capital loan.

(b) Actual Ontario Housing Loan, \$440,928 covered by outstanding debentures of \$800,000. Municipal Housing debenture debt outstanding \$480,749, exclusive of defaulted principal.

10 (c) Capital loan of \$740,554 secured partly by debenture hypothecations of \$243,290 included in debenture debt.

(d) Exclusive of (1) share of Water Commission bonds, \$376,750; (2) Railway liability of \$485,724; (3) Share of E. B. U. C. bonds, \$209,258 and (4) current liability of \$1,423,809 for defaulted debenture principal.

(e) Actual Ontario Housing loan \$53,538 for which debentures of \$240,000 outstanding. Municipal Housing debentures, \$179,353.

(f) Exclusive of (1) share of Water Commission Bonds, \$446,000 (approx.); (2) railway liability of \$759,593 and (3) share of E. B. U. C. Bonds, \$188,683.

20 (g) Actual Ontario Housing Loan, \$129,830. Municipal Housing Debentures, \$262,803.

(h) Not Levied for.

(i) Exclusive of (1) \$14,731 of Local Improvement debentures assumed from Sandwich West Twp. (2) Waterworks debt, share of E. B. U. C. bonds \$178,769. (3) Railway debt, share of S. W. & A. Ry. \$747,607. (4) Current Liability of \$645,426 for defaulted debenture principal. Includes \$167,758 assumed by Sandwich West Township.

(j) Actual Ontario Housing Loan, \$56,387.

PLAINTIFFS' EXHIBIT No. 6

30 Report of the Superintendent of Insurance of the Dominion of Canada, for the year ended December 31, 1934, Volume Three, Life Insurance Companies. Published by J. O. Patenaude, I. S. O., Printer to the King's Most Excellent Majesty. Not printed by consent.

Extracts from this Report appear in Exhibit 7 of the Record.

PLAINTIFFS' EXHIBIT No. 7

List of Life Insurance Companies with head offices outside Ontario reported by the Superintendent of Insurance of the Dominion of Canada in the statements of Life Insurance Companies shown in his Annual Report for the year ending December, 31st, 1934, (Exhibit No. 6) as owning debentures of any of the defendant Corporations and their Roman Catholic Separate School Boards with the par value of such holdings.

In the Supreme Court of Ontario Exhibits No. 5 Report of Municipal Statistics for 1934
Concluded

In the Supreme Court of Ontario Exhibits No. 7 List of Life Insurance Companies with Debenture Holdings

Page	Company	Head Office	Amount	Municipality
40 123	Continental Life Ins. Co.....	Chicago, Ill.....	\$ 17,084.98	East Windsor
393	Montreal Life Ins Co.....	Montreal, Que..	10,000.00	E. B. U. C.
			162,983.57	Windsor
			15,000.00	East Windsor
			6,097.76	Sandwich
			<u>\$194,081.33</u>	

In the Supreme
Court of Ontario
Exhibits
No. 7
List of
Life Insurance
Companies with
Debenture
Holdings

Concluded

657	Sun Life Ass. Co. of Canada.....	Montreal, Que...	\$250,279.31	Windsor	
			148,513.40	East Windsor	
			138,427.25	Sandwich	
			43,599.82	E. B. U. C.	
			<u>\$780,819.78</u>		
784	La Societe des Artisans Canadien Francois.....	Montreal Que....	\$ 45,645.21	East Windsor	
110	Confederation Life Ins. Co. (held in Newfoundland).....	Toronto, Ont....	38,000.00	Windsor	
276	London Scottish Assurance Co.....	London, Eng.....	2,667.20	Windsor	10
365	Metropolitan Life Ins. Co.....	New York, N.Y.	968,000.00	Windsor	
446	Mutual Life Insurance Co. of New York.....	New York, N.Y.	100,000.00	Windsor	
575	Prudential Life Ins. Co. of America..	Newark, N.J.....	505,000.00	Windsor	
810	Catholic Mutual Benefit Associat'n.	Montreal, Que...	87,132.67	Sandwich	
			11,498.07	Windsor	
			40,000.00	E. B. U. C.	
			<u>\$2,228,995.19</u>		

BONDS AND DEBENTURES OF ONTARIO MUNICIPALITIES

Sun Life Assurance Co. of Canada..		20
Cities and City guarantees.....	\$671,727.94	
Town and Town guarantees.....	828,774.04	
Villages.....	51,991.35	
Townships, Districts and Municipalities.....	111,440.04	
Schools.....	537,722.32	
	<u>\$2,201,655.69</u>	
London and Scottish Insurance Co.:		
with Receiver-General for Canada:		
Cities.....	\$ 60,342.92	30
Townships.....	40,000.00	
Schools.....	15,000.00	
With Trustees:		
Cities.....	56,667.20	
Towns.....	55,878.41	
Villages.....	8,760.82	
Townships.....	26,229.35	
Counties.....	35,421.16	
Held by Custodian:		
Towns.....	4,506.09	40
Villages.....	653.69	
Townships.....	8,771.33	
	<u>\$ 312,230.97</u>	
Metropolitan Life Insurance Co.:		
Cities.....	\$10,960,818.16	
Townships.....	608,000.00	
Schools.....	85,000.00	
	<u>\$11,653,818.16</u>	

PLAINTIFFS' EXHIBIT No. 8

OFFICE OF THE TREASURER

A. E. COCK, Treasurer.

Re TOWN OF WALKERVILLE

DEBENTURES OWNED OUTSIDE OF ONTARIO

G. C. & Emily Lawrence, Detroit.....	\$ 1,000.00	Bylaw 1222
		-1934
Jessie Lamb, Omaha, Neb.....	132.39	" 1279
		-1937
10 Jean Matthews, Belfast, Ireland.....	1,000.00	" 1303
		-1936
Sinking Fund Trustees, City of Edmonton.....	13,823.44	" 1300
		-1 -3
	<u>\$15,955.83</u>	due 35-0-6-7

CITY OF EAST WINDSOR DEBENTURES OWNED
OUTSIDE OF THE PROVINCE OF ONTARIO

	Name	Address	Amount
	City of Edmonton.....	Edmonton, Alberta.....	\$99,685.32
	J. A. and Barbara Newsome.....	R. R. No. 2, Waupaca, Wisconsin.....	1,000.00
20	Jos. Bonin.....	Lanoraie, P. Q.....	1,000.00
	Town of LaTuque.....	LaTuque, P. Q.....	1,000.00
	Ovide Letendre.....	St. Joseph de Sorel, P. Q.....	500.00
	J. H. Gledhill.....	716 S. Bonnie Brae St., Los Angeles, Calif.....	2,000.00
	Geo. LeClerc.....	St. Jean-Port-Joli, P. Q.....	500.00
	Jean Letendre.....	St. Joseph de Sorel, P. Q.....	500.00
	Alberic Desrosiers.....	Sorel, Que.....	1,000.00
	Jos. Proulx.....	St. Roberts, P. Q.....	500.00
	Mrs. Sarah H. Muter.....	Loreburn, Sask.....	1,000.00
	Mrs. Amelia M. Burkeff.....	Boulder, Colo.....	5,000.00
30	Caroline Quirk.....	Montreal, P. Q.....	270.00
	Napoleon Choinard.....	Quebec, P. Q.....	1,200.00
	Mme. Camille Beaudry.....	St. Roumald, P. Q.....	6,500.00
	Jas. Samson and Marie Alice Douville.....	Quebec, P. Q.....	1,000.00
	Louis Chevalier.....	L'Ange, Que.....	300.00
	Mme. A. B. Lepine.....	Quebec, P. Q.....	200.00
	Roy Elphige.....	St. Denis, Que.....	1,000.00
	Hormidas Gauthier.....	St. Remie, Que.....	1,000.00
	Wilfred Farley.....	St. Gabriel de Brandon, Que.....	500.00
40	Miss Annette LaBlanc.....	Joliette, Que.....	1,000.00
	Miss Marie LaBlanc.....	Joliette, Que.....	1,900.00
	Mr. F. X. Lachance.....	Black Lake, Co., Migantic, Que.....	2,000.00
	Henri Lelage.....	N. P. 54 Rue du Pont, Quebec, P. Q.....	100.00
	Albina Brodeur.....	Roxton Falls, Que.....	500.00
	Mlle. Lily Bidard.....	Roxton Falls, Que.....	2,000.00
	Ludger Brunelle.....	Roxton Falls, Que.....	500.00
	Jas. Hambleton.....	Roxton Falls, Que.....	500.00
	Dame Mathias Robinson.....	Roxton Falls, Que.....	897.99

In the Supreme
Court of Ontario
Exhibits
No. 8
List of Walker-
ville, Windsor and
East Windsor
Debentures
Owned out of
Ontario

In the Supreme
Court of Ontario
Exhibits
No. 8
List of Walkerville,
Windsor and
East Windsor
Debentures
Owned out of
Ontario

Name	Address	Amount
Octave Laberge.....	Ange Gardien, Portneuf, Que.....	200.00
Edouard Prudhomme.....	1642 Clements Ave., Detroit, Que.....	1,000.00
Candide Perreault.....	St. Marc des Carrieres, Que.....	196.96
Jos. Bouchard.....	Roxton Falls, Que.....	500.00
Alexander de Lachevrotiere.....	St. Marc des Carrieres, Que.....	200.00
Mme. Vve. Alzaide J. B. Pharand.....	150 Dufresne St., Montreal, Que.....	1,000.00
Arsene Cloutier.....	St. Marc des Carrieres, Que.....	390.67
Dame Jos. Thivierge.....	Isle Verte, Co., Temisconata, P. Q.,.....	100.00
LaCaisse Populaire de Lauzon.....	Lauzon, Que.....	1,500.00
Avila Farley.....	4808 de Grandpre, Montreal, Que.....	1,000.00
Michael Pye.....	Windsor, P. Q.....	1,000.00
Arthur Levesque.....	Riviere Ovelle, Kamourasha, P. Q.....	711.16
Alfred Hamelin.....	St. Marc des Carrieres, Que.....	1,000.00
Mrs. Mathilde Fregreau.....	St. Damase, St. Hyacinthe, Que.....	1,700.00

10

WINDSOR DEBENTURE HOLDERS NOT RESIDENT IN THE PROVINCE OF ONTARIO

Name of Owner	Amount
Emma G. McKenzie, 122 W. Euclid St., Detroit, Mich.....	\$ 4,000.00
Alfred Raycraft, Thedford Mines, Que.....	1,000.00
City of Edmonton, Sinking Fund, Edmonton.....	32,654.44
Grand Secy-Treas and (3) member of Board Grand Trustees of Benevolent & Protective Order of Elks of the Dominion of Canada, Winnipeg, Man.....	1,000.00
Grand Council of Catholic Mutual Benefit Assoc. of Canada, Montreal, Que.....	10,265.20
Fred Wareing, 3075 Ford St. W., Detroit, Mich.....	954.48
Robert Partridge, 81 Hanson St., Oldham Lanes, England.....	4,000.00
Roy A. McLellan, Saskatoon, Sask.....	1,089.03
Hugh E. Arnold, c/o Can. Bank of Commerce, St. James St., Montreal, Que.....	1,000.00
Miss Nettie Thorn, c/o Nurses Home Western Hospital, Montreal, Que.....	563.68
The Dominion Commercial Travellers' Association, Room 706, 485 McGill St., Montreal, Que.....	10,000.00
Mrs. Lily M. Hodge, Lockeport, N. S.....	10,000.00
Fred C. Wilson, 12061 Monica Ave., Detroit, Mich.....	3,000.00
Mrs. Sarah H. Muter, Loreburn, Sask.....	1,000.00
Ernest G. Britton, 4445 West 6th St., Riverside, Cal.....	5,000.00
The Canadian National Rly Insurance Investment Funds, Montreal, Quebec.....	44,000.00
Waldo Brook Clarke, Kenaston, Sask.....	2,000.00
E. K. Spinney, Limited, Yarmouth, N. S.....	1,000.00
	<u>\$132,526.83</u>

40

In the Supreme
Court of Ontario
Exhibits
No. 9
List of Sandwich
Debentures
Owned out of
Ontario

PLAINTIFFS' EXHIBIT No. 9

Holders and Amounts of Registered Debenture Holders, outside of the Province of Ontario, so far as Town records disclose, are as follows:

Debentures registered in name of "Trustees of Sinking Fund, City of Edmonton, Alberta, registered Nov. 26, 1931, Amount \$227,751.16. Issued under the following Bylaws:

2109, 2070, 2105, 2108, 2040, 2052, 2059, 1022, 1037, 1494, 1461, 1450, 1711, 1704, 1689, 1620.

PLAINTIFFS' EXHIBIT No. 13

Re: CITY OF EAST WINDSOR

DEBENTURES PAYABLE OUTSIDE OF ONTARIO

Partial List Shows:

\$2,926,675.73 Payable at Montreal or New York. Records of Bylaws prior to No. 536 do not show where payable.

In the Supreme
Court of Ontario
Exhibits
No. 13
East Windsor
Debentures
Payable Outside
of Ontario

PLAINTIFFS' EXHIBIT No. 14

Re: TOWN OF WALKERVILLE

DEBENTURES PAYABLE OUTSIDE OF ONTARIO—BYLAW 681

In the Supreme
Court of Ontario
Exhibits
No. 14
Walkerville
Debentures
Payable Outside
of Ontario

10

Detroit and Walkerville:

Past Due.....	\$ 3,624.58
Unmatured.....	16,594.00
Total.....	<u>\$20,218.58</u>

DEFENDANTS' EXHIBIT No. 15

Notice published in the Windsor Daily Star, on June 13th, 1936, same in form as Exhibit No. 2 (a)—72. Not printed by consent.

PLAINTIFFS' EXHIBIT No. 11

In the Supreme
Court of Ontario
Exhibits
No. 11
Bankruptcy
Petition Against
Walkerville-East
Windsor Water
Commission.
Sept. 11, 1936

IN THE SUPREME COURT OF ONTARIO

IN THE MATTER OF the Bankruptcy of the Walkerville-East Windsor Water Commission.

DEBTOR

I, Edgar F. Ladore, of the Town of Walkerville, in the County of Essex, Manufacturer;

HEREBY PETITION this Honourable Court that the Walkerville-East Windsor Water Commission, a Corporation incorporated under the laws of the Province of Ontario, lately carrying on business at the Town of Walkerville, 10
in the County of Essex, be adjudged bankrupt and that a Receiver may be appointed in respect of its estate and say:

1. That the said Walkerville-East Windsor Water Commission has at some time during the six months next preceding the presentation of this petition carried on business at the Town of Walkerville within the jurisdiction of this Court and its property is situated at the said Town of Walkerville and the City of East Windsor within the jurisdiction of this Court;

2. That the said Walkerville-East Windsor Water Commission is justly and truly indebted to me in the sum of \$2,000.00 for principal and \$55.00 for interest, of which the sum of \$55.00 for interest fell due for payment on the 30th day of June, 1936, upon certain bonds or debentures executed by the Walkerville-East Windsor Water Commission and issued for the consideration of money loaned. 20

3. The security held by the petitioner is a general charge or lien upon the assets of the said Commission in common with all other debentures issued by the said Commission which amount to the sum of \$753,500.10.

4. That the said Walkerville-East Windsor Water Commission within six months before the date of the presentation of this petition has committed the following acts of bankruptcy, namely:—

(1) That on the 30th day of June, 1936, the said Commission defaulted in the payment of the sum of \$13,532.31 of principal and \$1,935.86 for interest under the said debentures. 30

(2) That the report and statement of the said Commission dated on or about the 17th day of June, 1936, exhibited to the bondholders and their bankers and other creditors shows that the said commission is and was unable to pay its debts as they fell due.

(3) That the Walkerville-East Windsor Water Commission has transferred or is transferring to the Windsor Utilities Commission its Assets for the purpose of including them in a certain refunding scheme which will delay payment of creditors. 40

(4) That the Chairman and members of the said Commission have stated and resolved that they would default in payment of their debentures and other debts falling due and have so defaulted.

(5) The said Walkerville-East Windsor Water Commission has ceased to meet its Liabilities generally as they become due as above stated in that they have neglected or refused to pay the interest and the installment of principal falling due on their debentures on and after the 30th day of June, 1936.

5. That the Trusts and Guarantee Company, Limited, of the Province of Ontario, is a person qualified to act as custodian in respect to the Estate of the said debtor and is acceptable to the under-mentioned creditor.

In the Supreme
Court of Ontario
Exhibits
No. 11
Bankruptcy
Petition Against
Walkerville-East
Windsor Water
Commission.
Sept. 11, 1936
Concluded

	Creditor	Address	Amount of Debt
10	E. F. Ladore,	Walkerville, Ont.....	\$2,055.00

DATED this 11th day of September, 1936.

(Sgd.) E. F. LADORE.

Signed by the petitioner,
in my presence,
WILLIAM BOWMAN,
Signature of Witness.

Address:
Windsor, Ontario.
Description:

20 NOTE: The affidavit of verification by the petitioner, Notice of hearing by the Presiding Judge in Bankruptcy on September 24th, 1936, and the affidavit of proof of service of the Petition and Notice are not printed by consent.

DEFENDANTS' EXHIBIT No. 12

ASSESSMENT OF THE BORDER MUNICIPALITIES MADE IN 1931 FOR TAXES OF 1932

In the Supreme
Court of Ontario
Exhibits
No. 12
Statement of
Assessments, 1931
to 1936

	Description	Windsor	E. Windsor	Sandwich	Walkerville
	Land Assessment.....	\$33,452,600	\$ 7,792,335	\$ 7,316,205	\$ 4,342,706
	Building Assessment.....	48,182,250	11,046,140	7,640,595	9,819,067
	Total Real Property Assessment.....	\$81,634,750	\$18,838,475	\$14,956,800	\$14,161,773
30	Business Assessment.....	7,024,425	3,164,545	953,817	3,262,946
	Income Assessment.....	550,475	.....	.....	.....
	Total Assessment Liable for All Taxes.....	\$89,209,650	\$22,003,020	\$15,910,617	\$17,424,719
	Exempted by Statute.....	19,153,475	2,121,795	1,973,945	2,843,152
	Total, of All Assessments for the year 1931.....	\$108,363,125	\$24,124,815	\$17,884,562	\$20,267,871

ASSESSMENT OF THE BORDER MUNICIPALITIES MADE IN 1932
FOR TAXES OF 1933

In the Supreme
Court of Ontario
Exhibits
No. 12
Statement of
Assessments, 1931
to 1936

Continued

Land Assessment.....	\$30,193,000	\$ 7,737,105	\$ 6,658,418	\$ 4,308,444	
Building Assessment.....	43,370,770	10,954,550	7,366,650	9,812,458	
Total Real Property Assessment.....	\$73,563,770	\$18,691,655	\$14,025,068	\$14,120,902	
Business Assessment.....	5,979,410	2,936,160	941,660	3,081,272	
Income Assessment.....	477,620				
Total Assessment Liab. for All Taxes.....	\$80,020,800	\$21,627,815	\$14,966,728	\$17,202,174	
Exempted by Statute.....	17,391,515	2,122,750	1,960,725	375,895	10
Liab. for School Rates Only.....	117,920	27,000			
Total of All Assessments for the year 1932.....	\$97,530,235	\$23,777,565	\$16,927,453	\$17,578,069	

ASSESSMENT OF THE BORDER MUNICIPALITIES MADE IN 1933
FOR TAXES OF 1934

Land Assessment.....	\$22,578,070	\$ 4,039,860	\$ 4,047,025	\$ 4,273,296	
Building Assessment.....	38,700,920	9,072,790	5,826,693	9,762,487	
Total Real Property Assessment.....	\$61,278,990	\$13,112,650	\$ 9,873,718	\$14,035,783	
Business Assessment.....	4,947,380	2,783,150	392,517	2,985,572	
Income Assessment.....	379,660				20
Total Assessment Liab. for All Taxes.....	\$66,606,030	\$15,895,800	\$10,266,235	\$17,021,355	
Exempted by Statute.....	15,354,890	3,066,100	1,929,600	2,305,487	
Liab. for School Rates Only.....	106,130	24,000			
Total of All Assessments for the year 1933.....	\$82,067,050	\$18,985,900	\$12,195,835	\$19,326,842	

ASSESSMENT OF THE BORDER MUNICIPALITIES MADE IN 1934
FOR TAXES OF 1935

Land Assessment.....	\$22,241,470	\$ 3,322,370	\$ 2,864,950	\$ 3,837,519	
Building Assessment.....	38,616,810	7,953,580	5,661,203	9,487,336	30
Total Real Property Assessment.....	\$60,858,280	\$11,275,950	\$ 8,526,153	\$13,324,855	
Business Assessment.....	4,918,320	2,615,510	577,475	2,934,312	
Income Assessment.....	330,280				
Total Assessment Liab. for All Taxes.....	\$66,106,880	\$13,891,460	\$ 9,103,628	\$16,259,167	
Exempted by Statute.....	16,270,890	3,512,570	1,831,000	1,596,450	
Liab. for School Rates Only.....	110,200	22,000			
Total of all Assessments for the year 1934.....	\$82,487,970	\$17,426,030	\$10,934,628	\$17,855,617	
Registered Property not Liab. for Taxes.....	621,680	1,333,660	1,211,690		40

ASSESSMENT OF THE BORDER MUNICIPALITIES MADE IN 1935
FOR TAXES IN 1936

In the Supreme
Court of Ontario
Exhibits
No. 12
Statement of
Assessments, 1931
to 1936
Concluded

Land Assessment.....	\$19,679,450	\$ 4,093,320	\$ 4,801,200	\$ 3,770,440
Building Assessment.....	48,625,930	8,907,420	6,251,170	10,960,310
Total Real Property Assessment.....	\$68,305,380	\$13,000,740	\$11,052,370	\$14,730,750
Business Assessment.....	4,354,630	2,434,950	480,930	2,588,910
Income Assessment.....	315,910	29,400	30,160	79,090
Total Assessment Liable for All Taxes.....	\$56,297,350	\$12,909,500	\$ 8,493,370	\$14,555,730
10 Exempted by Statute	15,189,330	1,313,660	1,925,060	2,615,520
Liable for School Rates Only.....	97,090	8,200	.....	.....
Registered Property not Liable for Taxes.....	1,392,150	1,233,730	1,145,030	227,500

CITY OF WINDSOR

ASSESSMENT MADE IN 1936 FOR 1937 TAXES

Description	Windsor	Walkerville	E. Windsor	Sandwich	Total
Total Real Property Liable for All Taxes	\$52,156,870	\$11,700,120	\$10,818,310	\$ 7,340,200	\$82,015,500
20 Business.....	4,354,630	2,588,910	2,434,950	480,930	9,859,420
Income.....	481,490	.....	.....	.....	481,490
Total Assessment Lia- ble for All Taxes.....	\$56,992,990	\$14,289,030	\$13,253,260	\$ 7,821,130	\$92,356,410
Liable for School Rates Only.....	97,090	.....	8,200	.....	105,290
Liable for Local Im- provements Only.....	14,312,410	2,598,960	1,367,050	1,854,860	20,133,280
Total Rateable.....	\$71,402,490	\$16,887,990	\$14,628,510	\$ 9,675,990	\$112,594,980
Property Not Liable Registered.....	1,179,610	277,380	1,053,120	1,071,490	3,581,600
30 Total of All Assess- ments.....	\$72,582,100	\$17,165,370	\$15,681,630	\$10,747,480	\$116,176,580

Subject to changes by County Judge and Court of Revision.

APPENDIX OF STATUTES

THE BRITISH NORTH AMERICA ACT, 1867

30 VICTORIA, CHAPTER 3

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith.

(29th March, 1867)

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom; 10

AND WHEREAS such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire;

AND WHEREAS on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared;

AND WHEREAS it is expedient that Provision be made for the eventual admission into the Union of other Parts of British North America;

BE IT THEREFORE ENACTED AND DECLARED by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords 20 Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. PRELIMINARY

1. This Act may be cited as the British North America Act, 1867.

VI—DISTRIBUTION OF LEGISLATIVE POWERS
POWERS OF THE PARLIAMENT

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of 30 the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:

1. The Public Debt and Property.
2. The regulation of Trade and Commerce.
3. The raising of money by any mode or system of Taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The Census and Statistics.

7. Militia, Military and Naval Service and Defence.
 8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
 9. Beacons, Buoys, Lighthouses and Sable Island.
 10. Navigation and Shipping.
 11. Quarantine and the establishment and maintenance of Marine Hospitals.
 12. Sea coast and inland Fisheries.
 13. Ferries between a Province and any British or Foreign Country or between two Provinces.
 14. Currency and Coinage.
 15. Banking, incorporation of banks, and the issue of paper money.
 16. Savings Banks.
 17. Weights and Measures.
 18. Bills of Exchange and Promissory Notes.
 19. Interest.
 20. Legal tender.
 21. Bankruptcy and Insolvency.
 22. Patents of Invention and Discovery.
 23. Copyrights.
 24. Indians, and lands reserved for the Indians.
 25. Naturalization and Aliens.
 26. Marriage and Divorce.
 27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
 28. The Establishment, Maintenance and Management of Penitentiaries.
 29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.
- 30 And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of Provincial offices and the appointment and payment of Provincial officers.
5. The management and sale of the Public Lands belonging to the Province and of the timber and wood thereon.
6. The establishment, maintenance and management of public and reformatory prisons in and for the Province.
7. The establishment, maintenance and management of hospitals, 10
asylums, charities, and eleemosynary institutions in and for the
Province other than marine hospitals.
8. Municipal institutions in the Province.
9. Shop, saloon, tavern, auctioneer and other licenses in order to the
raising of a revenue for Provincial local or municipal purposes.
10. Local works and undertakings other than such as are of the following
classes:
 - a. Lines of steam or other ships, railways, canals, telegraphs and
other works and undertakings connecting the Province with any
other or others of the Provinces or extending beyond the limits 20
of the Province.
 - b. Lines of steamships between the Province and any British or
Foreign country.
 - c. Such works as, although wholly situate within the Province are
before or after their execution declared by the Parliament of
Canada to be for the general advantage of Canada or for the
advantage of two or more of the Provinces.
11. The incorporation of companies with provincial objects.
12. The solemnization of marriage in the Province.
13. Property and civil rights in the Province. 30
14. The administration of Justice in the Province, including the con-
stitution, maintenance, and organization of Provincial Courts, both
of civil and of criminal jurisdiction, and including procedure in civil
matters in those Courts.
15. The imposition of punishment by fine, penalty or imprisonment for
enforcing any law of the Province made in relation to any matter
coming within any of the classes of subjects enumerated in this
section.
16. Generally all matters of a merely local or private nature in the
Province. 40

REVISED STATUTES OF CANADA, 1927

CHAPTER II

AN ACT RESPECTING BANKRUPTCY

Statutes
The Bankruptcy
Act, R. S. C., 1927

1. This Act may be cited as the Bankruptcy Act.

INTERPRETATION

2. In this Act, unless the context otherwise requires or implies, the expression (k) "Corporation" includes any company incorporated or authorized to carry on business by or under an Act of the Parliament of Canada or of any of the Provinces of Canada, and any incorporated company, whereso-
10 ever incorporated, which has an office in or carries on business within Canada, but does not include building societies, having a capital stock, nor incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies.

REVISED STATUTES OF ONTARIO, 1927

CHAPTER 235

THE LOCAL IMPROVEMENT ACT

Statutes
The Local Im-
provement Act,
R. S. O., 1927

45. (5) The special rates imposed for the owners' portion of the cost shall form a special fund for the payment of the debentures issued under the authority of sub-section 2 and the interest thereon and shall not be applicable
20 to or be applied for any other purpose.

REVISED STATUTES OF ONTARIO, 1927

CHAPTER 248

THE PUBLIC PARKS ACT

Statutes
The Public Parks
Act, R. S. O., 1927

17. (8) Debentures issued under the authority of this Act, shall form a lien and charge upon all land which is by this Act declared to be subject to the control and management of the board.
- (9) In case of a sale the board may sell free from the lien, but the purchase money shall be applied to the payment of park debentures or to the purchase of other land for park purposes.
- 30 (10) During the currency of the debentures the Council shall withhold and retain out of and as a first charge on the annual rate the amount required to meet the annual interest of the debentures, and the annual sinking fund or principal mentioned in sub-section 3, to be provided for the retirement thereof as the debentures become due.
- (12) All money realized or payable under this Act shall be received by the treasurer of the municipality in the same manner as other money, and shall be by him deposited to the credit of the park fund, and shall be paid out by him on the orders of the board; save as to the amount required to meet the interest on and provide a sinking fund or principal for debentures. R. S. O.,
40 1914, c. 203, s. 18 (7-10, 12).

REVISED STATUTES OF ONTARIO, 1927

CHAPTER 249

THE PUBLIC UTILITIES ACT

30. The public utility works, and the land acquired for the purpose thereof and the property appertaining thereto, shall be specially charged with the repayment of any sum borrowed by the corporation for the purposes thereof, and for any debentures issued therefor, and the holders of such debentures shall have a preferential charge on such works, land and property for securing the payment of the debentures and the interest thereon. R. S. O., 1914, c. 204, s. 31. 10

31. Subject to the provisions of section 89 of THE POWER COMMISSION ACT and notwithstanding anything in THE MUNICIPAL ACT contained, revenues arising from supplying any public utility or from the property connected with any public utility work, after providing for the expenses and maintenance of the works, shall be paid over to the treasurer of the municipality to be applied annually to the reduction or extinguishment of the rates required to be levied under any by-law for the issue of debentures of the municipality for the construction, extension or improvement of the works, and it shall not be necessary to levy any general rate to provide for sinking fund and interest or other payments on account of such debentures, except to the extent to which the revenues on hand are insufficient to meet the annual payments falling due on account of principal and interest of the debentures. 1917, c. 47, s. 1. 20

CHAPTER 107

AN ACT RESPECTING THE JOINT PURCHASE OF WATERWORKS
BY THE MUNICIPAL CORPORATIONS OF THE TOWN OF WALKERVILLE
AND THE CITY OF EAST WINDSOR

Assented to 3rd April, 1930.

WHEREAS the municipal corporations of the town of Walkerville and the city of East Windsor have by their petition, prayed for special legislation in respect of the matters hereinafter set forth; and whereas it is expedient to grant the prayer of the said petition; 30

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:

1. This Act may be cited as *The Walkerville-East Windsor Water Commission Act, 1930.*

13. (1) For the purposes of assisting in the payment of the principal or interest of debentures for waterworks purposes issued or assumed by the Commission under the authority of this Act, the Commission shall impose in Walkerville and East Windsor an equal annual special rate not exceeding eleven cents per foot of frontage upon all land fronting or abutting upon any highway, lane or other public communication in, through or along which 40

waterworks mains are laid as well as all other land distant not more than three hundred feet therefrom, whether or not the owners or occupants thereof use the water.

Statutes
The Walkerville-
East Windsor
Water Commis-
sion Act, 1930

(2) The amount payable by the owner or occupant of any land upon which such frontage rate is imposed shall be a lien and charge upon the estate or interest in such land of the person by whom such amount is due and may be collected by the sale of his estate and interest in the said land.

20 20. All sums borrowed and debentures issued under the authority of this Act shall be binding on the Commission, Walkerville, East Windsor and the ratepayers thereof, and shall be a special charge upon the system.

CHAPTER 27

AN ACT RESPECTING THE ONTARIO MUNICIPAL BOARD

Assented to March 29th, 1932.

Statutes
The Ontario
Municipal Board
Act, 1932

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Ontario Municipal Board Act, 1932.*

PART III

GENERAL JURISDICTION AND POWERS

20 41. The board shall for all purposes of this Act have all the powers of a court of record and shall have an official seal which shall be judicially noticed. *R.S.O., 1927, c. 225, s. 4 (4).*

PART V

GENERAL MUNICIPAL JURISDICTION

84. Every debenture issued or to be issued under the authority of any bylaw of a municipality approved by the board shall bear the seal and certificate of the board signed by a member thereof, or by a person specially authorized by the chairman, establishing that the bylaw has been approved by the board and that the debenture is issued in conformity therewith. *New.*

30 85. The certificate of the board to the validity of any debenture of a municipality shall be in the following form:

THE ONTARIO MUNICIPAL BOARD

In pursuance of *The Ontario Municipal Board Act, 1932*, the board certifies that Bylaw No.....of the corporation of the.....ofpassed, on theday of.....19.... has been approved by the board, and that the within debenture, issued under the authority of such bylaw and in conformity therewith, is valid and binding upon the said corporation and its validity may not be contested or questioned for any cause whatsoever.

Dated this.....day of....., 19....

40 (SEAL)

.....

for the board.

PART VI

SPECIAL JURISDICTION OVER DEFAULTING MUNICIPALITIES

90. The board shall have and may exercise the special jurisdiction and powers conferred by this Part, whenever, upon request of a municipality, expressed by resolution of its council, or upon request of the creditors of a municipality having claims representing not less than twenty per centum of its indebtedness, including debenture debt, it is satisfied upon inquiry that the municipality has:

- (a) failed to meet and pay any of its debentures or interest thereon as the same became due and after payment thereof has been duly 10 demanded; or
- (b) failed to meet and pay any of its other debts or liabilities when due and default in payment is occasioned from financial difficulties affecting the municipality; or
- (c) become so financially involved or embarrassed that default in meeting any of its obligations may probably ensue.

(2) In the course of an inquiry the board may investigate any or all of the affairs of a municipality.

91. (1) If upon inquiry the board is of opinion that the circumstances so warrant or appear to render desirable, it may make such order as it may 20 deem proper or necessary to vest in supervisors control and charge over the administration of all or any of the affairs of the municipality as set forth in the order and to declare that thereafter and until the board shall otherwise determine and order such municipality shall be subject to the provisions of this Part.

(2) The board shall forthwith appoint a committee of supervisors for the municipality to be known as "The Supervisors of the.....of....." 30 (*naming the municipality*), to be composed of five persons, two of whom shall be nominated by the council, to be appointed by the board, two of whom shall be appointed by the board to represent the creditors of the municipality and the remaining one of whom shall be an independent person to be appointed by the board and he shall be the chairman of the committee.

(3) The board may require the council to submit the names of more than two nominees from whom to appoint the two to be appointed to represent the municipality.

(4) Where a vacancy occurs in the office of a supervisor the board shall fill the vacancy, but in so doing shall observe the provisions of subsection 2.

(5) Where a municipality fails to nominate supervisors within thirty days after being requested to so do, the board shall appoint the same without nomination being necessary. 40

(6) Notwithstanding the provisions of subsections 1 and 3, each of the supervisors shall be deemed to be appointed by the board and each of them shall hold office during the pleasure of the board.

(7) The supervisors shall be a continuing body notwithstanding any vacancy therein.

92. (1) Subject to the jurisdiction of the board, the supervisors shall have and may exercise the powers conferred on them by this Part and such additional powers as by any order of the board or by the terms of any agreement entered into under the authority of this Part may be conferred on them, and may do all things necessary or incidental to the exercise of any such powers.

10 (2) The powers of the supervisors shall be exercised by resolution of the committee, and the committee may with the approval of the board adopt such rules of practice and procedure governing the meetings, transactions and exercise of the powers of the supervisors as may from time to time be deemed expedient.

93. The council or any local board or any creditor of either of them dissatisfied with any order, direction or decision of the supervisors may within fifteen days, or such further time as the board may allow, appeal therefrom to the board.

20 94. Where a municipality has become subject to the provisions of this Part, notice thereof shall be given in the *Ontario Gazette* and in such one or more newspapers, published in or near the municipality and elsewhere and to such persons and in such form as the board may direct.

95. (1) When notice has been published in the *Ontario Gazette* that a municipality is subject to this Part, such publication shall operate as a stay of all actions or proceedings pending against the municipality and as a stay of execution as the case may be, and thereafter no action or other proceeding against the municipality shall be commenced or continued nor shall a levy be made under a writ of execution against the municipality, without leave of the board.

30 (2) Where the commencement or continuance of any action or proceeding or the making of any levy under a writ of execution is prevented or stayed under this section, the time during which such prevention or stay continues shall not be computed for the purposes of any Statute or law of limitations until leave of the board to commence or continue such action or proceeding or make such levy is obtained but the person having the right of action or to take any proceeding or to make a levy under a writ of execution shall upon the removal of the prevention or stay, have the same length of time within which to take action or proceed or make a levy under a writ of execution, as the case may be, as he had when such prevention or stay came into operation; provided that this subsection shall not apply unless application is made to the board for approval of the continuance or commencement of any such suit,
40 action or proceeding, within the time so limited as aforesaid by statute or law of limitations and such approval is refused.

96. Nothing in this Part contained shall take away any lien, hypothec or other charge, if any, in existence and subsisting at the time this Part comes into force with respect to any municipality upon or against any revenue or

Continued

other asset of the municipality and the same shall continue to exist until it is satisfied and discharged.

97. The supervisors shall with respect to the municipality and every local board thereof have control and charge over the exercise by any of them of any of their powers with respect to:

- (a) the appointment and dismissal of its officers, employees and servants, and their powers, duties, salaries and remunerations;
- (b) the collection, receipt, application and payment of its revenues and expenditures;
- (c) the system of accounting and audit, and the dealing with its assets, 10 liabilities, revenues and expenditures;
- (d) the making of and the manner and times for making the assessment and assessment rolls and of appeals therefrom;
- (e) the yearly or other estimates and the form, preparation and completion thereof, and the times when the same shall be made;
- (f) the amounts to be provided for and included in the yearly or other estimates, whether the same are to be provided by taxation or otherwise;
- (g) the imposition, rating, levying and collection of all rates, assessments and taxation, the mode and times for collecting the same and the 20 allowance of discounts or imposition of penalties thereon, and for the making and return of the collector's roll;
- (h) borrowing of moneys for the current expenditures of the corporation until the taxes are collected;
- (i) subject to *The Power Commission Act*, the rates, rents and charges imposed, levied or collectible for supply or service of any public utility;
- (j) imposition, charging and collection of all license permit or other fees, charges and expenses;
- (k) the sale or other disposition of any of its assets; and 30
- (l) without being limited by the foregoing, generally with respect to any other matter in any way affecting or pertaining to its affairs and their administration.

98. Where a municipality has become subject to this Part the board, with respect to the debenture debt and debentures of the municipality and interest thereon and with respect to any other indebtedness thereof, shall have power to authorize and order:

- (a) consolidation of the whole or any portion thereof;
- (b) issue of debentures in payment and satisfaction of the whole or any portions of such other indebtedness or any portion or portions thereof, 40 and compulsory acceptance of such debentures in payment and satisfaction thereof;

- (c) issue of new debentures to cover any such consolidation;
- (d) issue of new debentures in substitution and exchange for any outstanding debentures and compulsory acceptance thereof by the holders of such outstanding debentures;
- (e) retirement and cancellation of the whole or any portion of the existing debenture debt and outstanding debentures, upon the issue of new debentures to cover the same or in exchange therefor;
- (f) terms, conditions, places and times for exchange of new debentures for outstanding debentures;
- 10 (g) postponement of or variation in the terms, times and places for payment of the whole or any portion of the debenture debt and outstanding debentures and other indebtedness and interest thereon and variation in the rates of such interest;
- (h) cancellation, increase, decrease or other variation in the levy and collection of any assessment, rate or taxation, rent or charge imposed to meet, pay and discharge any debenture debt, debentures, or other indebtedness, and interest thereon, and to vary the basis, terms and times of payment thereof;
- 20 (i) creation and setting aside of sinking funds and special reserves out of any portion of the revenues of the municipality for meeting, paying and discharging its debenture debt, debentures, or other indebtedness or any portion thereof or interest thereon;
- (j) custody, management, investment and application of sinking funds, reserves and surpluses;
- (k) ratification and confirmation of any agreement, arrangement or compromise entered into with its creditors or any of them respecting its debenture debt, debentures or other indebtedness or any portion thereof and interest thereon;
- 30 (l) any variation, amendment or cancellation of any order made by it under this section or of the terms of any agreement, arrangement or compromise ratified and confirmed by it under this section.

100. (1) Where the board upon its own initiative or upon application to it by the supervisors, the council, local board, or any of the creditors of the corporation or of any local board intends to exercise any of the powers conferred on the board under section 98, it shall before so doing, give or direct that there be given notice of such intention in the *Ontario Gazette* and by such other publication and to such persons and in such manner as to the board may seem proper, and such notice shall state the time and place when the matter is to be dealt with by the board, which time shall be not less than three months
40 after the notice is published in the *Ontario Gazette*.

(2) The provisions of subsection 1 shall not apply with respect to any matter which is merely incidental to the exercise of any of said powers.

(3) The board shall not make any order under section 98 if objection in

writing to the making of such order is filed with the board by creditors representing not less than one-third in amount of the aggregate of the indebtedness of the municipality, including therein debenture indebtedness, but excluding therefrom indebtedness in respect of which the municipality is not directly but only contingently or collaterally liable.

(4) If creditors representing not less than fifty-one per centum in amount of the aggregate of the indebtedness of the municipality, including therein debenture indebtedness but excluding therefrom indebtedness in respect of which the municipality is not directly but only contingently or collaterally liable, have in writing filed with the board their approval of the making of any order of the board under section 98, it shall not be necessary that any notice be given under subsection 1 of the intention of the board to exercise its power to make such order, and in such case the provisions of subsection 3 shall not apply. 10

101. After an order of the board has been made under section 98 no portion of the debenture debt of the corporation represented by debentures ordered to be cancelled, retired or exchanged shall form part of its debt within the meaning of any Act limiting its borrowing powers.

102. The supervisors may, with the approval of the board, enter into agreements with any person with whom the municipality has previously entered into any agreement, contract or obligation which or some term, provision or obligation of which remains in whole or in part or in any manner to be observed, performed or carried out by the municipality, for the variation, amendment or cancellation of any such subsisting agreement, contract or obligation. 20

104. It shall not be necessary that the assent of the electors of the municipality or of those thereof qualified to vote on money bylaws be obtained with respect to any bylaw of the corporation or the issue thereunder of any debentures if such bylaw is approved by the board.

105. The supervisors shall have full charge and control over all moneys belonging to the corporation and received by any person for or on its behalf and such moneys shall be deposited in a chartered bank to be designated by the supervisors and when so deposited shall only be applied, used, transferred and withdrawn for such purpose in such manner and at such time or times as the supervisors may approve and direct, and all cheques drawn and issued by the corporation shall be signed and countersigned by such persons and in such manner as the supervisors may authorize. 30

113. The supervisors may authorize a compromise of tax arrears to be entered into between the corporation and any ratepayer and in such compromise may provide for an extension of the time of payment of such arrears and a reduction of the amount thereof and acceptance of any debentures or debenture coupons of the corporation in satisfaction of the whole or part thereof 40

114. Any agreement entered into in accordance with the provisions of this Part shall be binding upon and enure to the benefit of the parties thereto and all persons over whom the Legislature of this Province has legislative authority.

117. (1) The board shall have exclusive jurisdiction as to all matters arising under this Part or out of the exercise by the corporation or any other person of any of the powers conferred by this Part, and such jurisdiction shall not be open to question or review in any action or proceeding or by any court.

(2) The board may at any time of its own initiative or upon application made to it review any order, direction or decision of the supervisors and confirm, amend, vary or revoke the same.

(3) Any order made or approval given by the board under this Part shall, subject to the right of the board to review and amend or revoke the same, be final and conclusive and not open to question in any court, except by leave of the board.

118. The Board may make such orders and prescribe such forms from time to time as it may deem necessary to carry out the provisions of this Part or any agreement made in pursuance thereof and make rules and regulations in respect of applications, matters and things under this Part.

121. The board and the supervisors shall have access at all times to all books, records, papers and documents of the municipality and of every local board, including but without limiting the generality of the foregoing, all assessment rolls, collectors' rolls, bylaws, minute books, books of account, vouchers, and other records, papers and documents relating to its and their financial transactions, and may inspect, examine, audit and copy the same or any part thereof.

122. (1) Where a municipality has become subject to this Part, and its council or any local board fails, neglects or refuses to comply with any order, direction or decision of the board or the supervisors, the board may upon such notice, if any, as it may prescribe, do or order done all acts, deeds, matters and things necessary for compliance with such order or direction, and may exercise all the powers of the municipality or local board for such purpose and under its or their name and seal.

128. The powers contained in this Part shall be deemed to be in addition to and not in derogation of any power of the board and the municipality under this or any other Act, but where the provisions of any general or special Act or any other Part of this Act conflict with the provisions of this Part, the latter shall prevail.

PART VIII

PRACTICE AND PROCEDURE

157. (1) Subject to the provisions of Parts V and VI, an appeal shall lie from the board to the Court of Appeal of the Supreme Court upon a question of jurisdiction or upon any question of law, but such appeal shall not lie unless leave to appeal is obtained from the court within one month after the making of the order or decision sought to be appealed from or within such further time as the court, under the special circumstances of the case, shall allow after notice to the opposite party stating the grounds of appeal.

(2) Upon such leave being obtained the registrar shall set the appeal down for hearing at the next sitting, and the party appealing shall, within ten days give to the parties affected by the appeal, or the solicitors by whom such parties were represented before the board, and to the secretary, notice in writing that the case has been so set down; and the appeal shall be heard by such court as speedily as practicable.

(3) On the hearing of any appeal the court may draw all such inferences as are not inconsistent with the facts expressly found by the board and are necessary for determining the question of jurisdiction or law, as the case may be, and shall certify its opinion to the board and the board shall make an order 10 in accordance with such opinion.

(4) The board shall be entitled to be heard, by counsel or otherwise, upon the argument of any such appeal.

(5) The Supreme Court shall have power to fix the costs and fees to be taxed, allowed and paid upon such appeals, and to make rules of practice respecting appeals under this section, and until such rules are made the rules and practice applicable to appeals from a judge of the Supreme Court to the Court of Appeal shall be applicable to appeals under this Act.

(6) Subject to the provisions of Parts V and VI, when the matter in controversy exceeds the sum or value of \$4,000 or relates to the duration of a 20 privilege to operate a railway along a highway, or to the construction of an agreement between a railway company and a municipal corporation, or to any demand affecting the rights of the public or to any demand of a general or public nature affecting future rights, an appeal shall lie from the Court of Appeal to His Majesty in His Privy Council, but no appeal shall lie to His Majesty in His Privy Council in any other case, except by leave of His Majesty. *R.S.O., 1927, c. 225, s. 47 (1-6).*

(7) No appeal shall lie to His Majesty in His Privy Council, from any decision of the Court of Appeal upon an appeal from the board under *The Assessment Act* or under Part VI of this Act. *R.S.O., 1927, c. 225, s. 47 (?), 30 amended.*

(8) Neither the board nor any member of the board shall in any case be liable to any costs by reason or in respect of any appeal or application under this section.

(9) Save as provided in this section and in section 156:

(a) every decision or order of the board shall be final; and,

(b) no order, decision or proceeding of the board shall be questioned or reviewed, restrained or removed by prohibition, injunction, *certiorari* or any other process or proceeding in any court. *R.S.O., 1927, c. 225, s. 47 (8 and 9).*

CHAPTER 39

AN ACT TO AMEND THE ONTARIO MUNICIPAL BOARD ACT, 1932

Statutes
The Ontario
Municipal Board
Act, 1934

Assented to April 3rd, 1934.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Ontario Municipal Board Act, 1934*.

4. Section 83 of *The Ontario Municipal Board Act, 1932*, is repealed and the following substituted therefor:

10 83. (1) In any case where either prior or subsequent to the issue and sale of any debentures issued or to be issued by a municipality, application is made to the board for its approval of any bylaw authorizing the issue of such debentures, and of the debentures, the board may approve the bylaw and certify the validity of the debentures, notwithstanding any illegality, invalidity or irregularity in the bylaw or debentures or in any of the proceedings relating or incidental thereto occurring, had or taken prior or subsequent to the final passing of the bylaw or issue of the debentures.

20 (2) Every bylaw of a municipality approved by the board and every debenture issued thereunder bearing the seal and certificate of the board shall for all purposes be legal, valid and binding upon the corporation of such municipality and the ratepayers thereof and upon the property liable for any rate imposed by or under the authority of any statute or of the bylaw, and every such debenture shall be good and indefeasible security according to the tenor thereof in the hands of any *bona fide* holder thereof as if such debenture had been validated and declared to be legal and binding by an Act specially passed for such purpose, and the validity of the bylaw and of every such debenture may not be contested or questioned for any cause whatsoever, nor shall it be necessary to its or their validity that the judgment or opinion of any court or person be requisite or obtained.

30 (3) The board shall not approve any bylaw of a municipality or certify the validity of any debenture issued thereunder if such bylaw has been set aside, quashed or declared to be invalid by any court.

8. Section 91 of *The Ontario Municipal Board Act, 1932*, amended by adding thereto the following subsection:

(8) No person who is not a British subject may be appointed or act as a supervisor.

9. *The Ontario Municipal Board Act, 1932*, is amended by adding thereto the following sections:

40 91a (1) Where a municipality has failed, or the board is satisfied may fail to meet and pay any of the principal moneys of its debenture debt when the same is due but has met and paid, or will meet and pay all interest on its debenture debt when due, and notice is given

to the board and, within six months after the time when such principal moneys became due for payment, or where default has not occurred, at any time prior to the time when default may occur, the council of the municipality and the holders or authorized representatives of the holders of debentures of the municipality representing in amount not less than sixty per centum of the total outstanding debentures issued by the corporation of such municipality have entered into a preliminary or tentative agreement in writing approved by the board, for the postponement, refunding or reconstitution of the total outstanding debentures or of such portion thereof as such agreement may affect and for or respecting such other matters in relation to the affairs of such municipality as may appear to the board to be necessary or expedient to have provision made and for the appointment by the board of an inspector of the municipality, the board, upon inquiry and upon being satisfied that the appointment of a committee of supervisors is not essential for the due protection of the interest and rights of the municipality, its ratepayers, inhabitants and creditors, may with respect to such municipality and its affairs in lieu of appointing a committee of supervisors and vesting therein control and charge over the administration of its affairs, order and declare that thereafter and until the board otherwise determines and orders such municipality shall be subject to the provisions of this Part and shall vest in an inspector control and charge over the administration of all or any of the affairs of the municipality. 10

(2) Where the board has made an order with respect to any municipality under the authority of subsection 1, it shall forthwith appoint an inspector in whom shall be vested control and charge over the administration of the affairs of such municipality as provided by such order. 20

(3) If the board approves, the person appointed as an inspector may be the person agreed upon between the council and the creditors under the terms of the agreement referred to in subsection 1, or in case of disapproval by the board or disagreement or failure to agree between the municipality and the debenture holders, the inspector shall be such person as the board may itself select and appoint. 30

(4) An officer of the board may be appointed as an inspector under this section.

(5) No person may be appointed an inspector who is or within the preceding two years was a member of the council or any local board of the municipality, or who is not a British subject. 40

(6) In case the office of an inspector becomes vacant for any cause, the board shall appoint his successor, and for such purpose may consider any person nominated jointly by the council and the debenture holders.

(7) Every inspector appointed under this section shall be under the sole jurisdiction of the board and subject only to its control and

direction and he shall hold office only during the pleasure of the board.

10 (8) Subject to the jurisdiction of the board, an inspector appointed by the board shall with respect to the municipality for which he is appointed have and exercise such jurisdiction, control and powers as are by the provisions of this Part exercisable by supervisors, as the board may by its order provide, and all of the provisions of this Part relating to supervisors, their functions, rights, protection, power, duties, proceedings, transactions, orders, directions and decisions and to appeals from any such order, direction or decision shall, *mutatis mutandis*, apply to the extent necessary according to the terms of the order of the board unless the context of any such provision or of this section shall preclude or conflict.

(9) The salary and expenses payable to an inspector shall be determined by the board and be paid by the municipality for which he is appointed.

20 (10) This section shall not apply to any municipality which has failed to meet and pay any other of its debts, liabilities or obligations, including interest upon debentures, as the same became due or after payment thereof has been duly demanded, and if after an order has been made under this section with respect to any municipality the board is satisfied that such municipality has failed to meet and pay any of its other debts, liabilities and obligations, including interest upon debentures, in addition to failing to meet and pay any principal moneys of its debentures, it may forthwith order that the control and charge over the administration of the affairs of the municipality shall be vested in a committee of supervisors to be appointed under section 91 in lieu of an inspector.

30 (11) The Board at any time after it has made an order under subsection 1 if it deems it necessary or expedient so to do, may order that the control and charge over the administration of the affairs of a municipality shall be vested in a committee of supervisors to be appointed under section 91.

(12) Upon an order being made by the board under subsection 10 or subsection 11 and upon a committee of supervisors being appointed for a municipality, the inspector theretofore appointed for such municipality shall cease to hold office, and control and charge over the administration of the affairs of the municipality shall thereafter be vested in and continued by the supervisors.

40 (13) Where notice is given by a municipality to the board as provided for in subsection 1, the board may by its order provide that section 95 shall apply to such municipality pending an agreement being entered into under the said subsection 1, and notice shall be given and published of the application of section 95 as directed by the board.

91b Subject to the conditions and limitations set forth in section 91a, the provisions of the said section may by order of the board be made

applicable to any municipality which prior to the time when the said section came into force had failed to meet and pay any of the principal moneys of its debenture debt as if such failure had actually occurred on the day when the said section came into force.

10. Section 92 of *The Ontario Municipal Board Act, 1932*, is amended by adding thereto the following subsection:

- (1a) The jurisdiction and powers to be exercised under this Part by a committee of supervisors heretofore or hereafter appointed shall extend to and include and are hereby declared to have extended to and included not only control over all the affairs of the corporation of the municipality for which it is appointed, but also over all the affairs of every local board of such municipality, unless an order made by the board shall otherwise expressly declare and direct. 10

11. (1) Section 97 of *The Ontario Municipal Board Act, 1932*, is amended by inserting after the word "powers" in the third line the words "and over the performance by any of them of any of their duties and obligations," so that the first paragraph of the said section shall now read as follows:

- 97 The supervisors shall with respect to the municipality and every local board thereof have control and charge over the exercise by any of them of any of their powers and over the performance by any of them of any of their duties and obligations with respect to: 20

(2) The said section 97 is amended by adding thereto the following clause:

- (bb) the keeping, investment, use, application, payment and disposition of all sinking funds, and of the moneys belonging thereto and all of rates levied and moneys collected for the purposes of any such sinking fund.

12. Subsection 4 of section 100 of *The Ontario Municipal Board Act, 1932*, is amended by striking out the words "fifty-one per centum" in the first and second lines and inserting in lieu thereof the words "two-thirds" so that the said subsection shall now read as follows: 30

- (4) If creditors representing not less than two-thirds in amount of the aggregate of the indebtedness of the municipality, including therein debenture indebtedness but excluding therefrom indebtedness in respect of which the municipality is not directly but only contingently or collaterally liable, have in writing filed with the board their approval of the making of any order of the board under section 98, it shall not be necessary that any notice be given under subsection 1 of the intention of the board to exercise its power to make such order, and in such case the provisions of subsection 3 shall not apply. 40

14. Section 104 of *The Ontario Municipal Board Act, 1932*, is amended by striking out the word "corporation" in the fourth line and inserting in lieu thereof the word "municipality."

15. Section 105 of *The Ontario Municipal Board Act, 1932*, is amended by striking out the word "corporation" where it occurs in the second line and in the eighth and ninth lines and inserting in lieu thereof the word "municipality," and by adding at the end of the said section the words "and no moneys belonging to or revenues of the municipality may be appropriated, applied, paid, used, transferred or withdrawn by any person except with the approval of or otherwise than as directed by the supervisors," so that the said section shall now read as follows:

Statutes
The Ontario
Municipal Board
Act, 1934
Concluded

10 105 The supervisors shall have full charge and control over all moneys belonging to the municipality and received by any person for or on its behalf and such moneys shall be deposited in a chartered bank to be designated by the supervisors and when so deposited shall only be applied, used, transferred and withdrawn for such purpose, in such manner and at such time or times as the supervisors may approve and direct, and all cheques drawn and issued by the municipality shall be signed and countersigned by such persons and in such manner as the supervisors may authorize and no moneys belonging to or revenues of the municipality may be appropriated, applied, paid, used, transferred or withdrawn by any person except with the approval of or otherwise than as directed by the supervisors.

20

20. Section 113 of *The Ontario Municipal Board Act, 1932*, is amended by adding thereto the following subsection:

(2) No general scheme for authorizing compromises of tax arrears shall be undertaken or provided for by the supervisors until the same has first been approved by the board.

CHAPTER 51

AN ACT TO AMEND THE ONTARIO MUNICIPAL BOARD ACT, 1932

Assented to April 18th, 1935.

Statutes
The Ontario
Municipal Board
Amendment Act,
1935

30 His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Ontario Municipal Board Amendment Act, 1935*.

5. Sections 89 to 129, being Part VI of *The Ontario Municipal Board Act, 1932*, and amendments thereto and forms 1 to 4 to the said Act are hereby repealed.

CHAPTER 16

AN ACT TO ESTABLISH THE DEPARTMENT OF MUNICIPAL AFFAIRS

Assented to April 18th, 1935.

Statutes
The Department
of Municipal
Affairs Act, 1935

40 His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:

1. This Act may be cited as *The Department of Municipal Affairs Act, 1935*.

2. In this Act:

- (a) "Board" shall mean the Ontario Municipal Board;
- (f) "Municipality" shall mean a county, city, town, village or township, and shall include the corporation thereof, and for the purposes of this Act shall include every local board thereof;
- (g) "Public utility" shall mean and include any waterworks, gasworks, including works for the transmission, distribution and supply of natural gas, electrical power or energy works, or system for the generation, transmission or distribution of electric light, heat or power, any telephone system, any street or other railway system, any bus or other public transportation system and any other works or system for supplying the inhabitants generally with necessities or conveniences which are vested in or owned, controlled or operated by a municipality or municipalities or by a local board. 10

PART III

SPECIAL JURISDICTION OVER DEFAULTING MUNICIPALITIES

24. In this Part:

- (a) "Improved land" shall mean any parcel of land separately assessed which has a building thereon, and shall include any land in actual use for agricultural purposes, although there is no building thereon; 20
- (b) "Registrar" shall mean the registrar of a registry office;
- (c) "Registry office" shall mean the registry office of the registry division for the county or district in which a municipality subject to this Part is situate;
- (d) "Vacant land" shall mean any parcel of land separately assessed, which has no building thereon, but shall not include any improved land.

25. (1) The board shall have and may exercise the special jurisdiction and powers conferred by this Part, whenever, upon request of the department or of a municipality, expressed by resolution of its council, or upon request of the creditors of a municipality having claims representing not less than twenty per centum of its indebtedness, including debenture debt, it is satisfied upon inquiry that the municipality has: 30

- (a) failed to meet and pay any of its debentures or interest thereon as the same became due and after payment thereof has been duly demanded; or
- (b) failed to meet and pay any of its other debts or liabilities when due and default in payment is occasioned from financial difficulties affecting the municipality; or
- (c) become so financially involved or embarrassed that default in meeting any of its obligations may probably ensue. 40

(2) In the course of an inquiry the board may investigate any or all of the affairs of a municipality.

(3) The board may exercise the said powers with respect to any separate school board of any municipality which has not been made subject to this Part, upon request expressed by resolution of the school board.

10 26. (1) If upon inquiry the board is of opinion that the circumstances so warrant or appear to render desirable, it may make such order as it may deem proper or necessary to vest in the department control and charge over the administration of all the affairs of the municipality as set forth in the order and to declare that thereafter and until the board shall otherwise determine and order such municipality shall be subject to the provisions of this Part.

(2) During such time as the deputy minister is a member of the board he shall not sit as a member thereof with respect to any application or matter before the board under this Part.

20 27. (1) Except as otherwise provided in this Part, the department shall have and may exercise the powers conferred on them by this Part and such additional powers as by any order of the board or by the terms of any agreement entered into under the authority of this Part may be conferred on it, and may do all things necessary or incidental to the exercise of any such powers.

(2) The jurisdiction and powers to be exercised under this Part by the department shall extend to and include not only control over all the affairs of the corporation of the municipality, but also over all the affairs of every local board of such municipality, unless an order made by the board shall otherwise expressly declare and direct.

28. (1) The council or any local board or any creditor of either of them dissatisfied with any order, direction or decision of the department may within fifteen days, or such further time as the board may allow, appeal therefrom to the board.

30 (2) Every such order, direction or decision shall be communicated in writing by the department to the clerk of the municipality or secretary of the local board, as the case may be within five days after such order, direction or decision has been made.

29. Where a municipality has become subject to the provisions of this Part, notice thereof shall be given in the *Ontario Gazette* and in such one or more newspapers, published in or near the municipality and elsewhere and to such persons and in such form as the board may direct.

40 30. (1) When notice has been published in the *Ontario Gazette* that a municipality is subject to this Part, such publication shall operate as a stay of all actions or proceedings pending against the municipality and as a stay of execution as the case may be, and thereafter no action or other proceeding against the municipality shall be commenced or continued nor shall a levy be made under a writ of execution against the municipality, without leave of the board.

(2) Where the commencement or continuance of any action or proceeding or the making of any levy under a writ of execution is prevented or stayed under this section, the time during which such prevention or stay continues shall not be computed for the purposes of any Statute or law of limitations until leave of the board to commence or continue such action or proceeding or make such levy is obtained but the person having the right of action or to take any proceeding or to make a levy under a writ of execution shall upon the removal of the prevention or stay, have the same length of time within which to take action or proceed or make a levy under a writ of execution, as the case may be, as he had when such prevention or stay came into operation; 10 provided that this subsection shall not apply unless application is made to the board for approval of the continuance or commencement of any such suit, action or proceeding, within the time so limited as aforesaid by statute or law of limitations and such approval is refused.

31. Nothing in this Part contained shall take away any lien, hypothec or other charge, if any, in existence and subsisting at the time this Part comes into force with respect to any municipality upon or against any revenue or other asset of the municipality and the same shall continue to exist until it is satisfied and discharged.

32. The department shall with respect to the municipality and every 20 local board thereof have control and charge over the exercise by any of them of any of their powers and over the performance by any of them of any of their duties and obligations with respect to:

- (a) the appointment and dismissal of its officers, employees and servants, and their powers, duties, salaries and remunerations;
- (b) the collection, receipt, application and payment of its revenues and expenditures;
- (c) the keeping, investment, use, application, payment and disposition of all sinking funds and of the moneys belonging thereto and of all rates levied and moneys collected for the purposes of any such sinking 30 fund;
- (d) the system of accounting and audit, and the dealing with its assets, liabilities, revenues and expenditures;
- (e) the making of and the manner and times for making the assessment and assessment rolls and of appeals therefrom;
- (f) the yearly or other estimates and the form, preparation and completion thereof, and the times when the same shall be made;
- (g) the amounts to be provided for and included in the yearly or other estimates, whether the same are to be provided by taxation or otherwise; 40
- (h) the imposition, rating, levying and collection of all rates, assessments and taxation, the mode and times for collecting the same and the allowance of discounts or imposition of penalties thereon, and for the making and return of the collector's roll;

- (i) borrowing of moneys for the current expenditures of the corporation until the taxes are collected;
- (j) subject to *The Power Commission Act*, the rates, rents and charges imposed, levied or collectible for supply or service of any public utility;
- (k) imposition, charging and collection of all license permit or other fees, charges and expenses;
- (l) the sale or other disposition of any of its assets; and
- (m) without being limited by the foregoing, generally with respect to any other matter in any way affecting or pertaining to its affairs and their administration.

10

33. Where a municipality has become subject to this Part the board, with respect to the debenture debt and debentures of the municipality and interest thereon and with respect to any other indebtedness thereof, shall have power to authorize and order:

- (a) consolidation of the whole or any portion thereof;
- (b) issue of debentures in payment and satisfaction of the whole or any portion of such other indebtedness or any portion or portions thereof, and compulsory acceptance of such debentures in payment and satisfaction thereof;
- (c) issue of new debentures to cover any such consolidation;
- (d) issue of new debentures in substitution and exchange for any outstanding debentures and compulsory acceptance thereof by the holders of such outstanding debentures;
- (e) retirement and cancellation of the whole or any portion of the existing debenture debt and outstanding debentures, upon the issue of new debentures to cover the same or in exchange therefor;
- (f) terms, conditions, places and times for exchange of new debentures for outstanding debentures;
- (g) postponement of or variation in the terms, times and places for payment of the whole or any portion of the debenture debt and outstanding debentures and other indebtedness and interest thereon and variation in the rates of such interest;
- (h) cancellation, increase, decrease or other variation in the levy and collection of any assessment, rate or taxation, rent or charge imposed to meet, pay and discharge any debenture debt, debentures, or other indebtedness, and interest thereon, and to vary the basis, terms and times of payment thereof;
- (i) creation and setting aside of sinking funds and special reserves out of any portion of the revenues of the municipality for meeting, paying and discharging its debenture debt, debentures, or other indebtedness or any portion thereof or interest thereon;

20

30

40

- (j) custody, management, investment and application of sinking funds, reserves and surpluses;
- (k) ratification and confirmation of any agreement, arrangement or compromise entered into with its creditors or any of them respecting its debenture debt, debentures or other indebtedness or any portion thereof and interest thereon;
- (l) any variation, amendment or cancellation of any order made by it under this section or of the terms of any agreement, arrangement or compromise ratified and confirmed by it under this section.

35. (1) Where the board upon application to it by the department or the council or a separate school board or any of the creditors of the municipality intends to exercise any of the powers conferred on the board under section 33 or 34, it shall, before so doing, give or direct that there be given notice of such intention in the *Ontario Gazette* and by such other publication and to such persons and in such manner as to the board may seem proper, and such notice shall state the time and place when the matter is to be dealt with by the board, which time shall be not less than three months after the notice is published in the *Ontario Gazette*. 10

(2) The provisions of subsection 1 shall not apply with respect to any matter which is merely incidental to the exercise of any of said powers. 20

(3) The board shall not make any order under section 33 if objection in writing to the making of such order is filed with the board by creditors representing not less than one-third in amount of the aggregate of the indebtedness of the municipality or separate school board including therein debenture indebtedness, but excluding therefrom indebtedness in respect of which the municipality or separate school board is not directly but only contingently or collaterally liable.

(4) If creditors representing not less than two-thirds in amount of the aggregate of the indebtedness of the municipality or separate school board including therein debenture indebtedness but excluding therefrom indebtedness in respect of which the municipality or separate school board is not directly but only contingently or collaterally liable, have in writing filed with the board their approval of the making of any order of the board under section 33, it shall not be necessary that any notice be given under subsection 1 of the intention of the board to exercise its power to make such order, and in such case the provisions of subsection 3 shall not apply. 30

36. After an order of the board has been made under section 33 no portion of the debenture debt of the corporation represented by debentures ordered to be cancelled, retired or exchanged shall form part of its debt within the meaning of any Act limiting its borrowing powers. 40

37. The municipality may, with the approval of the department, enter into agreements with any person with whom the municipality has previously entered into any agreement, contract or obligation which or some term, provision or obligation of which remains in whole or in part or in any manner to be observed, performed or carried out by the municipality, for the variation,

amendment or cancellation of any such subsisting agreement, contract or obligation.

39. It shall not be necessary that the assent of the electors of the municipality or of those thereof qualified to vote on money bylaws be obtained with respect to any bylaw of the municipality or the issue thereunder of any debentures if such bylaw is approved by the department.

10 40. The department shall have full charge and control over all moneys belonging to the municipality and received by any person for or on its behalf and such moneys shall be deposited in a chartered bank to be designated by the municipality and when so deposited shall only be applied, used, transferred and withdrawn for such purpose in such manner and at such time or times as the department may approve and direct, and all cheques drawn and issued by the municipality shall be signed and countersigned by such persons and in such manner as the department may authorize and no moneys belonging to or revenues of the municipality may be appropriated, applied, paid, used, transferred or withdrawn by any person except with the approval of or otherwise than directed by the department.

20 50. (1) The department may authorize a compromise of tax arrears to be entered into between the corporation and any ratepayer and in such compromise may provide for an extension of the time of payment of such arrears and a reduction of the amount thereof and acceptance of any debentures or debenture coupons of the corporation in satisfaction of the whole or part thereof.

30 (2) Where a compromise of tax arrears has been entered into under this section and an extension of the time payment thereof agreed upon, such tax arrears shall be and remain a special lien upon the land in respect to which they are payable in priority over all claims, liens, privileges and encumbrances thereon, except claims of the Crown, and the liens, priorities and other rights with respect thereto provided for in *The Assessment Act* shall continue to apply thereto and to the collection and enforcement thereof, except that the treasurer and collector of taxes of the municipality without thereby waiving the statutory rights and powers of the municipality or of themselves shall not enforce collection of such tax arrears during the time the agreement is in force.

54. (1) The department or the board shall have exclusive jurisdiction as to all matters arising under this Part or out of the exercise by the municipality or any other person of any of the powers conferred by this Part, and such jurisdiction shall not be open to question or review in any action or proceeding or by any court.

40 (2) The department or the board may at any time of its own initiative or upon application made to it review any order, direction or decision made by it and confirm, amend, vary or revoke the same.

(3) Any order made or approval given by the department or the board under this Part shall, subject to the right of the board or the department to review and amend or revoke the same, be final and conclusive and not open to question in any court.

(4) The board only shall have and exercise exclusive jurisdiction to make any order under the provisions of sections 25, 26, 33, 34, 35 and 61, and otherwise shall have jurisdiction only with respect to appeals to it under the provisions of section 28.

(5) Except as provided by sections 25, 26, 28, 33, 34, 35 and 61, and by subsection 4 of this section, the department only shall have and may exercise exclusive jurisdiction with respect to all matters provided for in this Part.

58. The board and the department shall have access at all times to all books, records, papers and documents of the municipality and of every local board, including but without limiting the generality of the foregoing, all assessment rolls, collectors' rolls, bylaws, minute books, books of account, vouchers, and other records, papers and documents relating to its and their financial transactions, and may inspect, examine, audit and copy the same or any part thereof. 10

59. (1) Where a municipality has become subject to this Part, and its council or any local board fails, neglects or refuses to comply with any order, direction or decision of the board or the department, the board or the department may, upon such notice, if any, as it may prescribe, do or order done all acts, deeds, matters and things necessary for compliance with such order or direction, and may exercise all the powers of the council or local board for such purpose and under its or their name and seal. 20

66. Subject to the provisions of *The City of Windsor (Amalgamation) Act, 1935*, the municipalities and local boards heretofore declared subject to the provisions of Part VI of *The Ontario Municipal Board Act, 1932*, shall be and remain subject to the provisions of this Part and to the jurisdiction and control of the board and the department as provided for in this Part.

CHAPTER 15

AN ACT TO AMEND THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT, 1935

Assented to April 9th, 1936. 30

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Department of Municipal Affairs Amendment Act, 1936*.

5. Clause c of subsection 1 of section 25 of *The Department of Municipal Affairs Act, 1935*, is repealed and the following substituted therefor:

(c) has or may become financially involved or embarrassed that default or unusual difficulty in meeting debts or obligations, or in providing adequate funds to meet current expenditures may ensue, or has failed to levy the necessary rates to meet current expenditures. 40

6. Section 28 of *The Department of Municipal Affairs Act, 1935*, is repealed and the following substituted therefor:

28. The council or a local board or any creditor dissatisfied with any order of the Department may within five days after such order is transmitted to the head of the municipality, or its clerk or treasurer or, in the case of a local board, to its chairman or secretary, appeal therefrom to the Minister, who may himself dispose finally of the appeal or direct the same to be disposed of by the Board.

Statutes
The Department
of Municipal
Affairs Amend-
ment Act, 1936
Concluded

11. Subsection 1 of section 50 of *The Department of Municipal Affairs Act, 1935*, is amended by striking out the word "and" in the fourth line and inserting in lieu thereof the word "or," and by inserting after the word "there-
10 of" in the fifth line the words "or both."

CHAPTER 74

AN ACT TO AMALGAMATE THE CITY OF EAST WINDSOR, THE TOWN OF WALKERVILLE, THE CITY OF WINDSOR AND THE TOWN OF SANDWICH

Statutes
The City of
Windsor (Amal-
gamation) Act,
1935

Assented to April 18th, 1935.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The City of Windsor (Amalgamation) Act, 1935*.
- 20 2. In this Act:
- (a) "Amalgamated municipalities" shall mean East Windsor, Walkerville, Windsor and Sandwich;
- (b) "East Windsor," "Walkerville," "Windsor" and "Sandwich" shall respectively mean the municipality and corporation of the city of East Windsor, the town of Walkerville, the city of Windsor and the town of Sandwich;
- (c) "Finance commission" shall mean The Windsor Finance Commission constituted under this Act;
- (d) "Municipal Board" shall mean the Ontario Municipal Board;
- 30 (e) "New city" shall mean the municipality and corporation of the city of Windsor incorporated under the provisions of this Act, by the amalgamation of East Windsor, Walkerville, Windsor and Sandwich.
3. (1) East Windsor, Walkerville, Windsor and Sandwich and the inhabitants of them respectively are hereby amalgamated into and shall be and form one municipality, municipal corporation and body corporate under the name of "The Corporation of the City of Windsor," hereinafter referred to as the new city.
- (2) The area and confines of the new city shall be and include all the lands and territories which at the time of the passing of this Act formed,
40 comprised and confined the amalgamated municipalities and shall extend to

the boundary of the Province in the River Detroit in prolongation of the outlines of the new city, and the new city shall also include all the islands, the whole or the greater part of which, are comprised within the said outlines so prolonged.

4. (1) Subject as herein provided, the amalgamation and incorporation of the new city shall take effect for the purposes hereinafter mentioned at the time of the passing of this Act, and for all purposes on the 1st day of July, 1935, provided that the affairs of the amalgamated municipalities shall until the 1st day of January, 1936, continue to be administered as if they had remained as separate and several municipalities and municipal corporations to such extent and for such purposes as the finance commission may deem requisite, but on the said date each of them shall then be dissolved and cease to exist, and the new city shall take their place. 10

(2) If for any reason it becomes imperative that the said amalgamation and incorporation of the new city be deferred until some date in 1935 subsequent to the 1st day of July, the Lieutenant-Governor may by his Proclamation defer the same until such date as the Proclamation may provide, but in any event the said amalgamation and incorporation shall for all purposes take place not later than the 1st day of January, 1936.

(3) The councils and local boards of the amalgamated municipalities and the members thereof shall remain in office until such day as the Lieutenant-Governor shall by his Proclamation provide. 20

5. (1) Forthwith after the passing of this Act there shall be constituted a finance commission to be known as "The Windsor Finance Commission" to be composed and to have and exercise the functions, powers and duties hereinafter provided.

(2) The finance commission shall be composed of three persons, all of whom shall in the first instance be appointed by the Lieutenant-Governor in Council to hold office during pleasure, one of them being an owner of real property in one of the amalgamated municipalities rated upon the last revised assessment roll for not less than \$2,000, and one of them being appointed to represent holders of debentures of the amalgamated municipalities. 30

(3) The Lieutenant-Governor in Council shall designate which one of the members of the finance commission shall be the chairman.

(4) A quorum of the finance commission shall be two members thereof.

(5) From and after the election of the first council of the new city the mayor for the time being of the new city shall, *ex officio*, be a member of the finance commission in the place and stead of the property owning member appointed in the first instance by the Lieutenant-Governor in Council.

6. (1) The finance commission with respect to the amalgamated municipalities and each of them, and to their local boards, and to the new city shall have and exercise the same rights, authorities, powers and duties as by the provisions of Part III of *The Department of Municipal Affairs Act, 1935*, are conferred upon the said department and the provisions of the said Part III 40

shall apply to the said amalgamated municipalities and to the new city and to the said local boards, and the finance commission shall also have the rights, powers and duties conferred upon it by this Act.

Statutes
The City of
Windsor (Amal-
gamation) Act,
1935

Continued

(2) The finance commission shall appoint a finance comptroller who shall be the chief executive officer of the finance commission, and of the amalgamated municipalities and the new city. He shall hold office during the pleasure of the finance commission.

7. The finance commission shall forthwith after taking office:

- 10 (a) undertake or cause to be undertaken the preparation and making of the assessment rolls of the new city for the year 1936, so that the same is completed by the 1st day of August, 1935;
- (b) cause to be undertaken the preparation of the voters' list for the new city for the purpose of the election of the first council and local boards;
- 20 (c) undertake the preparation and submission of a plan for funding and refunding the debts of the amalgamated municipalities, upon the general basis that the debt of each of the amalgamated municipalities shall be discharged by the imposition of rates upon the rateable property in that area of the new city which formerly comprised such municipality;
- (d) fix the polling subdivisions into which the new city is to be divided so that the same are determined in time for the election of the first council and local boards;
- (e) prepare the administration system for the new city so that it shall be in effective operation on the 1st day of July, 1935, or so soon thereafter as may be;
- (f) prepare the estimates of revenues and expenditures for 1936 for the new city and every local board thereof so that the same will be effective from the 1st day of January, 1936;
- 30 (g) revise and consolidate the bylaws of the amalgamated municipalities for the purposes of the new city;
- (h) do or cause to be done all such other matters, acts, deeds and things as may be necessary or incidental to the amalgamation provided for in this Act.

8. The new city shall be divided into five wards to be composed as determined by the finance commission and approved by the Municipal Board.

9. (1) The council of the new city shall be composed of a mayor to be elected by general vote, and of ten aldermen to be elected, two for each of the five wards of the new city.

40 (2) The mayor and aldermen shall each hold office for a term of two years, provided that at the first election all the members of Council shall be elected to hold office only until the 1st day of January, 1937. At the annual

election held for the year 1937 of the two aldermen elected for each ward the one elected by the highest number of votes shall hold office for two years and the other shall hold office for one year. Thereafter at each succeeding annual election the one alderman to be elected for each ward shall hold office for two years.

10. (1) The Board of Education for the new city shall be composed of seven members, five of whom shall be elected, one for each of the wards of the new city, by the vote of the electors, who are public school supporters and two of whom shall be appointed by the separate school board for the new city.

(2) The elected members of the board shall hold office for a term of two 10 years and shall be elected biennially. The two members appointed by the separate school board shall be appointed annually by the said board at its first meeting in every year, provided that the members first elected and appointed to the board shall hold office until the 1st day of January, 1937.

11. The separate school board for the new city shall be composed of five members, one to be elected for each of the five wards, and to hold office for a term of two years, provided that the members first elected to the board shall hold office until the 1st day of January, 1937.

12. (1) The Essex Border Utilities Commission shall be dissolved on the 1st day of July, 1935, or at such later date in 1935 as the Lieutenant- 20 Governor in Council may by his Proclamation provide, and in the place and stead of the said commission there shall be established and substituted a commission to be known as "The Windsor Utilities Commission" which shall have and exercise all the powers, functions and duties of the Essex Border Utilities Commission under the special and general Acts relating to and governing or affecting the said commission.

(2) The Windsor Utilities Commission shall be composed of the mayor of the new city who shall hold office, *ex officio*, and four members to be appointed by the council of the new city who shall hold office for the term of four years, provided that the first appointed members shall hold office until 30 the 1st day of January, 1937, and that of the four members first appointed by the council after the 1st day of January, 1937, two of them shall be designated to hold office for four years and two of them to hold office for two years. Thereafter two members shall be appointed biennially to hold office for four years.

(3) To protect and serve the rights and interests of the municipalities of Riverside, LaSalle, Ojibway, Sandwich East and Sandwich West in the undertakings of the Essex Border Utilities Commission there shall be established by the Municipal Board such committee of the Windsor Utilities Com- 40 mission as may appear necessary, and in relation to the said rights and interest the committee shall have and exercise such powers and duties as the Municipal Board may from time to time prescribe, and in case of any dispute between such committee and the Windsor Utilities Commission the matter shall be determined by the Municipal Board, the decision of which shall be final and conclusive and binding upon the new city, the said mentioned municipalities and the said commission and committee.

(4) The said Committee shall be composed of five members, three of whom shall be members of the said commission appointed annually by it and the other two of whom shall be appointed annually by the councils jointly of the said municipalities at such time and in such manner as the Municipal Board may direct.

Statutes
The City of
Windsor (Amal-
gamation) Act,
1935

Continued

13. The council of the new city shall have management and control of all parks and playgrounds, and of all public libraries in the new city, in the place and stead of a board of park management and public library board.

10 14. The board of education for the new city shall have vested in it the ownership, management, control and maintenance of the Windsor-Walkerville Vocational School in the place and stead of the Windsor-Walkerville Vocational School Board, which from the 1st day of January, 1936, shall be dissolved and cease to exist.

15. (1) The Windsor Utilities Commission shall appoint a local board of health for the new city to be composed of five members, one to represent each of the five wards of the new city and to be a resident in the ward which he represents.

20 (2) The local board of health shall have the management, control and maintenance of the Metropolitan Hospital and the Metropolitan Isolation Hospital.

16. The management, control and operation of the undertakings of the Essex Border Utilities Commission and of waterworks systems and hydro electric systems of the amalgamated municipalities and of the new city shall be vested in the Windsor Utilities Commission, and from the date of the establishment of such commission the waterworks commissions and hydro commissions of the amalgamated municipalities, including the Walkerville-East Windsor Water Commission, shall be dissolved and cease to exist.

17. (1) The finance commission shall as soon as may be after it takes office:

- 30 (a) determine and adjust all the assets of the amalgamated municipalities among them upon such basis that each of them shall be credited equitably in respect thereto when such assets become vested in the new city or in the local board thereof which shall exercise jurisdiction over the same;
- (b) in conjunction with the council of the County of Essex, determine and adjust assets and liabilities as between the said county and Sandwich in respect to the separation of Sandwich from the said county;
- 40 (c) in conjunction with the council of the county of Essex, adjust and determine all matters between the said county and any of the amalgamated municipalities other than Sandwich, and between the said county and the new city;
- (d) in conjunction with the council of any other municipality affected, adjust any assets and liabilities which by reason of the creation of the new city it is requisite or desirable be adjusted.

Continued

18. From and after the 1st day of January, 1936, or such later date as may be proclaimed under this Act, Sandwich and the area and territory composing the same shall be separated from and shall no longer form part of the county of Essex for municipal purposes.

19. Any dispute which may arise with respect to the adjustment of assets and liabilities or other matters referred to in section 17 shall be determined by the Municipal Board, and its decision shall be final and conclusive.

20. Upon and from the final incorporation of the new city all the assets of the amalgamated municipalities shall be vested in and become the property of the new city, and all the assets of the several public school boards and boards of education of the amalgamated municipalities and of the Windsor-Walkerville Vocational School Board shall be vested in and become the property of the board of education of the new city and all the assets of the several separate school boards of the amalgamated municipalities shall be vested in and become the property of the separate school board of the new city. 10

21. The assets of the Essex Border Utilities Commission and of the several waterworks commissions and hydro commissions and of the Walkerville-East Windsor Water Commission shall on and from the date of final incorporation of the new city be vested in and become the property of the Windsor Utilities Commission for and on behalf of the new city. 20

22. (1) The first election of the council, board of education and separate school board of the new city shall be held on such day in 1935 as the Lieutenant-Governor in Council upon the recommendation of the finance commission may appoint.

(2) For the purposes of such election the finance commission shall appoint the times and places at which the new election and the nomination meetings therefor shall be held and the returning officer, deputy returning officers and poll clerks who shall hold such elections.

23. (1) The finance commission may appoint such officers, clerks and servants as may be necessary for its purposes, and shall fix their salaries and that of the finance comptroller. 30

(2) The salaries or other remuneration of the members of the finance commission shall be fixed by the Lieutenant-Governor in Council.

(3) The salaries and expenses of the members of the finance commission and of the finance comptroller and of its staff shall for the year 1935 be paid by the amalgamated municipalities in such proportions, manner and at such times as the finance commission may determine.

24. The Municipal Board may for the purpose of effecting the amalgamation provided for by this Act and of fully effectuating and carrying into effect the provisions of this Act and the incorporation and functioning of the new city do and authorize to be done such things as may be necessary or incidental thereto, and for such purpose may make rules and regulations and issue orders and directions in respect to any matters not specifically provided for in this Act, and every such rule, regulation, order and direction shall be valid and 40

binding upon the amalgamated municipalities and all persons affected thereby as if enacted by this Act.

Statutes
The City of
Windsor (Amal-
gamation) Act,
1935
Concluded

25. Subject as provided in this Act, the provisions of the general statutes in respect to municipal institutions and affairs and to schools and school boards and to utility commissions, and of any special Acts respecting the amalgamated municipalities or any of them shall apply to the new city and the local boards thereof.

26. This Act shall come into force on the day upon which it receives the Royal Assent.

10

CHAPTER 66

AN ACT TO AMEND THE CITY OF WINDSOR (AMALGAMATION) ACT, 1935

Statutes
The City of
Windsor
(Amalgamation)
Amendment Act,
1936

Assented to April 9th, 1936.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The City of Windsor (Amalgamation) Amendment Act, 1936.*

20 2. Sections 5, 6, 7 and 9 of *The City of Windsor (Amalgamation) Act, 1935* (herein referred to as the Amalgamation Act) are repealed and the following substituted therefor:

5. Part III of *The Department of Municipal Affairs Act, 1935*, shall apply to the new city and to every local board thereof, and all its and their affairs, and the same shall be subject to the provisions of the said Part, and wherever in the Amalgamation Act reference is made to the Windsor Finance Commission, such reference shall be deemed to refer to and mean the Department of Municipal Affairs for Ontario.

6. (1) For the year 1937 and thereafter the council of the new city shall be composed of a mayor, four controllers and ten aldermen.

30 (2) The mayor and controllers shall be elected by general vote, and of the ten aldermen, two shall be elected for each of the wards of the new city.

40 (3) The mayor, controllers and aldermen shall each hold office for a term of two years, provided that at the annual election for the year 1937, of the four controllers elected, the two controllers elected by the highest number of votes shall hold office for two years, and the other two shall hold office for one year, and of the two aldermen elected for each ward, the one elected by the highest number of votes shall hold office for two years, and the other shall hold office for one year. Thereafter at each succeeding annual election two controllers shall be elected by general vote and one alderman shall be elected for each ward, all of whom shall hold office for the term of two years. The mayor shall be elected biennially by general vote.

- (4) The mayor and the four controllers shall form the board of control of the new city.
- (5) Except as provided in this Act, the provisions of *The Municipal Act* shall apply to the council and the board of control, and to the members thereof.
- (6) The council of the new city elected in 1935 shall continue in office for 1936, and until the council for the year 1937 takes office.
7. All acts, transactions, contracts, matters and things done, made, entered into or performed by or in the name of The Windsor Finance Commission, or purporting so to be, in the execution and performance or intended execution and performance of the functions, authorities, powers and duties of the said Commission are hereby ratified and confirmed and declared to be and to have been legal, valid and binding for all purposes and upon all persons, notwithstanding any real want of authority or irregularity in respect thereto, or any irregularity or illegality in the composition of the said Commission. 10
9. (1) Bylaws numbers 22, 26 and 33 of the new city are hereby validated and confirmed, and shall be binding upon the ratepayers of the new city.
- (2) The General Byng School in the former town of Sandwich 20 vested in the board of education of the new city is declared to be a high school for the purposes of *The High Schools Act*, and all debts of the corporation of the said former town incurred with respect to the said school and the site thereof shall, up to the maximum sum of \$250,000 of the said debt as authorized and contracted, with interest thereon, be the debt of a high school and not of a public school, and all rates necessary to discharge such debts and interest thereon shall be levied as for high school purposes and not as for public school purposes, notwithstanding the provisions to the contrary of any bylaw passed by the council of the said former town. 30
3. Section 13 of the Amalgamation Act is repealed and the following substituted therefor:
13. (1) The council of the new city shall have the management and control of all parks and playgrounds in the place and stead of a board of park management.
- (2) The management and control of the public libraries of the new city shall be vested in a public library board to be appointed as provided in *The Public Libraries Act*, the provisions of which shall apply to the new city.
4. Section 23 of the Amalgamation Act is repealed. 40
5. Section 25 of the Amalgamation Act is amended by adding thereto the following subsection:
- (2) Subject as provided in this Act, and in so far as the same are not in conflict therewith, the provisions of any special Act relating

to the amalgamated municipalities; or any of them, shall continue to apply to the new city, except that if there be any conflict between the provisions of any special Act respecting the former city of Windsor and any special Act respecting any of the other or others of the amalgamated municipalities, the provisions of the special Act respecting the former city of Windsor shall as between them prevail.

Statutes
The City of
Windsor
(Amalgamation)
Amendment Act,
1936
Concluded

6. The amalgamation and incorporation of the new city shall for all the purposes of the Amalgamation Act and this and any other general or special Act be deemed to have been fully completed and finally become effective
10 on and from the 1st day of January, 1936.

7. This Act shall come into force on a day to be named by the Lieutenant-Governor by his Proclamation.

CHAPTER 102

AN ACT RESPECTING INTEREST

SHORT TITLE

1. This Act may be cited as the Interest Act. R.S., c. 120, s. 1.

Short title.

RATE OF INTEREST

2. Except as otherwise provided by this or by any other Act of the Parliament of Canada, any person may stipulate for, allow and exact, on any
20 contract or agreement whatsoever, any rate of interest or discount which is agreed upon.

No restriction as to rate except as provided by statute.

3. Except as to liabilities existing immediately before the seventh day of July, one thousand nine hundred, whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, the rate of interest shall be five per centum per annum.

Five per centum to be rate if no other provision.

4. Except as to mortgages on real estate, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or
30 percentage of five per centum per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which such other rate or percentage is equivalent.

When rate not per annum contracted for only 5 per centum recoverable unless equivalent rate per annum stated.

5. If any sum is paid on account of any interest not chargeable, payable or recoverable under the last preceding section, such sum may be recovered back or deducted from any principal or interest payable under such contract.

Recovery of sums paid otherwise.

INTEREST ON MONEYS SECURED BY MORTGAGE ON REAL ESTATE

No interest recoverable in certain cases unless mortgage states actual rate.

6. Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement showing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance. 10

No rate recoverable beyond that so stated.

7. Whenever the rate of interest shown in such statement is less than the rate of interest which would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shown in such statement.

No fine, etc., allowed on payments in arrears.

8. No fine or penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage of real estate, which has the effect of increasing the charge on any such arrears beyond the rate of interest payable on principal money not in arrear.

Interest on arrears.

2. Nothing in this section contained shall have the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrear. 20

Overcharge may be recovered back.

9. If any sum is paid on account of any interest, fine or penalty not chargeable, payable or recoverable under the three sections last preceding, such sum may be recovered back, or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal.

No further interest payable after five years on certain conditions.

10. Whenever any principal money or interest secured by mortgage of real estate is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then, if at any time after the expiration of such five years, any person liable to pay or entitled to redeem the mortgage tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under the provisions of the four sections last preceding, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage. 30

When section not to apply.

2. Nothing contained in this section shall apply to any mortgage upon real estate given by a joint stock company or other corporation, nor to any debenture issued by any such company or corporation, for the payment of which security has been given by way of mortgage on real estate. R.S., c. 120, s. 10. 40

Preceding sections apply only to mortgages since July 1, 1880.

11. The provisions of the five sections last preceding shall apply only to moneys so secured by mortgage executed after the first day of July, one thousand eight hundred and eighty.

MANITOBA, BRITISH COLUMBIA, SASKATCHEWAN, ALBERTA
AND THE TERRITORIES

12. The three sections next following apply to the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta and to the Northwest Territories and the Yukon Territory only.

13. Every judgment debt shall bear interest at the rate of five per centum per annum until it is satisfied. *Interest on judgment at 5 per centum.*

14. Unless it is otherwise ordered by the court, such interest shall be calculated from the time of the rendering of the verdict or of the giving of the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict or upon the giving of the judgment has been suspended by any proceedings either in the same court or in appeal. *From what time calculated.*

15. Any sum of money or any costs, charges or expenses made payable by or under any judgment, decree, rule or order of any court whatsoever in any civil proceeding shall for the purposes of this Act be deemed to be a judgment debt. *Judgment debt defined.*