

The relationship between roads and the development of “local” government

Who Pays for the Roads?

By the modified terms of settlement decided upon by the Executive Council of Lower Canada in March of 1794, the *Leaders* of the new townships (such as Isaac Ogden for Stanstead) were to be held financially responsible for surveys, mills, and other infrastructure including new roads, and for which they were to receive proportionally more land. Possibly some leaders met that responsibility, but we have no evidence to suggest that Ogden paid for anything beyond the external survey of the Township (paid in conjunction with Eleazer Fitch), and the subsequent internal survey conducted by Joseph Kilborn.

Trails through the wilderness were cut by individual settlers, or more rarely small groups of settlers, at their own expense and effort. These early routes were then enlarged and maintained by neighbouring pioneer farmers, as was deemed necessary, and presumably only for those portions of the trail that crossed their individual lots as custom demanded. The construction of roads of more regional extent, would have been built by statute labour and presumably a degree of community consensus. Some of the work for these regional roads may have been contracted out (i.e. Timothy Hinman and his work crews), but it is far from clear who paid for this latter work (mercantile interests?, land speculators?), and by what means (land, cash, barter, future tolls?). The more regional roads are discussed in an article entitled *The earliest roads to Ogden: Part II Communicating with the Wider World*.

Eventually this ad hoc approach to road building and maintenance by the settler-farmers themselves became entwined with interference, but also help, from governmental authorities. The need for ongoing road maintenance interestingly became the prime driver for the establishment of intermediate and more local levels of public governance in Canada East in the 1840's and '50s (Little, 1981).

As taxpayers in Ogden, a large share of our annual contributions go into the upkeep of our municipal road network. The path towards our present system did not evolve overnight, and in the following sections I have attempted to summarize the legislative steps leading toward the creation of local government (i.e. municipalities) with the ability to tax the local citizenry and the responsibility to maintain local roads.

An evolving bureaucracy but no money

In the ancien regime, the post of Grand Voyer was established to oversee the construction and maintenance of critical roads and bridges, and this office was maintained under the British. In 1793, during the first parliament of the Legislative Assembly of Lower Canada, a committee was formed and tasked with reviewing the very poor state of the roads in the province and the role of the then Grand Voyer, a M. Jean Renaud. As a result of the work of the committee, in 1796 a law was passed that regulated the widths of roads and bridges, and obliged local citizens¹ to maintain these roads under the

¹ Corvées or statute labour, where each able-bodied male was obliged to provide equipment and a certain number of days of work (for free) to maintain old parish roads or construct new ones.

direction of *appointed inspectors* who reported to the Grand Voyer. The law did not provide for any subsidies to underwrite the cost of new construction or maintenance. These costs were to be borne by the parishes, or the inhabitants of the new townships. In essence this was a more stringent but still very traditional approach to roads in the seigneuries. The new townships were a rather different story. All the roads were new construction (more expensive and more demanding of labour), and the townships were peppered by reserve lots for Crown and Clergy (see Bouchette's map of 1805 above), and settlers were hardly enthused to build and maintain roads across these lands². Furthermore, the new townships had no elected representatives³ until 1829, so there was no effective voice to fight for better legislation.

In 1805 a memorandum to the government from settlers in Stanstead and 14 other "new" townships, pleaded for amendments to the 1796 law - in particular this memorandum requested financial support for road construction. Nothing came from this request. Soon the problem was exacerbated as associates (the original grantees – some were settlers, many were not) *returned* granted acreage in excess of a single 200 acre lot, to the Leader (Isaac Ogden). Ogden soon acquired an immense land holding. In the case of squatters who were settling on Ogden's property, they would have been disinclined to improve roads that fronted their homesteads⁴ when it was unclear that they might ever gain clear title. This problem of absentee landowners became inextricably linked to a lack of road development and road maintenance for decades to come in the Eastern Townships.

In brief the dilemma was as follows. In Lower Canada, the *elected* Legislative Assembly, which controlled the purse strings, was disinclined to raise revenue for new road construction in the townships through any general (province-wide) levy on the population. After all the Assembly was controlled by the Parti Canadien, and the bulk of the population were French-speaking and living in the St Lawrence River valley, far from the townships, and quite frankly disinterested in the Yankee immigrants, or their infrastructure problems. On the other hand, a focused local levy based on acreage held in the various new townships, would hit the absentee landholders (like Ogden) hard, but of course many of these landholders (and their friends) were members of the *appointed* Legislative Council. This latter body obviously would veto or water down any such legislation. On top of all this, the absentee landholders were exempt from statute labour because they were not "residents" (how very convenient).

For these reasons, the settlers were left entirely to their own resources in building roads, and yet still had to seek the approbation of the inspectors and Grand Voyer in order to proceed⁵.

So for the period from 1794 to 1831, although there was a gradual shift towards providing funds for regional roads, no help whatsoever was provided for local road development or maintenance.

² The new roads would improve the value of the reserved Crown and Clergy lots immeasurably, but road building received no contribution from either church or state.

³ Until 1829 the townships were all included in the electoral district or comté of Buckinghamshire, which stretched from Sorel to Point Levis along the south shore of the St Lawrence. However the representatives for Buckinghamshire over these years all came from the seigneuries along the river. They had no contact with the townships, and had little in common with the new settlers, or sympathies with their trials.

⁴ Beyond what was absolutely necessary for their own immediate needs.

⁵ Presumably only for more regional roads. Despite no financial help coming from the government, the settlers were nonetheless left on the hook for expenses incurred in conferring with the Grand Voyer. Hubbard (1874) relates that Stanstead settlers were billed for ___ (an enormous sum in those days) by the Grand Voyer Jean Renaud, for a visit in 180_. Not a penny of this went to road construction per se.

Legislation was finally passed in 1832, that allowed electoral districts (parishes and counties) to elect *commissioners for roads and bridges* who would take over the responsibilities of the Grand Voyer within their boundaries. As the Eastern Townships did not have an assigned Grand Voyer, this new system worked for them. The commissioners principal duty was to ensure that land holders fronting roads maintained those roads, and to organize corvés or statute labour⁶. In fact the commissioners often reported directly to the Legislative Assembly, seeking funds for roads and bridges on behalf of their constituents.⁷ During this period with *road commissioners* the Legislative Assembly chose to directly fund much of the road building and repairs, both local and regional, rather than risk introducing a province-wide system of road or property taxes, as had been done in Upper Canada⁸. However funding out of general revenues was inefficient, quite limited, and subject to annual political whims.

Local government is introduced

In 1840 Governor Poulett Thompson (Lord Sydenham) tried to introduce local taxation but he was met with vehement opposition. Eventually legislation was passed, the **Municipal Act of 1840**, wherein 22 *municipal districts*⁹ were created with the popular election of councillors, but the councillors had little real power. *Road overseers* for each municipal district were also to be elected. Key council positions (warden, clerk, treasurer) were appointees of the Governor. Furthermore the appointed warden would choose the *district surveyor*, supervisor of all the local works projects. So councils replaced Grand Voyers in their ability to assign and enforce road duties, but the habitants in most of the established parishes boycotted the councils, as they were seen as instruments of taxation. Councils were generally adopted by those people residing in the Eastern Townships, and farmers in the Stanstead area formed part of the *Municipal District of Sherbrooke*. Councils could tax landowners for specific road and infrastructure projects, based on number of acres held, but at least with the large landholders, they had little luck in doing so. The Governor could simply disallow any local project, and the large landholders (like the BALC – British America Land Company) had the ear of the Governor.

In February of 1841 the Act of Union was proclaimed, resulting in a single United Province of Canada. About this time there was also created a provincial **Board of Works**, responsible for large projects, including major regional roads.



⁶ Typically householders were given three days notice to appear with tools and teams. A day's work of a team and wagon was equal to two days of personal labour.

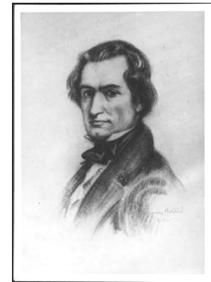
⁷ Rate-payers in the electoral district (County of) Stanstead, which comprised then the townships of Barnston, Stanstead, Hatley, Potton and Bolton. Presumably the road commissioners were elected at the same time as representatives for the Legislative Assembly, and for the same term. Were they more competent on issues of infrastructure than the MLA's? Were they paid?

⁸ In Upper Canada this was done as early as 1793, because in the absence of Custom's revenue (which Lower Canada monopolized), Upper Canada had few other sources of provincial funds.

⁹ These 22 municipal districts did not conform to the more numerous electoral districts, which numbered 46 in 1832.

In a major revision, Denis-Benjamin Papineau¹⁰ formulated the **Municipal Act of 1845**. This legislation disbanded the Municipal District entities, and in their place introduced local parish and *township councils*¹¹, and changed property taxation¹² to value rather than absolute acreage. The Act permitted the seizure of personal property in lieu of non-payment of taxes by judgement of the local circuit court, but land could only be seized after a 5 year grace period had elapsed.

Denis-Benjamin Papineau



By contrast, the township councils themselves only had a 2 year term. In 1847, by the Municipal Act of that year, Attorney-general William Badgley introduced an intermediate level of governance, the County Municipality, but otherwise left Papineau's reforms alone.

Taxes, roads, and absentee landlords

As the exodus of French-Canadians for New England reached alarming proportions, the Eastern Townships with its considerable reserve of arable lands, became a government focus. A special committee was formed in 1849 to look into this emigration, resulting in the *Chavreau Report*. In order to deal with the problem of absentee landholders holding on to considerable tracts of undeveloped land, the Government set a 2 year limit on delinquent tax payment before land could be seized. This simultaneously mitigated missing tax revenue for local governments, and also opened up more land for settlement.

The **1850 Act to Amend the Municipal Law of Lower Canada** allowed any contiguous region (township, portion of township, village, etc) with 300 souls or more to declare itself a separate municipality if it so wished (it was not obligatory). It also allowed councils for the first time to impose a small annual levy for unspecified general purposes. The grace period was now down to 6 months before land seizure was possible for unpaid taxes. In 1851 this was further amended to forgo the requirement of court judgements in order to seize property for unpaid taxes. Local township councils now had significant discretionary power in their hands. Also in 1851, the *Acte pour faciliter l'établissement des townships de L'Est dans le Bas-Canada* was tabled, an act that would have enabled township councils to collect land-based taxes in order to generate revenue to build roads. However this bill was never passed, due to strenuous opposition.

In 1854 the Municipal Loan Fund Act was applied to Canada East. Municipalities could now borrow money (within certain limits) to fund most significant infrastructure. In 1857 an ammendment was passed to allow borrowing for all road projects, regardless of size. In the same year Parliament put in a system of annual subsidies to fund colonization roads. With that they created the position of *Inspector of Agencies*, whose role was to oversee the construction of these roads. However in practice monies tended to be placed in the hands of local deputies (MP's), and the money instead ended up being

¹⁰ Papineau, the son of Louis-Joseph Papineau, was not an MP for a long period, but he was responsible for two major pieces of legislation, both passed in the same year: the Municipal Act of 1845 and the School Act of 1845.

¹¹ It does not appear that the establishment of these councils was mandatory.

¹² Again, for specific projects only. This was not an annual tax.

dissipated among numerous small local roads. Whether the Township of Stanstead benefited from this program is unclear¹³.

The Municipal and Road Act of 1855

Put forward by Attorney-general Lewis Thomas Drummond, the Municipal and Road Act of 1855 made township municipal corporations mandatory, with carefully defined powers and obligations. It retained County municipal councils, composed of township mayors, as a check, and with responsibility for court house, jails, and the more important public roads. The Act created the position of *County Superintendent*, appointed by, but largely independent of, the County Council. The *Superintendent* could draw up a report or proces-verbal for any road or bridge project demanded by 5 or more affected ratepayers. The report, including all the details of construction, cost, etc. , could be modified but not rejected by the appropriate (Township or village) council. According to this legislation, the ratepayers and landowners directly benefiting from the project in question had to contribute labour, and possibly materials and money, according to the value of their property, and would be responsible for the road or bridge's future upkeep. Assessed value of property had no upper limit and there was no appeal¹⁴. Councils did retain the authority to take on the responsibility for any road project begun by the *Superintendent*, plus the power to initiate such a project themselves, levying a special assessment on the whole municipality in either case. The council, not the immediate people in the vicinity, would be legally accountable for the future maintenance of such roads. The Act also provided for a tax on profits on all local merchants, craftsmen, and manufacturers, professionals, and office holders.



In 1856 the Government first started handing off legal title and responsibility for some provincial roads to the municipalities through which these roads crossed. In 1857 the role of County Superintendent was abolished, and as a consequence all road petitions had to go through Council. Councils now had the right to appoint *temporary superintendents* to assign statute labour and other duties to ratepayers benefiting from any project, but councils increasingly tended to hire work crews, and tax the whole municipality for wages and expenses for even local projects.

With the **1860 Municipal and Road Act** the right of appeal to circuit courts for land seizure was reinstated. Municipalities were also obliged to specifically notify land owners before their land could be put up at auction and sold. Statute labour was dropped for the entirety of eight counties (including Stanstead County), plus several townships in Acton County (all of which were majority english-speaking). The Act allowed any other municipality to adopt this measure in the future.

¹³ Probably unlikely, given the relative maturity and prosperity of this part of the Eastern Townships.

¹⁴ This was amended in 1856, whereby a group of 5 or more ratepayers could appeal the assessment directly to County Council.

In summary, by 1860, mandatory local governments (municipalities) had been instituted, and were responsible for the construction of new, and maintenance of old, road and bridge infrastructure in their jurisdiction. They had the power to tax based on property value, plus the authority to borrow monies, in order to fund this infrastructure. They had the power to seize lands for unpaid taxes. However they no longer could impose statute labour on the citizenry. Many provincial roads were subsequently “gifted” to the municipalities¹⁵, increasing the upkeep burden, particularly on rural municipalities with limited resources.

¹⁵ A tradition that carries on to today!!