

of this particular school, the amount required last year turned out to be insufficient to meet the actual expenses of the school. This arose from the fact that the number of pupils was greater than had been foreseen, and it became necessary, in the opinion of the board, to appoint an additional teacher. The municipality now take the position that, the Board's expenditure having exceeded the estimate, there is no provision in the Municipal Act by which the Board can compel a levy for the excess. There is no room on the material to suggest *mala fides*; in fact, counsel expressly repudiated any such idea. The fault of the Board, if any, is that it did not make an adequate allowance for unforeseen contingencies.

It would be a most serious reflection upon the legislation if, by any such reasoning, the ratepayers could be relieved from paying for services incurred on their behalf by their duly elected representatives; and it would be equally unfortunate if the failure of the Board to demand a sum sufficient to cover the necessary outgoings is to impose personal liability upon the members of the Board.

It is said, and truly said, that the policy of the Act is to require the expenditure of each year to be borne by the taxation of that year. This is true not only of school sections but in respect to the whole municipal government; but it would scarcely be thought that the failure to levy adequate rates would constitute a defence to a municipality if sued by its creditors.

[Reference *Re Toronto Public School Board and City of Toronto*, 2 O.L.R. 727, 4 O.L.R. 468.]

A series of cases which appear to me to throw much light upon this problem were not cited in the Toronto case. While it is true that these cases, by reason of the difference of legislation, may not be, strictly speaking, conclusive, yet the principles indicated seem to govern.

[Reference to *Attorney-General v. Lichfield* (1848), 17 L.J. Ch. 472; *Jones v. Johnson* (1850), 5 Ex. 862; *Haynes v. Copeland*, 18 C.P. 150.]

I realise the difficulty in applying this law in view of the wording of the statute in question here; yet I think it is applicable. Where there is no deliberate intention on the part of the Board to postpone the payment of debts incurred one year to the next, but the obligation arises by reason of the insufficient estimate, and money has had to be borrowed to pay the necessary expenses for maintaining the school, that