

OBLIGATIONS OF A BOARD OF HEALTH UNDER THE *MUNICIPAL ACT, 2001*

For:

The Association of Local Public Health Agencies

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Amendment 2021

In response to the COVID-19 pandemic the provincial government introduced the *Municipal Emergency Act, 2020*, which amends the *Municipal Act* to give municipalities the ability to fully conduct council, local board and committee meetings electronically when faced with local and province-wide emergencies. The significant change from the previous legislation is that board members who are participating electronically can be counted for the purpose of determining a quorum. It remains to be seen if the emergency response amendments will become permanent following the lifting of the pandemic emergency response.

The “Meetings” section has been revised to incorporate these amendments.

Amendments 2017

In May 2017 the government of Ontario passed the Modernizing *Ontario’s Municipal Legislation Act, 2017*. Of note for the purpose of this paper as it relates to boards of health are the amendments to the *Municipal Act* in regard to meetings of a board of health. The amendments include changes to:

- i. Section 238 (1) the definition of “meeting”.
- ii. Sections 238 (3.1) and 238 (3.2) electronic participation by members of a board of health in a meeting.
- iii. Section 239 (2) exceptions to the requirements that meetings be open to the public.
- iv. Section 239.2 (12) the requirement to pass a resolution in regard to a report with respect to a person who is the subject of an investigation.

I have revised the “Meetings” section of this paper to incorporate these amendments.

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In a previous paper I have reviewed the responsibilities and liabilities of board members of a board of health under the *Health Protection and Promotion Act* (“HPPA”).

This paper originated from questions expressed by alPHa members about the interplay between the *Municipal Act, 2001* (“the *Municipal Act*”) and the HPPA. Given the interplay between the various levels of government that are involved with public health matters, and the interplay between the various pieces of legislation of the various levels of government it is understandable to have questions when trying to figure out the relationship of the language of the *Municipal Act* and the obligations of a board of health under the HPPA. From the get go an answer as to whether a particular provision of the *Municipal Act* applies to a board of health is not straightforward. It is hoped that this paper will answer some questions with respect to the interplay between the *Municipal Act* and a board of health.¹

The paper begins with an overview of the various levels of government in Canada as related to public health. It then turns to a review of a number of sections of the HPPA and the *Municipal Act* and concludes with a review of the specific issue of the obligations of boards of health regarding the requirements for holding meetings under the *Municipal Act*.

The paper is not a comprehensive review of all the sections of the *Municipal Act* that are applicable to a board of health but is intended to provide an overview of the relationship of a board of health and the *Municipal Act* and to review some of the sections of the *Municipal Act* regarding their application to a board of health with the hope of making it easier for the reader when dealing with the two statutes in the future. For ease of reference, I have included excerpts from the HPPA and the *Municipal Act* in the body of the paper as the various sections are reviewed.

Jurisdictional Background

By way of overview, all three levels of government in Canada; federal, provincial and municipal have jurisdiction for public health related matters. The different levels of government do not act

¹ I wish to thank Kelly Yerxa Deputy City Solicitor for the City of Mississauga for her guidance in regard to the subject of this paper; and to *Public Health Law and Practice in Ontario: Health Protection and Promotion Act*, J. Speakman, L. Stoltz and R. Blake for the review of government jurisdiction and of the history of the HPPA.

independently in legislating and responding to public health issues. As a practical matter there is cooperation between the three levels of government in responding to the public health needs of the citizens of Canada across the three levels of government.

Given this intertwined jurisdiction and resulting legislation that exists between the three levels of government regarding public health it is understandable that there are questions around the legal status roles, and responsibilities of the various players at the provincial, municipal and board of health level. The questions that led to this paper arise from the interplay of the *HPPA* and the *Municipal Act*.

Presently in Ontario, the *HPPA* is the lead governing statute for boards of health. The *HPPA* is a piece of legislation created by the province. The *HPPA* creates boards of health and establishes a board of health's powers and the infrastructure for public health practice across the province and at the local municipal level.

In the interplay between boards of health and the province under the *HPPA*, boards of health are responsible for the delivery of public health programs and services while the province has retained most of the authority to set public health policy. In this regard, the provincial cabinet retains broad power under section 96 of the *HPPA* to make regulations regarding the application and scope of the *HPPA*.

By way of further background, historically, prior to 1884, public health powers were vested in municipal councils. The members of municipal councils were deemed to be health officers within their municipalities, having the right to delegate public health responsibilities to a committee of the council. In 1884, with the re-enactment of the *Public Health Act* this changed and all of the powers and authority that had previously vested into members of a municipal council were vested in local boards of health.

This newly defined entity was described as "... an independent body not under the control of the governing body of any municipality". Further revisions to the legislation have assisted in clarifying the legal status of boards of health but the relationship between municipalities and boards of health including the role that some municipalities play as deemed boards of health can still be confusing.

While the *HPPA* is the preeminent legislation for a board of health, the powers and obligations of a board of health are in some circumstances subject to other legislation. One of these pieces of legislation that a board of health is subject to is the *Municipal Act*. The reason for this is that while a board of health is subject to the requirements of the provincially legislated *HPPA* its operational mandate is limited to operating within a municipality.

Municipalities in Ontario are creatures of the province. The authority for the functioning and operation of a municipality is governed by the provincial government through the *Municipal Act*. The relationship between a board of health and a municipality is established in the language of the *Municipal Act*.

As will be reviewed in more detail below, the *Municipal Act* gives municipalities the responsibility and authority to govern their “local boards”. Section 1 (1) of the *Municipal Act* provides a definition of a local board. A board of health is included in the definition of a local board.

Accordingly, for the purpose of sorting out the relationship and obligations between a board of health and a municipality, given that a board of health is included in the definition of a local board in the *Municipal Act*, at first instance a board of health is an entity of a municipality and subject to the provisions and obligations of the *Municipal Act*. However, this does not end the matter, because, and here is where the questions arise, while in the first instance the *Municipal Act* defines a board of health as local board, the *Municipal Act* then goes on to exempt boards of health from various sections of the *Municipal Act*.

To sort out what provisions of the *Municipal Act* do and do not apply to a board of health we apply the legal statutory interpretation rules that lawyers and judges apply when it comes to sorting how the language of a statute such as the *Municipal Act* is to be interpreted and applied.

The overall guiding statutory interpretation rule that applies is that because a board of health is included in the definition of a local board under the *Municipal Act*, all of the provisions and obligations of the *Municipal Act* that refer to a local board apply to a board of health, **except** where a section of the *Municipal Act* specifically exempts a board of health from the obligations of that section.

With this overview of the process of statutory interpretation we turn now to a review of a number of relevant sections of the *Municipal Act*.

Definition of Local Board/Board of Health

As discussed above, section 1 of the *Municipal Act* includes a board of health in the definition of a “local board”:

PART I: INTERPRETATION

Definitions

1. In this Act,

“local board” means a municipal service board, transportation commission,

public library board, **board of health**, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority; (emphasis added)

All of the local boards included in the main definition are created either by specific statutory authority under the *Municipal Act*, such as municipal service boards (sections 193-197); or by other legislation, such as library boards (the *Public Libraries Act*); conservation authorities (*Conservation Authorities Act*) or police services boards (the *Police Services Act*). Generally, local boards are given certain powers and a separate corporate identity.

We now turn to reviewing sections of the *Municipal Act* where the fact of being defined as a local board creates obligations for a board of health, and sections where a board of health is exempted from the obligations of a local board under the *Municipal Act*.

Exemption for the City of Toronto

Section 7 of the *Municipal Act* exempts the City of Toronto from the *Municipal Act*. The province has legislated that the powers and operation of the City of Toronto are governed by the *City of Toronto Act, 2006*.

Application re City of Toronto

7.1 (1) This Act does not apply to any of the following, except as otherwise provided by another provision of this Act or of the *City of Toronto Act, 2006*:

1. The City of Toronto, a local board of the City (including a joint local board of the City) or a city corporation.
2. Members of the council of the City, members of a local board of the City (including a joint local board of the City) or directors or members of a city corporation.
3. Officers, employees or agents of the City, of a local board of the City (including a joint local board of the City) or of a city corporation.

Accordingly, with this exemption the board of health for the City of Toronto while remaining subject to the *HPPA* is subject as applicable to the *City of Toronto Act* and not the *Municipal Act*.

GENERAL POWERS

HPPA

Section 56 of the *HPPA* provides that boards of health have jurisdiction over their own governance procedures. As well as setting out a number of specific areas that a board of health is required to pass by-laws for, subsection 56(2)(b) provides a general authority that a board of

health may pass by-laws respecting “any other matters necessary or advisable for the management of the affairs of the board of health”.

By-laws

56. (1) A board of health shall pass by-laws respecting,

- (a) the management of its property;
- (b) banking and finance;
- (c) the calling of and proceedings at meetings; and
- (d) The appointment of an auditor.

Idem

(2) A board of health may pass by-laws respecting,

- (a) the appointment, duties and removal of officers (other than the medical officer of health or an associate medical officer of health) and employees, and the remuneration, pensions and other benefits of officers and employees; and
- (b) Any other matter necessary or advisable for the management of the affairs of the board of health.

Municipal Act

Part II of the *Municipal Act* establishes the general powers of a municipal government and its authority in regard to a local board and board of health.

Section 8 of Part II provides municipalities with a broad scope to enable the municipality to govern its affairs as it considers appropriate:

Scope of powers

8. (1) The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

Single-tier Municipalities

Section 10 gives municipalities the power to make by-laws to govern its administration; and to provide for the provision of services to its citizens. This includes the power to make by-laws for its local boards:

Broad authority, single-tier municipalities

10. (1) A single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public.

By-laws

(2) A single-tier municipality may pass by-laws respecting the following matters:

1. Governance structure of the municipality and its local boards.
2. Accountability and transparency of the municipality and its operations and of its local boards and their operations.
3. Financial management of the municipality and its local boards.
4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act.
5. Economic, social and environmental well-being of the municipality.
6. Health, safety and well-being of persons.
7. Services and things that the municipality is authorized to provide under subsection (1).
8. Protection of persons and property, including consumer protection.
9. Animals.
10. Structures, including fences and signs.
11. Business licensing.

However, the authority of a municipal government to make by-laws governing a board of health is taken away by subsection 6 which exempts a board of health from the definition of a local board for the purpose of section 10:

Definition

(6) In this section,

"local board" means a local board other than,

(a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

(b) **a board of health** as defined in subsection 1 (1) of the *Health Protection and Promotion Act*. (emphasis added)

It is noted that in section 10 item 6 there is an example of the overlap between a municipal government and a board of health in regard to the authority to provide public health services to citizens, in the right of a municipality to make by-laws for the “health, safety and well-being of persons”. Examples of the overlap in matters related to providing public health services are when municipalities have been involved in enacting no-smoking and food establishment inspections by-laws in their communities.

Regional Municipalities

The clarification of the power to provide services and make by-laws where there is a regional municipality in place is addressed in section 11 of the *Municipal Act*. Note that subsection 11(10) provides for the same exemption of a board of health from the definition of a local board as is found in section 10.

SPHERES OF JURISDICTION

Broad authority, lower-tier and upper-tier municipalities

11. (1) A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4)

By-laws

(2) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting the following matters:

...

Definition

(10) In this section,

“local board” means a local board as defined in section 10.

The definition in subsection 11(10) that refers to the definition in subsection 10(6) thereby, exempts boards of health from being subject to the by-law authority in section 11.

It is also noted that Section 474.21 of the *Municipal Act* establishes that a regional municipality with the exception of the District Municipality of Muskoka has the powers rights and duties of a board of health under the *HPPA*.

Regional municipalities

474.21 **A regional municipality, except** The District Municipality of Muskoka, has the powers, rights and duties of a **board of health under** the *Health Protection and Promotion Act*. (emphasis added)

Geographic Scope

Section 19 of the *Municipal Act* deals with the geographic scope of the power of a municipal government. The by-laws and resolutions passed by a municipality apply only within the geographic boundary of the municipality. Subsection 19(2) provides an exception that a municipality and/or a local board of the municipality may exercise its powers in another municipality, or in an unorganized territory with the consent of the beneficiary of the powers in the other municipality or unorganized territory. The definition in subsection 19 (4) of a local body, for the purpose of this section includes a board of health.

GEOGRAPHIC APPLICATION

Limited to municipal boundaries

19. (1) By-laws and resolutions of a municipality apply only within its boundaries, except as provided in subsection (2) or in any other provisions of this or any other Act

Exception, services

(2) A municipality may exercise its powers, other than its power to impose taxes, to provide a municipal system to provide a service or thing in an area in another municipality or in unorganized territory if one of the purposes for so acting is for its own purposes and if one of the following conditions applies:

4. The service or thing is provided in unorganized territory,
 - i. with **the consent of a local body** that has jurisdiction to provide the service or thing in the area, or
 - ii. with the consent of the person who receives the service or thing, if no local body has jurisdiction.

Definition

(4) In subsection (2),

“local body” means a local services board, local roads board, statute labour board, school board, district social services administration board, **board of health** and any other board, commission, body or local authority exercising any power with respect to municipal affairs or purposes in unorganized territory.(emphasis added)

Municipal Act: Additional Powers

There are number of sections in the *Municipal Act* that add to the topics that are set out in sections 9, 10 and 11 for which a municipality may make by-laws or provide services.

For purposes of determining the application of these sections to a board of health it is considered that given that the language in these sections states that they do not limit sections 9, 10 and 11 if the topics refer to a local board, the exemption in sections 10 and 11 for boards of health would not apply to a board of health. Therefore, a board of health would be subject to the requirements of the section, unless there is a specific exemption for a board of health in the particular section.

This is seen in section 216 in which the power of a municipality to dissolve or change a local board is added to the broad powers given to a municipality and the topics listed in sections 9, 10 and 11. However, subsection 216(3) establishes an exemption that prohibits a municipality from dissolving or changing a board of health. This exemption makes sense in order to preserve the independence of a board of health, and to protect a board of health from political based decisions when it comes to providing public health protection and services.

Power to dissolve or change local boards

216. (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to dissolve or change a local board.

Restriction

(3) Despite subsection (1), a municipality shall not, in accordance with subsection (1), dissolve or change a local board that is,

- (a) a society as defined in subsection 3 (1) of the *Child and Family Services Act*;
- (b) a **board of health** as defined in subsection 1 (1) of the *Health Protection and Promotion Act*;

There is a further exception in regard to the City of Sudbury:

Exception, City of Greater Sudbury

(4) Despite subsection (3), the City of Greater Sudbury may, in accordance with subsection (1), change the number of members it appoints as its representatives on the board of health of the Sudbury and District Health Unit, subject to the following rules:

- 1. The number shall not be smaller than two or larger than seven.
- 2. At least one of the members shall also be a member of the council of the City.
- 3. At least one of the members shall not be a member of the council of the City.

Municipal Act Part V.1: Accountability and Transparency

Part V.1 of the *Municipal Act* establishes the obligations and requirements for municipalities and their local boards for being accountable and transparent. A municipality is required to establish a Code of Conduct and to appoint an Integrity Commissioner who reports to council and oversees the application of the Code of Conduct.

Under the definitions in section 223.1 boards of health are exempted from this part of the *Municipal Act*.

Definitions

223.1 In this Part,

"Code of conduct" means a code of conduct described in section 223.2;

"Local board" means a local board other than,

- (b) A **board of health** as defined in subsection 1 (1) of the *Health Protection and Promotion Act*.

Records

Subsection 59(3) of the *HPPA* deals with the obligations of a board of health in regard to the retention of records created by the board of health.

Retention of records

59(3) a board of health need not keep any records, statements, minutes, accounts or other materials beyond the period of time prescribed by the regulations.

Sections 253 to 255 of the *Municipal Act* deal with the obligations and requirements in regard to the keeping of records. These sections deal with the retention; accessibility; disclosure; inspection; providing certified copies; transfer; and destruction of records.

Boards of health are not exempt from the record keeping sections of the *Municipal Act*.

It is also noted that in relation to the retention and disclosure of records and information a board of health is also subject to the *Municipal Freedom of Information and Protection of Privacy Act* (“*MFIPPA*”) and will also have obligations under the *Personal Health Information and Privacy Protection Act* (“*PHIPPA*”) for its health care related records.

Policies

Municipal Act

Sections 269 and 270 of the *Municipal Act* establish the obligation of a municipality and its local boards to establish policies in regard to the sale and disposition of land; the hiring of employees and the procurement of goods and services.

The definition of a local board is as per section one of the *Municipal Act*; therefore, boards of health are not exempt from these provisions.

Interpretation

269. (1) In section 270,

"local board" means,

(a) a local board as defined in section 1,

Policies of local boards

270 (2) A local board shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.
2. Its hiring of employees.

3. Its procurement of goods and services.

HPPA

There are related provisions in section 52 of the *HPPA* dealing with a board of health's authority to buy and sell real property. However, it is noted that in subsection 52(4) a board of health may not deal with is real property without first obtaining the consent of the municipality.

Real property

52(3) A board of health may acquire and hold real property for the purpose of carrying out the functions of the board and may sell, exchange, lease, mortgage or otherwise charge or dispose of real property owned by it.

Consents required

(4) Subsection (3) does not apply unless the board of health has first obtained the consent of the councils of the majority of the municipalities within the health unit served by the board of health.

Insurance

Sections 278 to 282 of the *Municipal Act* deal with matters related to insurance coverage, including; employee, and council and local board member liability coverage; employee health benefits and an employee sick days credit plan. A board of health is not exempt from these provisions.

Definitions

278. (1) In sections 279, 280 and 282,

"local board" means a local board as defined in the *Municipal Affairs Act*.

Municipal Affairs Act

Definitions

1. In this Act,

"**local board**" means a school board, municipal service board, transportation commission, public library board, board of health, police services board, planning board, or 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 a municipality or of two or more municipalities or parts thereof; (emphasis added)

Section 280 of the *Municipal Act* gives the authority to municipalities in subsection 280(1) to contract for insurance and in section 280(2) this authority is given to a local board which would include a board of health.

Powers re: local boards

280. (1) A municipality may contract for insurance for, pay any part of the premiums for or pay for any part of the damages, risks or costs referred to in subsection 279 (1) for any local board of the municipality or for any of the members, former members, employees or former employees of a local board of a municipality.

Local board powers

(2) A local board of a municipality has the same powers with respect to itself, its members, former members, employees and former employees to contract for insurance, pay premiums for the insurance, be or act as an insurer, exchange reciprocal contracts of indemnity and to pay damages and costs as are conferred upon a municipality by this Act.

Remuneration and Expenses

Sections 283 and 284 of the *Municipal Act* deal with the issue of the remuneration and paying the expenses incurred by members of a local board. There is no exemption for boards of health for these sections.

However, as result of changes to the *Municipal Act* for which there was not the required corresponding amendment to the *HPPA*, there currently exists an overt conflict between subsection 49(11) of the *HPPA* and section 283 of the *Municipal Act* which as a result a board of health is prohibited from remunerating or paying the expenses of a member of a board of health who also sits as a member of a municipal council.

Municipal Act

Section 283 of the *Municipal Act* states;

Remuneration and expenses

283. (1) A municipality may pay any part of the remuneration and expenses of the members of any local board of the municipality and of the officers and employees of the local board.

Limitation

(2) Despite any Act, a municipality may only pay the expenses of the members of its council or of a local board of the municipality and of the officers and employees of the municipality or local board if the expenses are of those persons in their capacity as members, officers or employees and if,

(a) the expenses are actually incurred; or

(b) the expenses are, in lieu of the expenses actually incurred, a reasonable estimate, in the opinion of the council or local board, of the actual expenses that would be incurred.

Local boards

(3) A local board of a municipality may pay remuneration to and the expenses incurred by its members, officers and employees to the extent that the municipality is able to do so under this Act.

Limitation

(4) No part of the remuneration of a member of a council or local board paid under this section is deemed to be for expenses incidental to his or her duties as a member and a municipality or local board shall not provide that any part of the remuneration is for such deemed expenses.

Statement

284. (1) The treasurer of a municipality shall in each year on or before March 31 provide to the council of the municipality an itemized statement on remuneration and expenses paid in the previous year to,

- (a) each member of council in respect of his or her services as a member of the council or any other body, including a local board, to which the member has been appointed by council or on which the member holds office by virtue of being a member of council;
- (b) each member of council in respect of his or her services as an officer or employee of the municipality or other body described in clause (a); and
- (c) each person, other than a member of council, appointed by the municipality to serve as a member of any body, including a local board, in respect of his or her services as a member of the body.

Statement to be provided to municipality

(3) If, in any year, any body, including a local board, pays remuneration or expenses to one of its members who was appointed by a municipality, the body shall on or before January 31 in the following year provide to the municipality an itemized statement of the remuneration and expenses paid for the year.

HPPA

Section 49(4) of the *HPPA* states:

Remuneration

49(4) A board of health shall pay remuneration to each member of the board of health on a daily basis and all members shall be paid at the same rate.

Expenses

(5) A board of health shall pay the reasonable and actual expenses of each member of the board of health.

Member of municipal council

(11) Subsections (4) and (5) **do not authorize payment** of remuneration or expenses to a member of a board of health, other than the chair, **who is a member of the council of a municipality** and is paid annual remuneration or expenses, as the case requires, by the municipality. (emphasis added)

The inequity of this conflict in the language of the two statutes that prohibits a board of health from compensating a board of health member who is also a member of a municipal council has been raised with the provincial government by alPHa and the Northwestern Health Unit but to date there is has been no response that the *HPPA* will be amended.

Review or Appeal re Delegated Authority

Section 284.1 (1) of the *Municipal Act* provides that a municipality may review or appeal a decision made by a person or body in the exercise of a performance of a duty designated under the *Municipal Act*.

Power to authorize review or appeal

284.1 (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to provide for a review or appeal of a decision made by a person or body in the exercise or intended exercise of a power or the performance or intended performance of a duty delegated to him, her or it by the municipality under this Act.

Section 44 of the *HPPA* meets the requirement of section 284.1(1) of the *Municipal Act* in that section 44 *provides* that any person who is subject to an order under the *HPPA* may appeal the order to the Health Services Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*

Right to hearing

44. (1) An order by a medical officer of health or a public health inspector under this Act shall inform the person to whom it is directed that the person is entitled to a hearing by the Board if the person mails or delivers to the medical officer of health or public health inspector, as the case requires, and to the Board, within fifteen days after a copy of the order is served on the person, notice in writing requiring a hearing and the person may also require such a hearing.

Financial Administration

HPPA

The *HPPA* at subsections 59(1) and 59(2) establishes that a board of health shall be responsible for dealing with its financial matters:

Financial records

59. (1) A board of health shall keep or cause to be kept,

(a) books, records and accounts of its financial affairs;

(b) the invoices, receipts and other documents in its possession that relate to the financial affairs of the board.

Annual financial statements

(2) A board of health shall cause to be prepared statements of its financial affairs in each year including but not limited to,

- (a) an annual statement of income and expenses;
- (b) an annual statement of assets and liabilities; and
- (c) an annual estimate of expenses for the next year.

Section 72 of the *HPPA* deals with the obligations regarding finances between a municipality and a board of health.

Notice to obligated municipalities

72(5) A board of health shall give annually to each obligated municipality in the health unit served by the board of health a written notice that complies with the following requirements:

1. The notice shall specify the amount that the board of health estimates will be required to defray the expenses referred to in subsection (1) for the year specified in the notice.
2. If the obligated municipalities in the health unit have entered into an agreement under subsection (3) respecting the proportion of the expenses referred to in subsection (1) to be paid by each of them, the notice shall specify the amount for which the obligated municipality is responsible in accordance with the agreement.
3. If the obligated municipalities in the health unit have not entered into an agreement under subsection (3) respecting the proportion of the expenses referred to in subsection (1) to be paid by each of them, the notice shall specify the amount for which the obligated municipality is responsible in accordance with the regulations.
4. The notice shall specify the times at which the board of health requires payments to be made by the obligated municipality and the amount of each payment required to be made.

Where additional expenses incurred

72(6) If, after a notice is given by a board of health under subsection (5) in respect of a year, additional expenses referred to in subsection (1) that were not anticipated at the time the notice was given are incurred during the year, the board of health may give another written notice to each obligated municipality in the health unit specifying the additional amount for which the obligated municipality is responsible under this section and the time at which the additional amount must be paid.

Estimates

72(7) If the actual expenses of a board of health and its medical officer of health for any year are greater than the estimated expenses for the year, the board of health shall, in preparing its estimate of the amount required to defray

the expenses referred to in subsection (1) for the following year, provide for any deficit from the preceding year.

Payment in accordance with notice

72(8) An obligated municipality that is given a notice by a board of health under this section shall pay to the board of health the amounts required by the notice at the times required by the notice.

There is overlap between the *HPPA* and the *Municipal Act* in regard to the administration of the finances of a board of health.

Municipal Act: Part VII: Financial Administration

Part VII of the *Municipal Act* establishes the financial oversight requirements for municipalities and of their local boards. Boards of health are not exempt from the applicable obligations of this Part of the *Municipal Act*.

Part VII deals with the appointment of a treasurer, yearly budgets, reserve funds, the submission of budgets, annual returns, publication of financial statements, the appointment of an auditor, the financial information to be provided to the Minister, and financial assistance from the Ministry of Municipal Affairs and Housing

Fiscal year

285. (1) The fiscal year of a municipality and a local board of a municipality is January 1 to December 31.

Regulations, changes in financial reporting requirements

292. (1) If changes in the financial reporting requirements of a municipality or local board affect the surplus or deficit of the municipality or local board, the Minister may make regulations,

- (a) phasing in or authorizing the municipality or local board to phase in the changes to its budgets over a period of years;
- (b) governing the phase-in.

Yearly budget from boards, etc.

290 (6) Despite any other Act, for the purpose of preparing and adopting its budget for a year, the local municipality may by by-law require that the year's budget of every board, commission or other body, other than an upper-tier municipality or school board, for which the municipality is required by law to levy a tax or provide money, be submitted to the municipality on or before a date specified by the local municipality, and that the budget shall be in such detail and form as the by-law provides.

Information re: municipal operations

299. (1) In this section,

"municipality" includes,

(a) a local board,

Information to be provided

(3) A municipality shall provide the Minister with information designated by the Minister which, in the Minister's opinion, relate to the efficiency and effectiveness of the municipality's operations, at the times and in the manner and form designated by the Minister.

Municipal Act: Part XII: Fees And Charges

Part XII of the *Municipal Act* deals with a municipalities', including its local boards' ability to impose fees and charges for services provided by it for; services provided, or purchased by another municipality or local board; and for the use of its property.

A board of health is not excluded from the definition of a local board.

Section 391(1.1) sets out the fees or charges that a local may impose on persons.

Definitions

390. In this Part,

"by-law" includes a resolution for the purpose of a local board;

"fee or charge" means, in relation to a municipality, a fee or charge imposed by the municipality under sections 9, 10 and 11 and, in relation to a local board, a fee or charge imposed by the local board under subsection 391 (1.1);

By-laws re: fees and charges

391. (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons,

- (a) for services or activities provided or done by or on behalf of it;
- (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and
- (c) for the use of its property including property under its control.

Local board

391 (1.1) A local board may impose fees or charges on persons,

- (a) for services or activities provided or done by or on behalf of it;
- (b) for costs payable by it for services or activities provided or done by or on behalf of any municipality or other local board; and
- (c) for the use of its property including property under its control.

The Minister of Municipal Affairs and Housing retains the power to make overriding regulations in regard to municipalities imposing fees and charges.

Regulations

400. The Minister may make regulations providing for any matters which, in the opinion of the Minister, are necessary or desirable for the purposes of this Part, including,

- (a) providing that a municipality or local board does not have the power to impose fees or charges for services or activities, for costs payable for services or activities, for use of municipal property or on the persons prescribed in the regulation;
- (b) imposing conditions and limitations on the powers of a municipality or local board to impose fees or charges;
- (c) providing that a body is a local board for the purpose of this Part;

Reserve Funds in Unorganized Territories

Section 417 of the *Municipal Act* provides that a local board that is exercising a power with respect to municipal affairs in an unorganized territory may establish a reserve fund, subject to any requirement to first obtain the approval of the municipality.

Reserve funds

417. (1) If a local board, conservation authority or any other body exercising a power with respect to municipal affairs under any Act in unorganized territory does not have power under another Act or another section of this Act to establish and maintain a reserve fund, it may, under this subsection, provide in its budget for the establishment or maintenance of a reserve fund for any purpose for which it has authority to spend money.

Approval

(2) If the approval of a municipality is required by law for a capital expenditure or the issue of debentures by or on behalf of a local board, the local board must obtain the approval before providing for a reserve fund for those purposes in its budget.

ENFORCEMENT: OFFENCES AND PENALTIES

HPPA

Part IX of the HPPA sets out the offences and enforcement provisions arising from a violation of an order issued under the *HPPA*.

Offence, orders

100. (1) Any person who fails to obey an order made under this Act is guilty of an offence.

Offence, reports

(2) Any person who contravenes a requirement of Part IV to make a report in respect of a disease of public health significance, a communicable disease or a reportable event following the administration of an immunizing agent is guilty of an offence.

Offence, specified provisions

(3) Any person who contravenes section 16, 17, 18, 18.1, 20, 39 or 40, subsection 41 (9), 42 (1), 72 (5), (7) or (8), clause 77.1 (3) (b), subsection 77.3 (3) or 77.5 (6), section 77.7, subsection 77.9 (3), 82 (13), (14), (15), (16) or (17), 83 (3) or 84 (2) or section 105 is guilty of an offence.

Offence, regulations

(4) Any person who contravenes a regulation is guilty of an offence.

Penalty

101. (1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than \$5,000 for every day or part of a day on which the offence occurs or continues

Corporation

(2) Where a board of health, a municipality or any other corporation is convicted of an offence under this Act, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is \$25,000 and not as provided in subsection(1).

Directors, officers, employees and agents

(3) Where a corporation, other than a board of health or a municipality, is convicted of an offence under this Act,

(a) each director of the corporation; and

(b) each officer, employee or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is guilty of an offence unless he or she satisfies the court that he or she took all reasonable care to prevent the commission of the offence.

Municipal Act

In addition to the specific powers under the *HPPA*, Part XIV of the *Municipal Act* establishes the general power of municipalities to pass by-laws providing that a person who contravenes a by-law is guilty of an offence. Part XIV applies as applicable to a board of health. Section 431 provides that in addition to any other remedy imposed by a conviction for the breach of a by-law of a local board the convicting court may make an additional order prohibiting the continuation or repetition of the offence.

MUNICIPAL ACT: PART XIV: ENFORCEMENT:

OFFENCES AND PENALTIES

Authority to create offences

425. (1) A municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence.

Directors and officers

(3) A by-law under this section may provide that a director or officer of a corporation who knowingly concurs in the contravention of a by-law by the corporation is guilty of an offence.

Offence re obstruction, etc.

426. (1) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act.

Additional order to discontinue or remedy

431. If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

- (a) prohibiting the continuation or repetition of the offence by the person convicted;

Restraining a Contravention

In addition to section 431 of the *Municipal Act*, the *HPPA* in section 102 and the *Municipal Act* in section 440 establish the right of a taxpayer, municipality or local board to apply to a court to restrain the contravention of a bylaw.

Fines

Section 433 of the *Municipal Act* establishes that the fines imposed for a contravention of a by-law of a local board belongs to the municipality. This includes boards of health.

Municipality entitled to fines

433. (1) Except as otherwise provided in this or any other Act, every fine imposed for a contravention of a by-law of a municipality or by-law of a local board of the municipality belongs to the municipality.

In addition section 447.7 (2) of the *Municipal Act* establishes that any legal costs that are awarded as the result of a municipalities or local boards involvement in a legal proceeding form part of the general funds of the municipality or the local board.

Costs to general fund

(2) The costs recovered in any proceeding by or on behalf of a municipality or local board shall form part of the general funds of the municipality or local board, respectively.

Marijuana Grow Operations

Section 447.2 of the *Municipal Act* gives a municipality the authority to utilize board of health personnel in regard to dealing with an illegal marijuana growing operation. Section 447.2 establishes that a municipality is required to conduct an inspection of a building in the municipality when it is notified by a police force that the building contained a marijuana grow operation. The inspection can be ordered to be conducted by a by-law enforcement officer of the municipality, or of any local board of the municipality. This would include persons in a board of health who have inspection and by-law enforcement powers.

Inspection of buildings containing marijuana grow operations

447.2 (1) If the clerk of a local municipality is notified in writing by a police force that a building located on land in the local municipality contained a marijuana grow operation, the local municipality shall ensure that an inspection of the building is conducted within a reasonable time after the clerk has been notified.

Persons who may conduct inspection

(2) An inspection referred to in subsection (1) may be conducted by,

(a) a by-law enforcement officer of any municipality or of any local board of any municipality; or

(b) an officer, employee or agent of any municipality or of any local board of any municipality whose responsibilities include the enforcement of a by-law, an Act or a regulation under an Act.

Protection from Personal Liability

Under the *HPPA* section 95 deals with the issue of liability. The section provides for an exemption in regard to personal liability with respect to the carrying out of responsibilities under the *HPPA*.

Protection from Personal Liability

95(1) No action or other proceeding for damages or otherwise shall be instituted against the Chief Medical Officer of Health or an Associate Chief Medical Officer of Health, a member of a board of health, a medical officer of health, an associate medical officer of health of a board of health, an acting medical officer of health of a board of health or a public health inspector or an employee of a board of health or of a municipality who is working under the direction of a medical officer of health for any act done in good faith in the execution or the intended execution of any duty or power under this Act or for any alleged neglect or default in the execution in good faith of any such duty or power.

However, these broad protections against individual liability under the *HPPA* do not end the matter. Subsection 95(3) reads:

Board of Health not Relieved of Liability

95(3), subsection (1) does not relieve a board of health from liability for damage caused by **negligence of or action without authority** by a person referred to in subsection (1), and a board of health is liable for such damage in the same manner as if subsection (1) had not been enacted. (emphasis added)

The provisions for the protection from liability for negligence for actions carried out in good faith are also found in the *Municipal Act*.

Policy decisions

450. No proceeding based on negligence in connection with the exercise or non-exercise of a discretionary power or the performance or non-performance of a discretionary function, if the action or inaction results from a policy decision of a municipality or local board made in a good faith exercise of the discretion, shall be commenced against,

- (a) a municipality or local board;
- (b) a member of a municipal council or of a local board; or
- (c) an officer, employee or agent of a municipality or local board.

MEETINGS

Note 2017: This section was revised in August 2017 to incorporate the amendments of the *Modernizing Ontario's Municipal Legislation Act, 2017* that pertain to meetings of a board of health.

Note 2021: During the COVID-19 pandemic in conjunction with the provincial government's declaring a provincial emergency, the provincial government introduced the *Municipal Emergency Act, 2020*. The *Municipal Emergency Act* amends the *Municipal Act* in regard to meetings. The amendments give municipalities the ability to fully conduct council, local board and committee meetings electronically when faced with local and province-wide emergencies. Importantly, this includes that local board members who are participating remotely will be counted for the purpose of determining a quorum. As at the time of reviewing this paper in November 2021, it was not known if these revisions would become permanent, the language of the *Municipal Act* and commentary, prior to the passing of the *Municipal Emergency Act* is still included below for reference. The *Municipal Emergency Act* sets out:

Municipal Act, 2001

1 Section 238 of the *Municipal Act, 2001* is amended by adding the following subsections:

Electronic participation, emergencies

(3.3) The applicable procedure by-law may provide that, during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*,

- (a) despite subsection (3.1), a member of a council, of a local board or of a committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time; and
- (b) despite subsection (3.2), a member of a council, of a local board or of a committee of either of them can participate electronically in a meeting that is closed to the public.

Same, procedure by-law

(3.4) A municipality or local board may hold a special meeting to amend an applicable procedure by-law for the purposes of subsection (3.3) during any period where an emergency has been declared to exist in all or part of the municipality under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act* and despite subsection

(3.1), a member participating electronically in such a special meeting may be counted in determining whether or not a quorum of members is present at any time during the meeting.

2 Subsection 451.1 (1) of the Act is amended by striking out “sections 9, 10 and 11” and substituting “sections 9, 10, 11 and 129”.

City of Toronto Act, 2006

3 Section 189 of the *City of Toronto Act, 2006* is amended by adding the following subsections:

Electronic participation, emergencies

(4.2) The applicable procedure by-law may provide that, during any period where an emergency has been declared to exist in all or part of the City under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act*,

- (a) despite subsection (4), a member of city council, of a local board of the City or of a committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time; and
- (b) despite subsection (4.1), a member of city council, of a local board of the City or of a committee of either of them can participate electronically in a meeting that is closed to the public.

Same, procedure by-law

(4.3) The city council or a local board of the City may hold a special meeting to amend an applicable procedure by-law for the purposes of subsection (4.2) during any period where an emergency has been declared to exist in all or part of the City under section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act* and despite subsection (4), a member participating electronically in such a special meeting may be counted in determining whether or not a quorum of members is present at any time during the meeting.

Role of head of council

(4.4) Despite anything in this or any other Act, only the head of council may call a special meeting of city council for the purposes of subsection (4.3).

Meetings Commentary

The question has been asked by alPHa members; whether the meeting, and particularly the closed meeting provisions of the *Municipal Act* are applicable to a board of health?

Both the *HPPA* and the *Municipal Act* contain provisions for meetings.

The *HPPA* at section 56 establishes amongst other requirements that a board of health is required to pass by-laws in regard to the calling of and proceedings of meetings. Section 58 provides that a board of health shall keep minutes of the proceedings of a meeting.

By-laws

56. (1) A board of health shall pass by-laws respecting,
 (a) the management of its property;
 (b) banking and finance;
 (c) the calling of and proceedings at meetings; and
 (d) the appointment of an auditor. Idem

Minutes

58. A board of health shall keep or cause to be kept minutes of its proceedings and the text of the by-laws and resolutions passed by it.

To determine if the meeting requirements under the *Municipal Act* apply to a board of health, as discussed above, we start with the definition of a local board in section 1(1) of the *Municipal Act*. As further discussed, under the rules of interpretation given that a board of health is included in the definition of a local board, a board of health is subject to the other provisions of the *Municipal Act* that refer to a local board unless the language of the particular section specifically excludes a board of health.

Section 238 of the *Municipal Act* establishes that a local board shall pass a procedure by-law for the calling of; setting the place of; and governing the proceedings of a meeting. There is no language that exempts a board of health from the definition section of section 238 (1), therefore a board of health is subject to the meeting provisions in sections 238 and 239 of the *Municipal Act*.

PROCEDURE BY-LAW

Definitions

238. (1) In this section and in sections 239 to 239.2,

"committee" means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards;

"local board" does not include police services boards or public library boards

"meeting" In 2017 the definition of meeting was amended to state:

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.

Notice

(2.1) The procedure by-law shall provide for public notice of meetings.

Outside municipality

(3) The procedure by-law may provide that meetings be held and public offices be kept at a place outside the municipality within an adjacent municipality.

Section 239 of the *Municipal Act* deals with the requirements for the holding of meetings. The section also deals with closed/*in camera* meetings. A general rule has existed since the 1990 *Municipal Act* that council meetings must be open unless one of the exemptions for a closed or *in camera* meeting listed in section 239 of the *Municipal Act* are met.

Meetings open to public

239. (1) except as provided in this section, all meetings shall be open to the public.

Exceptions

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) The security of the property of the municipality or local board;
- (b) Personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

(g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

Under the amendments to the *Municipal Act in 2017* the following exceptions (h) to (k) were added:

(h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;

(i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or

(k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Other criteria

(3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,

(a) a request under the Municipal Freedom of Information and Protection of Privacy Act, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or

(b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the Ombudsman Act, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

Open meeting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

Exception

(6) Despite section 244, a meeting may be closed to the public during a vote if,

- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
- (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board

The exemptions found in subsections 239(2) – (3.1) above acknowledge the necessity for municipal councils and a board of health to meet *in camera* from time to time. There are obvious reasons for this, for example; receiving legal advice and giving instructions; to protect the municipality’s negotiating position in relation to collective bargaining; and negotiating the purchase or sale of a piece of land.

In addition, subsection 238(2) requires that:

238(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings.

Accordingly, in addition to the *Municipal Act*, a board of health should also be familiar with the procedural by-law for meetings of the municipality it is subject to in regard to the definitions of and procedures applying to “committee” and “meeting”.

Subsections 239 (7) to (9) set out that a record shall be kept of the proceedings of a meeting regardless of whether it is held in camera; and that the records of meetings are subject to being disclosed under the *Municipal Freedom of Information and Protection of Privacy Act*. However, the minutes of closed meetings are exempt from the disclosure requirements under the *MFIPPA*.

Section 239.1 of the *Municipal Act* provides that a person may request the appointment of an investigator to investigate whether a local board has complied with the requirements and exemptions for a closed meeting. The investigator is to provide a report to the local board with his/her findings and recommendations.

In the 2017 amendments to the *Municipal Act* section 239.2 of the Act was amended by adding the following subsection:

Requirement to pass resolution re report

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report.

Section 244 provides that except for the vote for the appointment of a council head, and the selection of a presiding officer for a meeting no vote shall be taken by secret ballot. Except for the circumstances set out in subsection 239(6) above, matters which may be discussed in closed session must be voted on in public.

Lastly, in addition to the *HPPA* and the *Municipal Act*, in dealing with the issue of matters that can be subject to closed meetings a board of health also needs to consider the obligations under the applicable privacy legislation, *MFIPPA*, *FIPPA* and *PHIPPA* that a board of health is subject to in regard to the disclosure of minutes of meetings.

Remote Participation in Meetings

In the 2014 version of this paper this section addressed a related question that had come from a number of rural boards of health as to what extent is remote participation in a meeting permitted given the requirements under the *HPPA* and the *Municipal Act* for holding meetings?

As discussed in the 2014 version of the paper, the *Municipal Act* leaves the matter of location of offices and meetings to the local board, stating at subsection 238(3) that a local board's procedure by-law may provide that meetings be held, and public offices kept, at a place outside the municipality within an adjacent municipality. However, in the case of an emergency, subsection 236 (1) of the *Municipal Act* provides that a meeting may be held in any convenient location

As a result, in regard to the issue of electronic participation, the northern municipalities, of Greater Sudbury and Timmins, have interpreted this section as allowing for a telephone or electronic poll, where a matter is urgent and convening council would be impractical, and have included such a provision in their procedural by-law.

In 2014 the *HPPA* and the *Municipal Act* did not specifically address the issue of remote participation in meetings.

The 2017 and 2020 amendments to the *Municipal Act* have now addressed the issue of remote electronic participation in a meeting.

Section 238 of the *Municipal Act* was amended in 2017, and further amended in 2020 by the *COVID-19 Economic Recovery Act, 2020, S.O. 2020, c. 18*. The provisions for electronic participation now read:

Electronic participation

3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting to the extent and in the manner set out in the by-law.

(3.2) Repealed

(3.3) The applicable procedure by-law may provide that,

(a) a member of a council, of a local board or of a committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time; and

(b) a member of a council, of a local board or of a committee of either of them can participate electronically in a meeting that is open or closed to the public.

(3.4) A municipality or local board may hold a special meeting to amend an applicable procedure by-law for the purposes of subsection (3.3).

(3.5) A member participating electronically in a special meeting described in subsection (3.4) may be counted in determining whether or not a quorum of members is present at any time during the meeting.

A board of health is empowered by both the *HPPA* and the *Municipal Act* to determine its own manner of meeting. Accordingly, a board of health may amend its by-law in order to allow members to participate in board and committee meetings remotely by electronic means, and the board of health's procedural by-law for meetings continues to require; public notice of its meetings; that meetings are open to the public (with the exception of statutorily defined closed session matters) and that votes are conducted in public.

Should a board of health elect to amend its by-law to allow for meetings by video and/or telephone conferencing, it will have to address in its meeting by-law procedural issues, including but not limited to: when will remote participation occur; the criteria for members being allowed to participate; how will discussion and votes be conducted; and how will the public be allowed to participate?

Case Law

For a very informative review of the history, and the legal relationship and interplay between the *Municipal Act* and the *HPPA* as applied to a number of the sections from the legislation that have been reviewed in this paper see the decision of the Superior Court of Ontario in *City of Guelph v. Board of Health for the Wellington-Dufferin-Guelph Health Unit and the Corporations of the County of Wellington and the Corporation of the County of Dufferin* that can be found at: Can LII 2011 ONSC 5981.

In this matter the board of health for the Wellington-Dufferin-Guelph Health Unit approved the spending of \$22 million for the construction of buildings to provide public health programs and services. The Health Unit was comprised of the Municipalities of the City of Guelph and the Corporations of the County of Wellington and the Corporation of the County of Dufferin. The City of Guelph took the position that it could not afford its \$12 million portion of the \$22 million cost to construct the new buildings.

The City of Guelph took the board of health and the municipalities of Wellington and Dufferin to court for a declaration on the following two issues:

1. That the City of Guelph has the right to withdraw from the Wellington-Dufferin-Guelph Health Unit, which it agreed to join in 1967 on terms that would allow it to withdraw upon giving twelve months' notice to the other two municipalities and the Provincial Ministry of Health; or
2. The Health Unit may not decide, without Guelph's consent, to erect a building at a significant cost to the residents of Guelph.

After a thorough review of the history, jurisdiction and applicable sections of the *Municipal Act* and the *HPPA* the court dismissed the City's application for the declarations it sought and held that the City of Guelph did not have the right to withdraw from the health unit; and the board of health could decide, based upon a majority of its member municipalities to approve the construction of a building, regardless of the consent of the City of Guelph.

Conclusion

This paper has reviewed the relationship and role of the *Municipal Act* to a board of health. The interplay is mainly in regard to the business operations and administrative functioning of a board of health. Nevertheless, given a board of health's mandate, responsibilities and power for protecting the health of the citizens of the province of Ontario it is suggested that at the end of the day it is paramount that board members of a board of health keep upmost in mind that their responsibility for implementing the requirements of the *HPPA*, and responding to the public health needs of their community should be the guiding factor in all of their decisions as members of a board of health.

