

(Updated to Reflect Additional Relevant Provisions – October 8, 2019)

Municipal Finance Role with
Agencies, Boards and Commissions (ABC)
an

ABC Presentation

David Baxter

Director of Finance

Municipality of Port Hope

Heather Douglas

Partner

WeirFoulds LLP



WeirFouldsLLP

Legislative Overview

- Municipalities are created by the Province and are governed by the *Municipal Act, 2001* (“MA”)
- Local agencies, boards and commissions mean that municipalities avoid absolute self government



Legislative Overview (cont'd)

- There are provincially created boards that fall within the operation of a municipality
- Such boards are not subordinate to the municipality but are dependent on the municipality for financing
- Such boards by statute are able to require municipal council to levy taxes to meet their needs or to borrow money for expenditures



Legislative Overview (cont'd)

- Courts have considered the relationship of ABCs and municipalities
- A key characteristic of the relationship is whether a body is subordinate to or independent of council
- A board can be created by a municipality under the MA, in which case it is subordinate to the municipality that created it
or
- A board can be an independent body



Legislative Overview (cont'd)

An independent board:

- i. municipality has little or no discretion over the board's creation, membership, duties
- ii. even if a municipality appoints the members, the board is established by statute, the appointments are mandatory, the board members' tenure of office and the discharge of their duties are governed by statute
- iii. the Legislature has the authority to direct the activities
- iv. council's relationship is limited to finances and administrative appointments



Legislative Overview (cont'd)

- Our focus – boards created by a municipality under the MA
- Legal implications – municipality may be held liable for the torts and contracts performed by such a board



Legislative Overview – Local Boards

- “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 (MA ss. 1(1))
- a municipality is, with specific restrictions, authorized to dissolve or change a local board (MA ss. 216(1))*

*cannot dissolve or change a local board that is: (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*; (c) a committee of management established under the *Long-Term Care Homes Act, 2007*; (d) a police services board established under the *Police Services Act*; (e) a board as defined in section 1 of the *Public Libraries Act*; (f) a corporation established under section 203; (g) such other local boards as may be prescribed



Legislative Overview – Local Boards

(cont'd)

- a municipality can pass by-laws respecting the following for local boards: (i) governance structure; (ii) accountability and transparency/operations; (iii) financial management – consequently a municipality can tailor a local board to meet localized needs (MA ss. 10(2) and 11(2))
- a municipality is required to establish a code of conduct for members of council and of its local boards (MA ss. 223.2(1)) (does not apply to local boards excluded in the previous footnote)



Legislative Overview – Local Boards

(cont'd)

- every local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings (MA ss. 238(2)) (excluding police services boards and public library boards)
- a local board (excluding a police services board and a hospital 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; and 3. its procurement of goods and services (MA ss. 270(2))



Legislative Overview – Finances

Budget

- A municipality by by-law can require the budget of a board, commission or other body to be submitted to the municipality on or before a specified date in such detail and form as the by-law may require (MA ss. 289(7) and 290(6))

Auditors

- A municipality shall appoint an auditor licensed under the *Public Accounting Act* who is responsible for annually auditing the accounts and transactions of the municipality and its local boards and expressing an opinion on the financial status of the bodies based on the audit; and performing duties required by the municipality or local board (MA s. 296) – related fees may be collected by the municipality as a debt of the local board (MA ss.296 (9))



Legislative Overview – Reserve Funds

- A municipality may provide for such reserve funds as the municipality considers necessary (MA ss. 289(4)(f) and 290(4)(g))
- Regulations may be made by the Minister under section 293 of the MA in respect of a reserve fund that can, amongst other things, prohibit a municipality from changing the purpose for which the reserve fund is designated and prescribe conditions under which and for which the municipality can change the designation of all or a part of the reserve fund and borrow from the reserve fund (MA ss. 293(d), (e))



Legislative Overview – Reserve Funds (cont'd)

- If a local board, conservation authority or any other body exercising a power with respect to municipal officers under any Act in unorganized territory does not have power under another Act or under another section of the MA to establish and maintain a reserve fund, it may, under subsection 417 (1) of the MA provide in its budget for the establishment or maintenance of a reserve fund for any purpose for which it has authority to spend money
- If municipal approval 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 (MA ss. 417(2))



Legislative Overview – Insurance/Sick Leave Credit Gratuities

- A municipality may contract for insurance for, pay any part of the premiums for or pay for any part of the prescribed damages, risks or costs for any of its local boards or for specified related persons and a local board has the same powers with respect to itself and with respect to such specified persons 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 the MA (MA ss. 280 (1), (2))
- A municipality and any local board may, subject to the *Health Insurance Act*, provide group life insurance and group accident or group sickness insurance in addition to hospital, medical, surgical, nursing or dental services or payments for such services for members of local boards and for specified related persons (MA ss. 282(1), (2))
- Any local board may establish a plan of sick leave credit gratuities for employees (MA ss. 281 (2))



Legislative Overview – Employee Remuneration and Expenses/Fees and Charges

- A municipality may pay any part of the remuneration and expenses of the members of any of its local boards and of the board's officers and employees provided such expenses were incurred while acting in the board's capacity and were actually incurred or 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 (MA ss. 283(1), (2))
- A local board may pay remuneration to and the expenses incurred by its members, officers and employees to the extent that a municipality can do so under the MA (MA ss. 283 (3))
- If, in any year, any local board pays remuneration or expenses to one of its members who was appointed by a municipality, the board shall on or before January 31 in the following year provide to the municipality an itemized statement of the remuneration or expenses paid for the year (MA ss. 284 (3))



Legislative Overview – Employee Remuneration and Expenses/Fees and Charges (cont'd)

- A local board may impose fees or charges on persons as set out in Part XII of the MA (MA ss. 391(1.1))
- A municipality may pass a by-law providing that a by-law of a local board, which is not a local board of any other municipality, imposing fees or charges shall not come into force until the municipality passes a resolution approving the by-law of the local board (MA ss. 397(1))



Legislative Overview - Delegation

- Section 23.1 of the MA gives broad power to delegate to a municipality but there are restrictions e.g., cannot delegate the power to adopt or amend the budget of a municipality
- Various rules apply to a by-law delegating a municipality's powers or duties including:
 1. delegation can be revoked at any time without notice unless the by-law provides otherwise
 2. delegation shall not limit the right to revoke the delegation beyond the term of council which made the delegation
 3. delegation of a delegated power can provide that only the delegate can exercise the delegated power or both the delegate and the municipality can do so
 4. delegated powers and duties may be subject to such conditions and limits and procedural requirements as council of a municipality considers appropriate (MA ss. 23.1(2))



Legislative Overview – Delegation (cont'd)

- Some powers and duties cannot be delegated:
 1. power to appoint or remove a municipal officer whose appointment is required under the MA
 2. power to pass a by-law under section 400.1 (Transient Accommodation Tax), Parts VIII (Municipal Taxation), IX (Limitation on Taxes for Certain Property Classes), IX.1 (Optional Tax on Vacant Residential Units) and X (Tax Collection)
 3. power to incorporate a corporation under section 203
 4. power to adopt an official plan, amend an official plan or pass a zoning by-law under the *Planning Act*
 5. power to pass a by-law re small business counselling, small business programs or re assistance, including tax and development charge exemptions relating to the provision of municipal capital facilities
 6. power to adopt a community improvement plan in prescribed circumstances
 7. power to adopt or amend a municipal budget
 8. any other prescribed power or duty (MA s. 23.3)



Specific Example: A Municipal Service Board (“MSB”)

- MSB can be established by a municipality under sections 196 or 202 of the MA (joint municipal services board - JMSB)
- Both an agent and a local board of a municipality (MA ss. 197(2), (3))
- Is a body corporate unless otherwise specified (MA ss. 197(1))
- Includes public utility commissions, parking authorities and park management boards as they existed on December 31, 2002 (MA s. 195)



Specific Example: MSB Functions

- Municipality can give MSB the control and management of such services and activities of the municipality as it considers appropriate by delegating its powers and duties to the MSB in accordance with the MA (MA s. 198)
- MSB is not authorized to provide for the financing of the municipal service or activity other than by fees and charges under Part XII of the MA (Fees and Charges) unless MSB has council approval (MA ss. 23.4(2)(a))
- Municipality retains the power to finance the capital and operating costs of providing the service or activity as if the municipality had control and management of the service or activity (MA ss. 23.4(2)(b))



Specific Example: MSB Functions (cont'd)

- Municipality retains its power to deal with real and personal property in connection with the service or activity as if the municipality had control and management of the service or activity (MA ss. 23.4(2)(c))
- A municipality can establish an MSB to administer a program or administer the municipality's participation in prescribed programs that encourage the establishment and initial growth of small businesses (power to issue debentures for land acquisition or construction of buildings cannot be delegated to the MSB (MA ss. 108(8))



Specific Example: Board of Management for a Business Improvement Area

- A local municipality can designate an area as an improvement area and may establish a board of management to:
 1. oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and
 2. promote the area as a business or shopping area (MA s. 204)
- A board of management shall prepare a proposed budget for each fiscal year by the date and in the form required by the municipality and shall hold one or more meetings of the members of the improvement area for discussion of the proposed budget (MA ss. 205(1))



Specific Example: Board of Management for a Business Improvement Area (cont'd)

- Council may approve the board of management budget in whole or in part but may not add expenditures to it (MA ss. 205(2))
- A board of management shall not: spend money unless it is included in the budget approved by the municipality; incur any indebtedness extending beyond the current year without the prior approval of the municipality; or borrow money (MA ss. 205(3))



Specific Example : Library Boards- History

- Subsection 24(7) of the *Public Libraries Act 1984* stated:
- (7) A public library board, county library board or county audited financial library co-operative board shall submit its annual financial statements, audited by a person appointed under section 88 of the (old) *Municipal Act*, to the council annually on or before the date specified by the council
- The whole subsection was repealed in 2009 by the omnibus *Good Government Act, 2009* SO 2009 c 33 sched 11, ss. 7(4)
- The repeal came into force on April 1, 2010



Specific Example : Library Boards – Current Requirements – Finance

- The current *Public Libraries Act* (“PLA”) provides that a library board must appoint a treasurer who shall open an account or accounts in the name of the board in a bank, or other prescribed financial institution, and deposit all money received into the account(s) and disburse the money as the board directs (PLA ss. 15(4))



Specific Example : Library Boards – Current Requirements – Finance (cont'd)

- The current PLA provides that a library board shall submit to the appointing council, annually on or before the date and in the form specified by council, estimates of all sums required during the year for the purposes of the board (PLA ss. 24(1))
- The amount of a board's estimates that is approved or amended and approved by council shall be adopted by the board and shall be paid to the board out of the money appropriated for it (PLA ss. 24(2))
- The PLA budget provisions generally conform to the budget provisions for local boards (see slide 10)



Specific Example : Library Boards – Current Requirements – Finance (cont'd)

- A board shall apply the appropriated money paid to it in accordance with the estimates as approved (PLA ss. 24(3))
- Council may, in its approval of a board's estimates or at any time at the board's request, authorize the board to apply a specified amount or percentage of the money paid to it under PLA ss. 24(2) otherwise than in accordance with the items of the estimates as approved (PLA 24(4))



Specific Example : Library Boards – Current Requirements – Finance (cont'd)

- A board may, with the consent of the appointing council: (a) acquire land required for its purposes by purchase, lease, appropriation or otherwise; (b) erect, add to or alter buildings; (c) acquire or erect a building larger than is required for library purposes, and lease any surplus part of the building; and (d) sell, lease or otherwise dispose of any land or building that is no longer required for the board's purposes (PLA ss. 19(1))
- The sums required by a board for the purposes of acquiring land, for building, erecting or altering a building or for acquiring books and other things required for a newly established library may, on application of the board, be raised by the issue of municipal debentures (PLA ss. 25(1))



Specific Example : Library Boards – Current Requirements – Finance (cont'd)

- A board's application for financing through municipal debentures shall be made to the council of the municipality for which the board was established and such council at the first meeting after receiving the application or as soon thereafter as reasonable, shall consider and approve or disapprove it, and if a vote in council results in a tie, the application shall be deemed to be disapproved by council (PLA ss. 25(3), (4))
- In the case of multiple relevant municipal councils, the council of the municipality with the greatest population shall raise the sum required by the issue of debentures under the MA.



Specific Example : Library Boards – Fees and Charges

- A board shall not make a charge for admission to a public library or for use of the library's materials. Every board shall allow the public to (a) reserve and borrow circulating materials that are prescribed or belong to a prescribed class; and (b) use reference and information services as the board considers practicable, without making any charge (PLA ss. 23(1), (2))
- A board may impose such fees as it considers proper for, (a) services not referred to in (a) or (b) above; (b) the use of the parts of a building that are not being used for public library purposes; and (c) the use of library services by persons who do not reside in the area of the board's jurisdiction (PLA ss. 23(3))



Specific Example : Library Boards – Fees and Charges (cont'd)

The following are the prescribed classes of circulating materials for which a library board shall allow the public to reserve and borrow without making any charge:

1. Books with hard, soft and paper covers;
2. Periodicals;
3. Newspapers;
4. Audio materials designed for the handicapped;
5. Sound recordings;
6. Audio and video cassettes;
7. Tape recordings;
8. Video discs;
9. Motion pictures;
10. Film strips;
11. Film loops;
12. Micro materials in all formats;
13. Computer software;
14. Multi-media kits.



R.R.O. 1990, Reg. 976, s. 2

Specific Example : Police Services Boards

Section 39 of the *Police Services Act* (“PSA”) provides as follows:

- 39** (1) The board shall submit operating and capital expenditures to the municipal council that will show, separately, the amounts that will be required,
- (a) To maintain the police force and provide it with equipment and facilities;
and
 - (b) To pay the expenses of the board’s operation other than the remuneration of board members.

Same

- (2) The format of the estimates, the period that they cover and the timetable for their submission shall be as determined by the council.



Specific Example - Police Services Boards

(cont'd)

(3) Upon reviewing the estimates, the council shall establish an overall budget for the board for the purpose described in clauses (1) (a) and (b) of section 39 of the PSA and, in doing so, the council is not bound to adopt the estimates submitted by the board.

Same

(4) In establishing an overall budget for the board, the council does not have the authority to approve or disapprove specific items in the estimates.



Specific Example - Police Services Boards

(cont'd)

Commission hearing in case of dispute

(5) If the board is not satisfied that the budget established for it by the council is sufficient to maintain an adequate number of police officers or other employees of the police force or to provide the police force with adequate equipment or facilities, the board may request that the Ontario Civilian Police Commission determine the question and the Commission, shall, after a hearing, do so.



Specific Example: Police Services Boards

- The *Comprehensive Ontario Police Services Act* (New PSA) repeals and replaces the *Police Services Act, 2018* and the *Ontario Special Investigations Unit Act, 2018*
- The New PSA received Royal Assent on March 26, 2019 but has not yet been proclaimed in force



Specific Example : Police Services Boards- Budgeting

- A municipality may, with the approval of the Minister of Community Safety and Correctional Services, constitute a municipal board to have policing responsibility for the municipality (New PSA ss. 22(1))
- New PSA includes a provision similar to Section 39 of the PSA however, if the municipal board is not satisfied that the budget established for it by the municipality is sufficient:
 1. The municipal board and the municipality may jointly apply to the Chair of the Arbitration and Adjudication Commission to appoint a conciliation officer to attempt to resolve the matter, or
 2. The municipal board may give the municipality written notice referring the matter to arbitration (New PSA ss. 50(6))
- If the municipality is able to demonstrate that the municipal board could reasonably have entered into an agreement that meets the standard for adequate and effective policing at a lower cost in comparison to the estimates, the arbitrator shall not find that the budget is insufficient (New PSA ss. 50(11))



Specific Example: Police Services

Boards-Training

- Members of the board must complete mandatory training including “... training approved by the Minister with respect to the role of a police service board and the responsibilities of members of a board or committee.” (New PSA ss. 35(2))
- This can assist council members in understanding their duties and responsibilities as both board and council members



Key Takeaways: Practical Considerations

- Daily Financial Functions
- Policies Coordination
- Fees and Charges Establishment
- Budgets
- Reserves
- Surplus and Deficits



ABC Presentation

Questions?

