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VIA E-MAIL

The Board of Health of the Middlesex-London Health Unit
50 King Street
London ON N6A 5L7
Attention: Ms. Viola Poletes Montgomery, Board Chair

Dear Ms. Poletes Montgomery:

Re: MLHU Funding from the City of London

You have requested a legal opinion regarding the authority of The Board of Health of the Middlesex London Health Unit ("MLHU") to require The Corporation of the City of London (the "City of London") to provide the level of funding MLHU requires to carry out its responsibilities under the Health Protection and Promotion Act (Ontario) (the "HPPA"). This opinion is divided into the following headings for ease of reference:

- A. Conclusions;
- B. Discussion and Analysis; and
- C. Summary.

A. CONCLUSIONS:

1. The City of London is obliged under Section 72 of the HPPA to fund MLHU's expenses that are incurred in the performance of its functions and duties that are required under the HPPA.

2. The Province of Ontario's obligation to fund MLHU is discretionary under Section 76 of the HPPA. No provision of the HPPA or the HPPA's Regulations require the Province of Ontario to fund MLHU, or any other health unit, at all or at a specific level. In particular, the Province of Ontario is not required under the HPPA to fund seventy-five (75%) per cent (or any other specified percentage) of MLHU's budget.

3. We have reviewed the Public Health Accountability Agreement between MLHU and the Province of Ontario. The Public Health Accountability Agreement confirms that a Grant, as defined therein, will be payable to MLHU towards the costs of fulfilling its legislated responsibilities under the HPPA but the amount of the Grant is not set out. The Public Health Accountability Agreement authorizes the Province of Ontario to withdraw all or part of the Grant at any time, in certain

circumstances. MLHU's receipt of the Grant is also conditional on MLHU's compliance with its legislated responsibilities.

B. DISCUSSION AND ANALYSIS:

The relevant legislative provisions are set out in Schedule "A".

The City of London is an obligated municipality within the meaning of Section 72 of the HPPA. Section 72 employs mandatory language for payments by obligated municipalities to boards of health. For example, Section 72(1) indicates the obligated municipalities shall pay the expenses incurred by or on behalf of the Board of Health and by or on behalf of the Medical Officer of Health of the Board of Health in the performance of functions or duties of the health unit under the HPPA. The amount payable must be sufficient to enable the Board of Health to provide the health programs and services in accordance with Sections 5, 6 and 7 of the HPPA and to comply in all other respects with the HPPA, the Regulations and guidelines.

The Board of Health must annually give each obligated municipality written notice of its funding requirements. The procedures for such written notice are set out in Section 72(5). MLHU followed the Section 72(5) procedures when submitting its funding request to the City of London. Section 72(8) confirms that an obligated municipality provided with notice under Section 72 "shall pay" to the board of health the amounts required by the notice "at the times required by the notice". Section 72(6) confirms unanticipated, unbudgeted expenses of the health unit are to be funded by the municipalities.

The obligation of the Province of Ontario to fund Ontario health units is much more discretionary. Under Section 76, the Minister of Health and Long-Term Care may make grants for the purposes of the HPPA on such conditions as the Minister considers appropriate. The Ministry of Health and Long-Term Care has entered into the Public Health Accountability Agreement under which a Grant, as defined in that agreement, will be payable to MLHU. The quantum of the Grant is not defined and is discretionary. As well, MLHU's receipt of the Grant is conditional on compliance with the HPPA.

We reviewed the Legislation Act (Ontario) which mandates certain rules of interpretation for legislation. Section 79 of the Legislation Act confirms that duties imposed on a person shall be performed when required.

For comparison purposes, we also reviewed the funding legislation for other services such as Fire and Police. In our view, the language employed by the Provincial Legislature for the funding of Fire and Police services is more permissive than the language used for the funding of Ontario health units and as such reinforces the obligation of Ontario municipalities to fund health unit budgets in accordance with the procedures set out in the HPPA.

In the Police Services Act, the board is required to submit operating and capital estimates to municipal council (Section 39). Section 39(3) confirms that upon reviewing the estimates, council shall establish an overall budget for the board. The language of Section 39(3) merely establishes a permissive obligation to consider the estimated budget of the board. This Section does not create an obligation for municipal council to accept the board's budget and municipal council (not the board) establishes the overall budget. Under the Fire Protection and Prevention Act, there are no mandatory provisions

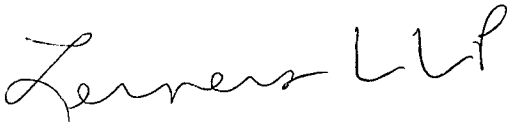
requiring municipal funding for this service. The legislature has drawn a distinction between the municipal funding for these services and funding for Ontario health units.

C. SUMMARY:

In summary, the Province of Ontario may provide funding to health units at its discretion. However, the legal obligation to fund health units in Ontario rests solely with the obligated municipalities under Section 72 of the HPPA. Therefore, if the Province of Ontario funds only part of a health unit's budget, it is the responsibility of the obligated municipalities to make up the difference in order to enable the health unit to perform its functions and duties under the HPPA or any other Act.

Yours very truly,

LERNERS LLP

A handwritten signature in cursive script that reads "Lerners LLP". The signature is written in dark ink and is positioned below the typed name of the signatory.

David M. Woodward
DMW/st

SCHEDULE "A"

Section 72 of the HPPA provides as follows:

Payment by obligated municipalities

72. (1) The obligated municipalities in a health unit shall pay,

- (a) the expenses incurred by or on behalf of the board of health of the health unit in the performance of its functions and duties under this or any other Act; and
- (b) the expenses incurred by or on behalf of the medical officer of health of the board of health in the performance of his or her functions and duties under this or any other Act. 1997, c. 30, Sched. D, s. 8.

Same

(2) In discharging their obligations under subsection (1), the obligated municipalities in a health unit shall ensure that the amount paid is sufficient to enable the board of health,

- (a) to provide or ensure the provision of health programs and services in accordance with sections 5, 6 and 7, the regulations and the guidelines; and
- (b) to comply in all other respects with this Act and the regulations. 1997, c. 30, Sched. D, s. 8.

Agreement

(3) The obligated municipalities in a health unit shall pay the expenses referred to in subsection (1) in such proportion as is agreed upon among them. 1997, c. 30, Sched. D, s. 8.

If no agreement

(4) If the obligated municipalities in a health unit fail to agree on the proportion of the expenses referred to in subsection (1) to be paid by each of them, each obligated municipality in the health unit shall pay the proportion of such expenses that is determined in accordance with the regulations. 1997, c. 30, Sched. D, s. 8.

Notice to obligated municipalities

(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. 1997, c. 30, Sched. D, s. 8.

Where additional expenses incurred

(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. 1997, c. 30, Sched. D, s. 8.

Estimates

(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. 1997, c. 30, Sched. D, s. 8.

Payment in accordance with notice

(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. 1997, c. 30, Sched. D, s. 8.

Municipal authority

(9) An obligated municipality has all the powers necessary to comply with this section, including the power to enter into and carry out an agreement referred to in subsection (3). 1997, c. 30, Sched. D, s. 8.

Section 76 of the HPPA provides as follows:

Grants

76. The Minister may make grants for the purposes of this Act on such conditions as he or she considers appropriate. 1997, c. 15, s. 5 (2).

Ontario Regulation 489/97, allocation of Board of Health expenses, provides as follows:

ONTARIO REGULATION 489/97

ALLOCATION OF BOARD OF HEALTH EXPENSES

1. (1) If the obligated municipalities in a health unit fail to agree on the proportion of the expenses referred to in subsection 72 (1) of the Act to be paid by each of them, each obligated municipality in the health unit shall pay the proportion of the expenses that is determined by dividing its population by the sum of the populations of all the obligated municipalities in the health unit. O. Reg. 489/97, s. 1 (1).

(2) In this section,

"population" means, with respect to an obligated municipality, the population of the obligated municipality as determined from the most recent enumeration conducted under section 15 of the *Assessment Act*. O. Reg. 489/97, s. 1 (2).

1.1 (1) Despite section 1, this section applies with respect to the obligated municipalities within the Simcoe Muskoka District Health Unit. O. Reg. 142/05, s. 1.

(2) If the obligated municipalities fail to agree on the proportion of the expenses referred to in subsection 72 (1) of the Act to be paid by each of them, each obligated municipality shall pay the proportion of the expenses that is determined by the formula,

$$A = B + C$$

where,

A is the amount to be apportioned to the obligated municipality,

B is the amount obtained by dividing the sum of the assessments of all real property in the obligated municipality by the sum of the assessments of all real property in the obligated municipalities in the Simcoe Muskoka District Health Unit, then multiplying the result by 50 per cent of the expenses of the health unit as determined under subsection 72 (1) of the Act, and

C is the amount obtained by dividing the population of obligated municipality by the population of the health unit, then multiplying the result by 50 per cent of the expenses of the health unit as determined under subsection 72 (1) of the Act.

O. Reg. 142/05, s. 1.

(3) In this section,

"assessment", with respect to real property, means the assessment for the real property made under the *Assessment Act* according to the last returned assessment roll;

"population" means population as determined from the most recent enumeration conducted under section 15 of the *Assessment Act*. O. Reg. 142/05, s. 1.

2. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 489/97, s. 2.

Section 79 of the Legislation Act provides as follows:

Performance when occasion requires

79. Powers that are conferred on a person may be exercised, and duties that are imposed on a person shall be performed, whenever the occasion requires. 2006, c. 21, Sched. F, s. 79.