

Legislative Context for Governing Public Libraries in Ontario

As a library board member, you have joined a lengthy list of people who have served their local communities through the local library board.

Lending libraries were introduced to Canada in the form of subscription libraries in the early 1800s. A Scottish tradition, subscription libraries required members to pay an annual fee. Mechanics' Institutes began to replace subscription libraries in the 1830's. They had a broader mandate, existing to provide 'mechanics and working men' with lectures, classes, reading rooms and lending libraries to improve literacy skills in the working class. The first library legislation in Ontario was passed in 1851, followed in 1882 by the *Free Libraries Act*. It permitted the establishment of free public library services supported by a municipal levy and governed by a board of citizens appointed by local council.

In Ontario, public libraries continued to be governed by library boards. Although considered a local service, public libraries are established and guided by legislation at the provincial level. The official name of the legislation for public libraries is [Public Libraries Act, Revised Statutes of Ontario, chapter P44](#) (the *PLA*). The Ministry responsible for the administration of this legislation changes from time to time and in a change of government, but as of June 2022, it is the Ministry of Tourism, Culture and Sport.

The *PLA* grants the municipality the power to create, through a by-law, a public library established as a separate corporation under the management and control of a board of trustees.

The overall responsibilities of a public library board are to oversee the operations of its library and to function as the ultimate decision-maker for the library with fiduciary responsibility. In carrying out this mandate, the board has accountability and legal responsibilities to the many different stakeholders in its community: the public utilizing the library, taxpayers, library employees, creditors, the appointing council, the other directors, and various levels of government. Each board member, and the board as a whole, have a responsibility to act in the best interest of the library to achieve its legal purpose. The board needs to be aware of the legislative requirements of operating a public library as an employer and the financial responsibilities.

The *Public Libraries Act, R.S.O. 1990, chapter P.44* specifies three major responsibilities for public library boards:

1. Accountability to municipal council

The board must submit estimates of funds required for the year and an audited financial statement to council each year (Section 24 (1), (2) and (7)). The board must seek council approval to acquire and dispose of real property and to raise funds through debentures (Section 19 and Section 25).

2. Reporting responsibilities to the province

The board is required to report specific statistics to the provincial minister annually. The board is also required to report on specific grants (Section 20 (f)).

3. Provision of free public library service reflecting the needs of the community

Section 20(a) of the *Public Libraries Act, R.S.O. 1990, chapter P.44* directs a public library board to provide “comprehensive and efficient public library service” reflecting the community’s needs. The Act goes on to direct the board regarding fees for library service.

Quick reference to the *Public Libraries Act, R.S.O. 1990, chapter P.44.*

The legislation prescribes the manner in which the board must operate. A copy of this provincial legislation can be obtained through the E-laws section of the Ontario government website at www.ontario.ca/laws. In addition to the legislation itself, board members may also refer to the [legislation section](#) of the Ministry’s website for clarification on certain issues. This section is intended as general information about the legislation and not interpretation or advice. If you have any specific questions about any legal matter you should consult a professional legal services provider. All references are to the specific section of the *PLA*, for example -Section 3(3).

General

- Public Library Boards are established by municipal by-law (Section 3 (1)).
- Library Boards must be under the management and control of a board and board is a corporation - Section 3 (3), Section 5 (3) and Section 7(7).

Appointments

- Council shall appoint at least five members to the board - Section 9(1)
- Council shall not appoint more of its own members to a board than: in the case of a public library board or union board, one less than a majority of the board; in the case of a county library or a county co-operative library, a bare majority of the board -Section 10 (2).

Quick reference to the *Public Libraries Act, R.S.O. 1990, chapter P.44* (continued)

Appointments (continued)

- A board member holds office for a term concurrent with the term of the appointing council or until a successor is appointed and may be reappointed for one or more further terms - Section 10 (3).
- A person is qualified to be appointed as a member of a board who is a member of the appointing council **OR** who is at least eighteen years old, a Canadian citizen or a permanent resident of Canada within the meaning of the *Immigration and Refugee Protection Act* (Canada); and not employed by the board or by the municipality or county or, in the case of a union board, by any of the affected municipalities and is,
 - a resident of the municipality for which the board is established in the case of a public library board, a resident of one of the municipalities for which the board is established in the case of a union board, a resident of one of the participating municipalities in the case of a county library board, or a resident of the area served by the board in the case of a county library co-op board,
 - a resident of a municipality or local service area with a contract with the board
 - a member of a band that has a contract with the board, or
 - a member of a second board that has entered into a contract with the board to purchase library services for its residents (Section 10 (1)).
- Once appointed, a board member is disqualified from serving if he or she:
 - is convicted of an indictable offence;
 - becomes incapacitated;
 - is absent from the meetings of the board for three consecutive months without being authorized by a board resolution;
 - ceases to be qualified for membership - Section 10; or,
 - otherwise forfeits his or her seat. - Section 13.

Officers of the Board

- A board member is elected as chair at the first meeting in a new term. Section 14(3).

Staff

- A board may appoint and remove such employees as it considers necessary, determine the terms of their employment, fix their remuneration and prescribe their duties - Section 15(1).

Chief Executive Officer

- A board appoints a chief executive officer who shall have general supervision over and direction of the operations of the public library and its staff, shall attend all board meetings and shall have the other powers and duties that the board assigns to him or her from time to time - Section 15(2).
- The board appoints a secretary and treasurer - Section 15(3)(4).
- The same person may be the secretary and treasurer and chief executive officer.

Quick reference to the *Public Libraries Act, R.S.O. 1990, chapter P.44* (continued)

Meetings

- All members of the board including the chair may vote on all matters and a tie is considered negative
- A board shall hold at least seven regular meetings in each year.
- The chair or any two members of a board may summon a special meeting of the board by giving each member reasonable notice in writing, specifying the purpose for which the meeting is called.
- **Quorum** - The presence of a majority of the board is necessary for the transaction of business at a meeting.
- All meetings of the Board and its Committees shall be **open** to the public – Section 16.1(2). However, a meeting or part of a meeting *may* be **closed** to the public if the subject matter being considered is about: a) the security of the property of the board; (b) personal matters about an identifiable individual; (c) a proposed or pending acquisition or disposition of land by the board; (d) labour relations or employee negotiations; (e) litigation or potential litigation, including matters before administrative tribunals, affecting the board; (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose (Section 16.1 (4)).

Rules/Policies

- A board *may* make rules (Section 23 (4)),
 - for the use of library services
 - for the admission of the public to the library
 - for the exclusion from the library of persons who behave in a disruptive manner or cause damage to library property
 - imposing fines for breaches of the rules
 - suspending library privileges for breaches of the rules; and
 - regulating all other matters connected with the management of library and property

Services

- A board provides a comprehensive and efficient public library service that reflects the community’s unique need and may operate special services in connection with a library as it considers necessary - Section 20
- Under Section 23, a board *cannot* charge for
 - admission to a public library or for use in the library of the library’s materials
 - or reserve and borrow circulating materials that are prescribed or belong to a prescribed class (See Regulation 976)
- Fees *may* be charged for:
 - other services not referred to above
 - use of the parts of a building
 - use of library services by persons who do not reside in the geographical area of the board’s jurisdiction.

Additional Legislation

In addition to considering the *Public Libraries Act*, the library is also affected by other legislation, and it befits each board member to review and understand all pertinent legislation. On a federal level, public libraries will be subject to relevant legislation including the [Criminal Code](#) and [Charter of Rights and Freedoms](#). There may be certain local by-laws such as use of public space which might also affect the library.

On the provincial level, board will also be governed or affected by specific requirements within the *Municipal Act*, *Accessibility for Ontarians with Disabilities Act*, *Occupational Health and Safety Act*, *The Municipal Freedom of Information and Protection of Privacy Act* and the *Child, Youth and Family Services Act*. An overview of the implications for each piece of legislation is provided here.

Municipal Act 2001 and Municipal Statute Law Amendment Act 2006

The [Municipal Act, 2001, S.O. 2001, Chapter 25](#) governs municipal governance and powers and the [Municipal Statute Law Amendment Act, 2006](#) amends various Acts in relation to municipalities. Public libraries in Ontario are subject to certain requirements of the *Municipal Act, 2001* because they are municipally established local boards and included in the Act's definition of local boards for the purposes of that Act. The *Municipal Act* contains three specific requirements for all local boards, including the public library board. Found at Section 270(2) of the *Municipal Act* and effective from January 1, 2005, it reads.

“Policies of local boards

- (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. 2006, c. 32, Sched. A, s. 113.”

For these three policies required under the *Municipal Act*, keep in mind that even if the library board is using policies of the municipality (because the municipality is *also* required to have those specific policies), the library board must pass these policies as their own and include with their other policy documents.

The provincial Ministry has created a webpage called [Public libraries and the Municipal Act, 2001](#) that provides additional information about the legislation. This webpage provides clarification on the relationship between the *Municipal Act* and public libraries with respect to: board governance, contracting for library service, and financial reporting requirements.

Accessibility for Ontarians with Disabilities Act, 2005

The [Accessibility for Ontarians with Disabilities Act, 2005](#) lays the framework for the development of province-wide mandatory standards on accessibility in all areas of daily life. Public libraries in Ontario are required to have a specific Statement of Organizational Commitment. Such as Statement might read like this:

“The Public Library is committed to providing equitable access to library service. The Library will ensure that each employee, volunteer and patron receive equitable treatment with respect to employment and services without discrimination, and receives accommodation where required in a timely manner, and in accordance with the *Ontario Human Rights Code* and the *AODA* and its regulations. The Library meets the obligations set out in the *AODA* and the current accompanying regulations, in partnership with the Municipality.”

Beginning in 2010, libraries were required to [provide accessible customer service](#). The main points of that requirement are as follows:

- train your staff and volunteers to serve customers of all abilities
- keep a record of the training (if large organization must keep written record of training)
- welcome service animals and support persons
- create accessible ways for people to provide feedback
- put an accessibility policy in place, so your employees, volunteers and customers know what to expect

Note that one requirement is that the library have an accessibility policy, which may fall under the approval of the board or under staff approval if the Library Board operates under the Policy Governance Model (Carver model of governance).

In June 2016, the Ontario Government announced amendments to the Accessibility Standards under a new regulation called *Ontario Regulation 165/16*. With respect to the Library Board, one important change with this 2016 regulation relates to Customer Service Training. Previously only those who dealt directly with the public had to be trained, but now, all employees and volunteers (paid and unpaid, full-time, part-time and contract positions) and anyone involved in developing your organization’s policies (including managers, senior leaders, directors, board members) as well as anyone who provides goods, services or facilities to customers on your organization’s behalf must receive training on AODA standards. Details on training are posted on the Ontario Government website at <https://www.ontario.ca/page/how-train-your-staff-accessibility>.

Occupational Health and Safety Act

The **Occupational Health and Safety Act** (OHSA) provides the legal framework and the tools to achieve the goal of making Ontario's workplaces safe and healthy. Since 1979, the OHSA has had requirements for all workplaces, with respect to policy on health & safety in general.

Section 25 of the OHSA (within Part III) reads as follows: ...“an employer shall...”

- i. post, in the workplace, a copy of the [Occupational Health and Safety] Act and any explanatory material prepared by the Ministry
- ii. prepare and review at least annually a written occupational health and safety policy and develop and maintain a program to implement that policy;
- iii. post at a conspicuous location in the workplace, a copy of the occupational health and safety policy”

In 2010, new policy and program requirements (Bill 168) relating to [Workplace Violence and Harassment](#) were added to the OHSA and the following legal requirements for employers were added:

- 1) Conduct an assessment for each location on risk of workplace violence
- 2) Write policy
 - (a) prepare a policy with respect to workplace violence;
 - (b) prepare a policy with respect to workplace harassment;
 - (c) review the policies as often as is necessary, but at least annually.
- 3) Write a program to implement the policy and address the risks – in each specific workplace location. (Any template used must be tailored to fit the workplace where it would be used and based on the results of the assessment for that workplace.)
- 4) Provide information or instruction to staff on contents of policies and programs

In September 2016, the Government of Ontario implemented another workplace harassment prevention measure under **Bill 132: Sexual Violence and Harassment Action Plan Act**. Bill 132 is *an enhancement to Bill 168 from 2010 on workplace violence and harassment*. Under Bill 132, in addition to drafting policies and developing programs to assess and manage threats of violence and harassment, employers will need to go ensure that the workplace harassment program includes a reporting mechanism and training on the procedures. Bill 132 contains a requirement to investigate any complaint of harassment and report investigation outcomes to complainants.

Library boards in Ontario must ensure that these OHSA policies are in place at the library, particularly as the library board is the employer of staff at the library. The OHSA policies from the municipality may be used but must be adopted by the library board as their policy, and the required programs of this section of OHSA must be **site-specific** to each location used by the library system. In the case of a Carver Policy Governance Model, the staff may develop these policies, but it remains the responsibility of the Library Board to receive assurance from the staff that these policies are in place at the library.

Child, Youth and Family Services Act

The [Child, Youth and Family Services Act](#) (CYFSA), passed in 2018, is a key piece of legislation that governs many of the province’s programs and services for children and youth. When establishing rules and policies around children and youth in the library, it is important that staff and board members familiarize themselves with this legislation to ensure compliance with the legislative provisions. For example, the new CYFSA legislation does not specify an age where a child can be left alone but it did raise the “age of protection from 16 to 18, meaning that the legislated duty to report will continue to apply in respect of children under 16, and then there is a voluntary reporting provision (Section 125), where “a professional or member of the public who is concerned that a 16-or 17-year old is or may be in need of protection may make a report to a society and the society is required to assess the reported information”.

Freedom of Information and Protection of Privacy Legislation

Two pieces of provincial legislation - [Freedom of Information and Protection of Privacy Act](#) and [Municipal Freedom of Information and Protection of Privacy Act \(MFIPPA\)](#) govern personal information protection and access to information held by thousands of provincial and local public sector organizations. The Ministry has provided [additional information for public libraries about MFIPPA](#). As an example, under MFIPPA, personal information can only be used for the purpose for which it was originally obtained or compiled, or for a consistent purpose and using personal information for other purposes is not permitted. Therefore, the board could not use a patron's personal information, which was collected for library services, for some other purpose such as fundraising *unless* that new purpose could have been reasonably expected when the personal information was collected, or the person was specifically asked about using their personal information for that purpose.

Corporations Act

The [Corporations Act](#) provides the statutory framework for not-for-profit corporations, including charitable corporations, as well as the legislation and rules governing Ontario insurance companies. Under the *PLA*, the Library Board is a corporation. This is specified under Section 3(3) which reads: “A public library shall be under the management and control of a board, which is a corporation known in English as The (insert name of municipality) Public Library Board and in French as Conseil de la bibliothèque publique de (insert name of municipality)”. The same designation of being a corporation applies to Union Library Boards (at Section 5(3)) and to County Library Boards (at Section 7(7)).

Note: Readers are reminded that it requires legal expertise to read and interpret the law and its complexities, and that changes in legislation and case law may lead to changes in how laws should be interpreted and applied.

Additional Legislative Considerations

In addition to specific legislation, board members must be aware of specific elements within other legislation which may have an impact on their work as board members.

- Liability
- Conflict of Interest
- Indemnification and insurance

Liability

There are a number of specific statutes in legislation which are of particular relevance to directors of public library boards in their personal capacity and the issue of potential financial liability. It is important for all board members to be aware of these pieces of legislation.

Legislation	Potential financial liability
Corporations Act (Ontario)	S81: directors of a corporation are jointly and severally liable to the employees for not more than 6 months wages and 12 months vacation pay (if the board has been sued for the debt within 6 months after it has become due and the employee has been unable to satisfy the debt) as well as for technical offences (e.g., failure to produce books or records to an auditor acting for the members). Resigning as a director does not automatically extinguish all of the director’s liabilities.
Workplace Insurance and Safety Act	Individual directors who authorize, permit or acquiesce to any contravention of the legislation by the corporation is a party to and guilty of the offence.
Employment Standards	Individual directors who authorize, permit or acquiesce to any contravention of the legislation by the corporation is a party to and guilty of the offence.
Occupational Health and Safety Act	Directors have a legal duty to take all reasonable care to ensure that the corporation complies with the act and its regulations including the requirement to create and maintain policies and procedures under Workplace Violence and Workplace Harassment clauses.
Pay Equity Act	Directors may be subject to penalty where the officer or director caused or acquiesced in the breach of the organization’s statutory duty to its employees in maintaining pay equity in the workplace.
Employment Insurance Act	Director is liable if corporation does not deduct or remit employment insurance premiums.
Income Tax Act	Personal liability on directors if the corporation fails to deduct, withhold or remit taxes.
Pension legislation	Director is liable if the corporation does not deduct appropriate amounts under the Canada Pension Plan .
Criminal Code	Personal liability for directors for offences such as defrauding creditors.

Conflict of Interest

Conflict of interest can arise in two major ways:

1. Where a director is motivated by considerations other than the best interests of the library; or
2. Where the director has a personal interest in a contract with the board either as an individual or as a member of another organization.

Also note that the concept of personal gain is considered as a conflict of interest.

While the *Corporations Act* provides a procedure for dealing with conflict of interest for corporations, the [Municipal Conflict of Interest Act, R.S.O. 1990, chapter M.50](#) provides a much more detailed code of conduct. In the *Municipal Conflict of Interest Act*, the interest of a director is specifically stated to include the interest of a parent, spouse, or child. In disclosing the interest, the director is also specifically prohibited from participating in the discussion and, if it is in a public meeting (which the *Public Libraries Act* requires in most cases), then the director must actually leave the meeting.

The *Municipal Conflict of Interest Act* further provides that an elector can bring the director before a judge to determine the question of conflict at any time within six years from the date of the alleged conflict. Section 10 provides the remedies when a judge declares that a member has breached the provisions of the *Act* and that includes the power to declare the seat of the member vacant, disqualify the member for a period of not more than seven years, and require the member to make restitution to the party or the municipality or local board suffering the loss. Finally, the *Act* also has a procedure which allows a board to obtain the authority necessary to discuss an issue if the conflict results in two or fewer directors being available for a vote.

In the past, it was recommended that all libraries have a conflict of interest policy, and/or a code of conduct for board members that include procedures for dealing with conflicts of interest. Then in June of 2017 the Government of Ontario passed Bill 68, the *Modernizing Ontario's Municipal Legislation Act*. Bill 68 requires that every municipality in Ontario provide its citizens access to an integrity commissioner. By March 2019, appointment of an integrity commissioner is mandatory (either on staff or on retainer) and "codes of conduct" will be mandatory for all municipal councils and certain local boards. It is recommended that the library board have a Board Code of Conduct. To this end, a sample Code of Conduct is provided within the [OLS Trillium Public Library policies](#), under the heading, [Purpose and Duties of the Board](#) (includes Board Code of Conduct) - Policy Number: GOV-01.

Indemnification and insurance

The [Corporations Act](#) permits a corporation to indemnify a director in respect of costs incurred defending himself or herself from an action based on his or her position as a director, except for costs rising out of willful neglect or default. Typically, insurance is recommended to back up any form of indemnity. The question of whether directors' liability insurance should be purchased is a matter of risk management and should be discussed by each board. There are no reported cases of a successful action against a director of a non-profit corporation for breach of his or her duties which would be compensable by an insurer. While there are directors' liability insurance policies for non-profit corporations which are cheaper than such policies for directors of business corporations, the expense of such insurance may be quite high in comparison to the perceived risk.

Under the terms and conditions of receiving the Ontario Public Library Operating Grant (the PLOG), "all library applicants MUST carry at least \$2 million commercial general liability insurance coverage as noted in the application legal terms and conditions section 11."

Most actions against directors are commenced by disgruntled shareholders who have a direct pecuniary interest in the outcome of the litigation. However, the reality of a public library board is that the director's appointment is more likely to be terminated by the appointing body for any breach of his or her duty than for the director to be sued. Finally, any of the biggest dangers, such as conflict situations where a profit has been made, would be excluded under directors' liability coverage or would increase the cost of the insurance coverage so as to make it absolutely prohibitive.

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