



Public Libraries: The Library Board and the Municipality

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THE PUBLIC LIBRARIES ACT

Public library service in Ontario is delivered through nearly 300 library systems – in communities ranging from 250 people to over 2 million – with the support of two regional library services, one of which is the Southern Ontario Library Service and various membership organizations such as the Ontario Library Association

The ***Public Libraries Act, R.S.O. 1990, chapter P.44*** (the “PLA”) is provincial legislation that governs the operations of public libraries in Ontario.

A copy of the ***Public Libraries Act, R.S.O 1900, c. P44*** is posted in the ‘Libraries’ section of Ministry of Tourism, Culture and Sport website at <http://www.mtc.gov.on.ca/en/libraries/libraries.shtml> At that site, the Ministry staff have also posted a list of 44 frequently-asked questions to assist in understanding the general principles behind the establishment, administration and funding of public libraries as set out in the PLA as well as a brochure entitled, ***Understanding Ontario’s Public Library Act***.

The Ministry of Tourism, Culture and Sport has responsibility for the administration of the PLA, which outlines the legal structure for all public libraries in Ontario. The Ministry, through the staff responsible for public libraries, develops provincial policies for the public library system, is responsible for collecting statistics under the Annual Survey of Public Libraries and for administering the Public Library Operating Grants, the Pay Equity Grants and Ontario Library Capacity Funding.

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Role of the Municipality in establishing a library service

Under the **PLA**, municipalities may provide library service by establishing a public library to serve their own municipality. To establish the library under **PLA** subsection 3(1) the municipal/county council must pass an establishing by-law. When the by-law is passed under subsection 3 (1), the clerk is required to deliver a copy of the by-law to the Minister of Tourism, Culture and Sport. By exception, four county/region libraries in southern Ontario are served by committees, through special legislation passed in the 1970s. Libraries in First Nation communities may also be run by band committees.

With this context, they are two ways that public libraries are affected by Ontario's Municipal Act (as outlined in the Ministry's *Q&A about the Municipal Act* posted at http://www.mtc.gov.on.ca/en/libraries/municipal_act_q_a.shtml)

- **Why are public libraries affected by the *Municipal Act, 2001*?** Public libraries are affected by the *Municipal Act, 2001*, because they are municipally established local boards. As such, they are included in the Act's definition of local boards for the purposes of that Act.
- **The *Municipal Act, 2001*, s. 195 provides for the establishment of municipal services boards. Can these boards replace public library boards?** - No. *Municipal Act, 2001*, clause 195 (2) (b) provides that a municipality may give control and management of municipal services to a municipal services board *by delegating to the board all or part of the municipality's powers under any Act related to the municipal services*. The **PLA** allows municipalities to establish public library boards. Once established, the library board and not the municipality, operates the library. Therefore, it is possible for a municipality to delegate to a municipal services board its authority to establish a library board, but it cannot give a municipal services board the authority to operate a library.

Board Appointments

Once established, public library boards are governed specifically by the Public Libraries Act, R.S.O 1900, c. P44 - Section 3(3) states that, "a public library shall be under the management and control of a board, which is a corporation known in English as The....."

Appointments to the Public Library Board are made at the first meeting of municipal council in each term. The existing library board continues until the new appointments are made. If the council fails to make the appointments at its first meeting, it must do so at any regular or special meeting held within sixty days after its first meeting.

The public library board is composed of at least five members appointed by municipal council. The number of council members is limited to one less than a majority of the board.

The specifics on the qualifications are covered in Section 10 of the **PLA** and disqualifications in Section 13, but it is important to note that Section 10(1) specifies that a person is qualified for appointment to a library board under the *Public Libraries Act* if they are at least eighteen years old, a Canadian citizen, and is a resident of the municipality for which the board is established. Appointees can be from the appointing municipal council but cannot be employed by the board or by the municipality.

Public libraries are governing boards and also legal corporations with the authority to govern the library's affairs given to them under the *Public Libraries Act, R.S.O 1900, c. P44*. In this context, a number of statutes affect public libraries other than the *Public Libraries Act*; however, if there were an inconsistency between a provision of the general legislation and a provision of the specific legislation, the *Public Libraries Act* provision would take precedence with respect to a public library board. This is the case, unless the general legislation indicates otherwise, e.g. where the legislation states that it operates "despite any other Act". The other pieces of legislation which might be applicable in a given situation within a public library include: Employment Standards Act, Pay Equity Act, Municipal Conflict of Interest Act, Corporations Act, Occupational Health and Safety Act, Income Tax Act and MFIPPA (Municipal Freedom of Information and Protection of Privacy)

Another piece of legislation, the *Municipal Act*, contains three specific requirements for all local boards including two main local service boards found in most municipalities - the Library Board and the Police Services Board – both with their own legislation but subject to this provision of the Municipal Act. 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, the board must pass these policies as their own and include with their other policy documents.

The Public Libraries Act

The *Public Libraries Act, R.S.O 1900, c. P44* is very specific about the governance and operations of the library and the library board. **Some key points from the legislation that often get asked by board members:**

Staffing and Officers (Section 15) – Section 15 (1) of the PLA states that "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" and Section 15 (2) states that "a board shall appoint 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 him or her from time to time."

- Appointment of a CEO by the Library Board is required under subsection 15(2) of the *PLA* and, as an employee, the CEO is not a voting member of the board
- There are no provisions in the Public libraries for a dual report to a board and a municipality

Secretary and Treasurer –Section 15(3) states that the board shall appoint a secretary, and Section 15(4) that the board shall appoint a treasurer. Section 15(4) states that that same person may be both the secretary and the treasurer, and the chief executive officer may fill those roles.

- Some libraries have asked if a library provide for such administrative functions as payroll, by entering into an agreement with its municipality. To this, the Ministry has said "Yes. A number of library boards and their municipalities already carry out administrative functions in this way. However, where such administrative financial agreements exist, directions regarding the disbursement of library funds remain the prerogative of the library board."

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- **Meeting management** – Section 16 (1) outlines the requirement for 10 meetings per year. Special meetings can be held on reasonable notice.
 - In a similar way to the municipal meetings, all meetings of the library board and all committees are open to the public except under Section 16(4) criteria. The legislation states: “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 the board; “meeting” means any regular, special, committee or other meeting of the board.
 - For closed meetings, section 16 (4) states that “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 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;(g) a matter in respect of which a board or committee of a board may hold a closed meeting under another Act.
 - All members of the board may vote on all matters and a tie is considered negative – Sec. 16 (6)
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The responsibilities of the Library Board

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

#1 - Accountability To Municipal Council And Financial Control

Budget estimates - The board must submit budget estimates and an audited financial statement to council each year (Section 24 (1), (2) and (7)). Section 24 (1) of the *PLA* specifically states that “a public library board, county library board or county library co-operative board shall submit to the appointing council, annually on or before the date and in the form specified by the council, estimates of all sums required during the year for the purposes of the board”. Then Section 24 (2) states that “the amount of the board’s estimates that is approved or amended and approved by the council shall be adopted by the board and shall be paid to the board out of the money appropriated for it.”

Property - The board must seek council approval to acquire and dispose of real property and to raise funds through debentures (Section 19 and Section 25).

Treasury and Banking- Section 15 (4) of the *PLA* requires the appointment of a library board Treasurer, who receives and accounts for all the board’s money; opens an account or accounts in the name of the board in a chartered bank, trust company or credit union approved by the board; deposits all money received on the board’s behalf to the credit of that account or accounts; and disburses the money as the board directs.

- The *PLA* does require the library is have its own bank account, and remittances from the Ministry are only deposited into the Library Board’s bank account.

Audit - The *Municipal Act, 2001*, section 296 requires municipalities to appoint an auditor licensed under the *Public Accountancy Act* to annually audit the accounts and transactions of the municipality and its local boards and to express an opinion on the financial statements of these bodies based on the audit. “It is a condition of *PLA* Regulation 976 1(b) that recipients of library funding under *PLA* s. 30 supply the audited financial statements and information to the Minister that are required under. It is acceptable for a library board to supply its financial information in a consolidated audited financial statement as noted in *Municipal Act, 2001*, s. 296 (11), provided that the financial information on the library board is identified. One way to do this would be in a separate schedule or appendix of the consolidated municipal financial statement.”

#2 - 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 board has a duty to provide comprehensive and efficient public library service that reflects the community’s unique needs. Section 20(b) states that French/English usage is mandated as “where appropriate” and Section 10(d) allows for special services such as art galleries, museums, archives.-

The Act goes on to direct the board regarding fees for library service. As outlined by *Public Libraries Act, R.S.O. 1990, chapter P.44*, the charges for public library service are as follows.

The board must not charge for: (Section 23 (1) and (2))

- admission to the library
- using library materials in the library
- reserving or borrowing specified circulating materials
- using those reference and information services as the board considers practicable

The board may charge for: (Section 23 (3))

- certain services not outlined in Regulation 976
- use of portions of the library building not being used for public library purposes
- library services for persons who do not live in the municipality (non-residents)

Section 23 (4) of the PLA says that the board may make rules/policies to govern these areas:

- use of library services
- exclusion of persons found to be disruptive or causing damage
- fine structures
- suspension of library privileges for breaches of policy
- regulation of all other matters associated with library management, policy and property

#3 - Reporting Responsibilities To The Province

The library board is required to report specific statistics to the provincial minister annually (through *Annual Survey of Public Libraries*). The board is also required to report on specific grants as outlined in the terms of reference of the grants (Section 20 (f)).

Library Board and CEO Roles and Responsibilities

The work of the board and the work of the CEO are connected but quite specific and require different skills. The board exists to direct the vision and mission of the library and ensure that the community’s needs have been met but has no direct responsibility for operations. The board is focused on what the library should accomplish and the CEO focuses on how it is done.

When there is uncertainty about what is a board issue and what is an operational issue the board should ask itself – Does the discussion, action or decision we are engaged in relate to our role in defining the library’s direction and monitoring progress, delegating authority to the CEO through plans, budgets, policies or library advocacy?

To illustrate how the Board and CEO should work together as a shared leadership, review the information provided in the OLBA publication called *Cut to the Chase: Ontario public library governance at-a-glance* particularly the section called “The Public Library Board and the Chief Executive Officer: Who Does What? Below is a brief chart outlining some of these areas.

Library board roles and responsibilities		CEO roles and responsibilities
Legal responsibilities	<ul style="list-style-type: none"> Knows local and provincial laws; responds to new legislation affecting libraries. Ensures that complete and accurate records are kept by the library. Is legally responsible for the library to the council. 	<ul style="list-style-type: none"> Knows local and provincial laws; responds to new legislation affecting libraries. Keeps complete and accurate records concerning financing, personnel, inventory, insurance and annual report. Is legally responsible to the library board.
Board meetings	<ul style="list-style-type: none"> Attends and participates in all regular and special board meetings. 	<ul style="list-style-type: none"> Reports at each board meeting and attends at all times except when own performance or salary are to be discussed.
Planning	<ul style="list-style-type: none"> Assesses the library needs of the community. Sets the mission and overall direction of the library in response to the needs of the community Approves and participates in the development of the library's goals and objectives. Approves the plan for meeting the library's goals and objectives. Evaluates the performance of the Library annually or more often, considering budget vis-à-vis service rendered, library use, personnel and public relations. 	<ul style="list-style-type: none"> Assists the board to know community needs and to carry out formal assessment when required. Analyzes library strengths and weaknesses. Participates in developing the library's goals and objectives Formulates a plan for meeting the library's goals and objectives. Recommends programs and activities. Administers the Library to conform to established goals.
Policy making	<ul style="list-style-type: none"> Determines policies for the library after careful analysis of the Chief Executive Officer's recommendations. 	<ul style="list-style-type: none"> Recommends policies needed, advises board, and supplies examples and sources of information. Establishes procedures for implementing policies. Interprets policies and procedures to staff and public.
Personnel	<ul style="list-style-type: none"> Hires the Chief Executive Officer. May approve and review senior level staff recommended by Chief Executive Officer. Approves salary scales for all staff, within the context of the Library's Pay Equity Plan. Ensures that appropriate steps are taken to handle any grievances that have not been satisfactorily resolved. Evaluates the CEO's performance annually. 	<ul style="list-style-type: none"> Hires and directs subordinate staff members, adhering to board policies. Negotiates salary scales and working conditions for staff. Handles all grievances and keeps the board informed. Ensures that annual performance appraisals are conducted on all staff under the CEO's supervision
Library board roles and responsibilities		CEO roles and responsibilities
Financial responsibilities	<ul style="list-style-type: none"> Analyzes preliminary budget request submitted by the Chief Executive Officer; makes necessary changes. Explores all ways of increasing Library's income through new sources; determines method used. Officially adopts budget and prepares the budget for presentation to municipal council. Presents the budget at the municipal council and committee meetings. (This may vary with the size of the library and the level of integration with the municipality.) Ensures that proper financial control measures are in place to expend the budget: <ul style="list-style-type: none"> with due diligence according to board priorities as approved by council 	<ul style="list-style-type: none"> Prepares preliminary budget in conjunction with the Board or its committee based upon present and anticipated needs, considering the Board's plan for growth. Liaises with municipal treasurer and other municipal staff regarding the budget. Participates in budget presentation, supplying facts and figures, analysis and comment as requested. Maintains and monitors the budget and attends to problem areas when they arise.
Community relations	<ul style="list-style-type: none"> Advocates the library's services in the community. Advocates the community's needs with the library. Develops a strong and communicative relationship with the municipal council. 	<ul style="list-style-type: none"> Maintains an active program of public relations, including promoting library services in the community.

Members of municipal council who are appointed to library boards may see their role as being different from the citizen members of the board. They should play an important role in facilitating the relationship between the board and the municipal council when they ensure that the library board has regular and effective contact with municipal council. However, municipal councillors who limit their work with the library board to issues directly related to the interests of the municipal council, like any board member with a single agenda, are not acting in the full capacity as a director.

The question of the allegiance of municipal councilors appointed to local boards (of which the library board is one) was discussed in an article published in *Municipal World*. The authors are clear that a board member's first obligation is to the interest of the board, regardless of how the person is appointed. It may be helpful to clarify the role of all board members in a code of conduct. A sample code of ethics for a public library board is included in the ***Library Board Orientation Kit***.

Summing up the Role of Board

As you consider the role of the board, here are ten significant points to remember:

1. Act always in the best interests of the library. The library board is a corporation whose purpose is to provide library service that meets the needs of the entire community. The board represents all of the taxpayers and residents and must ensure the best possible.
2. Know your job. Take the time to learn about your job and take care to do it well. Look to the broad issues that engage the public library in the local community and beyond.
3. Keep learning! There is always new information, an advance in technology or a proposed change in legislation that could affect the library. It is important to be open to new learning all the time.
4. Connect with other trustees and boards. Sharing information with other trustees and boards helps to strengthen the trustees' understanding of issues and learn new approaches to problems.
5. Govern, don't manage. Avoid the temptation to get involved in the nitty-gritty of running the library. Work at a board level with mainly a future focus.
6. Know your community. Take the time to get to know your community and understand their needs for information. It is the only way that you can represent their interests.
7. Build community support. If you represent your community well, the community will be more likely to support the efforts of the board in return. The library is important only if the public sees it as important!
8. Develop a good relationship with council. Use every opportunity to reinforce your linkage with municipal council
9. Use resources wisely. Remember that the board is accountable for the stewardship of the library – a public resource.
10. Defend Intellectual Freedom - Public libraries are built upon the principle of universal access to information. This is a cornerstone of a free and democratic society. As a library board, your job is to defend this principle and still represent the interests and values of your community. Truly, access to information and the library as a public good are issues that the public library board must preserve, protect, maintain.

- The Southern Ontario Library Service maintains a list of links within LearnHQ. Under the “Professional Resources” page, there is a section dedicated to Boards – The link is <http://www.learnhq.ca/kr/One.aspx?objectId=4651119&contextId=3362634>
- SOLS has also published a detailed publications called the *Library Board Development Kit* – which is posted online at http://sols.org/files/docs/develop/publications/boarddevkit/Kit2014-full_document-Final.pdf
- The Ontario Library Boards Association has a section on board resources including Cut to the Chase: Ontario Public Library governance at a glance – which is posted at http://accessola.com/olba/pdf/cut_to_the_chase.pdf
- The Ministry of Tourism, Culture and Sport – Public Library page posted at <http://www.mtc.gov.on.ca/en/libraries/libraries.shtml>, with links to legislation affecting public libraries (<http://www.mtc.gov.on.ca/en/libraries/legislation.shtml>)