

# Library Board Orientation Kit

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## Module 3: Legal responsibilities

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### Key points covered in this module

1. **Director's liability:** Since public library boards are corporations, they are bound by certain duties and a standard of care that binds other corporations. Board members are required to act in the best interest of the library.
    - Trustee or director?
    - Standard of care
    - Conflict of interest
  2. **Specific legislative liability:** Public library board directors are also subject to certain legislative liabilities.
  3. **Defensive practices to protect the board:** There are a variety of actions that directors may take to protect themselves.
  4. **Indemnification and insurance:** Indemnification and Insurance may provide further protection. Libraries may be covered by the municipality's liability coverage.
  5. **Implications of the *Municipal Act on public libraries:*** The *Municipal Act* is a key piece of legislation that library board members must understand. There are certain requirements expected of libraries by January 2005.
  6. ***Public Libraries Act Frequently Asked Questions*** provides the Ministry's answer to key questions arising from the *Public Libraries Act, RSO 1990, chapter P.44*.
  7. **Discussion: *Public Libraries Act Frequently Asked Questions***
  8. **Resources for this model**
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There are a number of legal responsibilities and liabilities that fall upon the members of a public library board. These arise from legislation governing public libraries (The **Public Libraries Act, R.S.O. 1990, chapter P.44**, the **Corporations Act** and the **Municipal Act 2001**) as well as other specific laws that library boards must also know and respect. This module draws your attention to these very important pieces of legislation and the responsibilities and liabilities that flow from them.

## 1. Directors' liability

(adapted from *Sourcebook for Small Public Libraries: Administration 3: Director's Liability*)

The duty of a public library board is to manage the affairs of its library so as to achieve the objectives set out in the **Public Libraries Act, Revised Statutes of Ontario, 1990, chapter P.44**. This primarily involves the organization and delivery of library services. In carrying out this mandate, each member of the board has responsibilities to many different sectors of society: the public utilizing the library, library employees, creditors, the appointing council, the other directors, and various levels of government. **However, the overriding duty is to act in the best interest of the library.** This is the board member's fiduciary duty.

Several statutes are relevant to the duties of public library board members:

- Library boards are defined as local boards in the **Municipal Affairs Act**
- Public libraries are given separate corporate status as non-share capital corporations in the **Public Libraries Act, R.S.O. 1990, chapter P.44**
- Therefore the **Corporations Act** also applies in determining the duties and liabilities of members of public library boards.

### a) Trustee or Director?

Although many members of public library boards refer to themselves as trustees, it would seem that they are more appropriately seen as directors. This is more than mere semantics. Charitable corporations, which are managed by trustees, hold assets in trust for the charitable purposes of the corporation, unlike public libraries which actually deliver library services. As such, trustees of charitable corporations are held to a high and extremely onerous standard of care which relates to the fact that their duties lie primarily in preserving assets. Members of public library boards, on the other hand, are expected to carry on services and this necessarily involves some risk. Therefore, members of public library boards are more appropriately referred to as directors.

Because the **Corporations Act** does not contain a statutory standard of care, the standard of care for directors of non-profit corporations comes from the common law. The common law duty of care was enunciated in 1925 in the case of **Re City Equity Fire Insurance Co. Ltd.** which set out a subjective test: a director must exercise that care which may be reasonably expected from someone of "his knowledge and experience". Directors are therefore not responsible for everything that goes wrong and are not liable for mere errors in judgment.

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## b) Standard of care

In determining whether a breach of the director's duty has occurred, each director is judged independently. It is a measure of protection for each director that he or she will be judged on his or her own knowledge and experience and not by an objective standard applied to a skilled professional, except for those directors who are appointed by virtue of a special skill or some particular expertise. The following outline of the general duties of a director will serve to give the essential flavour of the overall responsibility of a director.

Standard of care	
<b>Honesty</b>	This common law duty has been codified in business corporations' statutes but not in the <i>Corporations Act</i> . It generally means that a <b>director must act honestly, in good faith and with a view to the best interests of the library</b> . It would constitute a breach of this duty to act fraudulently or to make a secret profit.
<b>Loyalty</b>	This duty means that a <b>director's personal interest cannot conflict with his or her duty to the library</b> . As well, a director cannot personally profit from his or her position.
<b>Diligence</b>	This duty means that a <b>director is obligated to make those inquiries that he or she would make in managing his or her own affairs</b> . Once again, this is a subjective test based on the knowledge and experience of the director. This takes the practical form of being prepared for and attending all board meetings. It is important to note that a director cannot relieve himself or herself of this duty by relying on other directors or by doing nothing or by being willfully blind to wrongful acts of the board as a whole, or other directors individually.
<b>Skill</b>	<b>The skill required of a director is measured as the degree of skill expected from a person of the director's knowledge and experience</b> . If a director has a particular skill or area of expertise, he or she must use that knowledge for the benefit of the library.
<b>Prudence</b>	This duty is merely common sense: <b>a director must act carefully, deliberately, and cautiously, and must try to foresee the probable consequences of a proposed course of action</b> .

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## c) Conflict of interest

The area of conflict of interest and corporate opportunity illustrates the overlapping duties of a director. It is probably one of the major worries of a director of a public library since the appointing body is a municipal government. 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.

The area of conflict of interest is an area where the significance of the public library board as a local board is relevant. While the **Corporations Act** does provide a procedure for dealing with conflict of interest for corporations, the **Municipal Conflict of Interest Act** provides a much more detailed code of conduct in such situations. 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, R.S.O. 1990, chapter P.44** requires in most cases), then the director must actually leave the meeting.

This **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 this **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, this **Act** also has a helpful 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.

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## 2. Specific legislative liability

There are many specific statutes which are of particular interest to directors of public library boards in their personal capacity. It is important for all board members to be aware of these laws.

Legislation	Potential 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.
Canada Corporations Act	Same liability for wages and vacation pay as Ontario Corporations Act except the action against the director must start within 12 months of ceasing to be a director and also for technical offences.
Income Tax Act	Personal liability on directors if corporation fails to deduct, withhold or remit taxes.
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 positive legal duty to take all reasonable care to ensure that the corporation complies with the act and its regulations.
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.
Employment Insurance Act	Director is liable if corporation does not deduct or remit employment insurance premiums.
Environmental Protection Legislation	All reasonable care taken to prevent discharge of contaminants.
Municipal Affairs 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.

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## 2. Specific legislative liability (continued)

Pension legislation	Director is liable if corporation does not deduct appropriate amounts under the Canada Pension Plan.
Criminal Code	Personal liability for directors for offences such as defrauding creditors.

Standard of care is an area which will affect every director of a public library board. The following excerpt from “Liability of Directors for Corporation Taxes” by Vern Krishna published in the June, 1984 edition of *Canadian Current Tax*, may provide some comfort regarding what constitutes an adequate standard of care, diligence and skill on the part of a director:

- “a director is not bound to give continuous attention to the affairs of his corporation
- a director is entitled in respect of his duties to rely upon the officials of the corporation to keep him informed on corporate developments
- a director, in the absence of grounds for suspicion, would usually be justified in trusting his officials to execute their duties according to corporate policies

**Thus, the directors of a corporation might be expected to:**

- **establish corporate policies** in respect of accounting for income tax, both under Part 1 of the *Act* in respect of the corporation’s own tax liabilities and in respect of withholding from employees, and payments to non-residents;
- **call upon the financial officers** of the corporation **to report** upon compliance with established corporate policies;
- **obtain undertakings from senior corporate officials** that corporate policies in respect of income tax and other financial matters have in fact been complied with during the relevant period.”

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## 3. Defensive practices to protect the board

(Adapted from *Duties and Responsibilities of Directors in Canada*, by J.M. and Mark Wainberg)

1. Attend all meetings of the board;
2. Insist on receiving, and then reading, before each meeting, all documents and reports on which there will be a vote;
3. Review all minutes of meetings;
4. Keep personal notes of the meetings;
5. Keep all minutes and notes in one notebook or folder, along with any other important documents, such as lists of current directors and staff, all written library policies, any special reports, reports to municipal council or the Ministry, etc.;
6. Insist on written legal opinions for any important step about to be taken;
7. Insist on written professional opinions from specialists on whose advice the board is expected to act. As well, if a director is a specialist, but a matter comes up which is not within his or her area of expertise, at least put it on the record, if the board does not get an outside opinion;
8. Insist on the minutes recording any disclosure made by any director or a director's refraining from voting or a director's dissent;
9. Vote against any disbursement if there is any question of the solvency of the board;
10. Send a letter by registered mail to the board, with a copy to the municipal council, if the secretary or chairman refuses to record a disclosure, a refraining from a vote, or dissent.
11. Be familiar with relevant legislation, such as the ***Public Libraries Act, R.S.O. 1990, chapter P.44***;
12. Be familiar with the library's program and personnel;
13. Consult with your insurer to conduct a risk appraisal and follow up on problem areas, such as staff and volunteer training;
14. Have regular meetings, more than required, if necessary;
15. Review the library insurance on a regular basis.

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## 4. 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.

Example: ***Lorenc v. Koteles (1981) 14 Man. R. (2d) 427,***

The Manitoba Folk Arts Council sued its chairman, a lawyer, for an accounting of corporation money he paid himself as wages, without the consent of the council. The director lost the case since his actions were considered to be willful neglect or default and he was therefore clearly acting outside his authority. Indeed, this was such an extreme situation that criminal charges were laid against the director. Note that the indemnity must be specifically given by the corporation and is not an automatic right.

Usually 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. 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 risk.

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.

It is also important to note that most municipalities and counties cover their local boards as well as their councils.

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## 5. Implications of the *Municipal Act* on public libraries

Public libraries in Ontario are subject to certain requirements of the *Municipal Act* because they are municipally established local boards. They are, therefore, included in the definition of local boards for the purposes of that *Act*.

It is important to point out several issues, listed below, that require particular attention as a result of recent changes to the *Act*:

- User fees
- Public library governance and municipal services boards
- Contracting for library service
- Financial reporting requirements – Audited financial statements
- Requirements regarding policies (due January 1, 2005)
  - Hiring of employees
  - Procurement of goods

For further information, refer to the “Frequently Asked Questions” section concerning the *Municipal Act 2001*. This document is posted on the Ministry of Culture Web site at <http://www.culture.gov.on.ca/english/culdiv/library>. From the choices, select “Legislation”.

## 6. *Public Libraries Act* Frequently Asked Questions

(as posted on the Ministry Web site at <http://www.culture.gov.on.ca/english/culdiv/library>)

**DISCLAIMER:** The reason the Ministry is posting these Frequently Asked Questions on its website is to assist the public in understanding the general principles behind the establishment, administration and funding of public libraries as set out in the Public Libraries Act. The Ministry is not providing legal advice on any of the issues. For further questions relating to these questions or your particular circumstances, you must consult with your own legal advisors.

*Please Note: These FAQs are the most recent that the Ministry has produced and reflect the latest changes to the Public Libraries Act. If you have referred at any time to the previous version of this document, please review this newest edition.*

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## 6. Public Libraries Act Frequently Asked Questions (continued)

### LIBRARY SERVICE

**1. How can municipalities provide library service?**

Under the *Public Libraries Act* municipalities may provide library service in a number of ways. They may establish a public library to serve their own municipality, or establish a union public library by agreement with one or more other municipalities, or when two-thirds of the municipalities in a county so request, a county may establish a county library to serve those municipalities. Instead of establishing a library board, a municipality may enter into an agreement whereby another library board will provide library service for that municipality.

**2. How may a Local Services Board provide for library services in an unincorporated area?**

Local Services Boards may provide library services by either establishing a library or contracting for library service with a public library board, union library board or county library board. The ability of Local Services Boards to establish libraries is provided for in the Schedule to the *Northern Services Boards Act*.

### PUBLIC LIBRARY BOARDS

**3. How are public libraries established?**

Public libraries are established under *Public Libraries Act* subsection 3(1) by the passing of a by-law by municipal council. When the by-law is passed under subsection 3 (1), the clerk is required to promptly mail or deliver a copy of the by-law to the Minister.

**4. How are public library boards composed? What proportion of their members can be municipal councillors?**

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

### UNION PUBLIC LIBRARY BOARDS

**5. How are union public libraries established?**

Union public libraries are established by the councils of two or more municipalities making an agreement. The agreement specifies the proportion of the cost of the establishment, operation and maintenance of the union public library, including the cost of existing libraries, that will be paid by each municipality. When the agreement is made the public library boards established in the municipalities for which the union board is established are dissolved, and the assets and liabilities of those boards are vested in and assumed by the union board, unless the agreement provides otherwise.

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## 6. Public Libraries Act Frequently Asked Questions (continued)

**6. What notification of the Ministry is required when a union public library is established?**

When an agreement is made to establish a union public library, the clerk of the municipality that has the greatest population is required to promptly mail or deliver a copy of the agreement establishing the union public library to the Minister.

**7. How are union public library boards composed? What proportion of their members can be municipal councillors?**

A union board is composed of at least five members appointed by the councils of the affected municipalities in the proportions and in the manner specified in the agreement establishing the union public library. The number of council members on a union public library board is limited to one less than a majority of the board.

### COUNTY LIBRARIES

**8. How is a county library established? Must all municipalities in the county take part?**

A county library is established by county by-law. The resolutions of at least two-thirds of the municipalities forming part of a county are required for the establishment of a county library. When the county library system is established, the municipalities which do not wish to take part in that system are not required to do so.

**9. How are county library boards composed? What proportion of their members can be municipal councillors?**

A county library board is composed of at least five members appointed by the county council. The number of council members on county library board is limited to a bare majority of the board.

**10. Can a municipality leave a county library system?**

The *Public Libraries Act* is silent on this issue. Libraries are advised to seek legal advice should questions on this subject arise.

**11. Does a county public library system continue to be legally constituted if the number of municipalities that take part in the county library drops beneath 2/3?**

Subsection 7(1) of the *Public Libraries Act* allows a county to pass a by-law establishing a county library where 2/3 thirds of the municipalities forming part of the county for municipal purposes so request. This is a pre-condition for the passing of such a by-law, and for the by-law to be valid the precondition must be met. There is nothing in the *Public Libraries Act* setting out any continuing qualifications for such a by-law. It is valid if at the time of its making the precondition was met, despite what may happen after the by-law is made.

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## 6. Public Libraries Act Frequently Asked Questions (continued)

12. **Under what circumstances may a county library close a branch?**  
Section 21 of the *Public Libraries Act* requires a county library board to operate a branch library in each local municipality that operated a public library before that municipality became part of the county library system, unless the county council and the council of the municipality concerned agree otherwise.

### CONTRACTING FOR LIBRARY SERVICE

13. **May a municipality provide for library service if it does not establish a library?**  
Yes, under *Public Libraries Act* subsection 29 (1), a municipality may enter into a contract for library service with a public library board, union board or county library board, instead of establishing its own library.
14. **May a library charge a fee to residents of a municipality that contract with them for library service?**  
No. The prescribed conditions for library operating funding do not permit a library to charge fees to residents of contracting municipalities. See subsection 30(2) of the *Public Libraries Act* and Regulation 976.
15. **May a municipality that has contracted for library service charge its residents a fee for that service?**  
No. Municipalities that contract for library service receive operating funding from the province. The prescribed conditions of that funding preclude a municipality's charging residents a fee for library service.

### LEGISLATION

16. **What legislation applies to a public library board?**  
Municipalities are given the power under the *Public Libraries Act* to establish public library boards. If established, public library boards are governed specifically by the *Public Libraries Act*. But since public library boards are both local boards of a municipality and are corporations, the general legislation that applies to those entities also applies to public library boards. 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".

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## 6. Public Libraries Act Frequently Asked Questions (continued)

### LIBRARY GOVERNANCE

**17. How are libraries governed?**

Public libraries are governed by public library boards which are corporations established under the **Public Libraries Act**.

**18. Can a library be governed by a committee of council?**

The **Public Libraries Act** does not provide for committee of council governance for libraries. A library may be governed by a committee of council only if a Private Member's Bill has been enacted that allows for governance by a committee of the particular council.

**19. When are library board appointments made?**

Board appointments are made at the first meeting of council in each term. 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 existing library board continues until the new appointments are made.

**20. What are the qualifications for appointment to a library board?**

The following individuals are qualified for appointment to a library board under the **Public Libraries Act**:

- A person who is a member of the appointing council (the qualifications for which are found in the **Municipal Act**);

or

- A person who is at least eighteen years old, is a Canadian citizen, and is:
  - A resident of the municipality for which the board is established or the area served by the board in the case of a county library cooperative board, and is not employed by the board or the municipality; or
  - A person who resides in a municipality or a Local Services Board area that contracts with the library board for service; or
  - A member of an Indian Band that has a contract with the library board for service; or
  - A person who is a member of a second board that has entered into a contract with the board to purchase from it library services for the residents of the second board.

**21. May the mayor have ex-officio status on a library board, and does this restrict his or her abilities?**

An "ex officio" member of a board is one who is a member by virtue of his or her office. For example, if the mayor had ex officio status on a library board, the person who filled the office of mayor each term would automatically be a member of that board. An ex officio board member has full board member privileges such as the right to vote and is also subject to all the duties and liabilities of a board member unless otherwise restricted by way of the corporate articles or by-laws or by an applicable statute.

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## 6. Public Libraries Act Frequently Asked Questions (continued)

**22. Under what circumstances would a library board member be disqualified?**

A library board member is disqualified under *Public Libraries Act* section 13 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 under the ***Public Libraries Act***, or
- otherwise forfeits his or her seat.

**23. May library board members receive honorariums?**

The ***Public Libraries Act*** is silent on the receipt of honorariums. However, section 18 of the *Act* does provide for the following remuneration of board members' expenses:

A board may reimburse its members for proper travelling and other expenses incurred in carrying out their duties as members. R.S.O. 1990, c. P.44, s. 18.

Library boards seeking guidance on the issue of honorariums may wish to consult with their own legal counsel.

### LIBRARY BOARD APPOINTMENTS AND RESIDENCY

**24. How is resident defined?**

The *Public Libraries Act* does not define "resident" and therefore the word resident is to be interpreted according to its ordinary and normal meaning. That is, a resident is someone who normally resides in the jurisdiction in question.

**25. Under which circumstances may a non-resident be appointed to a library board?**

A non-resident may be appointed to a library board if he or she is:

- a resident of a contracting municipality, a contracting Local Services Board area, or is a member of an Indian 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 from it library services for the residents of the second board.

**26. Can someone who owns a business in the area, but is not a resident, be appointed to a library board?**

No, residency is required.

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## 6. Public Libraries Act Frequently Asked Questions (continued)

### CONFLICT OF INTEREST AND LIBRARY BOARDS

**27. Can the spouse of a library employee sit on a library board, or would that constitute a conflict of interest?**

A board member's being married to a library employee is not in itself a conflict of interest. However, the board member would have to declare a conflict should a matter arise that would have an impact on the employee or board member. For example, if the library board member was the Library CEO's spouse, and the board was deciding whether to increase the CEO's salary, the board member would have to declare himself/herself in a conflict of interest, and withdraw from any discussion of or vote on the matter.

### SCHOOL BOARD REPRESENTATIVES

**28. Is there a reporting relationship between a library board member whose appointment was recommended to council by a school board and the school board that made the recommendation?**

The *Public Libraries Act* is silent on this matter, however, once a library board member is appointed, his or her role is as member of the library board not a spokesperson for the school board.

### LIBRARY FINANCE AND ADMINISTRATION

**29. Must a library have a Chief Executive Officer?**

Yes. Appointment of a CEO is required under subsection 15(2) of the *Public Libraries Act*. The CEO has general supervision over and direction of the operations of the public library and its staff, attends all board meetings and has other powers and duties that the board assigns to him or her from time to time.

**30. May a library provide for such administrative functions as payroll, by entering into an agreement with its municipality?**

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.

**31. May a library have a reserve fund?**

The *Public Libraries Act* is silent on the subject of reserve funds. While it is common practice for municipalities to hold library reserve funds, library boards do have authority to have reserve funds under the *Municipal Act*.

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## 6. Public Libraries Act Frequently Asked Questions (continued)

**32. What is the library estimates or budget process?**

Library boards submit estimates to their appointing council or councils annually. The estimates are submitted in the form required by the council or councils and they must include all amounts required during the year for the purposes of the board. If there is more than one appointing council the estimates are required to include a statement on the proportion of the estimates to be charged to each of the municipalities. Council may, in the approval of the 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 otherwise than in accordance with the estimates as approved.

**33. Who conducts the library 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. Please see the *Municipal Act, 2001*, for more detailed information on the municipal auditor. The *Public Libraries Act* subsection 24(7) requires that the auditor appointed under the *Municipal Act, 2001*, section 296 conduct the library audit.

**34. May the library audit be included in the municipal audit?**

Both public library boards and First Nation Bands, Local Services Boards and municipalities that contract for library service, receive library funding under *PLA* s. 30. 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 s. 37 of that Act. 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.

**35. Is a library board required to have its own bank account?**

Yes. *PLA* s. 15 (4) 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.

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## 6. Public Libraries Act Frequently Asked Questions (continued)

### LIBRARY FEES

**36. What services are free under the *Public Libraries Act*?**

Any of the following services provided by a library must be provided to residents free of charge (*Public Libraries Act* subsections 23(1) and (2)):

- admission to a public library or use in the library of the library's materials,
- reserving and borrowing circulating materials specified in section 2 of *Public Libraries Act* Regulation 976 \*,
- using reference and information services as the board considers practicable.

\*The following materials are specified in *Public Libraries Act* Regulation 976 section (2):

- books with hard, soft and paper covers,
- periodicals,
- newspapers,
- audio materials designed for people with disabilities,
- sound recordings,
- audio and video cassettes,
- tape recordings,
- video discs,
- motion pictures,
- film strips,
- film loops,
- micro materials in all formats,
- computer software, and
- multi-media kits.

**37. May a library charge a fee for service to people who are not residents?**

A library may charge non-residents a fee for service, providing their municipality, Local Services Board or Indian band council has not contracted for service with the library.

**38. May a library charge its users a fee to borrow materials on interlibrary loan?**

The *Public Libraries Act* precludes libraries from charging their users for materials borrowed on interlibrary loan, if the materials borrowed fall within the classes of materials prescribed in Regulation 976.

**39. May one library charge another to borrow materials on interlibrary loan?**

The Act is silent on the issue of one library charging another to borrow materials on interlibrary loan.

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## 6. Public Libraries Act Frequently Asked Questions (continued)

- 40. If one library charges another library a fee to borrow materials on interlibrary loan, including an administrative fee, can the borrowing library pass the fee on to the person who requested the materials?**

No. The *Public Libraries Act* precludes libraries from charging their users for materials borrowed on interlibrary loan. Therefore libraries are not permitted to pass any interlibrary loan fee on to their users, including the passing on of any administrative interlibrary loan fee that the lending library has charged them.

### LIBRARY FUNDING

- 41. Where is provincial funding for libraries addressed in the *Public Libraries Act* and who is eligible?**

Library operating funding is addressed in section 30 of the *Public Libraries Act*. The following organizations are eligible for library operating funding:

- library boards,
- councils of Indian bands or Local Services Boards that have established public libraries,
- municipalities, Local Services Boards, Indian bands that have a contract for library services (under the conditions prescribed in *Public Libraries Act* subsection 29 (1)).

- 42. What are the conditions for library operating funding?**

Organizations must comply with the *Public Libraries Act* and its Regulation to be eligible for provincial public library operating funding. Libraries and organizations that contract for library service must complete an annual survey, and submit it and their audited financial statement to the Ministry. Every organization that contracts for library service must also send a copy of that contract to the Ministry.

### FRENCH LANGUAGE SERVICES

- 43. Does the French Language Services Act apply to libraries?**

No.

- 44. Are French language services required under the *Public Libraries Act*?**

Section 20 (b) of the *Public Libraries Act* requires libraries to provide services in the French language, where appropriate.

# Library Board Orientation Kit

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## 7. Discussion: *Public Libraries Act Frequently Asked Questions*

In reviewing the *Public Libraries Act Frequently Asked Questions* you will note a few changes to the legislation. For example, the size of the library board is no longer specified in the same manner. For those who were familiar with the previous posting of questions (from 2000), you will note that there are different responses to several questions including #4, #19, #20, and #42. In addition, the section of questions from #28 to #35 has been altered to provide longer responses.

You should take some time to review each of the questions, either on your own or as part of the board discussion.

Then consider whether these responses help you to clarify the board's responsibilities under the **Public Libraries Act**.

## 8. References for this module

Krishna, Vern. "Liability of Directors for Corporate Taxes" *Canadian Current Tax*. chapter 27 (1, 1984).

Loucks, Randee. *The Ontario Library Trustees' Handbook*. Ontario Library Trustees' Association, Ontario Library Association, 2000.

*Sourcebook for Small Public Libraries: Administration 3: Director's Liability*, Southern Ontario Library Service, Ottawa.

Wainberg, J.M., Q.C. and Mark I., *Duties and Responsibilities of Directors in Canada*. 5th ed. CCH Canada Limited, 1984.