

# Toronto Public Library Board

Legal Duties and Requirements of Board Members

# Board Members' Obligations

## Duties:

- Act in the best interests of the Board
- Abide by the requirements of the Municipal Conflicts of Interest Act
- Abide by the requirements of the Toronto Public Library Board's Code of Conduct
- Fulfill the requirements under the Public Libraries Act

# Common Law Duties of Board Members

- Have a fiduciary duty to the Toronto Public Library Board
- Act honestly and in good faith with a view to the best interests of the Board
- Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
- Act within the scope of the Board Member's authority

# Municipal Conflict of Interest Act

# Municipal Conflict of Interest Act (“MCIA”)

- Applies to members of council and members of local boards. The Library Board is a local board for the purposes of the MCIA
- Amendments to the MCIA come into effect on March 1, 2019
- All Board Members are responsible for reviewing the MCIA and for abiding by the requirements
- It is the responsibility of each Board Member to determine for themselves whether they have a conflict of interest as defined under the MCIA

# Principles of the Municipal Conflict of Interest Act

The Province of Ontario added four principles to the MCIA:

- 1. Integrity, independence and accountability in decision-making
- 2. Certainty in reconciling public duties and pecuniary interests
- 3. Perform their duties of office with integrity and impartiality
- 4. There is a benefit when members have a broad range of knowledge and continue to be active in their own communities, in business, in the practice of a profession, in community associations, etc.

Note: This is a new addition to the MCIA

# Conflict of Interest under the MCIA

- Applies to direct and indirect pecuniary interests
- Also applies to a direct or indirect pecuniary interest of the Member's parent, spouse or child, which is known to the Member.
- Section 4 contains a long list of exemptions of direct or indirect pecuniary interests for the purposes of the MCIA
- Key exceptions:
  - A pecuniary interest which is an interest in common with electors generally.
  - An interest which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member

# Indirect Pecuniary Interest under the MCIA

When the Member:

- is a shareholder, director or senior officer of a private corporation.
- has a controlling interest in or is a director or senior officer of a public corporation.
- is a member of a body that has a pecuniary interest in the matter.
- is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

# When a Member has a Conflict of Interest

## **When the Member is present at a meeting at which the matter is considered**

- When a Board Member declares a conflict of interest and is present at a meeting of the Board at which the matter is the subject of consideration, the member shall:
- (a) disclose the interest and the general nature prior to any consideration of the matter at the meeting,
- (b) not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

## **Where the conflict of interest is declared on a matter that is being discussed in a closed meeting**

- the Board Member shall leave the meeting or the part of the meeting during which the matter is under consideration

## **When the member is absent from the meeting where the matter is being discussed**

- the Board Member must disclose the conflict of interest at the first meeting of the Board attended by the Board Member

# Written statement of disclosure under the MCIA

- When a Board Member discloses a conflict of interest, the Board Member must file a written statement of the conflict of interest and its general nature with the secretary of the Library Board
- The Declaration of Interest Form will be made available at Board meetings

Please Note: This is a new addition to the MCIA.

# Prohibition on Influencing Decisions Outside of Meetings

Where a Board Member has any pecuniary interest, direct or indirect, in any matter that is being considered at the Board, the Board Member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

Please Note: This is a new addition to the MCIA.

# When you fail to declare a conflict

If the judge determines that a Board Member or former member failed to declare a conflict of interest or acted improperly after declaring a conflict, the judge may do any or all of the following:

1. Reprimand the member or former member.
2. Suspend the remuneration paid to the member for a period of up to 90 days.
3. Declare the member's seat vacant.
4. Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order.
5. If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.

# Mitigating factors that a judge may take into account

The judge may consider whether the member or former member,

(a) took reasonable measures to prevent the contravention;

...

(c) committed the contravention through inadvertence or by reason of an error in judgment made in good faith.

# Examples of Potential Conflicts of Interest

- 1. A Board Member is the CEO of Corporation XYZ, and Library Staff bring a report to the Board asking the Board for direction to award the contract to either Corporation XYZ or Corporation ABC.
- 2. A Member's father's business interests may be affected by a decision of the Board.
- 3. A Member's child is part of advocacy group ABC.

Note: These are only examples. Whether a Board member must declare a conflict of interest under the MCIA is highly contextual.

# Process

## **Conflicts Declared under the MCIA**

- Review the MCIA
- Declare the conflict at the Board meeting
- Complete a Declaration of Interest Form
- If the matter is being discussed in a closed session, leave the room during the part of the meeting when the matter is being discussed in closed session
- If the member is absent from the meeting, declare the conflict and complete the Form at the next meeting the member attends

# When in doubt...

- If you have to ask whether or not you have a conflict of interest, it is safer to declare a conflict

# Insurance for Board Members

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- Board Members are covered by insurance for errors and omissions in carrying out Board business – but not covered for breach of their duties

# Toronto Public Library Board's Code of Conduct

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- **is broader than the MCIA**
- Can include family members other than a Board Member's spouse, child, or parent
- Includes a Board Member's non-pecuniary interests
- Does not require the Board Member to file a written declaration
- The Board Member is still required to make a verbal declaration
- The declaration is recorded in the minutes of the meeting
- The Toronto Public Library Board's Procedural By-Law sets out the procedure for declaring conflicts of interest

	Municipal Conflict of Interest Act	Toronto Public Library Board Code of Conduct
<b>Conflict of interest pertains to monetary interests</b>	Yes	Yes
<b>Conflict of interest pertains to non-monetary interests</b>	No	Yes
<b>Obligation to disclose</b>	Yes (Required by law)	Yes (Obligated by Code)
<b>Conflict of interest noted in the meeting minutes</b>	Yes	Yes
<b>Requirement to complete written Declaration of Interest form</b>	Yes	No
<b>Declarations included in online registry</b>	Yes	No

# Communications Outside of Meetings

- Meetings must be open to the public – this is a requirement of the Public Libraries Act
- Board Members are free to gather and communicate with each other outside of Board and Committee meetings
- However Board Members cannot advance the decision-making of the Board outside of meetings
- The content and nature of the communication or discussion, not the forum or the venue, determines whether the business or decision-making of the Board is being advanced

# Responsibilities of the Board

- directing and approving the library's strategic plans, goals, and policies based on community needs, and ensuring that these plans are efficiently and effectively implemented
- approving the annual operating and capital budgets for recommendation to City Council
- acting as an advocate for library services and representing the library before City Council and in the community
- protecting the public's right to read materials of their choice
- hiring and evaluating the City Librarian, who is responsible for the day-to-day administration of the library and its staff
- is legally accountable for the library's activities and for ensuring that it complies with all applicable legislation