



Background on FOLA's Interest in the County Law Library System

Libraries, or Practice Resource Centers, remain a fundamental issue for FOLA and its members. The preservation, improvement and sustainability of the system has been at the forefront of FOLA and before it, CDLPA's advocacy since before the inception of LibraryCo.

Now the time has come to acknowledge where the system can improve, in both operation and fiscal responsibility, while still preserving the most important aspects of the system for front line users.

It is useful to remind ourselves of the history of the library system in the context of where we are today, and where the discussions are taking us into the future.

History: Before 2000

In the 1990's libraries existed in all of the County Courthouses across Ontario. They were owned and operated by the local associations. They were funded, in large part and to varying degrees by the Law Society who recognized that access to legal information was a critical part of assisting small town lawyers in serving their clientele and facilitating access to justice.

LibraryCo – 1st Generation

The first incarnation of LibraryCo came about as the result of the efforts of the Law Society and CDLPA to organize the County and District law libraries across the province, establish a stable funding base for the libraries across the province, and to try and provide for some centralized administration and purchasing for the library system; while at the same time allowing the Local County and District Law Association to continue to manage the libraries and develop their collections in accordance with local needs. This came to be referred to as the “blended system”. LibraryCo was incorporated on 2001.

The first unanimous Shareholders Agreement called for a Board of Directors of 15. The original Board of Directors included representatives of the Ontario Bar Association, the Ontario Courthouse Librarians Association, CDLPA and the Law Society.

In April of 2002, LibraryCo produced its first five year business plan entitled “Out of the Box and Beyond the Walls”. The Great Library was notably absent from that business plan. It appeared that the Great Library and LibraryCo were to exist in parallel universes.

As part of that business plan, LibraryCo embarked on a number of initiatives to organize and direct the County and District law libraries across the province.

Amongst the less controversial initiatives was the development of a tiered system of libraries with five regional libraries, fifteen area libraries, and twenty-eight local libraries; the establishment of a core collection list and an “essentials” collection list for the libraries at each level; the establishment of salary bands and job descriptions for library staff; the provision of inter-library



document delivery; the use of a uniform accounting package for each library through the Simply Accounting program.

As part of the “tiered” system of libraries, LibraryCo initially proposed to “de-staff” a total of fifteen local law libraries and impose certain restrictions on staffing and budgets for the remaining local law associations. This was the first effort to have legal information provided to lawyers in smaller centers without the benefit of local staff. The plan to de-staff fifteen local libraries was abandoned in short order after vigorous protest from CDLPA.

From CDLPA’s perspective, LibraryCo also got itself in trouble early on when it started telling Associations how much to pay the staff, started telling staff members what they did or did not have to do for the Associations, referring to the libraries as “LibraryCo libraries” and attempting to direct library staff on the management of the Law Association libraries without consultation with the Law Associations.

It further appeared that from the Law Society perspective, LibraryCo got itself in trouble with its financial reporting to the Law Society. It seemed that the Law Society was not particularly pleased at the time with the form of the financial reporting.

At the time that those issues were coming to a head, LibraryCo had established the “Integration Task Force” to examining ways that LibraryCo and the Great Library could work more closely together. It became very clear very quickly that there were fundamental governance issues with LibraryCo.

LibraryCo – 2nd Generation

As a result, LibraryCo had a major corporate overhaul in 2007 which resulted in the Board of Directors being reduced from 15 to 8 seats, a new unanimous Shareholder’s Agreement, the “USA”, between the Toronto Lawyers Association, CDLPA, and the Law Society, and an Administrative Services Agreement under which the Law Society was contracted to provide most of the administrative and technical support which LibraryCo required.

At that same time, LibraryCo and the Great Library developed a new and closer working relationship. Also, commencing in 2004, the Great Library and the Toronto Lawyers Association library worked together to rationalize some of their collections and worked together towards a more coherent approach to providing library services to lawyers in the Toronto area.

LibraryCo has existed basically in this form since that time.

Issues from 2012 – today

Starting in May 2012, the LibraryCo Chair at the time, Alan Silverstein, made clear that issue of funding for the library system was at a critical point. Despite the fact that the library levy had actually decreased over the previous three years, with a levy of \$203 in 2012, LibraryCo was running a deficit, and Law Foundation funding had been decreased and was in serious danger of being further reduced.



This message was repeated through 2012 and into 2013. However, under then Treasurer Conway, the LSUC agreed not to alter funding in 2014 pending the work of the Legal Information and Support Services Working Group, or LISS, with representative members from CDLPA, TLA, LSUC, OBA and Advocates Society, and who were charged with doing an overview of the current system to identify and provide advice on areas that needed further review. A Report was prepared for wide distribution which was first distributed to the membership of CDLPA October 15, 2014.

Overall, the LISS report confirms a number of CDLPA’s core positions on libraries – that these are important spaces that serve a variety of purposes, not limited to legal research alone. However, it recognizes that the delivery of legal services has changed, as has the way lawyers do legal research, and as such, has identified areas of concern that require further investigation and recommendations.

The result of these findings was that the Shareholders of the Corporation, LSUC, CDLPA and TLA, met and agreed on a course of action to modernize the system and eliminate administrative duplicative costs, while striving to maintain front line services.

Most importantly, the Law Society has agreed to maintain stable funding for 2015 while discussions and implementation of reforms are contemplated. The overall budget took a hit with the removal of Law Foundation grant funds associated with the Quick Law “Toolkit” and “Desktop”, but once those funds are factored, it is worth noting that the 2015 budget contribution from the Law Society included a small operational increase.

Removing administrative duplication first meant the removal of the Board General Manager position from LibraryCo and the “Roving Librarian” position from the Great Library. In the interim during a transition phase, financial matters arising from the county law libraries are directed to the Law Society finance staff and legal research questions normally fielded by LibraryCo are being taken on by staff at the Great Library. While there have been some hiccups in the early days, CDLPA and the other shareholders have been careful to regularly check-in with front-line library staff and other stakeholders.

Another change that has taken place is to the Library Co Board. All the shareholders agreed to replace their Board members in order to bring some new perspectives and that this Board be charged with carrying on the work of the LISS Committee. They have been asked to complete the investigations initiated by LISS and make recommendations regarding the future of the system.

Meanwhile, the FOLA Executive has also given its general direction, which we ratified at the Plenary meeting, to the Committee members. Those principles are noted below:

FOLA's Core Principles Going Forward

The FOLA Executive has set out these Core Principles for any discussions going forward.

1. We desire to build a better system to service all parts of Ontario.



That system needs to be one that is integrated and is focused on improving service for all lawyers in Ontario, regardless of where they practice, but particularly those lawyers in rural and remote communities.

The system MUST look to integrate, in every way, the Great Library. The Great Library cannot be an outlier in terms of governance, budget or operations.

2. We believe the spaces need to continue to be staffed by qualified and competent professionals.

The degree of staffing, the qualifications of the staff and their ongoing support are points for discussion and debate, but a bottom-line for FOLA and the Presidents is that there should be staff in each of the facilities.

3. FOLA believes that the principles behind the structure of LibraryCo which gives a measure of legal control must be maintained.

At this stage, LibraryCo, or a similar governance structure, which maintains a governance role for FOLA and the TLA, must remain in place. We believe that many of the issues arising in the operation of libraries in the last few years have been addressed, and it may be that the Corporation as currently in place could work, and may not have to be altered at all.

As the examination by the new Board proceeds, the precise nature of the legal structure and the operations of the Library system may change, but FOLA will want to maintain some degree of input and legal or “shareholder” control.

4. We want to see a financially sustainable system.

We can all agree that the rising cost of collections and other operating cost inputs are a challenge that can only partially be off-set by the inflation-fighting benefits of technology.

Related to financial sustainability is the widespread recognition that there are efficiencies to be found in an integrated system, particularly with reference to things like common purchasing and administrative cost.

A stable, rational funding model needs to be developed to maximize the benefit to front-line practitioners.



5. We have a strong desire to hold on to the physical space.

Having physical space for the private, practicing bar inside the courthouse is important to our members, and their Associations.

This physical space is important for practical and professional reasons, but also symbolically and must be reaffirmed in its importance to the entire justice system.

Current Challenges and Issues:

Funding Issues

The system has suffered from a number of years where funding has been frozen or at least has not kept pace with inflation. This chart shows the total LibraryCo budget and the associated library levy since 2006.

Figure 1 – A snapshot of the LibraryCo Budget and “Library Levy” – 2006 - 2016

Year	Total LibraryCo Budget	Library Levy/ Lawyer	“Contribution” from LSUC	Lawyer Levy	Library Portion of Lawyer Levy
2006	\$7.6 million	\$219	\$6.8 million	\$1509	14.5%
2007	\$8.4 million	\$224	\$7.1 million	\$1601	14.0%
2008	\$8.5 million	\$235	\$7.7 million	\$1653	14.2%
2009	\$7.6 million	\$220	\$7.4 million	\$1703	12.9%
2010	\$8.1 million	\$203	\$6.9 million	\$1736	11.7%
2011	\$8.2 million	\$196	\$6.8 million	\$1785	11.0%
2012	\$8.3 million	\$203	\$7.3 million	\$1826	11.1%
2013	\$8.4 million	\$205	\$7.5 million	\$1851	11.0%
2014	\$8.3 million	\$202	\$7.5 million	\$1866	10.8%
2015	\$7.8 million	\$202	\$7.7 million	\$1866	10.8%
2016	\$7.8 million	\$194	\$7.6 million	\$1866	10.4%

According to the Bank of Canada [Inflation Calculator](#) \$7.6 million in 2006 should translate to \$9.05 million in 2017 dollars. In 2017, the actual budget was \$7.8 million. This inflation calculator does not account for an increase in the number of lawyers practising in Ontario. In 2006, there were 31,000 lawyers in Ontario. In 2017, the Law Society licensed nearly 50,000 lawyers and 8,000 paralegals. In other words, the system is doing more, serving more lawyers and doing it with less money.

We also have reason to believe the rate of inflation in the library system is significantly higher than the standard economy-wide rate. Many of our members report year-over-year double-digit increases for many resources. An accurate picture of this inflation is difficult to calculate



because the response of most libraries is to discontinue expensive resources. Discontinuing expensive resources is not necessarily a bad thing, if the level of service and availability of information is maintained through other channels, but in many cases our members and library staff report that critical resources that are widely used can no longer be provided in the practice resource centres, further contributing to the problem because lawyers are simply not using the resource.

Public and Paralegal Access

The LISS report identified, and the Law Society has stated on numerous occasions, that there is pressure to increase public access to law libraries in Ontario. Some law libraries already allow wide-open, or nearly wide-open access. Many maintain strict restrictions on who can access the facilities. Some law libraries and associations allow paralegals; some do not. It must also be noted that the Law Society has stated that its mandate is to promote “access to justice” in all of its operations and this clearly extends to their view of law libraries. The self-represented litigant advocate community has recently started to identify access to law libraries as a part of their agenda to better “help” the self-represented. The reader can see this reference at this link: <http://representingyourselfcanada.com/2014/10/31/law-libraries-accept-the-srl-challenge/>

We recognize that public and paralegal access to a space that has for decades been the exclusive jurisdiction of the bar is a contentious one, but at the same time we acknowledge that these pressures exist. Within this context, we continue to strenuously make the point that the question of public access is multi-faceted and more complex than one might think at first blush. Factors to consider include:

- The actual location of the library within the Courthouse and its proximity to courtrooms, judge’s offices, jury rooms, lawyer’s lounges and robing rooms, and other non-public areas;
- The personal security of library staff when on duty;
- The security of the library collections, electronic resources and other assets;
- Whether or not the members of the public intend to actually use library resources, as opposed to a gathering place or a meeting room.

In this context, the question of paralegal access to libraries also has to be discussed. To date the general consensus appears to be that paralegals would only have access to libraries on the same basis as members of the public unless paralegals begin to pay a library levy similar to lawyers.

With the rise of self-represented litigants in the court system, and programs of the Attorney General and Law Society regarding Access to Justice, public and paralegal access are going to be examined in the process ahead. Our goal is to ensure that we use any decisions on public access to recognize the importance of the Practice Resource Center to the practicing bar, and balance that in such a way that our members’ needs are not compromised.



It should be noted that the Law Foundation of Ontario has expressed some interest in the public access policies of the County and District law libraries, which may offer alternate sources of funding for the library system if an appropriate compromise can be designed.

CanLII

The Canadian Legal Information Institute (CanLII) is an undertaking of the Federation of Law Societies of Canada. It aims to provide a web-based facility of judicial and tribunal decisions from all levels of the justice system. The integrity of the CanLII database has been improving over the last several years but is not yet a comparable service to those provided by LexisNexis and Carswell. It appears to be the aim of CanLII to develop a primary case law database accessible to anyone with internet access. In addition to the case law facility, CanLII provides access to statutes and regulations across Canada. The lawyers of Ontario paid approximately \$30.00 per lawyer in 2014 to support CanLII.

Despite the progress, it is clear that CanLII remains an inadequate source for research for a practicing lawyer. Deficiencies in its citation mean that lawyers cannot still rely on CanLII for case law absent other research, whether electronic or not. Care will have to be taken in considering CanLII's role in the future.

Paper and Electronic Resources

The cost of paper and electronic resources is always an issue. LibraryCo has negotiated contracts on an annual basis with vendors, and if LibraryCo can achieve some price stability through the negotiation of longer term contracts, then they will have to seriously consider that. However, electronic resources, as well as print collections, have increased exponentially in price each year, making maintenance of these collections very difficult.