

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

BETWEEN:

MADELINE WELD

Applicant

-and-

OTTAWA PUBLIC LIBRARY

Respondent



NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicant. The applicant requests that this application be heard at **Ottawa Courthouse, 161 Elgin Street, 2nd Floor, Ottawa, Ontario, K2P 2K1.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date JUN 11 2018

Issued by
Registrar
Address of court office

TO Ottawa Public Library
120 Metcalfe Street
Ottawa, ON K1P 5M2

AND TO Attorney General of Ontario
Crown Law Office – Civil
720 Bay Street
8th Floor
Toronto, Ontario M7A 2S9

APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR:

- a. Judicial Review of the Respondent's decision to cancel the booking to view the documentary film, "Killing Europe" ("the Documentary"), which was scheduled for November 25, 2017 in the Auditorium of the Main Branch Library in the City of Ottawa (the "Decision");
- b. An order of *certiorari* quashing the Decision and an order of *mandamus* requiring the Respondent to permit the rebooking of the Main Branch Library Auditorium (the "Auditorium") for the viewing of the Documentary;
- c. In the alternative, an order of *certiorari* as set out above, and a *mandamus* order requiring the Respondent to reconsider its Decision in accord with the *Canadian Charter of Rights and Freedoms* ("the Charter");
- d. A Declaration pursuant to section 24(1) of the *Charter* that the Decision unjustifiably violates the Applicants' freedom of expression as protected by section 2(b) of the *Charter*;
- e. A Declaration pursuant to section 24(1) of the *Charter* that the Decision unjustifiably violates the right of listeners and viewers to receive expressive material, and to hear and see information and opinions as protected by section 2(b) of the *Charter*;
- f. A Declaration that the Decision was arbitrary and unreasonable;

- g. Further, or in the alternative, a Declaration that the Decision contravened the Respondent's own policies and is therefore void;
- h. Further, or in the alternative, a Declaration that the Decision contravened the principles of natural justice and procedural fairness;
- i. Costs of this Application; and
- j. Such further and other relief as the court deems just.

2. THE GROUNDS FOR THE APPLICATION ARE:

The Parties

- a. The Applicant, Madeline Weld, is a resident of Ottawa and a retired toxicologist.
- b. The Applicant, Valerie Thomas, is a resident of Montreal, a retired business owner and an active local volunteer.
- c. The Respondent, the Ottawa Public Library serves as a forum for the free exchange of ideas via written and visual materials. As a public library controlled by government it is bound by the *Charter*.

The Facts

- d. For a fee, the Ottawa Public Library offers the use of the Auditorium to all members of the public, who may book and utilize the Auditorium for private events such as the viewing of the Documentary. The Auditorium has 189 seats and is located in the basement of the Main Branch Library, separated from the Library's common areas by a series of hallways and stairways. Library users and other members of the public cannot hear or view what is occurring inside the Auditorium unless they intentionally enter this separated room through a set of doors.
- e. On October 25, 2017, Ms. Weld submitted a request to the Ottawa Public Library to book the Auditorium to show the Documentary on November 25, 2017. In addition to the showing of the Documentary, the producer of the Documentary, Michael Hansen was to attend and give a presentation to the viewers regarding the Documentary, and was to take questions from the audience.
- f. Only those who purchased a ticket would have been permitted to enter the Auditorium during the viewing of the Documentary, and the subsequent presentation by Michael Hansen.
- g. Ms. Weld received an email response from the Ottawa Public Library the same day, October 25, stating that the booking request would be "reviewed by staff".
- h. The Documentary discusses several social, political, and cultural topics relating to Europe. It includes footage of Michael Hansen interviewing various people to solicit their views

and describe their experiences. Amazon.com describes it as “the story of a Danish expatriate and his quest to uncover the growing issues within the European society he left 15 years ago.”

- i. On October 27, 2017 the Ottawa Public Library emailed Ms. Weld stating that her booking request had been “reviewed and confirmed” by Library staff. Ms. Weld paid the required fee of \$194.99 on the same day, and the Library provided her with a copy of the rental contract (the “Rental Contract”).
- j. Two and a half weeks later, on November 14, 2017, Ms. Weld received a telephone call from Ottawa Public Library Senior Manager Catherine Seaman regarding the Documentary. Ms. Seaman inquired as to whether Ms. Weld would adhere to the Ontario *Human Rights Code* and the *Criminal Code*. Ms. Weld stated that the viewing of the Documentary would not violate either code.
- k. During the same telephone conversation, Ms. Seaman stated that the Ottawa Public Library was “anticipating disruptions” and would therefore require Ms. Weld to arrange for security at her own expense. Ms. Weld agreed to arrange for security for the showing of the Documentary. Ms. Seaman did not allege that the Documentary itself, or the showing of the Documentary, violated any law.
- l. On November 16, 2017, Ms. Weld submitted a request to the Ottawa Police Service Paid Duty office for the provision of security. She received an email response on November 22,

2017 in which the police advised that paid duty officers would not be provided and that she should hire a private security service.

- m. On November 22, Ms. Seaman again telephoned Ms. Weld to inform her that Ottawa Public Library had hired two private security personnel to be present for the showing of the Documentary, and would be billing Ms. Weld for the expense. Ms. Weld agreed to pay the cost for security and thanked Ms. Seaman. Again, Ms. Seaman did not state or suggest that the Documentary violated the Ontario *Human Rights Code* or any other law, or that the booking might be cancelled.
- n. During the above telephone conversation of November 22, Ms. Seaman stated that people had been “reaching out to the mayor” regarding the showing of the Documentary.
- o. On November 23, 2017 Richard Warman, a local lawyer, submitted an open letter to Ottawa City Council and the Senior Management of the Ottawa Public Library. This letter was also provided to various media outlets. The letter states, in part:

I urge you in the strongest possible terms to correct the media’s mistaken impression that the rental by ‘Act For Canada’ to show ‘KILLING EUROPE’ on Saturday at the main Ottawa public library will be allowed to happen there, or anywhere else on City of Ottawa property. I am deeply concerned that if the event is permitted to proceed, it would constitute a breach of s. 1 of the Ontario Human Rights Code.
- p. The November 24-26 weekend edition of the Ottawa *Metro* newspaper contained a front-page article in which Ottawa Public Library Branch Manager, Tony Westenbroek, reportedly confirmed that the showing of the Documentary would proceed.

- q. At 11:43 a.m. on November 24, Ottawa Public Library Chief Executive Officer Danielle McDonald emailed the Applicant stating:

I am writing in respect of your rental booking with the Ottawa Public Library for Saturday, November 25th, 2017.

As a result of a number of complaints that have been raised, Library staff have undertaken a further review of the presentation entitled, Killing Europe, which you have proposed to screen at the Ottawa Public Library's Main branch tomorrow.

As you are presumably aware, the Terms and Conditions governing bookings on Ottawa Public Library premises state as follows:

The Library will not provide public space, facilities and/or properties within its jurisdiction to an individual or group that supports or promotes views, ideas or presentations which promote or are likely to promote discrimination, contempt or hatred to any person on the basis of race, national or ethnic origin, color, religion, age, sex, marital status, family status, sexual preference, or disability, gratuitous sex and violence or denigration of the human condition. The Library reserves the right to cancel a contract if any of the above-noted circumstances arise.

Based on my review of the presentation, it is my view that the content falls within the category of material that the Library is not prepared to have displayed or screened on its property. As a result, I must advise that the Library is immediately cancelling the booking in question.

Any deposit paid to reserve the space will be returned to you shortly.

- r. Ms. Weld received an email from the Ottawa Public Library on November 24, 2017 at 3:32 p.m. confirming that the booking was cancelled.
- s. At approximately 4:30 p.m. on November 24, 2017 Ms. Weld attended at the Main Branch Library to inquire about the cancellation. There, she met with the Deputy Chief Executive Officer, Monique Desormeaux, who stated that the cancellation occurred because the Documentary failed to conform to the terms and conditions as set out in paragraph 35 of the Rental Contract.

- t. The Applicant, Ms. Thomas had made arrangements to attend the showing of the Documentary and the presentation thereafter by Michael Hansen. Ms. Thomas had a number of questions she wanted to ask Mr. Hansen. As a result of the cancellation, Ms. Thomas was unable to view the Documentary on November 25, or hear Mr. Hansen speak.

Legal Basis

- u. The *Charter* applies to the Respondent's policies and decisions. By cancelling the booking to view the Documentary, the Respondent infringed the Applicants' *Charter* right to free expression.
- v. As the Respondent has repeatedly acknowledged in its *Intellectual Freedom* policy and public statements, the Respondent has a constitutional obligation as a public library to consider freedom of expression when making decisions regarding what materials will be permitted to be viewed at the Respondent's locations. The Respondent failed to consider the Applicant, Ms. Weld's constitutional right to free expression when it decided to cancel the booking to viewing the Documentary.
- w. The Respondent also failed to consider the constitutional right of listeners and viewers to receive and consider information, and to hear and see diverse opinions. Section 2(b) of the *Charter* protects the right to receive expressive material as much as it does the right to create it. It is not only the speaker but the listener who has an interest in freedom of expression. The Applicant, Ms. Thomas and others who planned to view the Documentary and the presentation by Michael Hansen, were deprived of access to the information

contained in the Documentary and subsequent presentation. They were denied the ability to listen to the Documentary's producer, ask him questions, and consider his viewpoint.

- x. In the alternative, if the Respondent considered the Applicants' *Charter* rights, it failed to proportionately balance these *Charter* rights as against any other objectives and limited those rights more than reasonably necessary.
- y. The Respondent acted arbitrarily and unreasonably in cancelling the booking to view the Documentary. The Respondent cancelled the booking on the vague grounds that the Documentary's content fell within a "category of material that the Library is not prepared to have displayed or screened on its property". The Respondent apparently relied on paragraph 35 of the Rental Contract to support its decision.
- z. However, the Respondent did not provide reasons as to how paragraph 35 applies. The Documentary is neither criminal hate speech nor does it contravene the Ontario *Human Rights Code*. Further, in viewing the Documentary and listening to the Documentary's producer speak following the viewing, the Applicants would not have engaged in discrimination, contempt or hatred regarding any of the grounds listed in paragraph 35.
- aa. The Respondent cancelled the booking to view the Documentary in contravention of its own policies. In particular, the Respondent has statements and policies respecting, *inter alia*, intellectual freedom, freedom of expression and the safeguarding and facilitation of expression that some individuals and groups would find unconventional, unpopular and unacceptable. These policies include the *Strategic Directions and Priorities 2015-2018* and the *Intellectual Freedom* policy.

bb. The Respondent cancelled the booking to view the Documentary on only one day's notice without providing sufficient reasons for the cancellation, and without providing the Applicant, Ms. Weld with any opportunity to respond to the Respondent's allegations regarding the Documentary. These actions contravene the principles of natural justice and procedural fairness.

cc. The Applicant relies upon:

- i. *The Canadian Charter of Rights and Freedoms*.
- ii. *The Courts of Justice Act*, R.S.O. 1990, c. C.43.
- iii. *The Ontario Human Rights Code*, R.S.O. 1990, c. H.19.
- iv. *The Criminal Code*, RSC 1985, c C-46.

3. The following documentary evidence will be used at the hearing of the application:

- a. The Affidavit of the Applicant, Madeline Weld;
- b. The Affidavit of the Applicant, Valerie Thomas;
- c. Such further and other material as counsel may advise and this Honourable Court will permit.

Date: _____

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