



# Justice Centre for Constitutional Freedoms

December 14, 2018

VIA EMAIL: [julia.morrison@vpl.ca](mailto:julia.morrison@vpl.ca)

Julia Morrision,  
Acting Director of Corporate Services and Facilities  
Vancouver Public Library  
302 - 345 Robson Street  
Vancouver, BC V6B 6B3  
Phone: 604-331-3761

Dear Ms. Morrison:

***RE: Unlawful Demands Regarding January 10, 2019 Booking of the Alice Mackay Room***

We write on behalf of Holly Hutton and A.H., two local citizens (the “Event Organizers”) who have booked the Alice Mackay room at the Vancouver Public Library’s Central Library for Thursday, January 10, 2019 at 6:30 PM for a public lecture to be given by Meghan Murphy, noted feminist and author (the “Event”).

We are advised that the Vancouver Public Library (“VPL”) is attempting to move the Event to after-hours and impose a “security fee” in the amount of \$2,047.50 on the Event Organizers in response to the complaints of unruly elements within the community who do not respect the constitutional and legal rights of speakers and listeners to discuss and debate all subjects and topics.

We hereby write to remind VPL of its legal obligation to comply with the Constitution and cease its content-based discrimination against the Event Organizers.

Continued discrimination and infringement of the constitutional and contractual rights of the Event Organizers will be met with legal action.

## **Background**

Meghan Murphy is a noted feminist and social critic. She is the founder and editor of *Feminist Current*. Ms. Murphy, a resident of Vancouver, regularly engages in public discourse on the subjects of sex, sexuality, and gender. She holds a Masters degree from Simon Fraser University.

VPL is a government-run institution that is subject to the *Canadian Charter of Rights and Freedoms*, including an obligation to protect and uphold section 2(b) – freedom of expression.

On November 14, 2018, the Event Organizers booked the Alice Mackay room at the Central Library, for the purposes of the Event, and paid the requisite deposit toward the \$824.25 room rental fee.

On November 28, Christina de Castell, VPL Chief Librarian issued a statement regarding the Event in which she stated that VPL “does not agree with the views of the *Feminist Current*”, that “Meghan Murphy’s opinions are concerning” and that it is difficult for VPL staff “to accept a rental from an organization whose perspectives we disagree with”.<sup>1</sup> The statement was also “tweeted” by the VPL Twitter account.

As a government entity, it was improper for VPL to issue a statement taking sides in a societal debate, and publicly stating that it disagreed with Ms. Murphy. That is not the role of the state or of any public body such as VPL.

On December 3, Julia Morrison, VPL Acting Director of Corporate Services and Facilities sent a letter to the Event Organizers (the “December 3 Letter”), which states, in part:

The event has attracted significant attention and we have been advised that there will likely be public protests against the event at or near the Library.

In the December 3 Letter, Ms. Morrison demanded that the Event not start at 6:30 PM, but rather start at least one half hour after the closing of the Central Library, which is 9:00 PM on a Thursday evening. Ms. Morrison further demanded that, “to ensure safety”, the Event Organizers must pay a fee of \$2,047.50 for “additional security guards” (the “Demands”).

On December 7, the Event Organizers emailed Ms. Morrison to inform her that they had already arranged for security for the Event, specifically that seven security guards would be present for the duration of the Event. Ms. Morrison was not satisfied, however, and continued to demand the \$2,047.50 “security fee” from the Event Organizers. On the same day, December 7, Ms. Morrison wrote back to the Event Organizers, stating:

Thank you for your additional note about the security that you have arranged, in addition to the funding that we require for the security that we will be putting in place for the event.

### **The *Charter* Guarantees Freedom of Expression**

The *Charter* guarantees Canadians the “fundamental freedoms” of expression, association, conscience and religion. As a government institution that is regularly used for the purposes of exercising the constitutional freedoms of expression, association and assembly, the Vancouver Public Library (“VPL”) is constitutionally prohibited from restricting expression on its premises on the basis of the content of the expression. VPL is precluded from limiting or erecting barriers to the use of its facilities in a manner that unjustifiably infringes the freedoms protected by section 2 of the *Charter*.<sup>2</sup>

The *Charter* protects freedom of expression “so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”<sup>3</sup> As the Supreme Court of Canada has elsewhere stated, “the guarantee of freedom of expression serves to protect the right of the minority to express its view, however

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<sup>1</sup> See “Statement on “Feminist Current” Event” issued by Christina de Castell, VPL Chief Librarian: <https://www.vpl.ca/statement-on-feminist-current-event>.

<sup>2</sup> *Canadian Federation of Students v Greater Vancouver Transportation Authority*, 2009 SCC 31 at paras 41-44.

<sup>3</sup> *Saskatchewan (Human Rights Commission v Whatcott*, 2013 SCC 11 at para 50.



unpopular it may be; adapted to this context, it serves to preclude the majority's perception of 'truth' or 'public interest' from smothering the minority's perception."<sup>4</sup>

Further, VPL is legally obligated to uphold, as part of freedom of expression, the right of citizens to hear and consider all views and perspectives. Section 2(b) of the *Charter* protects the right to receive expressive material as much as it does the right to speak.<sup>5</sup> By refusing to permit the event unless it take place after Library operating hours, and by demanding a \$2,047.50 "security fee", VPL has acted unreasonably and has unjustifiably infringed the constitutional right of those intending to attend the Event, violating the *Charter* right of people to listen and consider diverse opinions on topics of interest to them.

It is not against the public interest to hold and express diverse views regarding sexuality and gender.<sup>6</sup> Further, governments at all levels are precluded from favouring any one belief system over another, including beliefs regarding sexuality and gender, and from discriminating against the expression of minority beliefs.<sup>7</sup>

Difficult though some may find the issues of human sexuality and gender, there must be room for free and open discussion about such issues, including ideological and conscientiously-held beliefs regarding such issues. Peaceful, public expression regarding issues of sexuality and gender, including transgenderism, is entitled to protection under the fundamental Canadian value of free expression, even if such expression is unpopular or makes some people feel uncomfortable. The advancement of various views, even if unpopular, enriches public discourse and is essential to democracy.

VPL has a constitutional obligation as a library to uphold freedom of expression. As VPL has acknowledged, a "commitment to free speech and intellectual freedom are fundamental values of public libraries and are bedrock values for democratic society."<sup>8</sup> Yet, despite VPL's written commitment to free speech,<sup>9</sup> VPL has effectively censored unpopular opinion (or opinion unpopular with unidentified "protesters") by way of a \$2,047.50 "security fee" based on a vague reference to "safety". The concept that only those able to *pay* should be able to express themselves is antithetical to the very purpose of a library and to the free society. Further, the Event Organizers have already made their own security arrangements at their own cost and discretion.

The imposition of a "security fee" is nothing more than content-based discrimination. The Event Organizers are peaceful. Any risk of disruption arises solely and entirely from those lawless elements in society who do not respect the Constitution or the rule of law. The "security fee" amounts to a "hecklers veto" – the power of obstructive and lawless elements to stifle constitutionally-protected

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<sup>4</sup> *R v Zundel*, [1992] 2 SCR 731, at p 753.

<sup>5</sup> *Harper v. Canada (Attorney General)*, 2004 SCC 33 at paras. 17-18; *Little Sisters Book & Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 at para. 41.

<sup>6</sup> *Civil Marriage Act*, SC 2005, c 33, preamble; s 3.1.

<sup>7</sup> *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at paras. 71-75.

<sup>8</sup> See "Statement on "Feminist Current" Event" issued by Christina de Castell, VPL Chief Librarian.

<sup>9</sup> See also the Introduction to VPL's *Public Space Policy*: "Our public space contributes to community building by providing an opportunity for diverse cultures and socio-economic groups to express opinions and perspectives through personal interaction, planned assemblies and celebrations. It is an expression of our commitment to collective values, free and open access and public deliberations."

conversation and dialogue. Courts have rejected the unspecified reference to “safety and security” as justification for censoring the peaceful expression of opinion on campus.<sup>10</sup>

The rule of law requires that, absent justification, VPL is not permitted to limit expression except in accordance with the hate speech provisions contained in section 319 of the *Criminal Code*, or if the expression is so obscene or indecent as to cause harm incompatible with society's proper functioning.<sup>11</sup> As VPL has acknowledged, there is “no indication” that Meghan Murphy will engage in criminal hate speech at the Event.<sup>12</sup> The possibility of “protests” and unsupported fears about “safety” do not justify the limitations of free expression occasioned by the Demands.

The Event Organizers intend for Ms. Murphy’s views to be considered and debated in accordance with the principles of Canada’s free society. It is important to hold the Event at a time of day that is convenient for all members of society to be able to attend. 9:30 PM on a weeknight is an inconvenient time for a multi-hour event; it is a time of day that will preclude many from being able to attend.

### Conclusion

Canada is a diverse, pluralistic, free and democratic society, not a police state where the “wrong” opinions are suppressed by government or by other public authorities. We request VPL rescind the Demands and permit the Event to proceed unhindered as scheduled.

Considering the urgent nature of this matter, we request a response from VPL no later than the close of business on December 21, 2018.

Govern yourselves accordingly.

Sincerely,

*for:*   
Jay Cameron  
Barrister and Solicitor

cc: Holly Hutton  
A.H.  
Meghan Murphy, Feminist Current  
Christina de Castell, VPL Chief Librarian  
VPL Board of Trustees

Enclosures

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<sup>10</sup> See for example, *Wilson v. University of Calgary*, 2014 ABQB 190 at paras 153-162.

<sup>11</sup> *R v Labaye*, 2005 SCC 80 at paras 21-23.

<sup>12</sup> See “Statement on “Feminist Current” Event” issued by Christina de Castell, VPL Chief Librarian.



# Statement on "Feminist Current" Event

Vancouver Public Library (VPL) is aware of concerns that have been expressed regarding an event with speaker Meghan Murphy scheduled for January 10th at the Vancouver Public Library.

VPL is not endorsing, or hosting this event; it is a rental of our public space. VPL has zero tolerance for discrimination and does not agree with the views of the *Feminist Current*. However, commitment to free speech and intellectual freedom are fundamental values of public libraries and are bedrock values for democratic society. As such, we will not refuse to rent to an individual or organization simply because they are discussing controversial topics or views, even those we find offensive. We seek to be a welcoming place for all, and actively find ways to support the trans, gender variant and two-spirit communities.

VPL takes steps to ensure appropriate conduct occurs in its venues by clients who rent our spaces, including compliance with the BC Human Rights Code. VPL has explicit requirements in its rental agreements that govern the conduct of renters and has confirmed with *Feminist Current* their obligation to comply with all Canadian laws relating to the content of their presentation. We have advised the Vancouver Police Department of the event; they will be monitoring and will take appropriate action should conduct breach the Criminal Code. If we anticipate that this event will present a risk to public safety, additional security measures will be put in place.

We recognize that Meghan Murphy's opinions are concerning. However, VPL is not in a position to take action intended to censor speech that is otherwise permissible under Canadian law. We have no indication that the event on January 10<sup>th</sup> will include content that violates the Criminal Code.

VPL cares deeply about respecting the diversity of our community – intellectually, socially, and culturally – and seeks to ensure that our locations are welcoming and safe for all patrons, including trans, gender variant and two-spirit individuals. We welcome any community group to rent our spaces, and our staff actively work towards access and equity in VPL services, spaces and programs. The programs that we partner on and host are aligned with these values.

While it is difficult for us as individuals and staff to accept a rental from an organization whose perspectives we disagree with, the fundamental role of libraries as a place for free speech and intellectual freedom must be upheld.

Christina de Castell, Chief Librarian

Feminist Current  
204-210 E. 16<sup>th</sup> Ave.  
Vancouver, BC  
V5T 2T4

ATTN : A [REDACTED] H [REDACTED]

**RE: Library Space Licence #18676, November 14, 2018**

Feminist Current has booked the Alice Mackay room on Thursday, January 10, 2019 for an event with the working title "Meghan Murphy in Vancouver".

The event has attracted significant attention and we have been advised that there will likely be public protests against the event at or near the Library.

To ensure that there is no disruption to Library services, in accordance with the terms of the license and our meeting room and facilities policy (copies of which are enclosed), we will need to move the event to a time at least 30 minutes after the Central Library closes. We are offering you the alternative options of a booking start time of:

- Thursday, January 10 at 9pm, with the public event to start no earlier than 9:30pm
- Saturday, January 12 at 6pm, with the public event to start no earlier than 7pm
- Sunday, January 13 at 6pm, with the public event to start no earlier than 7pm

1. We will require additional security guards for the event to protect VPL and City of Vancouver property, and to ensure the safety of all participants and staff. The added security costs are \$2,047.50 (\$1,950 plus \$97.50 GST) which will be required to be paid by three weeks prior to the event, December 21, 2018 (adjusted depending on event date). In addition to the \$824.25 rental fee (\$785 plus \$39.25 GST), this will bring the amount payable to VPL to \$2,871.75. We have received your deposit of \$412.13. Please submit the amount owing on the original booking fee this week, \$412.13, and the remaining \$2,047.50 by December 21, 2018.
2. We remind you of your obligation to provide insurance, and ask that you provide proof of same to us by no later than December 21, 2018.
3. Please amend your advertising to state the location as Library Square Conference Centre, 350 West Georgia Street.
4. Advertising for the event must include the terms **"This event is not a Vancouver Public Library program. Statements being made or positions being taken during events do not necessarily reflect the opinions or values of the Vancouver Public Library Board."**

We remind you of the following terms of the event licence, to which you have agreed:

- You must not place or affix any signs, advertisements, posters, or other things in the Space or the Library;
- You will not suffer, cause, permit or carry on any unlawful events or events which endanger public safety;
- You will be liable for the content of the event and any written material, publications, promotions or advertisements relating thereto ;
- You will not contravene the Criminal Code of Canada or the Human Rights Act of British Columbia;
- You will pay to the Board, on demand, the Board's costs for repairing any damage to the Space or Library arising out of, or in connection with, any willful or negligent act or failure to act by you, or employees, agents, contractors or invitees; and
- If, in consultation with either the VPL or Feminist Current, the Vancouver Police Department recommends or requires that additional security measures be put in place for the event, Feminist Current will implement those measures at its own cost.

Given the circumstances, the Library will waive the cancellation fees and refund your deposit in full if you would prefer to cancel the booking.

Sincerely,



Julia Morrison  
Acting Director, Corporate Services and Facilities