Court File No. DC-18-00002401-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

MADELINE WELD and VALERIE THOMAS

Applicants

and

OTTAWA PUBLIC LIBRARY

Respondent

APPLICATION UNDER THE *JUDICIAL REVIEW PROCEDURE ACT*, R.S.O. 1990, C. J.1

FACTUM OF THE RESPONDENT
OTTAWA PUBLIC LIBRARY

July 2, 2019

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FACTUM OF THE OTTAWA PUBLIC LIBRARY

PART I - OVERVIEW

1. On October 27, 2017, the Applicant Madeline Weld entered into a contract with the Ottawa Public Library (the "**OPL**") to rent its auditorium at the Main Branch of the library (the "**Contract**"), situated at 120 Metcalfe Street in Ottawa.

2. Ms. Weld stated on her booking application form that she and her organization, ACT! for Canada (henceforth, "**ACT**"), desired to show a film entitled *Killing Europe* in the auditorium.

3. Section 35 of the Contract specified that the OPL reserved its right to cancel the contract if the renter made use of material that was, among other attributes, violent or likely to incite hatred. Ms. Weld accepted the terms and conditions of the Contract.

4. On November 24, 2017, the OPL rescinded the Contract because, in the opinion of its senior management team, *Killing Europe* was a film that was violent and likely to incite hatred.

5. The OPL immediately apprised Ms. Weld of its decision, invoking section 35 of the Contract as the basis for cancelling the booking. Ms. Weld was provided with a full refund of the booking fee which she had paid. Ms. Weld has suffered no damages.

6. The Applicants are seeking public law remedies for a cause of action based in private law. The OPL submits that the Application for Judicial Review should be dismissed on the following grounds:

(a) The OPL's decision to rescind the Contract (the "**Decision**") is not reviewable under the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 (the "***JRPA***");

(b) The Decision does not attract scrutiny under the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "***Charter***");

(c) In the alternative, the Decision was reasonable and procedurally fair;

(d) In any event, this Honourable Court should not grant the discretionary remedies petitioned for.

PART II - FACTS

7. On October 25, 2017, Ms. Madeline Weld submitted on behalf of ACT a booking request for the auditorium of the Main Branch of the OPL. Her booking request simply stated: "*We would like to show the film* Killing Europe."

Affidavit of D. McDonald at paras. 9–11, Applicants' Record, vol. 1, tab 5 at pp. 114–15; Affidavit of D. MacDonald, Exhibit B, Applicants' Record, vol. 1, tab 5-B at p. 127

8. The booking form specifically requires applicants to list topics of discussion as well as the names of speakers and their affiliation. Ms. Weld did not do so, even though it had always been her intention for Michael Hansen, the maker of *Killing Europe*, to host a Q&A period after the film was shown.

Affidavit of D. McDonald, Exhibit B, Applicants' Record, vol. 1, tab 5-B at pp. 127; Cross-Examination of M. Weld at Q. No. 290–93, Applicant's Record, vol 1, tab 7 at pp. 279–80

9. After Ms. Weld's booking was confirmed, she received a copy of the Contract. Section 35 of the Contract states as follows:

> *The Library [OPL] 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.* [Emphasis added.]

Affidavit of D. McDonald, Exhibit H, Applicants' Record, vol. 1, tab 5-H at p. 156

10. The auditorium was booked for November 25, 2017. After Ms. Weld booked the auditorium, the OPL's senior management team was apprised of information about the booking independently from Ms. Weld. The information was as follows:

(a) The OPL was made aware of a Facebook posting about the event stating "*Michael Hansen will be attending the showing of his film and will be available afterwards to answer questions and discuss the existential threat that Islam poses for the West*;"

Affidavit of D. McDonald, Exhibit C at para. 12 Applicants' Record, vol. 1, tab 5-C at p. 131

(b) Ottawa Police Services' Special Events Unit constables attended at the OPL and asked that staff be aware of the event and to call the Ottawa Police Services if there were issues with the event; and

Affidavit of D. McDonald at para. 15, Applicants' Record, vol. 1, tab 5 at p. 115

(c) The OPL received numerous complaints and objections in relation to the event by email or through social media. These complaints raised concerns about the content of the film and the possibility that the content of the film and the subject-matter of the discussion may be in contravention with the terms and conditions of the Contract.

Affidavit of D. McDonald at para. 19, Applicants' Record, vol. 1, tab 5 at p. 116; Undertakings Brief, tab 3, Applicants' Record, vol. 2, tab 9-C at pp. 427–83

11. As these events unfolded, Ms. Catherine Seaman (OPL Division Manager, Branch Operations) contacted Ms. Weld to review the terms of the Contract and to notify her that additional security personnel would be required to ensure the security of the attendees and OPL premises/property. Ms. Weld agreed with Ms. Seaman's request.

Affidavit of D. McDonald at paras. 13–18, Applicants' Record, vol. 1, tab 5 at pp. 115–16

12. On cross-examination, Ms. McDonald specified that the information about the event that was received from other sources prompted senior managers at the OPL, including Ms. McDonald,

to look further into the booking request with a view to manage risks and examine its compliance with the terms and conditions of the Contract.

Cross-Examination of D. McDonald at pp. 31–36, 64 ff., Applicants' Record, vol. 2, tab 8 at pp. 341–46, 374–5 ff.

13. On or around November 24, 2017, after reviewing the trailer of *Killing Europe* online, Ms. McDonald and members of senior management concluded that the film:

(a) Was likely to promote discrimination, contempt or hatred on the basis of race, national or ethnic origin, colour and/or religion; and

(b) May contain gratuitous sex and violence, including gang rapes.

Affidavit of D. McDonald at para. 21, Applicants' Record, vol. 1, tab 5 at p. 116; Cross-Examination of D. McDonald at p. 69 ff., Applicants' Record, vol. 2, tab 8 at p. 379 ff.; Respondent's Record, tab A

14. Ms. Weld was notified on November 24, 2017 that the Contract was cancelled. The reasons provided were that the content of the film and the substance of the event were not compliant with the terms of section 35 of the Contract.

15. On cross-examination, Ms. Weld admitted that she was provided with reasons for the cancellation and that she understood those reasons.

Cross-Examination of M. Weld at pp. 64–65, Applicants' Record, vol. 1, tab 7 at pp. 270–71

PART III - ISSUES

16. The OPL submits that the issues to be decided by this Honourable Court are as follows:

(a) Is the Decision judicially reviewable pursuant to the *JRPA*?

OPL's position: The Decision is not subject to judicial review.

(b) In the alternative:

1) What is the applicable standard of review for the Decision?

OPL's position: The Decision should be reviewed on the deferential standard of "reasonableness."

2) Was the Decision reasonable insofar as it reflects a proportionate balancing of *Charter* protections with the statutory objectives at play?

OPL's position: In the context of the OPL's booking procedures, including applicable policies and contractual terms, and in light of the facts of this case, the OPL struck a proportionate balance between Ms. Weld's freedom of expression and its responsibility to ensure the right to safe and welcoming places and surroundings.

3) Was the Decision procedurally fair?

OPL's position: In the context of a room booking request, Ms. Weld's procedural fairness rights were specified by the Contract. The OPL went beyond the requirements of the Contract to ensure that Ms. Weld was treated fairly.

(c) In the further alternative, should the Court decline to order or issue the applied for remedies on the basis of its inherent discretion?

OPL's position: Even if the Decision were unreasonable and/or procedurally unfair, the Court should decline to order or issue the pleaded public law remedies because the Applicants do not plead sufficient facts to warrant a Charter declaration nor do they have standing to assert personal Charter rights on behalf of an ill-defined group of people.

PART IV - ARGUMENT

17. The OPL's arguments are set out in the order outlined above.

A) The Decision is Not Subject to Judicial Review Under the *JRPA*

18. The Court's jurisdiction pursuant to section 2(1) of the *JRPA* turns on whether the impugned Decision "*is the kind of decision that is reached by public law and therefore a decision to which a public law remedy can be applied*."

> ***Setia v. Appleby College*, 2013 ONCA 753 at para. 32, Respondent's Book of Authorities ("RBA") at tab A; see also *Trost v. Conservative Party of Canada*, 2018 ONSC 2733 at para. 10–13 (Div. Ct.), RBA at tab B**

19. As recently put by Rowe J., writing for a unanimous bench of the Supreme Court of Canada:

> *Judicial review is only available where there is an exercise of state authority and where that exercise is of a sufficiently public character. Even public bodies make some decisions that are private in nature — such as renting premises and hiring staff — and such decisions are not subject to judicial review. In making these contractual decisions, the public body is not exercising "a power central to the administrative mandate given to it by Parliament", but is rather exercising a private power. Such decisions do not involve concerns about the rule of law insofar as this refers to the exercise of delegated authority*. [References omitted; emphasis added.]
>
> ***Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 at para. 14, RBA at tab C, citing *Air Canada v. Toronto Port Authority*, 2011 FCA 347 at para. 52, RBA at tab D**

20. The OPL submits that the Decision does not involve concerns about the rule of law for two reasons:

(a) The Decision was not made pursuant to an exercise of statutory power; and

(b) The Decision was not sufficiently "public" in nature so as to attract public law remedies.

i. Not an Exercise of Statutory Power

21. The OPL's Board of Trustees (hereinafter the "**Board**") and its delegates derive their statutory authority and obligations from the *Public Libraries Act*, R.S.O. 1990, c. P.44 (the "***PLA***").

22. The *PLA* provides that the Board shall allow the public to reserve and borrow circulating materials free of charge; it shall also allow the public to use, as it considers practicable, reference and information services free of charge.

***PLA*, s. 23(2)**

23. The PLA also provides that the Board may impose such fees as it considers proper for "*the use of the parts of a building that are not being used for public library purposes*."

***PLA*, s. 23(3)(b)**

24. The *PLA* further provides that the Board may make rules:

(a) For the use of library services;

(b) For the admission of the public to the library; or

(c) Regulating all other matters connected with the management of the library and library property.

***PLA*, s. 23(4)(a), (b) and (f)**

25. There is no mention in the *PLA* of "*legal rights, powers, privileges* [etc.]" or reference to "*the eligibility of any person or party to receive* […] *a benefit or license*" in relation to the renting out of library space. Members of the public who satisfy the OPL's admission criteria are entitled to access its materials and information services for free.

***JRPA*, s. 1**

26. In contrast, the *PLA* does not "confer" a right or a legal entitlement on the Applicants to rent a room at the OPL. Accordingly, the Applicants cannot claim public law remedies on the basis of a stand-alone right to "freedom of expression."

***JRPA*, s. 1 and 2**

ii. Decision Insufficiently Public in Nature

27. Even if one were to accept that the OPL's discretion with regards to renting out rooms is of statutory origin, it remains that the "power" to rent, or not to rent, a room is not "*a power central to the administrative mandate*" given to the OPL, directly or indirectly, by the Ontario legislature. In effect, paragraph 23(3)(b) of the *PLA* makes clear that the OPL may only rent out space which is *"not being used for public library purposes*" [emphasis added].

***Air Canada* at para. 52**

28. The statutory origin of the power is not, in any event, the end of the analysis. The Court must also consider whether "*the decision was sufficiently public in nature so as to clothe the court with jurisdiction to review the decision*."

***Sangar v. Ontario (Private Career Colleges Superintendent)*, 2018 ONSC 673 at para. 39 (Div. Ct.), RBA at tab E**

29. To this end, this Court has adopted the approach of Stratas J.A. in *Air Canada v. Toronto Port Authority*, which is based on an open-ended series of factors which may "colour" a determination with a public "flavour" sufficient to attract remedies of a public nature.

***Air Canada* at para. 60, *RBA* at tab D**

30. One such factor is the decision-maker's relationship to other statutory schemes and whether it is an agent of government. Certainly, the OPL's Board is composed of nine (9) members, four (4) of which are city councillors and the rest of which are appointed City Council. Pursuant to the *PLA*, however, the OPL's reporting requirements to the City and the Province are only minimal. On an operational level, the OPL manages its own affairs independently from City Council.

***PLA*, s. 9, 20; Affidavit of D. McDonald, paras. 2–8, Applicants' Record, vol. 1, tab 5 at pp. 113–14**

31. The more relevant factors of the analysis in the present case are as follows:

a) The Character of the Matter for Which Review Is Sought and Whether the Impugned Decision Was Shaped by Law

32. The entire matter in this case is governed by a contract. As such, it is a private matter between a member of the public and a public institution. The public component of the decision,

that is, that the cancellation was made by a public entity, does not unavoidably render the decision amenable to judicial review by the courts.

33. The terms and conditions of the Contract are not specified in the *PLA* or any regulation adopted pursuant thereto nor is the cancellation procedure set out in any statutory instrument. The Decision to cancel the Contract was not a decision founded in or shaped by public law.

34. In other words, there is no "compulsory power" engaged in this case, either for the public at large or for a defined group. This case simply involves the OPL's discretion to enter into and subsequently cancel a contract.

b) The Suitability of Public Law Remedies

35. There is no exercise of statutory power in this case to which a writ can be directed. Insofar as the relief sought by the Applicants at paragraph 74 of their Factum amounts to a request for an order of *mandamus*, the OPL cannot be enjoined by means of a writ to enter into a new private contractual arrangement with Ms. Weld in order to allow her to rebook the meeting room. There would simply be no statutory basis for doing so.

***Apotex Inc. v. Canada (Attorney General),* [1994] 1 FC 742 (C.A.), aff'd [1994] 3 S.C.R. 1100, *RBA* at tab F**

36. The reasons provided to Ms. Weld for the cancellation related to her breach of a contractual term. In response, the Applicants are seeking remedies which, practically speaking, would put them in the position they would have occupied had the OPL not fundamentally breached the Contract. The Applicants' cause of action lies in the law of contracts and so must the remedies.

c) Exceptional Effect on the Rights or Interests of a Broad Segment of the Public

37. Finally, the cancellation was a private decision by a public body, which, at the very least, affected the Applicants in that they were not able to see *Killing Europe* in the auditorium at the Main Branch, or ask questions of its producer. The effect on them was minimal, however, as they had the opportunity to see the film in Toronto eight (8) days later and to ask questions of Michael Hansen. The film was subsequently made available in its entirety online (Youtube.com,) where it remains accessible for free.

Affidavit of V. Thomas, para. 11, Applicants' Record, vol. 1, tab 3 at p. 24; Cross-Examination of V. Thomas at pp. 7, 14; Applicants' Record, vol. 1, tab 6 at pp. 189, 196; Affidavit of D. McDonald, Exhibit E, Applicants' Record, vol. 1, tab 5-E at p. 139

38. At the very most, the cancellation disappointed the Applicants and the others who sought to view *Killing Europe*. The cancellation does not affect the rights or interests of the public at large nor does it concern the legality of state decision-making or raise issues regarding the rule of law and the limits of an administrative decision-maker's exercise of power. Moreover, the facts of this matter are not so unique so as to set a new precedent in case law; no fundamental principles are at play which, if decided, could help shape or reshape the landscape of Canadian administrative or constitutional law.

***Highwood* at paras. 21–22, *RBA* at tab C**

39. The Applicants' own admissions underscore the fact that the cancellation of the event did not affect the OPL's "public" within the meaning and purpose of the *PLA*, but only affected ACT's own "public", i.e. the set of persons to which it advertised the event:

(a) Tickets for the event were sold by ACT, not by the OPL to further its mandate or for its own benefit: "*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*;"

Notice of Application at para. 2-F, Applicants' Record, vol. 1, tab 1 at p. 9

(b) "*Only individuals who paid an admission fee would be permitted to enter the auditorium to view the documentary and listen to Michael Hansen*;" and

Affidavit of M. Weld at para. 8, Applicants' Record, vol. 1, tab 4 at pp. 28–29

(c) From the booking request form's drop-down menu, Ms. Weld selected "*Private activity: $57.52*" to categorise the event, as opposed to "*Not for Profit activity*;" the latter option might have entailed that the event had a public education purpose.

Affidavit of D. McDonald, Exhibit B, Applicants' Record, vol. 1, tab 5-B at p. 128

40. The event planned by Ms. Weld and ACT was not an event for the public at large, such as may be organized by the OPL itself from time to time. OPL events are open to all members of the public.

41. In contrast, ACT effectively controlled who was to attend the event, with no input from the OPL and no reference to the OPL's admission requirements. The event was limited to persons to whom the event was advertised through ACT's newsletter and social media postings. The Decision's effect was therefore limited to those people.

Cross-Examination of V. Thomas at p. 19, Applicants' Record, vol. 1, tab 6 at p. 201

42. All the above factors militate in favour of the Decision not being of a sufficiently public character to as to attract scrutiny under the *JRPA*.

B) Standard of Review and the *Doré/Loyola* Framework

43. Should this Court accept that the Decision is reviewable under the *JRPA*, the OPL argues in the alternative that the Decision was reasonable on a deferential standard, as applied to decisions that engage *Charter* values and protections, assuming such values and protections are engaged in this case, which the OPL denies.

i. Substantive Review of the Decision Attracts the Standard of "Reasonableness"

44. The OPL is an administrative body interpreting its home statute or enabling legislation. Accordingly, the presumptive standard of reasonableness applies in this case and the Applicants have not attempted to rebut the presumption.

45. The standard of "reasonableness" entails deference from the reviewing court which must refrain from substituting its own opinion for that of the decision-maker, provided that the impugned decision has the attributes of justification, transparency and intelligibility within the decision-making process and that the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law.

> ***Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 at para. 55, *RBA* at tab G; *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47**

46. Deference is "*grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing*." As stated by the Supreme Court of Canada, "*the reviewing court's task is to supervise the* [decision maker's] *approach in the context of the decision as a whole. Its role is not to impose an approach of its own choosing*."

> ***Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para. 33, *RBA* at tab H; *Canada (Canadian Human Rights Commission)* at para. 57, *RBA* at tab G; *Dunsmuir* at paras. 48–49**

47. As per the analytical framework set out by the Supreme Court of Canada in *Loyola High School v. Quebec (Attorney General)* and *Doré v. Barreau du Québec*, reasonableness remains the standard of review even when *Charter* protections, rights or values are involved and irrespective of whether the impugned decision is administrative or adjudicative in nature.

> ***Doré v. Barreau du Québec*, 2012 SCC 12, *RBA* at tab I; *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at paras. 35, 42, *RBA* at tab J; see also *Bonitto v. Halifax Regional School Board*, 2015 NSCA 80 at para. 49, leave to appeal to S.C.C refused, 2016 CanLII 7596, *RBA* at tab K**

ii. <u>The *Doré/Loyola* Framework</u>

48. *Doré* and *Loyola* set out a two-prong test:

(a) First, the reviewing court must determine whether the impugned decision engages the *Charter* by limiting its protections; the *Charter* is thus engaged only when protections are limited; *Charter* protections are defined as both values and rights.

> ***Loyola* at paras. 35, 39, *RBA* at tab J**

(b) Second, the reviewing court must determine whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision as well as the statutory and factual contexts, the impugned decision reflects a proportionate balancing of the *Charter* protections at play. In other words, the reviewing court is tasked with evaluating the balancing of *Charter* values with statutory objectives undertaken by the decision-maker whose decision is under review. As such, the reviewing court must ask whether the decision-maker reasonably determined how to protect the *Charter* value(s) at issue in view of the statutory objectives, which can also be understood as the decision-maker's statutory mandate.

***Doré* at paras. 55–57, *RBA* at tab I; see also *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at paras. 79–82, see also paras. 112-19, per McLachlin C.J., concurring, *RBA* at tab L**

49. As in all proceedings involving the reasonableness standard, leeway is to be accorded by the reviewing court to the decision-maker: the proportionality test described above will be satisfied if the impugned decision falls within a range of reasonable alternatives.

50. Deference to the decision-maker remains the norm in that decision-makers are afforded a margin of appreciation because they are exercising a discretionary power under their home statute. According to the Supreme Court of Canada, by virtue of the expertise and specialization this discretionary power confers on the decision-makers, they possess particular familiarity with the competing considerations at play in weighing *Charter* values.

***Doré* at paras. 47 and 56–57, *RBA* at tab I**

C) *Charter* Values and Protections Are Not Engaged by the Decision

51. The Decision does not meet the first prong of the *Doré/Loyola* test. *Charter* values and protections are not engaged, largely for the same reasons that the Decision is not reviewable under the *JRPA*: the Decision is not an exercise of statutory power and the nature of the Decision is such that it does not attract public law remedies, which include *Charter* remedies.

52. Even if the Decision were reviewable, the *Charter* is not engaged nor are its protections limited. Though section 2(*b*) protects everyone from undue government interference with the freedom of expression, it does not go so far as to place the government under an obligation to facilitate expression by providing individuals with a particular means of expression, i.e. to provide access to an auditorium. Thus, where the government creates such a means, it is generally entitled to determine which speakers are allowed to participate, and a speaker who is excluded from such means does not have a section 2(*b*) right to participate unless they meet the criteria set out by the Supreme Court of Canada in *Baier v. Alberta*.

> ***Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31 at paras. 27–36, *RBA* at tab M; *Baier v. Alberta*, 2007 SCC 31, *RBA* at tab N; *Haig v. Canada*, [1993] 2 S.C.R. 995 at p. 1041, *RBA* at tab O**

53. Here, the Applicants invoke the *Charter* and the right to freedom of expression but fail to show how or why they are legally entitled to a platform. Indeed, the Applicants' *Charter* rights to freedom of expression do not constitutionalize a right to book rooms at a library.

> ***Toronto (City) v. Ontario (Attorney General)*, 2018 ONCA 761 at para. 15, *RBA* at tab P**

D) The OPL's Decision Was Reasonable

54. In the alternative, should this Court find that the Decision does engage *Charter* values and protections, the OPL submits that the Decision was reasonable. Consequently, the OPL should be accorded deference and the Decision should stand.

55. The OPL submits that the reasonableness of the Decision should be assessed in light of the following points:

(a) The procedural and contractual context in which the Decision was made; and

(b) The material considered by the OPL in making its Decision and concessions made by Ms. Weld on cross-examination.

i. Procedural and Contractual Context

56. Firstly, it should be noted that the Applicants do not contest the reasonableness of the OPL's procedural framework for booking requests. For instance, the Applicants do not take issue with the fact that room rentals at the OPL are governed by contract nor do they dispute the reasonableness of the Contracts' terms and conditions. The Applicants also do not take issue with the terms of the OPL's room booking policy or protocol.

57. The Contract, the room booking policy and protocol as well as the OPL's various policy statements (inasmuch as the latter are relevant to room bookings) form the framework in which the OPL makes decisions about room bookings. If that framework is not contested, it should follow that any decision that is consistent with that framework is "within the range of acceptable outcomes" and is therefore reasonable.

Undertakings Brief, tab 1, Applicants' Record, vol. 2, tab 9-A at pp. 405–20; Affidavit of D. McDonald, Exhibit G, Applicants' Record, vol. 1, tab 5-G at pp. 147–49

58. Further, the Applicants do not claim that the OPL did not follow its usual procedure *per se*, but take issue with the outcome of the procedure undertaken. The Applicants do claim, however, that the OPL's Decision did not conform with its own policy statements, such as its *Strategic Directions and Priorities* or its *Intellectual Freedom Statement* (the "***Statement***").

Affidavit of D. McDonald, Exhibit I, Applicants' Record, vol. 1, tab 5-I at pp. 159–61; Affidavit of M. Weld, Exhibit A, Applicants' Record, vol. 1, tab 4-A at pp. 39–42

59. First, the *Strategic Direction and Priorities* as well as the *Statement* do not apply to the booking of space at the OPL. These documents relate to the circulation of OPL materials. As per the *Ontario Library Association Statement of Intellectual Rights of the Individual (2)*, of which the *Statement* is partly comprised, "*it is the responsibility of libraries to maintain the right of intellectual freedom and to implement it consistently in the selection of books, periodicals, films, recordings, other materials*."

Affidavit of D. McDonald, Exhibit I, Applicants' Record, vol. 1, tab 5-I at p. 160

60. Still, the *Statement* makes clear that OPL's support of intellectual curiosity and enquiry "*does not apply to the expression or dissemination of views that promote and/or incite hatred… Such communications are prohibited on library premises…*" There is therefore a clear limit to the OPL's commitment to intellectual freedom: though users are allowed to borrow books many would consider unsavory, these same users are not, however, allowed to gratuitously disseminate hateful material on library premises.

Affidavit of D. McDonald, Exhibit I, Applicants' Record, vol. 1, tab 5-I at p. 159

61. The *Meeting Room Booking Policy* and the Contract's terms and conditions, which are the only documents that form the legal basis for the Decision, already balance competing *Charter* values. Indeed, the policy and Contract support intellectual freedom insofar as persons or their expressive content do not promote views which are likely to promote discrimination, contempt or hatred to any other person.

62. In any event, as noted recently by the Alberta Court of Appeal, universally applied formal policies can be an indication of a good faith attempt to balance statutory objectives with *Charter* values. As noted in *Doré*, decision-makers such as the OPL have a distinct advantage in the balancing process given their proximity to the facts at hand and familiarity with the statutory scheme; the content of a formal policy is therefore a relevant factor. As such, the *Statement* represents due consideration for the OPL's "*responsibility to safeguard and facilitate access to constitutionally protected expressions of knowledge…which some individuals consider…unpopular*" and "*foster...the right to safe and welcoming places and conditions*."

***Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, 2018 ABCA 154 at para. 77, RBA at tab MM; Affidavit of D. McDonald, Exhibit I, Applicants' Record, vol. 1, tab 5-I at p. 159–60**

ii. Materials Before the OPL and Concessions by Ms. Weld

63. First, it bears noting that the Applicants never raised any *Charter* issues or any right to freedom of expression to the OPL, either before or after the Decision was made. Courts have previously held that the failure to raise an issue before the factfinder and merits-decider, i.e. the

OPL, entails that one is barred from raising the said issue on judicial review. This applies in the context of a *Doré* analysis as well.

> ***Taman v. Canada (Attorney General)*, 2017 FCA 1 at para. 18, *RBA* at tab Q; *Buffone v. Canada (Attorney General)*, 2017 FC 346 at paras. 3, 53–60, *RBA* at tab R; see also *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245 at paras. 37–58, *RBA* at tab S, and *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at para. 53**

64. Second, the only materials that were before the OPL at the time of the Decision were:

(a) Ms. Weld's parsimoniously-worded booking form;

(b) A Facebook post indicating that the showing was actually an event featuring a controversial figure;

(c) A panoply of complaints from members of the public decrying the OPL's decision allowing the event to proceed; and

(d) The trailer for the film, which the senior management team accessed and viewed online.

65. It is important to note that the complaints did not result in the Decision. The complaints prompted a review of the material by the staff, which then resulted in the Decision based on a review of the trailer.

> **Cross-Examination of D. McDonald at p. 69, Applicants' Record, vol. 2, tab 8 at p. 379**

66. Though the Applicants have described the film as a "*political documentary*" about "*changes to European society*" and as being critical of "*European policies and left-wing political*

groups," Ms. Thomas admitted that the film targets Muslims, and that all that is portrayed in the film are Muslims "*committing violence and committing gang rapes*." Ms. Weld described the film in a similar fashion, in that she agreed that the film was "*basically making it clear that immigrants and refugees have a propensity to rape women*," burn cars in the streets or generally engage in very violent behaviour. The underlying message of the film is that Muslims are a threat to western civilization that must be stopped.

> **Factum of the Applicants at para. 2; Affidavit of M. Weld at para. 9, Applicants' Record, vol. 1, tab 4 at p. 29; Affidavit of V. Thomas at paras. 8, Applicants' Record, vol. 1, tab 3 at p. 23; Cross-Examination of V. Thomas at pp. 16, 18, Applicants' Record, vol. 1, tab 6 at pp. 198, 200; Cross-Examination of M. Weld at pp. 26–30, 40–41, Applicants' Record, vol. 1, tab 7 at pp. 232–36, 246–47**

67. In light of the film as described by the Applicants, it is difficult to conceive of how the OPL could not have concluded that it breached section 35 of the Contract's terms and conditions insofar as it relates to prohibitions against content that is <u>likely</u> to promote discrimination. The film clearly singles out Muslim immigrants – on the Applicants' own admissions – as violent criminals and rapists, solely by virtue of their being Muslim and immigrants.

68. Moreover, contrary to the Applicants' assertions, the material does not need to rise to the level of hate speech as contemplated by the *Criminal Code*, R.S.C., 1985, c. C-46 in order to be considered undesirable by the OPL (e.g. the terms and conditions refer to "gratuitous sex" as well as violent content). In effect, beyond the violation to the Contract's terms and conditions, the OPL was reasonably entitled to be concerned that its association with the film and its producer could be perceived by the public in such a way that the integrity of, and the public confidence in, the OPL could be jeopardized.

***Canadian Arab Federation v. Canada (Citizenship and Immigration)*, 2015 FCA 168 at para. 26, leave to appeal to S.C.C. refused, 2016 CanLII 16508, *RBA* at tab T**

69. The foregoing showcases a proportionate weighing of Charter values and statutory objectives.

E) <u>The OPL's Decision Was Fair</u>

70. As concerns allegations of procedural unfairness, the lawfulness of the decision at issue must be reviewed for correctness and no deference is required. The question is to determine whether the process the decision-maker followed was fair; the reviewing court must establish whether the process at issue achieved the level of fairness required in the context of the rights affected.

***Mission Institution v. Khela*, 2014 SCC 24 at para. 79, *RBA* at tab U; *Dunsmuir* at para. 50; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para. 115, RBA at tab V**

71. The factors to be considered in a fairness analysis are set out by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*.

***Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817**

i. <u>Closeness of the Administrative Process to the Judicial Process</u>

72. The nature of the Decision bears no resemblance to judicial proceedings. Moreover, the OPL bears none of the trappings of a judicial tribunal.

***Re Residential Tenancies Act*, [1981] 1 S.C.R. 714 at p. 743, *RBA* at tab W; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras. 43, 50, *RBA* at tab X**

ii. Role of the Particular Decision within the Statutory Scheme and Choice of Procedure

73. Again, no statutory scheme governs the terms and conditions of the Contract, the basis for the Decision. Though there is no provision in the Contract for a hearing, no requirement of written or oral reasons and no right of appeal *per se*, Ms. Weld was perfectly welcome to voice her protest to the OPL upon receiving the Decision, which she in fact did. Otherwise, invoking a contractual provision is in and of itself sufficient reasons for rescinding it; the OPL offered more than the required "*handful of well-chosen words*" as justification.

***Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158 at para. 17, *RBA* at tab Y**

74. In any event, the Supreme Court of Canada has made clear that reviewing courts should take into account and respect the choices of procedure made by the decision-maker itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures. This factor does indeed invite a degree of deference to the choice of procedure. In this case, we are dealing with the action of a "line decision maker" at the very lowest end of the procedural fairness ladder; there are no factors militating in favour of more stringent procedural safeguards.

***Baker* at para. 27; Suresh at para. 120, *RBA* at tab V; see also *E.T. v. Hamilton-Wentworth District School Board*, 2017 ONCA 893 at paras. 121 ff., per Lauwers J.A. (concurring) for discussion of "line decision makers", *RBA* at tab Z**

iii. Importance of the Decision to the Individual Affected

75. First, contrary to what the Applicants state at paragraph 65 of the Applicant's Factum, the fact that Ms. Weld and Ms. Thomas hold leadership positions in ACT is utterly irrelevant to this

factor of the *Baker* analysis. Likewise for the contention that this was allegedly not a "*routine booking*" but one that "*attracted a significant response*": there is no connection between Ms. Weld's duty to adhere to contractual provisions in renting out the auditorium and it garnering negative attention, and the OPL's duty of procedural fairness. Though the Applicants baldly assert that the Decision was unfair in that it was issued "*summarily*", they fail to indicate what, if any, other procedure beyond "*the opportunity to make submissions*" the OPL could have adopted to ensure the heightened degree of procedural fairness the Applicants feel entitled to.

76. In any event, Ms. Weld was allowed to make her case in person when she went to the OPL to contest the Decision. But the OPL was under no obligation to take her input into consideration; the Contract clearly stipulates that the OPL reserves the right to rescind in the event of a violation.

77. This situation is in sharp contradistinction to the facts in *Baker* or *Suresh*, where the appellants were facing deportation to a foreign country. That the Applicants feel aggrieved and inconvenienced ("*lost opportunity to listen*") by the Decision does not render it *ipso facto* unreasonable or unfair.

***Suresh* at para. 118, *RBA* at tab V**

iv. Legitimate Expectations

78. The Applicants' legitimate expectation is based on the fact that ACT was allowed to host "controversial" speakers at the OPL in the past.

79. With respect, the argument has no merit. The Decision was not directed at ACT as an organization, targeted for its own likelihood to incite hatred, but at the content of the film *Killing Europe*. As such, there is no legitimate (or legally valid) reason why the Applicants would expect

a certain result, i.e. that their booking would be accepted and not rescinded, on the basis that its past events were accepted and allowed to proceed. Indeed, the doctrine of legitimate expectations ensures that a certain previously relied upon procedure (a practice or conduct) be followed in the future; however, it does not ensure a certain result or outcome. The factor of legitimate expectations simply finds no application here.

> ***Agraira v. Canada (Public Safety and Emergency Preparedness),* 2013 SCC 36 at paras. 94–97, *RBA* at tab AA; *Canada (Attorney General) v. Mavi*, 2011 SCC 30 at para. 68, *RBA* at tab BB**

F) The Court Should Not Grant the Relief Sought

80. Even if the Decision were unreasonable or unfair, the Court should exercise its discretion not to grant the prerogative writs applied for. Sending the matter back would have no practical significance since the OPL could not reasonably reach a different decision. First, the OPL could elect not to re-enter into a booking contract with Ms. Weld. Neither the *PLA* nor any of the OPL's rules, policies or protocols indicate that the library has an obligation to book a room on behalf of any individual or group. Enjoining it to do so would be impractical. Second, if the matter were to be sent back to be reconsidered by the OPL at the cancellation stage, this remedy would also be impractical in that the OPL could not reasonably find that *Killing Europe* does not infringe section 35 of the Contract. There is only one possible outcome.

> ***Robbins v. Canada (Attorney General),* 2017 FCA 24 at para. 17, *RBA* at tab CC; *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board,* [1994] 1 S.C.R. 202 at pp. 228–29, *RBA* at tab DD; *Mining Watch Canada v. Canada (Fisheries and Oceans),* 2010 SCC 2 at para. 52, *RBA* at tab EE**

81. As for declaratory relief, the Applicants have no basis to request a declaration pursuant to subsection 24(1) of the *Charter*.

82. Firstly, applicants cannot simply ask for a *Charter* declaration on judicial review in an attempt to bypass the *Doré* analysis. Balancing competing *Charter* rights and values as well as statutory objectives against each other in the context of an administrative decision is a fact-specific exercise that does not lend itself to general pronouncements.

> **See e.g. *BC Civil Liberties Association v. University of Victoria*, 2016 BCCA 162 at para. 55, leave to appeal to S.C.C. refused, 2016 CanLII 82919, *RBA* at tab FF**

83. Under the *Doré/Loyola* framework, the reviewing court undertakes to assess the Decision's reasonableness; absent a reasonable outcome, the reviewing court is typically tasked with sending the matter back for reconsideration by the decision-maker.

> ***Loyola* at para. 81, *RBA* at tab J; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319 at paras. 54, 88, *RBA* at tab GG; *Grande Prairie (City)* at para. 41, RBA at tab MM; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 at para. 31, *RBA* at tab HH**

84. As such, a disproportionate balancing of *Charter* values and statutory objectives does not warrant a declaration pursuant to the *Charter*.

85. In this case, the Applicants are not bringing a *Charte*r challenge where the government must have the opportunity to argue that a limit to rights is justified under section 1, but are rather challenging the reasonableness of an administrative decision. Indeed, in any event, the record as it stands fails to disclose sufficient material facts to support a *Charter* declaration.

> ***Gehl* at para. 79, per Lauwers and Miller JJ.A. (concurring), *RBA* at tab GG; *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at para. 21, *RBA* at tab II; *MacKay v. Manitoba*, [1989] 2 S.C.R. 357 at pp. 361–63, *RB*A at tab JJ**

86. Secondly, this Court should elect not to exercise its discretion to make a declaration of right pursuant to section 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as such an order would amount to a declaration to the effect that any and all who seek to show their or view expressive content at a public library have a right to do so. This would amount to establishing a positive right to a platform as contemplated in *Baier v. Alberta*.

87. In the alternative, should this Court determine that there exist sufficient grounds to grant a declaration to the effect that *Charter* rights have been limited, such a declaration should be aimed solely at Ms. Weld's personal rights. Ms. Weld is the only person who is directly affected by the Decision.

88. Subsection 24(1) cannot in and of itself be relied upon as a basis for standing, as the provision clearly requires an infringement or denial of a personal *Charter*-based right. What the Applicants seek here is a bare declaration that the OPL was wrong to cancel Ms. Weld's booking contract because it affected potential viewers' "right" to see the film.

89. As the Application is currently framed, the Applicants do not have standing to assert the personal right to freedom of expression on behalf of an ill-defined community of people, i.e. persons who may have attended the screening of Killing Europe. A party cannot rely upon the violation of a third party's *Charter* rights as the basis of their claim. What the Applicants actually seek would require the Court to answer a purely abstract and political question which would in effect sanction a private reference.

> ***R. v. Edwards*, [1996] 1 S.C.R. 128 at para. 45, *RBA* at tab KK; *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at p. 367, *RBA* at tab LL**

PART V - ORDER REQUESTED

90. The Respondent requests that this Application for Judicial Review be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of July, 2019.

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36
2. *Air Canada v. Toronto Port Authority*, 2011 FCA 347
3. *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61
4. *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 FC 742
5. *Baier v. Alberta*, 2007 SCC 31
6. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
7. *BC Civil Liberties Association v. University of Victoria*, 2016 BCCA 162
8. *Bonitto v. Halifax Regional School Board*, 2015 NSCA 80
9. *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342
10. *Buffone v. Canada (Attorney General)*, 2017 FC 346
11. *Canada (Attorney General) v. Mavi*, 2011 SCC 30
12. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31
13. *Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City)*, 2018 ABCA 154
14. *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9
15. *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2
16. *Doré v. Barreau du Québec*, 2012 SCC 12
17. *Dunsmuir v. New Brunswick*, 2008 SCC 9
18. *E.T. v. Hamilton-Wentworth District School Board*, 2017 ONCA 893
19. *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47
20. *Forest Ethics Advocacy Association v. Canada (National Energy Board*), 2014 FCA 245

21. *Gehl v. Canada (Attorney General)*, 2017 ONCA 319

22. *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31

23. *Haig v. Canada*, [1993] 2 S.C.R. 995

24. *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26

25. *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32

26. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12

27. *MacKay v. Manitoba*, [1989] 2 S.C.R. 357

28. *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227

29. *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2

30. *Mission Institution v. Khela*, 2014 SCC 24

31. *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202

32. *R. v. Edwards*, [1996] 1 S.C.R. 128

33. *Robbins v. Canada (Attorney General)*, 2017 FCA 24

34. *Re Residential Tenancies Act*, [1981] 1 S.C.R. 714

35. *Sangar v. Ontario (Private Career Colleges Superintendent)*, 2018 ONSC 673

36. *Setia v. Appleby College*, 2013 ONCA 753

37. *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1

38. *Taman v. Canada (Attorney General)*, 2017 FCA 1

39. *Toronto (City) v. Ontario (Attorney General)*, 2018 ONCA 761

40. *Trost v. Conservative Party of Canada*, 2018 ONSC 2733

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY - LAWS

A. *Canadian Charter of Rights and Freedoms,* Part I of *The Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

Guarantee of Rights and Freedoms
1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms
2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association.

Enforcement of guaranteed rights and freedoms
24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

B. *Judicial Review Procedure Act,* R.S.O. 1990, c. J.1

Definitions
1. In this Act,

"application for judicial review" means an application under subsection 2 (1); ("requête en révision judiciaire")
"court" means the Superior Court of Justice; ("Cour")
"licence" includes any permit, certificate, approval, registration or similar form of permission required by law; ("autorisation")
"municipality" has the same meaning as in the *Municipal Affairs Act*; ("municipalité")
"party" includes a municipality, association of employers, a trade union or council of trade unions which may be a party to any of the proceedings mentioned in subsection 2 (1); ("partie")
"statutory power" means a power or right conferred by or under a statute,

(a) to make any regulation, rule, by-law or order, or to give any other direction having force as subordinate legislation,
(b) to exercise a statutory power of decision,

(c) to require any person or party to do or to refrain from doing any act or thing that, but for such requirement, such person or party would not be required by law to do or to refrain from doing,

(d) to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person or party; ("compétence légale")

"statutory power of decision" means a power or right conferred by or under a statute to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person or party is legally entitled thereto or not,

and includes the powers of an inferior court. ("compétence légale de décision") R.S.O. 1990, c. J.1, s. 1; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1).

Applications for judicial review

2. (1) On an application by way of originating notice, which may be styled "Notice of Application for Judicial Review", the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.

2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. R.S.O. 1990, c. J.1, s. 2 (1).

Error of law

(2) The power of the court to set aside a decision for error of law on the face of the record on an application for an order in the nature of certiorari is extended so as to apply on an application for judicial review in relation to any decision made in the exercise of any statutory power of decision to the extent it is not limited or precluded by the Act conferring such power of decision. R.S.O. 1990, c. J.1, s. 2 (2).

Lack of evidence

(3) Where the findings of fact of a tribunal made in the exercise of a statutory power of decision are required by any statute or law to be based exclusively on evidence admissible before it and on facts of which it may take notice and there is no such evidence and there are no such facts to support findings of fact made by the tribunal in making a decision in the exercise of such power, the court may set aside the decision on an application for judicial review. R.S.O. 1990, c. J.1, s. 2 (3).

Power to set aside

(4) Where the applicant on an application for judicial review is entitled to a judgment declaring that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may, in the place of such declaration, set aside the decision. R.S.O. 1990, c. J.1, s. 2 (4).

Power to refuse relief
(5) Where, in any of the proceedings enumerated in subsection (1), the court had before the 17th day of April, 1972 a discretion to refuse to grant relief on any grounds, the court has a like discretion on like grounds to refuse to grant any relief on an application for judicial review. R.S.O. 1990, c. J.1, s. 2 (5).

Where subs. (5) does not apply
(6) Subsection (5) does not apply to the discretion of the court before the 17th day of April, 1972 to refuse to grant relief in any of the proceedings enumerated in subsection (1) on the ground that the relief should have been sought in other proceedings enumerated in subsection (1). R.S.O. 1990, c. J.1, s. 2 (6).

C. *Public Libraries Act*, R.S.O. 1990, c. P.44

Composition of public library board
9. (1) A public library board shall be composed of at least five members appointed by the municipal council. 2002, c. 18, Sched. F, s. 3 (8).

Composition of union board
(2) A union board shall be 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 made under subsection 5 (1). 2002, c. 18, Sched. F, s. 3 (8).

Composition of county library board
(3) A county library board shall be composed of at least five members appointed by the county council. 2002, c. 18, Sched. F, s. 3 (8).

Same
(4) When a single-tier municipality joins a county library, the members of the county library board shall be appointed by the county council and the council of the single-tier municipality in the proportions agreed upon by the county council and the council of the single-tier municipality. 2002, c. 18, Sched. F, s. 3 (8).

Composition of county library co-operative board
(5) A county library co-operative board shall be composed of at least five members appointed by the county council. 2002, c. 18, Sched. F, s. 3 (8).

Powers and duties of board
20. A board,

(a) shall seek to provide, in co-operation with other boards, a comprehensive and efficient public library service that reflects the community's unique needs;
(b) shall seek to provide library services in the French language, where appropriate;

(c) shall operate one or more libraries and ensure that they are conducted in accordance with this Act and the regulations;
(d) may operate special services in connection with a library as it considers necessary;
(e) shall fix the times and places for board meetings and the mode of calling and conducting them, and ensure that full and correct minutes are kept;
(f) shall make an annual report to the Minister and make any other reports or provide any other information required by this Act and the regulations or requested by the Minister from time to time;
(g) shall make provision for insuring the board's real and personal property;
(h) shall take proper security for the treasurer; and
(i) may appoint such committees as it considers expedient. R.S.O. 1990, c. P.44, s. 20; 2009, c. 33, Sched. 11, s. 7 (3).

Libraries to be open to public

23. (1) A board shall not make a charge for admission to a public library or for use in the library of the library's materials. R.S.O. 1990, c. P.44, s. 23 (1).

Certain library services free

(2) Every board shall allow the public to,
(a) reserve and borrow circulating materials that are prescribed or belong to a prescribed class; and
(b) use reference and information services as the board considers practicable,
without making any charge. R.S.O. 1990, c. P.44, s. 23 (2).

Fees

(3) A board may impose such fees as it considers proper for,
(a) services not referred to in subsections (1) and (2);
(b) the use of the parts of a building that are not being used for public library purposes; and
(c) the use of library services by persons who do not reside in the area of the board's jurisdiction.

Rules

(4) Subject to the regulations, a board may make rules,
(a) for the use of library services;
(b) for the admission of the public to the library;
(c) for the exclusion from the library of persons who behave in a disruptive manner or cause damage to library property;
(d) imposing fines for breaches of the rules;
(e) suspending library privileges for breaches of the rules; and
(f) regulating all other matters connected with the management of the library and library property.

MADELINE WELD et al.
Applicants

-and-

OTTAWA PUBLIC LIBRARY
Respondent

Court File No. DC-18-00002401-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT
TORONTO

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